

**Code
of the
Town of Minden**

COUNTY OF MONTGOMERY

STATE OF NEW YORK

SERIAL NO.

GENERAL CODE
781 Elmgrove Road
Rochester, NY 14624

2001

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OF THE
TOWN OF MINDEN

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2017

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CERTIFICATION

TOWN OF MINDEN

Office of the Town Clerk

I, **JANET I. TRUMBULL**, Town Clerk of the Town of Minden, New York, hereby certify that the chapters contained in this volume are based upon the original local laws, ordinances and resolutions of the Town Board of the Town of Minden, 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 Minden, County of Montgomery, State of New York, as adopted by local law of the Town Board on April 19, 2001.

Given under my hand and the Seal of the Town of Minden, County of Montgomery, State of New York, this 20th day of April, 2001, at Minden, New York.

s/JANET I. TRUMBULL

Town Clerk



PREFACE

The Town of Minden 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 of a general and permanent nature enacted by the Town Board of the Town of Minden, 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.

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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 are listed beneath the chapter title in order to facilitate the location of the individual item of legislation.

Reserved Chapters

Unassigned chapter numbers do not appear in the Table of Contents but are available for assignment to new enactments. In this manner, new subject matter can be included alphabetically.

Pagination

A unique page-numbering system has been used in which each chapter forms an autonomous unit. The first page of each chapter is the number of that chapter followed by a colon and the numeral "1." Thus, Chapter 6 would begin on page 6:1. By the use of this system, it is possible to add or to change pages in any chapter, or add new chapters, without affecting the sequence of subsequent pages.

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 would be § 6-1, while the fourth section of Chapter 53 would be § 53-4.

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 text, under its title. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

PREFACE

Codification Amendments and Revisions

New chapters adopted 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 amended or revised are 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.

Disposition List

The Disposition List is a chronological listing of legislation adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. The Disposition List will be updated with each supplement to the Code to include the legislation reviewed with said supplement.

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 supplemented 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.

Adding new sections. 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

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sections as decimal numbers (e.g., a new section between §§ 65-5 and 65-6 should be designated § 65-5.1).

Adding new chapters. 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 166 and 167 should be designated Chapter 166A).

Adding new articles. 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 § 166-30 and Article XVII begins with § 166-31, Article XVIA should contain §§ 166-30.1 through 166-30.6). **NOTE:** In chapters where articles appear on the Table of Contents, simply add new articles to the end of the chapter since they are not arranged by subject matter.

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.

Acknowledgment

The assistance of the Town officials is gratefully acknowledged by the editor. The codification of the legislation of the Town of Minden 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 community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code that this Code will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

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PART I

ADMINISTRATIVE LEGISLATION



Chapter 1

GENERAL PROVISIONS

ARTICLE I Adoption of Code

- § 1-1. Legislative intent.**
- § 1-2. Continuation of existing provisions.**
- § 1-3. Repeal of enactments not included in Code.**
- § 1-4. Enactments saved from repeal; matters not affected.**
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- § 1-10. Penalties for tampering with Code.**
- § 1-11. Changes in previously adopted legislation; new provisions.**
- § 1-12. Incorporation of provisions into Code.**
- § 1-13. When effective.**

ARTICLE I Adoption of Code

[Adopted 4-19-2001 by L.L. No. 1-2001]

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Town of Minden, as codified by General Code Publishers Corp., and consisting of Chapters 1 through 90, together with an Appendix, shall be known collectively as the "Code of the Town of Minden," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Town of Minden" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law, are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Town Board of the Town of Minden, and it is the intention of said Board that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

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

All local laws and ordinances of a general and permanent nature of the Town of Minden 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 laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, 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 Minden 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 Minden 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 Minden.
- D. Any agreement entered into or any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Minden.
- E. Any local law or ordinance of the Town of Minden 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 Minden or any portion thereof.
- F. Any local law or ordinance of the Town of Minden 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 Minden or other instruments or evidence of the town's indebtedness.
- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract, agreement or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.
- J. Any local law or ordinance relating to salaries and compensation.
- K. Any local law or ordinance amending the Zoning Map.
- L. Any local law or ordinance relating to or establishing a pension plan or pension fund for town employees.

- M. Any local law or ordinance or portion of a local law or ordinance establishing a specific fee amount for any license, permit or service obtained from the town.
- N. Any local law adopted subsequent to 10-18-2000.
- O. The Investment Policy adopted 1-6-2000 by Resolution No. 2000-03, and any amendments thereto.

§ 1-5. Severability.

If any clause, sentence, paragraph, section, article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or 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, chapter 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 Minden 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 by the Town Clerk of the Town of Minden by impressing thereon the Seal of the town, 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 said Code is in effect. The enactment and publication of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 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 Minden" 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 a 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, they shall thereafter be printed and, as provided hereunder, inserted 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 Minden 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 a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws, ordinances or resolutions until such changes, 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, or any chapter or portion of it, may be purchased from the Town Clerk, or an authorized agent of the Clerk, upon the payment of a fee to be set by resolution of the Town Board. The Clerk may also arrange for procedures for the periodic supplementation of the Code.

§ 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 Minden or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Town of Minden 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 \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-11. Changes in previously adopted legislation; new provisions.

- A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Town of Minden, 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 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 amendments and/or additions as set forth in Schedule A attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this local law.¹ (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)

1. Editor's Note: In accordance with § 1-11B, the chapters, parts and sections which were added, amended, adopted or deleted by this local law are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article I. During routine supplementation, footnotes indicating amendments, additions or deletions will be replaced with the following history: "Amended (added, deleted) 4-19-2001 by L.L. No. 1-2001." Schedule A, which contains a complete description of all changes, is on file in the Town offices.

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Town of Minden, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-13, inclusive.

§ 1-13. When effective.

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



Chapter 5

ASSESSOR

§ 5-1. Legislative intent.

§ 5-3. Appointment.

**§ 5-2. Abolition of offices of Board of
three elected Assessors.**

§ 5-4. Term of office.

§ 5-5. Qualifications.

[HISTORY: Adopted by the Town Board of the Town of Minden 6-21-2012 by L.L. No. 3-2012.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Taxation — See Ch. 83.

§ 5-1. Legislative intent.

The legislative intent of this chapter is to establish the office of a single appointed Assessor pursuant to Real Property Tax Law § 328. It is the intent of this chapter to abolish the Board of three elected Assessors in the Town of Minden and to substitute therefor a single appointed Assessor to be appointed pursuant to Real Property Tax Law § 310.

§ 5-2. Abolition of offices of Board of three elected Assessors.

The offices of the three elected Assessors as previously established and continued by the Town of Minden are hereby abolished effective December 31, 2012.

§ 5-3. Appointment.

In place and stead of the Board of three elected Assessors, the Town of Minden shall have one single Assessor to be appointed by the Town Board of the Town of Minden. Such initial term of office will be from January 1, 2013, to September 30, 2013.

§ 5-4. Term of office.

The term of office for said appointed Assessor shall be six years, with the current term beginning October 1, 2007, and terminating on September 30, 2013.

§ 5-5. Qualifications.

The qualifications for the office of appointed Assessor shall be the minimum qualifications and standards set by the State Board of Equalization and Assessment as of the date of appointment to the office.

1. Editor's Note: This local law also superseded former Ch. 5, Assessors, adopted 4-15-1971 by L.L. No. 1-1971.



Chapter 9

ETHICS, CODE OF

§ 9-1. Purpose.

§ 9-2. Definitions.

§ 9-3. Standards of conduct.

§ 9-4. Restrictions.

§ 9-5. Distribution of Code of Ethics.

§ 9-6. Enforcement; additional penalties.

§ 9-7. Financial disclosure.

[HISTORY: Adopted by the Town Board of the Town of Minden 11-5-1998 by L.L. No. 2-1998. Amendments noted where applicable.]

GENERAL REFERENCES

Investment policy — See Ch. 13.

Officers and employees — See Ch. 17.

§ 9-1. Purpose.

- A. Pursuant to the provisions of § 806 of the General Municipal Law, the Town Board of the Town of Minden 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 chapter to promulgate these rules of ethical conduct for the officers and employees of the Town of Minden. These rules shall serve as a guide for official conduct of the officers and employees of the Town of Minden.
- B. The rules of ethical conduct of this chapter 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.

§ 9-2. Definitions.

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

INTEREST¹ — A direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this chapter, a municipal officer or employee shall be deemed to have an interest in the contract of:

- A. His spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves.

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

- B. A firm, partnership or association of which such officer or employee is a member or employee.
- C. A corporation of which such officer or employee is an officer, director or employee.
- D. A corporation, any stock of which is owned or controlled directly or indirectly by such officer or employee.

MUNICIPAL OFFICER OR EMPLOYEE — An officer of the Town of Minden, whether paid or unpaid, including members of any administrative board, commission or other agency thereof.²

§ 9-3. Standards of conduct.

- A. Gifts. He shall not directly or indirectly solicit any gift or accept or receive any gift having a value of \$75 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 to further his personal interest.
- C. Representation 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 of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- 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 relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with such 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 and any officer or employee of the Town of Minden, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town of Minden 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.

² Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- 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 Minden in relation to any case, proceeding or application in which he personally participated during the period of this service or employment or which was under his active consideration.

§ 9-4. Restrictions.

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 Minden 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.

§ 9-5. Distribution of Code of Ethics.

The Supervisor of the Town of Minden shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Minden within 15 days after the effective date of this chapter. Each officer or employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his 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 provisions thereof.

§ 9-6. Enforcement; additional penalties.

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.

§ 9-7. Financial disclosure.

Pursuant to the authority of § 806, Subdivision 3, of the General Municipal Law, the Town of Minden elects not to be subject to the provisions of § 812 of the General Municipal Law requiring financial disclosures.



Chapter 13

INVESTMENT POLICY

[The current Town of Minden Investment Policy is on file in the town offices.]



Chapter 17

OFFICERS AND EMPLOYEES

ARTICLE I

Residency Requirements for Appointed Officials

§ 17-1. Legislative intent.

§ 17-2. Legislative authorization.

ARTICLE II

Indemnification and Defense of Employees

§ 17-3. Legislative intent.

§ 17-4. Definition of employee.

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Town Supervisor

§ 17-17. Title.

§ 17-18. Purpose.

§ 17-19. Authority.

§ 17-20. Application.

§ 17-21. Effective date.

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Residency Requirements for Appointed Officials

[Adopted 11-20-1996 by L.L. No. 2-1996]

§ 17-1. Legislative intent.

It is the intent of the Town Board of the Town of Minden that officials of the town who are appointed by the Town Board need not be residents of the Town of Minden at the time of their appointments.

§ 17-2. Legislative authorization.

The Town Board of the Town of Minden does hereby direct the adoption of this article which states that officials to the town who are appointees of the Town Board do not have to be residents of the town at the time of their appointments, and that according to Municipal Home Rule Law, this article supersedes § 23 of the Town Law and § 3 of the Public Officers Law regarding residency requirements of appointed town officials.

ARTICLE II
Indemnification and Defense of Employees
[Adopted 6-16-2016 by L.L. No. 2-2016]

§ 17-3. Legislative intent.

The New York State Legislature has enacted legislation permitting public entities, including towns, to provide for the defense and indemnification of officers and employees of the town. This article implements that concept and the statutory intent set forth in Section 18 of the Public Officers Law of the State of New York and is in addition to and supplements any other defense or indemnification protection conferred by any other enactment.

§ 17-4. Definition of employee.

The term "employee" shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of the Town of Minden, whether or not compensated. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

§ 17-5. Defense.

- A. Upon compliance by the employees with the provisions of § 17-7 of this article, the Town of Minden shall provide for the defense and indemnification of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties. This duty to provide for a defense and indemnification shall not arise where such civil action or proceeding is brought by, or at the behest of the Town of Minden.
- B. Reasonable attorneys' fees and litigation expenses shall be paid by the Town to such attorney employed or retained, from time to time, during pendency of the civil action or proceeding, subject to certification by the Town Supervisor that the employee is entitled to representation under the terms and conditions of this article. In addition, the Town Board may require, as a condition of payment of fees and expenses of such representation, that appropriate groups of employees be represented by the same counsel. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Town. Any dispute with respect to representation of multiple employees by the attorney employed or retained for such purposes, or with respect to the amount of the fees or expenses, shall be resolved by the court upon motion or by way of a special proceeding.
- C. Where the employee delivers process and a written request for a defense to the Town of Minden under § 17-7 of this article, the Town of Minden shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 17-6. Indemnification.

- A. The Town of Minden shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Town Board of the Town of Minden or its insurance company.
- B. Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- C. Nothing in this section shall authorize the Town of Minden to defend, indemnify or save harmless an employee with respect to any claims filed, or money recovered from an employee pursuant to Section 51 of the General Municipal Law or for any claims alleging intentional wrongdoing or a reckless act.
- D. Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within five days of the date of entry or settlement, upon the Clerk and the Town Attorney of the Town of Minden, and if not inconsistent with the provisions of this article, the amount of such judgment or settlement shall be paid by the Town of Minden.

§ 17-7. Duty to notify.

The duty to defend or indemnify and save harmless prescribed by this article shall be conditioned upon:

- A. Delivery by the employee to the Town Attorney and to the Town Clerk a written request to provide for his defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such documents; and
- B. The full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the Town of Minden based upon the same act or omission, and in the prosecution of any appeal.

§ 17-8. Other rights.

The benefits of this article shall inure only to employees as deemed herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this article be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

§ 17-9. Notice.

This article shall not in any way affect the obligation of any claimant to give notice to the Town of Minden under Section 10 of the Court of Claims Act, Section 50E of the General Municipal Law, or any other provision of law.

§ 17-10. Insurance.

The Town of Minden is hereby authorized and empowered to purchase insurance from any insurance company created by, or under the laws of the State of New York, or authorized by law to transact business in this state, against any liability imposed by the provisions of this article, or to act as a self-insurer with respect thereto.

§ 17-11. Payments.

All payments made under the terms of this article, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

§ 17-12. Insurer rights.

The provisions of this article shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 17-13. Immunity.

Except as otherwise specifically provided in this article, the provisions of this article shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to, or conferred upon, any unit, entity, officer or employee of the Town of Minden, by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

§ 17-14. Other enactments.

Except as otherwise provided in this article, benefits accorded to employees under this article shall supplement, and be available in addition to, defense or indemnification protections conferred by any other enactment of the Town Board of the Town of Minden, New York State statutes or common law. In the event that another employer or agency is also obligated to provide a defense for the employee and/or pay any sums of monies by way of indemnification and/or judgment or award, notwithstanding anything contained herein to the contrary, the Town of Minden shall be entitled to contribution and/or indemnification by the employee and/or other agency.

§ 17-15. Applicability determined by date of commencement of action.

The provisions of this article shall apply to all actions or proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this article.

§ 17-16. No duty to defend and/or indemnify.

- A. Notwithstanding anything to the contrary contained herein, there shall be no duty of the Town of Minden to defend or indemnify any employee unless the Town Board finds:
- (1) That the claim arose during the course of his normal employment and within the scope of his employment in a matter in which the Town of Minden had an interest;
 - (2) The employee was acting in discharge of a duty imposed or authorized by law; and
 - (3) The employee acted in good faith and without malice.
- B. In the event the Town assumes the duty of defense and in the event a court determines that the employee acted in bad faith or with malice or in a wanton or willful manner so as to cause the claim, or was not acting in a bona fide discharge of his or her municipal duties, the employees shall reimburse the Town for all expenses incurred for defense of claims arising out of the alleged civil action or civil proceeding. Upon such finding by a court, the Town shall have no duty to satisfy any judgment or claim against the employee, and in the event the Town has satisfied or is ordered to satisfy said judgment or claim, the employee must reimburse the Town for any sum paid for the said satisfaction.

ARTICLE III**Town Supervisor**

[Adopted 4-21-2016 by L.L. No. 3-2016]

§ 17-17. Title.

This article shall be known as the "Local Law Extending the Term of the Town Supervisor of the Town of Minden, County of Montgomery, and State of New York."

§ 17-18. Purpose.

The purpose of this local law is to extend the term of office for the Town Supervisor from two years to four years. The Town Board believes an extended term would bring greater continuity to the office, and thus believes that the extended term is in the public's best interest. It is the intention of the Town Board to supersede Town Law § 24 and any other conflicting provisions of Town Law with this local law.

§ 17-19. Authority.

This local law is enacted pursuant to the Town's authority under Section 10(1)(ii)(a) and Section 23(2)(e) of the Municipal Home Rule Law of the State of New York.

§ 17-20. Application.

This local law shall extend the term of the Town Supervisor from two years to four years, such four-year term shall commence as of the first day of January, 2018, and shall apply to the person elected to such office at the general election be held in November 2017, and to those elected thereafter.

§ 17-21. Effective date.

In accordance with the provisions of the Municipal Home Rule Law of the State of New York, this local law shall not become operative or effective unless and until it shall have been approved at the next general election held within the Town of Minden by the affirmative vote of a majority of the qualified electors of the Town of Minden voting upon the proposition.¹ This article shall take effect, if approved as set forth above by the electors, upon the filing with the Office of the Secretary of State.

1. Editor's Note: This article was approved at referendum 11-8-2016.

Chapter 20

PLANNING BOARD AND ZONING BOARD OF APPEALS

ARTICLE I Alternate Members

§ 20-1. Legislative intent.

§ 20-2. Short title; applicability.

§ 20-3. Definitions.

§ 20-4. Authorization and effect.

§ 20-5. Supersession of Town Law.

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 90.

ARTICLE I Alternate Members

[Adopted 7-26-2012 by L.L. No. 4-2012]

§ 20-1. Legislative intent.

The Town Board of the Town of Minden recognizes that it is sometimes difficult to maintain a quorum on the Planning Board and Zoning Board of Appeals because members are ill, are on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted which may delay or impede adherence to required timeliness. The use of alternate members in the absence of Planning Board or Zoning Board of Appeals members is hereby authorized pursuant to the provisions of this article.

§ 20-2. Short title; applicability.

The short title of this article is the "Alternate Planning Board and Zoning Board of Appeals Members Act." This article shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board or Zoning Board of Appeals in the Town of Minden.

§ 20-3. Definitions.

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

ALTERNATE MEMBER — An individual appointed by the Minden Town Board to serve on the Planning Board or Zoning Board of Appeals of the Town of Minden when a regular member is unable to participate on an application or matter before the Planning Board or Zoning Board of Appeals as provided herein.

MEMBER — An individual appointed by the Minden Town Board to serve on the Planning Board or Zoning Board of Appeals of the Town of Minden pursuant to the provisions of the local law or ordinance which first established such Planning Board or Zoning Board of Appeals.

PLANNING BOARD — The Planning Board of the Town of Minden as established by the Town Board of the Town of Minden pursuant to the provisions of § 271 of the Town Law of the State of New York.

ZONING BOARD OF APPEALS — The Zoning Board of Appeals of the Town of Minden as established by the Town Board by local law or ordinance pursuant to provisions of § 267 of the Town Law of the State of New York.

§ 20-4. Authorization and effect.

- A. The Town Board of the Town of Minden hereby enacts this article to provide a process for appointing alternate members of the Planning Board and Zoning Board of Appeals. Such alternate members would serve when members of the Planning Board or Zoning Board of Appeals are absent or unable to participate on an application or matter before the respective Board.
- B. Alternate members of the Planning Board and Zoning Board of Appeals shall be appointed by resolution of the Minden Town Board, for a term of one year.
- C. The Chairperson, or the Acting Chairperson in the absence of the Chairperson, of the Planning Board or Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate in an application or matter before the respective Board. When so designated the alternate member shall possess all the powers and responsibilities of a member of such Board. Such designation shall be entered into the minutes of the initial Planning Board or Zoning Board of Appeals meeting at which the substitution is made.
- D. All provisions of state law relating to Planning Board and/or Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

§ 20-5. Supersession of Town Law.

This article is hereby adopted pursuant to the provisions of § 10 of the New York State Municipal Home Rule Law and § 10 of the New York State Statute of Local Governments. It is the intent of the Town Board of the Town of Minden, pursuant to § 10 of the New York State Municipal Home Rule Law, to supersede the provisions of § 271 of the New York State Town Law relating to the appointment of members of the Town Planning Board and/or of § 267 of the New York State Town Law relating to the appointment of members to the Zoning Board of Appeals.

Chapter 24

RECORDS

ARTICLE I **Public Access**

- § 24-1. Purpose.
- § 24-2. Records inaccessible to the public.
- § 24-3. Designation of records access officers; responsibilities.
- § 24-4. Location of records.
- § 24-5. Hours for public inspection.
- § 24-6. Procedure for requests.

- § 24-7. Subject matter list.
- § 24-8. Denial of access; appeals.
- § 24-9. Fees.
- § 24-10. Public notice.

ARTICLE II **Retention and Disposition**

- § 24-11. Records Retention and Disposition Schedule MU-1.

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in article histories. Amendments noted where applicable.]

ARTICLE I **Public Access** **[Adopted 10-10-1974¹]**

§ 24-1. Purpose.

- A. The people's right to know the process of governmental decisionmaking and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.
- B. These regulations provide information concerning the procedures by which records may be obtained.
- C. Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

§ 24-2. Records inaccessible to the public.

- A. The following records, pursuant to town and state law, are not accessible to the public:
 - (1) Those which are specifically exempted from disclosure by state or federal statute.

¹ Editor's Note: Amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (2) Those which, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of Subdivision 2 of § 89 of the Public Officers Law.
 - (3) Those which, if disclosed, would impair present or imminent contract awards or collective bargaining negotiations.
 - (4) Those which are trade secrets or are maintained for the regulation of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.
 - (5) Those which are compiled for law enforcement purposes and which, if disclosed, would:
 - (a) Interfere with law enforcement investigations or judicial proceedings;
 - (b) Deprive a person of a right to a fair trial or impartial adjudication;
 - (c) Identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - (d) Reveal criminal investigative techniques or procedures, except routine techniques and procedures.
 - (6) Those which, if disclosed, would endanger the life or safety of any person.
 - (7) Those which are interagency or intraagency materials which are not:
 - (a) Statistical or factual tabulations or data;
 - (b) Instructions to staff that affect the public;
 - (c) Final agency policy or determinations; or
 - (d) External audits, including but not limited to audits performed by the Comptroller and the federal government.
 - (8) Those which are examination questions or answers which are requested prior to the final administration of such questions.
 - (9) Those which are computer access codes.
- B. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 24-3. Designation of records access officers; responsibilities.

- A. The Town Board of the Town of Minden is responsible for ensuring compliance with the regulations herein and designates the following persons as records access officers:
- (1) Town Clerk, Office of the Town Clerk, 134 STHWY 80, Fort Plain, NY 13339.
 - (2) Deputy Town Clerk, Office of the Town Clerk, 134 STHWY 80, Fort Plain, NY 13339.

- B. Records access officers are responsible for ensuring appropriate agency response to public requests for access to records. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. Records access officers shall ensure that personnel:
- (1) Maintain an up-to-date subject matter list.
 - (2) Assist the requester in identifying requested records, if necessary.
 - (3) Upon locating the records, take one of the following actions:
 - (a) Make records available for inspection; or
 - (b) Deny access to the records in whole or in part and explain in writing the reasons therefor.
 - (4) Upon request for copies of records, make a copy available upon payment or offer to pay established fees, if any, in accordance with § 24-9.
 - (5) Upon request, certify that a record is a true copy.
 - (6) Upon failure to locate records, certify that:
 - (a) The Town of Minden is not the custodian for such records; or
 - (b) The records of which the Town of Minden is custodian cannot be found after diligent search.

§ 24-4. Location of records.

Records shall be available for public inspection and copying at the Office of the Town Clerk, 134 STHWY 80, Fort Plain, NY 13339.

§ 24-5. Hours for public inspection.

Requests for public access to records shall be accepted and records produced during all hours the Town Clerk's office is regularly open for business. These hours are 9:00 a.m. until 4:30 p.m.

§ 24-6. Procedure for requests.

- A. A written request is required.
- B. A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.
- C. A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

- D. If the records access officer does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within 10 business days after the date of acknowledgment of receipt of a request, such failure may be construed as a denial of access that may be appealed.

§ 24-7. Subject matter list.

- A. The records access officer shall maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not records are available pursuant to Subdivision 2 of § 87 of the Public Officers Law.
- B. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.
- C. The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

§ 24-8. Denial of access; appeals.

- A. Denial of access to records shall be in writing, stating the reason therefor 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 § 24-6D of these regulations, such failure shall also be deemed a denial of access.
- C. The following person or persons or body shall hear appeals from denial of access to records under the Freedom of Information Law: the Town Board of the Town of Minden, 134 STHWY 80, Fort Plain, NY 13339, 518-993-3443.
- D. The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of written appeal identifying:
- (1) The date of the appeal.
 - (2) The date and location of the request for records.
 - (3) The records to which the requester was denied access.
 - (4) Whether the denial of access was in writing or due to failure to provide records promptly as required by § 24-6D.
 - (5) The name and return address of the requester.
- E. The individual or body designated to hear appeals shall inform the requester of its decision in writing within 10 business days of receipt of an appeal.
- F. The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to the Committee on Open Government, Department of State, 162 Washington Avenue, Albany, New York 12231.

- G. The person or body designated to hear appeals shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in Subsection F of this section.

§ 24-9. 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. Copies of records shall be provided according to the following fee schedule:

- (1) The fee for photocopies not exceeding nine inches by 14 inches is \$0.25 per page.
- (2) The fee for copies of records other than photocopies which are nine inches by 14 inches or less shall be the actual copying cost, excluding fixed agency costs such as salaries.

§ 24-10. Public notice.

A notice containing the title or name and business address of the records access officers and appeals person 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 of general circulation.

ARTICLE II
Retention and Disposition
[Adopted 2-8-1989]

§ 24-11. Records Retention and Disposition Schedule MU-1.

- A. Only those records will be disposed of that are described in Records Retention and Disposition Schedule MU-1 after they have met the minimum retention period prescribed therein.
- B. Only those records will be disposed of that do not have sufficient administrative, fiscal, legal or historical value to merit retention beyond established time periods.

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Chapter 28
SALARIES AND COMPENSATION

ARTICLE I
Town Attorney

§ 28-1. Compensation for specified services, plus additional work.

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Town Attorney
[Adopted 8-27-1988 by L.L. No. 1-1988]

§ 28-1. Compensation for specified services, plus additional work.

The Minden Town Attorney may be paid by a fixed amount for certain specified services, plus an additional amount, which might be computed at an hourly rate, for certain additional services.



Chapter 32

SMOKING

§ 32-1. Prohibited acts.

§ 32-2. Smoking rooms.

§ 32-3. Conflicts.

§ 32-4. Disciplinary action.

§ 32-5. Posting of copies.

§ 32-6. Enforcement.

§ 32-7. Amendments.

[HISTORY: Adopted by the Town Board of the Town of Minden at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

§ 32-1. Prohibited acts.

- A. Smoking is prohibited throughout the municipal facilities except in designated areas identified by "Smoking Permitted" signs.
- B. Smoking is prohibited in any indoor enclosed work area occupied by more than one person, unless all employees in such area agree to allow smoking. The rights of a nonsmoker to a smoke-free area shall prevail.
- C. Smoking is also prohibited in conference or meeting rooms and municipal vehicles used by more than one person unless all occupants agree to allow smoking.

§ 32-2. Smoking rooms.

An enclosed smoking room may be designated upon request, if space is available.

§ 32-3. Conflicts.

Conflicts should be brought to the attention of the Town Supervisor.

§ 32-4. Disciplinary action.

Employees found smoking outside of designated smoking areas will be considered in violation of this chapter and may be subject to disciplinary action.

§ 32-5. Posting of copies.

Copies of these rules will be posted and distributed to all employees and to all prospective employees upon request.

§ 32-6. Enforcement.

The Town of Minden shall be designated an agent to assist in the enforcement of this chapter by notifying employees who are in violation.

§ 32-7. Amendments.

This chapter may be amended from time to time by resolution of the Town Board. All amendments shall be in conformance with New York State law, and employees will be notified accordingly.

PART II

**GENERAL
LEGISLATION**



Chapter 40

ANIMALS

Part 1 Dog Control and Licensing

ARTICLE I Definitions

§ 40-1. Terms defined.

ARTICLE II Control of Dogs

§ 40-2. Quarantines.

§ 40-3. Dogs in heat.

§ 40-4. Confinement and housing of dogs.

§ 40-5. Interference with Dog Warden or agent.

§ 40-6. Refusal of entry.

§ 40-7. Notice requiring examination of dog.

§ 40-8. Dangerous dogs.

§ 40-9. Theft, poisoning and abandonment of dogs.

§ 40-10. Public nuisance.

§ 40-11. Commercial breeding of dogs.

§ 40-12. Parent or guardian responsible for underage owners.

§ 40-13. Penalties for offenses.

ARTICLE III Dog Licensing

§ 40-14. License required.

§ 40-15. Application.

§ 40-16. Identification tag.

§ 40-17. License terms.

§ 40-18. Licenses nontransferable.

§ 40-19. Purebred licenses.

§ 40-20. Service dog.

§ 40-21. Fees and surcharges.

§ 40-22. Exemptions.

§ 40-23. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in part histories. Amendments noted where applicable.]

Part 1
Dog Control and Licensing
[Adopted 3-19-2015 by L.L. No. 2-2015¹]

ARTICLE I
Definitions

§ 40-1. Terms defined.

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

AGENT — Any police officer acting on the behalf of the Town of Minden.

DOG WARDEN — A person appointed to carry out the duties of dog control.

KEEPER — One who has possession, control, custody or care of a dog.

OWNER — When applied to the proprietorship of a dog, includes every person having a right of property in such dog, and every person who keeps such dog or has it in his care, and every person who harbors or otherwise permits such dog to remain on or about any premises occupied by him.

PET BREEDER — Any person who breeds and raises animals and then sells or offers them for sale or who breeds and raises animals for a commission or percentage of the profits.

PET BROKER — Any person who deals in regulated animals but does not take physical possession of them.

PET DEALER — Any person who engages in the sale or offering for sale of more than nine animals per year for profit to the public.

POLICE OFFICER — Any person employed or elected whose duty it is to preserve peace or to make arrests or to enforce the law. The term includes constables and dog, game, fish and forest wardens.

RUNNING AT LARGE — An animal who is not on a chain, leash or confined within the property boundaries or under the control of said owner and/or keeper.

ARTICLE II
Control of Dogs

§ 40-2. Quarantines.

All quarantines will be determined by either a licensed veterinarian, Town Justice, or as provided by the Agriculture and Markets Law of NYS Article 7, § 123.

1. Editor's Note: This local law superseded former Ch. 40, Animals, comprised of Art. I, Dog Licensing, adopted 11-18-2010 by L.L. No. 1-2010; and Art. II, Control of Dogs, adopted 3-14-2012 by L.L. No. 2-2012.

§ 40-3. Dogs in heat.

It shall be unlawful for the owner or keeper of any female dog to permit such female to go beyond the premises of such owner or keeper at any time she is in heat, unless such female dog is properly confined or under the full control of the owner or keeper.

§ 40-4. Confinement and housing of dogs.

A. Confinement and control. It shall be unlawful within any zoning district in the Town of Minden designated residential, agricultural or commercial for any person or group of persons constituting a household to keep, harbor or maintain more than six dogs at any one time on said parcel or on the premises on which said household is located which includes the total number of all other parcels owned. It shall also be unlawful for the owner or keeper of any dog to fail to keep the dog at all times in any of the following manners:

- (1) Confined within the boundary of the parcel of the owner or keeper; or
- (2) Firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
- (3) Under the reasonable control of some person or by the use of a training or GPS collar when engaged in lawful hunting, exhibition, performance events or field training.
- (4) No dogs shall be penned, chained or otherwise confined within 15 feet of any property line.

B. Housing.

- (1) It shall be unlawful for the owner or keeper of a dog to house the dog for any period of time in a drum, barrel, refrigerator or freezer regardless of the material of which the drum, barrel, refrigerator or freezer is constructed.
- (2) No person or persons shall keep any dog in any pen, shed or yard without providing for the proper removal and disposal of all feces, filth, rubbish and foul material that accumulates therein and becomes noxious and/or injurious to the public health.
- (3) Any pen, shed or yard in which any dog is kept shall at all times be kept in reasonably clean condition.

§ 40-5. Interference with Dog Warden or agent.

- A. It shall be unlawful for any person to interfere with the duties of the Dog Warden or agent in the enforcement of these laws.
- B. It shall be unlawful for any person to forcibly cut the leash or take the dog away from the Dog Warden or agent when the officer has the dog in his possession after being found running at large unaccompanied by the owner or keeper.

- C. It shall be unlawful for any person to whom a license has been issued to fail or refuse to produce such license for such dog upon demand by the Dog Warden or agent.

§ 40-6. Refusal of entry.

- A. Violation. It shall be a violation of this part if a person or persons refuses entry to the Dog Warden or other agent acting on behalf of the Town of Minden to enforce this part. The term "refusal of entry" shall include any of the following:
- (1) Preventing an agent from entering the premises.
 - (2) Preventing an agent from inspecting a dog.
 - (3) Hiding a dog from an agent.
 - (4) An act or omission that prevents an agent from gaining entry to the premises.
- B. Order of inspection/investigating a complaint. When the Dog Warden or agent acting on behalf of the Town of Minden attempts an inspection or investigates a complaint and no person is present to grant him access, he may post an order demanding access within 36 hours. Failure to permit an inspection or investigation of a complaint within the thirty-six-hour time period indicated in the order that was posted shall be a violation of this part and shall constitute a refusal of entry for purposes of Subsection A of this section, unless there are no dogs on the property or the owner and the Dog Warden or agent who posted the order agree within the thirty-six-hour time period indicated in the order that was posted to permit an inspection or investigation at a time agreed upon by both parties.
- C. Affirmative defense. It shall be an affirmative defense to Subsection B if there were no dogs on the property at the time the order was posted.

§ 40-7. Notice requiring examination of dog.

- A. The Dog Warden may issue a written notice requiring the dog to be examined by a licensed doctor of veterinary medicine within a maximum of 72 hours if:
- (1) The Dog Warden personally observes the condition of the dog in the course of inspection or investigation on the premises at which the dog is kept; and/or
 - (2) The dog exhibits signs of illness, injury or neglect.
- B. Contents of written notice:
- (1) Information to the identity of the owner or keeper.
 - (2) Information to identify the dog to be examined.
 - (3) Signs of illness or injury of the dog that is observed by the Dog Warden.
 - (4) The date and time by which a veterinary examination of the dog must be conducted.

- (5) That a report of an examination must be delivered to the Dog Warden by the veterinarian.
- C. Issuance and service of notice.
 - (1) The written notice requiring that a dog be examined may be left with the owner or keeper or another responsible person on the premises.
- D. Illegal to fail to respond to notice.
 - (1) It shall be unlawful of the owner or keeper of the dog to fail to comply with a written notice issued under authority of this section.

§ 40-8. Dangerous dogs.

- A. It is unlawful for an owner or keeper of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal or from destroying property with its teeth.
- B. Except as otherwise set forth above in Subsection A, dangerous dogs, including dog bites, detention and isolation of dogs, shall be handled in accordance with Article 7, § 123, of the NYS Agriculture and Markets Law.

§ 40-9. Theft, poisoning and abandonment of dogs.

- A. All dogs are hereby declared personal property and therefore are considered a potential object of theft.
- B. Intentional poisoning or baiting of dogs is unlawful.
- C. Intentional harming of dogs is unlawful.
- D. Abandonment of dogs is unlawful.

§ 40-10. Public nuisance.

- A. Restrictions.
 - (1) No owner or person having custody of any dog within the legal limits of the Town of Minden shall allow such dog to unnecessarily annoy or disturb any person by continued or repeated barking, howling or yelping, or any other loud or unusual noises; or
 - (2) Allow such dog to chase, jump upon or otherwise harass any person in such a manner as to reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury when such dog is off the

premises of the owner or premises under the control of a person who has authorized such dog to be on the premises.

B. Complaint.

- (1) Upon written complaint by the person or persons disturbed, signed and sworn to, the Town Dog Warden or any duly qualified law enforcement officer may investigate and may give written notice to the owner or keeper of such dog that such annoyance or disturbance must cease. The warning shall be made part of the complaint.

§ 40-11. Commercial breeding of dogs.

The commercial breeding of dogs will be done in accordance with the Town of Minden zoning regulations.²

§ 40-12. Parent or guardian responsible for underage owners.

If a person who owns a dog is under the age of 18 then the parent or guardian of the youth will be held responsible in the event of an issue or complaint.

§ 40-13. Penalties for offenses.

- A. The penalties of the Town of Minden's Dog Law will be as set forth by resolution of the Town Board.
- B. The Town Board from time to time may increase the fines as deemed appropriate by resolution.

**ARTICLE III
Dog Licensing**

§ 40-14. License required.

All dogs in the Town of Minden, unless otherwise exempted by New York State Agriculture and Markets Law, must be licensed by the Town Clerk of the Town of Minden by the age of four months.

§ 40-15. Application.

The owner of each dog required to be licensed shall, for new applications and renewal applications, obtain, complete and return to the Town Clerk the following:

2. Editor's Note: See Ch. 90, Zoning.

- A. A dog license application;
- B. The license application fee;
- C. Any applicable license surcharges;
- D. Such additional fees as may be established by the Town Board of the Town of Minden;
- E. Proof that the dog has been vaccinated against rabies or a statement from a licensed veterinarian that such vaccination would endanger the dog's life, in which case vaccination shall not be required;
- F. In the case of a spayed or neutered dog, a certificate signed by a licensed veterinarian or an affidavit signed by the owner, showing that the dog has been spayed or neutered, provided such certificate or affidavit shall not be required if the same is already on file with the Town Clerk. In lieu of the spay or neuter certificate, an owner may present a statement certified by a licensed veterinarian stating that he or she has examined the dog and found that, because of old age or other reason, the life of the dog would be endangered by spaying or neutering. In such case the license fee for the dog shall be the same as for a spayed or neutered dog.

§ 40-16. Identification tag.

Each dog licensed pursuant to this part shall be assigned, at the same time the dog is first licensed, a municipal identification number. Such identification number shall be carried by the dog on an identification tag which shall be affixed to a collar on the dog at all times. No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which the number has been assigned.

§ 40-17. License terms.

- A. All dog licenses will be for a period of at least one year but no greater than three years and will expire, at a minimum, at the end of the month one year from the date of issue, or for licenses issued for a term greater than one year, on the last day of the month of the period for which they are issued.
- B. Anyone with more than six dogs as defined in Article II, § 40-4A, shall have one year from the date of the license being issued to comply with this part.

§ 40-18. Licenses nontransferable.

Any license issued pursuant to this part shall not be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately make an application for a new license for such dog.

§ 40-19. Purebred licenses.

The Town of Minden will not issue any purebred licenses.

§ 40-20. Service dog.

The Town of Minden will not issue a special tag for identifying any service dog as defined by the Americans with Disabilities Act.³

§ 40-21. Fees and surcharges.

The fees and surcharges for issuing dog licenses shall be fixed by the Town Board. Such fees and surcharges may be revised from time to time by resolution of the Town Board. These fees and surcharges may include:

- A. The license fee for a spayed or neutered dog;
- B. The license fee for an unspayed or unneutered dog (such fee having to exceed the fee for a license for a spayed or neutered dog by such amount as mandated by the New York State Agriculture and Markets Law);
- C. In addition to the license fee authorized by this part and established by the Town Board of the Town of Minden, a surcharge if the dog to be licensed is spayed or neutered (such surcharge shall be, at a minimum, such amount as mandated by the New York State Agriculture and Markets Law);
- D. In addition to the license fee authorized by this part and established by the Town Board of the Town of Minden, a surcharge if the dog to be licensed is unspayed or unneutered (such surcharge shall be, at a minimum, such amount as mandated by the New York State Agriculture and Markets Law);
- E. In addition to the license fee authorized by this part and established by the Town Board of the Town of Minden, a surcharge to recover and defray the cost of an enumeration of dogs living within the Town of Minden.

§ 40-22. Exemptions.

- A. License fees are waived for a dog license for a service dog as defined by the Americans with Disabilities Act,⁴ provided that written documentation is provided with such application that certifies such dog as being a service dog.
- B. A dog participating in a dog show within the Town of Minden shall be exempt, during such participation only, from wearing its identification tag.

§ 40-23. Penalties for offenses.

- A. The penalties of the Town of Minden dog licensing law will be as set forth by resolution of the Town Board.

3. Editor's Note: See 42 U.S.C. § 12101 et seq.

4. Editor's Note: See 42 U.S.C. § 12101 et seq.

- B. From time to time the Town Board, by resolution, may increase the fines as deemed appropriate.



Chapter 45

ELECTRICAL STANDARDS

§ 45-1. Purpose.

§ 45-2. National Electrical Code.

§ 45-3. Electrical inspection.

§ 45-4. Violations; penalties for offenses,

§ 45-5. Applicability.

§ 45-6. No waiver or assumption of liability.

[HISTORY: Adopted by the Town Board of the Town of Minden 5-1-1986 by L.L. No. 1-1986. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 50.

Flood damage prevention — See Ch. 54.

§ 45-1. Purpose.

The Town of Minden, by enactment of Local Law No. 1 of the year 1986, has provided for enforcement of the New York State Uniform Fire Prevention and Building Code and, recognizing that said code in Parts 850 and 1030.1 provides minimum parameters for the design, installation and location of electrical wiring, systems and equipment operating on 50 volts or more, wishes to more fully implement the aforesaid provisions and facilitate enforcement of the same.

§ 45-2. National Electrical Code.

All electrical installations heretofore mentioned shall be made in conformity with the requirements of the National Electrical Code except when the provisions of this chapter or any other local law, ordinance or Building Code of the town provides otherwise, in which event compliance with the provisions of such local law, ordinance or Building Code shall be recognized as proper compliance with this chapter. The requirements of the National Electrical Code shall be those known as "National Fire Protection Association Pamphlet #70," as approved and adopted by the American Standards Association.

§ 45-3. Electrical inspection.

- A. The Code Enforcement Officer of the Town of Minden shall be and is hereby authorized to appoint and deputize as agents of the Town of Minden for the purpose of making inspections and reinspections at reasonable times and places, and upon reasonable notice, of all electrical installations regulated and covered by the New York State Uniform Fire Prevention and Building Code, and to approve or disapprove said installations, such persons, agencies or organizations as, in the opinion and discretion of the Code

Enforcement Officer, shall be qualified to conduct the same. In no event shall the cost or expense of such inspections or reinspections be a charge against the Town of Minden.

- B. It shall be the duty of such person, organization or agency duly appointed and deputized as provided in this chapter to report in writing to the Code Enforcement Officer of the Town of Minden all violations of or deviations from the provisions of the National Electrical Code, and of all local laws and the Building Code insofar as any of the same shall apply to electrical wiring, systems and equipment covered by this chapter. Such deputized inspector shall make inspections of electrical installations in and on properties in the Town of Minden upon the written request of the Town of Minden Code Enforcement Officer.
- C. It shall be the duty of such appointed and deputized electrical inspector to issue a certificate of compliance only when electrical installations and equipment are found to be in conformity with the provisions of the National Electrical Code and this chapter. He shall direct that a copy of the certificate of compliance or the official denial thereof be sent to the Code Enforcement Officer of the Town of Minden.¹

§ 45-4. Violations; penalties for offenses,

- A. Any installation or alteration of an electrical system or electrical wiring that is covered and regulated by the provisions of the New York State Uniform Fire Prevention and Building Code, the National Electrical Code or a local law of the Town of Minden without the issuance of a certificate of compliance as hereinabove provided shall be a violation of this chapter.
- B. Any person, firm or corporation who or which shall violate the provisions of this chapter shall be subject to all penalties and remedies provided by Article 18 of the Executive Law of the State of New York as the same pertains to violations of the New York Uniform Fire Prevention and Building Code.

§ 45-5. Applicability.

The provisions of this chapter shall not apply to the electrical installations in mines, ships, railway cars, automotive equipment or the installations or equipment employed by railway, electrical or communication utilities in the exercise of its function as a utility, and located outdoors or in buildings used exclusively for that purpose. This chapter shall not apply to any work involved in the manufacture, assembly, test or repair of electrical machinery, apparatus, materials and equipment by a person, firm or corporation engaged in electrical manufacturing as their principal business. It shall not apply to any building which is owned or leased in its entirety by the government of the United States of America or the State of New York.

§ 45-6. No waiver or assumption of liability.

This chapter shall not be construed to relieve from or lessen the liability of any person owning, operating, controlling or installing any electrical wiring, devices, appliances or equipment for

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

loss of life or damage to person or property caused by any defect therein, nor shall the Town of Minden, its Code Enforcement Officer or the deputized electrical inspector be deemed to have assumed any such liability by reason of any inspection made pursuant to this chapter.



Chapter 50

FIRE PREVENTION AND BUILDING CONSTRUCTION

ARTICLE I Financial Assistance to Local Governments for Building and Fire Code Administration and Enforcement

- § 50-1. Purpose.
- § 50-2. Definitions.
- § 50-3. Submitting applications.

ARTICLE II Uniform Code: Procedures for Certain Classes of Buildings

- § 50-4. Statutory findings.
- § 50-5. Governmental buildings and activities.
- § 50-6. Local government option.
- § 50-7. Manufactured housing.
- § 50-8. Permits needed for mobile home setups, both new and used units.

ARTICLE III Uniform Code Administration and Enforcement

- § 50-9. Findings and determination.
- § 50-10. Building permits.
- § 50-11. Certificate of occupancy.
- § 50-12. Inspections for compliance with building permit.
- § 50-13. Inspectors.
- § 50-14. Fees.
- § 50-15. Inspections to determine violations; right of entry.
- § 50-16. Compliance required; violation orders.
- § 50-17. Penalties for offenses.

ARTICLE IV New Dwellings

- § 50-18. Construction of new dwellings.

[HISTORY: Adopted by the Town Board of the Town of Minden 8-21-1991 by L.L. No. 1-1991. Amendments noted where applicable.]

GENERAL REFERENCES

Electrical standards — See Ch. 45.
Flood damage prevention — See Ch. 54.

Subdivision of land — See Ch. 77.
Zoning — See Ch. 90.

ARTICLE I Financial Assistance to Local Governments for Building and Fire Code Administration and Enforcement

- § 50-1. Purpose.

This article establishes procedures through which local governments may apply for and receive moneys available under § 54-g of the State Finance Law in support of activities related to the administration and enforcement of fire prevention and building codes.

§ 50-2. Definitions.

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

ACTIVITIES RELATED TO THE ADMINISTRATION AND ENFORCEMENT OF FIRE PREVENTION AND BUILDING CODES — After January 1, 1985, means activities conducted in accordance with the minimum standards for administration and enforcement prescribed in Part 444 of this Title, regardless of the fire prevention or building code actually in force within a local government.

§ 50-3. Submitting applications.

- A. To be eligible to receive moneys in support of activities related to the administration and enforcement of fire prevention and building codes, a city, town or village must submit an application therefor, signed by its chief executive officer, not later than the last day of February following the end of the calendar year in which the activities were undertaken. Such application shall be made to the Secretary of State on a form provided for that purpose and shall include:
- (1) An identification of the local law, ordinance or other regulation under which the local government enforces fire prevention and building codes;
 - (2) An identification of those buildings and fire prevention codes, if any, other than the New York State Uniform Fire Prevention and Building Code in effect within the local government;
 - (3) The number of building permits and certificates of occupancy issued by the local government during the subject calendar year;
 - (4) The number of existing structures which were inspected for compliance with the fire safety and housing maintenance provisions during the subject calendar year;
 - (5) The name, address and title of the local official charged with administration and enforcement of fire prevention and building codes; and
 - (6) The names and addresses of persons or firms, if any, which are authorized by applicant to provide, under contract or similar arrangement, inspection services or other support services related to administration and enforcement of fire prevention and building codes within the local government.
- B. In instances where a county engages in activities related to administration and enforcement of building codes and fire prevention codes in the place or stead of a local government, application for moneys may be made by such county.

ARTICLE II**Uniform Code: Procedures for Certain Classes of Buildings****§ 50-4. Statutory findings.**

In general, § 381 of the Executive Law directs that the state's cities, towns and villages administer and enforce the New York State Uniform Fire Prevention and Building Code

("Uniform Code"). However, the statute contemplates the need for alternative procedures for certain classes of buildings based upon their design, construction, ownership, occupancy or use and authorizes the Secretary of State to establish those procedures. Those exceptions are the subject of this article.

§ 50-5. Governmental buildings and activities.

- A. A city, village, town or county will be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, the respective city, village, town or county.
- B. A city, village, town or county shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, any special purpose unit of local government created by or for the benefit of the respective city, village, town or county.
- C. The state shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a state department, bureau, commission, board or authority.
- D. The State Education Department shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, school districts and boards of cooperative educational services.
- E. To the maximum extent practicable, a governmental entity acting under this section shall consult with those other governmental entities providing services, under authority of other laws, to those areas where the authority conferred by this section is exercised.
- F. The Secretary of State may examine records of a government related to the administration and enforcement of the Uniform Code under this section. It shall be the duty of such government to make those records available to the Secretary upon request.

§ 50-6. Local government option.

Executive Law, § 381, Subdivision 2, accords a city, town, village or county the option to decline to enforce the Uniform Code. The effect of the exercise of that option is to relinquish any power conferred by this article as well as any general power under that section.

§ 50-7. Manufactured housing.

Administration and enforcement of the provisions of the Uniform Code pertaining to factory-manufactured homes while at the manufacturing facility, while displayed for sale at a temporary location, or otherwise prior to delivery to a site for permanent installation or erection, shall be by the Division of Housing and Community Renewal. Factory-manufactured homes and mobile homes bearing the insignia of approval or certifying seal as required by the code shall be presumed to comply with the applicable regulations.

§ 50-8. Permits needed for mobile home setups, both new and used units.

- A. Concrete slab: minimum depth of four inches, full length and width of mobile home installed, with approved skirting.
- B. Septic system:
 - (1) One thousand gallon or larger.
 - (2) Concrete, fiberglass or other suitable types to be approved by Town of Minden Town Board.
 - (3) Must have New York State Department of Health soil percolation test, according to drainage field size.
 - (4) A fee not to exceed an amount as set from time to time by the Town Board will be charged for the administration of the percolation test.¹
- C. Water supply:
 - (1) Must be copper or galvanized piping (no plastic). A combination of copper and galvanized piping may not be used.
 - (2) Must be ¾ inch or larger.
- D. Electrical service as approved by Fire Underwriters.
- E. Heating system:
 - (1) Fuel oil.
 - (2) Propane.
 - (3) Wood (only if installed by manufacturer or inspected and approved by enforcement officer.
 - (4) Other approved fuels such as electric or solar.
- F. Mobile home installations:
 - (1) Mobile home must be installed on an approved concrete slab with approved skirting.
 - (2) Mobile home must have hitch (tongue) removed or enclosed and wheels removed.
 - (3) Must have approved:
 - (a) Septic system.
 - (b) Water supply.
 - (c) Electrical service.
 - (d) Heating system.
 - (4) Any double-wide mobile home must be as manufactured! No improvising of two or more mobile homes incorporated into one.

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

G. Mobile home repairs:

- (1) No mobile home/trailers shall be allowed to be placed on any property for purposes of repairs and/or renovations unless and until a written application for permission to perform repairs and/or renovations is filed with, and approved by, the Code Enforcement Officer.
- (2) The Code Enforcement Officer may, in his or her discretion, issue a permit granting a period not to exceed 60 days in which to complete the applied-for repairs and/or renovations.
- (3) There shall be no occupancy of any mobile home/trailer during a period of repair and/or renovation, nor thereafter, unless and until said mobile home/trailer is in compliance with the provisions of this chapter.

H. These specifications are in addition to any New York State requirements.

ARTICLE III

Uniform Code Administration and Enforcement

[Amended 3-16-2000 by L.L. No. 2-2000]

§ 50-9. Findings and determination.

- A. In general, a local government is charged with the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code) unless the local government has opted to decline that responsibility.
- B. The Town of Minden has determined it is in the best interest of the town to exercise such responsibility.

§ 50-10. Building permits.

- A. No person, firm, corporation, association or other organization shall commence the erection, construction, enlargement, alteration, improvement, removal or demolition of any building or structure, except as provided for herein, nor install heating equipment, without having applied for and obtained a permit from the Town of Minden. No permit shall be required for the performance of necessary repairs which do not involve material alteration of structural features and/or plumbing, electrical or heating/ventilation system, including, for example, the replacement of siding and roofing materials, nor the erection of fences, nor for the construction of residential storage sheds and other small noncommercial structures less than 150 square feet of gross floor area which are not intended for use by one or more persons as quarters for living, sleeping, eating or cooking; for example, a small storage building. Such work shall nevertheless be done in conformance with the Uniform Code.
- B. Applications for a building permit may be obtained from the Town Clerk. A completed application may be delivered or mailed to the office of the Town Clerk, or delivered or mailed to the Code Enforcement Officer, and must include:
 - (1) The signature of the applicant or authorized agent;

- (2) A description of the site on which the proposed work is to be done;
 - (3) A statement of the use or occupancy of all parts of the land and of the proposed building or structure;
 - (4) A brief description of the proposed work;
 - (5) The estimated cost of the proposed work, with appropriate substantiation;
 - (6) The full name and address of the owner and the applicant and, if either is a corporation, the names and addresses of responsible officers;
 - (7) Three sets of plans and specifications for the proposed work; and
 - (8) Payment of the fee specified in this article.
- C. The applicant may request that the requirement of plans and specifications be waived where the work to be done involves minor alterations or are otherwise unnecessary.
- D. The applicant shall notify the Town Clerk of any changes in the information contained in the application during the period for which the permit is in effect. A permit will be issued when the application has been determined to be complete and when the proposed work is determined to conform to the requirements of the Uniform Code. The authority conferred by such permit may be limited by conditions, if any, contained therein.
- E. A building permit issued pursuant to this article shall be prominently displayed on the property or premises to which it pertains.
- F. A building permit issued pursuant to this article may be suspended or revoked if it is determined that the work to which it pertains is not proceeding in conformance with the Uniform Code or with any condition attached to such permit, or if there has been a misrepresentation or falsification of a material fact in connection with the application for the permit.
- G. A building permit issued pursuant to this article shall expire three years from the date of issuance or upon the issuance of a certificate of occupancy (other than a temporary certificate of occupancy), whichever occurs first. The permit may, upon written request, be renewed for successive one-year periods provided that:
- (1) The permit has not been revoked or suspended at the time the application for renewal is made;
 - (2) The relevant information in the application is up to date; and
 - (3) The renewal fee is paid.

§ 50-11. Certificate of occupancy.

- A. No building erected subject to the Uniform Code and this article shall be used or occupied, except to the extent provided in this section, until a certificate of occupancy has been issued. No building similarly enlarged, extended or altered or upon which work has been performed which required the issuance of a building permit shall be occupied or used for more than 30 days after the completion of the alteration or work unless a certificate of

occupancy has been issued. No change shall be made in the nature of the occupancy of an existing building unless a certificate of occupancy authorizing the change has been issued. The owner or his agent shall make application for a certificate of occupancy.

- B. A temporary certificate of occupancy may be issued if the building or structure or a designated portion of a building or structure is sufficiently complete that it may be put to the use for which it is intended. A temporary certificate of occupancy shall expire six months from the date of issuance or at an earlier date if specified within it. A temporary certificate of occupancy may, at the discretion of the Code Enforcement Officer, be renewed an indefinite number of times.
- C. No certificate of occupancy shall be issued except upon an inspection which reveals no uncorrected deficiency or material violation of the Uniform Code in the area intended for use and upon payment of the appropriate fee.

§ 50-12. Inspections for compliance with building permit.

- A. Work for which a building permit has been issued under this article shall be inspected for approval prior to enclosing or covering any portion thereof and upon completion of each stage of construction, including but not limited to building location, site preparation, excavation, foundation, framing, superstructure, electrical, plumbing and heating and air conditioning. It shall be the responsibility of the owner, applicant or his agent to inform the appropriate inspector that the work is ready for inspection and to schedule such inspection.
- B. Existing buildings not subject to inspection under Subsection A of this section shall be subject to periodic inspections for compliance with the Uniform Code in accordance with the following schedule: all areas of public assembly defined in the Uniform Code, all buildings or structures containing areas of public assembly, and the common areas of multiple dwellings: every three months; all buildings or structures open to the general public: every six months; all other buildings: every 12 months. Notwithstanding any requirement of this subsection to the contrary, no regular, periodic inspections of occupied dwelling units shall be required; provided, however, that this shall not be a limitation on inspections conducted at the invitation of the occupant or where conditions on the premises threaten or present a hazard to public health, safety or welfare.

§ 50-13. Inspectors.

- A. The inspections required by § 50-12 of this article may be performed by employees or agents of the Town of Minden. Such inspectors are authorized to order, in writing, the correction of any condition in violation of the Uniform Code found in, on or about any building. Such orders shall be served in person upon a responsible party or his authorized agent or by registered or certified mail sent to the address of a responsible party set forth in any relevant application for a permit or in any relevant certificate. The order shall set forth the time within which the condition must be corrected, which time period shall not exceed 30 days unless a longer period is required for good cause shown. A responsible party who fails to correct the condition within the specified time shall be subject to a penalty as provided by law.

- B. A person subject to inspection under § 50-12 of this article may be required by the Town of Minden to have such inspection performed at such person's own cost and expense by a competent inspector acceptable to the town. Such inspector may be a registered architect, licensed professional engineer, certified code enforcement officer or other person whose experience and training has been demonstrated to the satisfaction of the town. Such inspector shall certify the results of his inspection to the Town of Minden. Any person required by the town to have an inspection performed at his own cost and expense shall not be assessed the fees otherwise prescribed in this article.

§ 50-14. Fees.²

Fees for building permits and other inspections and fees related to building construction shall be as set forth from time to time by the Town Board.

§ 50-15. Inspections to determine violations; right of entry.

- A. The inspector shall conduct periodic inspections for compliance with the provisions of the fire prevention provisions of the Uniform Fire Prevention and Building Code. Such inspections may be made at any reasonable time.
- B. If entrance to make an inspection is refused or cannot be obtained, the inspector may apply to any court of competent jurisdiction for a warrant to make an inspection.

§ 50-16. Compliance required; violation orders.

- A. A person owning, operating, occupying or maintaining property or premises within the scope of the fire prevention provisions of the Uniform Fire Prevention and Building Code or this chapter shall comply with all the provisions of the fire prevention provisions of the Uniform Fire Prevention and Building Code, this chapter and all orders, notices, rules, regulations or determinations issued in connection therewith.
- B. Whenever the inspector finds that there has been a violation of the fire prevention provisions of the Uniform Fire Prevention and Building Code, this chapter or any rule or regulation adopted pursuant to this chapter, a violation order shall be issued to the persons responsible.
- C. Violation orders shall be in writing; shall identify the property or premises; shall specify the violation and remedial action to be taken; shall provide a reasonable time limit for compliance; and shall state the time within which an appeal may be taken.
- D. Violation orders may be served by personal service; or by mailing by registered or certified mail.
- E. In case the owner, lessor, occupant or the agent of any of them shall fail, neglect or refuse to remove, eliminate or abate the violation within the time specified in the violation order,

² Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

a request to take appropriate legal action shall be made to the Town Attorney of the Town of Minden.

§ 50-17. Penalties for offenses.

- A. Failure to obtain a building permit prior to the commencement of any work requiring a permit shall result in a fine not to exceed \$1,000 per day of violation, as set forth in Executive Law § 382, Subdivision 2. No building permit shall be issued until any outstanding fine has been paid.³
- B. Failure to comply with any other provision of the fire prevention provisions of the Uniform Fire Prevention and Building Code, this chapter, rules or regulations adopted pursuant to this chapter or a violation order shall be deemed a violation, and the violator shall be liable for a fine of not to exceed \$1,000 per day of violation or imprisonment not to exceed one year, or both, as set forth in Executive Law § 382, Subdivision 2, and each day such violation continues shall constitute a separate violation.⁴
- C. An action or proceeding in the name of the Town of Minden may be commenced in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of the fire prevention provisions of the Uniform Fire Prevention and Building Code, this chapter, rule or regulation adopted pursuant to this chapter or a violation order or to vacate the occupancy or building in the case of imminent danger to life or property. Such remedy shall be in addition to penalties otherwise prescribed by law.
- D. In the event that any person, firm, corporation, association or other organization shall commence any work requiring a permit without first obtaining a permit, then in addition to being subject to the issuance of a violation order, a court action and fine, no building permit shall be issued to such party for any work to be performed in the Town of Minden until such party pays a \$150 civil penalty to the Town Clerk.

**ARTICLE IV
New Dwellings**

§ 50-18. Construction of new dwellings.

- A. Building shall be at least 50 feet from the center of the road or 25 feet from the edge of the right-of-way, whichever is further.
- B. Lots must consist of a minimum of two acres, with 125 feet of front footage, except that this section shall not apply to any building lot or site whereon a dwelling existed prior to the effective date of this chapter, or which consisted of vacant land purchased prior to the effective date of this chapter. The exception herein contained shall only apply to a lot or lots which are in compliance with all provisions of this chapter.
- C. One dwelling of no more than two families.

³ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

⁴ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. No driveway shall be cut without the applicable Superintendent of Highway's approval.
- E. In no event shall the owner of a dwelling diminish the size of the lot where the dwelling is located to an area less than that described in § 50-18B above.
- F. No building shall be erected within six feet of the property line of the parcel upon which it is to be built.
- G. A fee of an amount as set from time to time by the Town Board shall be collected by the Code Enforcement Officer upon any inspection of property.⁵

⁵ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 54

FLOOD DAMAGE PREVENTION

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[HISTORY: Adopted by the Town Board of the Town of Minden 3-30-1987 by L.L. No. 1-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 98. Zoning — See Ch. 205.
Subdivision of land — See Ch. 169.

ARTICLE I Statutory Authorization and Purpose

- § 54-1. Findings.

The Town Board of the Town of Minden finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Minden 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.

§ 54-2. 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; and
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 54-3. 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 public.
- 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.
- 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.

ARTICLE II Definitions

§ 54-4. Word usage and definitions.

- 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 foot to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD — 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, A1-99, V, VO, VE or V1-30. 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.

BREAKAWAY 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."

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 V1-30, 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 nonbasement 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;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) — 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 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-Floodway Map and the water surface elevations of the base flood.

FLOODPROOFING — Any combination of structural and nonstructural 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 — The same meaning as "regulatory floodway."

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

FUNCTIONALLY DEPENDENT USE — 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 — 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 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 nonelevation design requirements of this chapter.

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

MEAN SEA LEVEL — 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 is a vertical control used as a reference for establishing varying elevations within the 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."

PRINCIPALLY ABOVE GROUND — At least 51% 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 § 54-12B 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. For manufactured homes, the actual start means affixing of the manufactured home to its permanent site.

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

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure 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.

ARTICLE III General Provisions

§ 54-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Minden.

§ 54-6. Basis for establishing areas of special flood hazard.

The areas of special flood hazard are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study of the Town of Minden (#360451), of Montgomery County, New York," dated January 19, 1983, which report, with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps, is hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at the Town Clerk's office, Route 80, Fort Plain, NY 13339.

§ 54-7. Interpretation; conflict with other provisions.

- 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.

§ 54-8. 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. Any 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 \$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 Minden 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

§§ 54-16 and 54-17 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 54-9. 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 hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Minden, 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.

**ARTICLE IV
Administration**

§ 54-10. Designation of local administrator.

The Flood Code Enforcement Officer is hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 54-11. Establishment of development permit.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 54-6. 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 materials, drainage facilities and the location of the foregoing.

A. Application stage. The following information is required where applicable:

- (1) Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures.
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.
- (3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 54-13C(1).
- (4) Certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 54-14.
- (5) 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 floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the elevation of the lowest floor, or floodproofed 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 the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. 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.

§ 54-12. Duties and responsibilities 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. An 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 all development permits for compliance with the provisions of § 54-13E, Encroachments.
- B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 54-6, 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 § 54-13D(4), in order to administer § 54-14, Specific standards, and § 54-15, 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 floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed.
 - (b) Maintain the floodproofing certifications required in §§ 54-13 and 54-14.
- (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 FIRM 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 § 54-6 and/or § 54-12B, when available, shall be used to accurately delineate the area 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 area 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 § 54-8 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 § 54-8 of this chapter.

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 either the development permit or the approved variance.

H. Certificate of compliance.

- (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or

wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.

- (2) All other development occurring within the designated flood hazard area will have upon completion a certificate of compliance issued by the local administrator.
- (3) All certifications shall be based upon the inspections conducted subject to Subsection G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

ARTICLE V

Provisions for Flood Hazard Reduction

§ 54-13. 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. Manufactured homes shall be elevated to or above the base flood elevation or two feet above the highest adjacent grade when no base flood elevation has been determined. 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.

C. Utilities.

- (1) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of 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 provided for subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than either 50 lots or five acres.

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the area of special flood hazard set forth in § 54-12A(3), Permit review. This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 54-12B or 54-13D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.
- (3) In all areas of special flood hazard where floodway data is provided or available pursuant to § 54-12B, the requirements of § 54-15, Floodways, shall apply.

§ 54-14. Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 54-6, Basis for establishing areas of special flood hazard, and § 54-12B, Use of other base flood and floodway data, the following standards are required:

A. Residential construction. New construction and substantial improvements of any residential structure shall:

- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.
- (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be

certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all such openings shall be no higher than one 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. 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 floodproofed so that the structure is watertight below the base flood level 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.
- (1) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all such openings shall be no higher than one 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.
 - (2) If the structure is to be floodproofed:
 - (a) A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 - (b) A licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.
 - (3) 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. New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the base flood elevation as may be determined in § 54-12B or two feet above the highest adjacent grade where no elevation data is available.
- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor (including basement) elevated to at least two feet above the highest adjacent grade next to the proposed foundation of the structure.
 - (2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all such openings shall be no higher than one 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.

§ 54-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways (see definition, § 54-4). 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 §§ 54-6 and 54-12B, 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.

ARTICLE VI Variance Procedure

§ 54-16. Appeals Board.

- A. The Town of Minden Town Board as established by the Town of Minden shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Town of Minden Town Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the said Town Board may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

- D. In passing upon such applications, the Town Board 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 flood damage and the effect of such damage on the individual owner.
 - (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 to the 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 and 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 conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- 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.

§ 54-17. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of $\frac{1}{2}$ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that § 54-16D(1) through (12) have been fully considered. As the lot size increases beyond the $\frac{1}{2}$ acre, the technical justification required for issuing the variance increases.
- 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 contributing structures procedures set forth in the remainder of this section.

- 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 threat 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.
 - (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 resulting from lowest floor elevation.



Chapter 57

GAMES OF CHANCE

§ 57-1. Title.

§ 57-5. Sunday games.

§ 57-2. Definitions.

§ 57-6. Enforcement.

§ 57-3. Games of chance authorized.

§ 57-7. When effective.

§ 57-4. Restrictions.

[HISTORY: Adopted by the Town Board of the Town of Minden 4-18-2002 by L.L. No. 1-2002; approved at referendum 11-5-2002. Amendments noted where applicable.]

§ 57-1. Title.

This chapter shall be known as the "Games of Chance Law" of the Town of Minden.

§ 57-2. Definitions.

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

AUTHORIZED ORGANIZATION — An authorized organization as defined in Paragraph 4 of § 186 of the General Municipal Law.

GAMES OF CHANCE — A game of chance as defined in Paragraph 3 of § 186 of the General Municipal Law.

TOWN — The Town of Minden.

§ 57-3. Games of chance authorized.

Authorized organizations may, upon obtaining a license from the Town Clerk, conduct games of chance within the Town, 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 and subject to the provisions of Article 9-A of the General Municipal Law, this chapter, general state law and with the rules and regulations of the New York State Racing and Wagering Board.

§ 57-4. Restrictions.

- A. No license shall be issued for the conduct of games of chance in any private home or dwelling.
- B. No person under the age of 18 years may receive a license pursuant to this chapter.

§ 57-5. Sunday games.

Games of chance on the first day of the week, commonly known as "Sunday," may be conducted pursuant to this chapter and appropriate statute and regulation.

§ 57-6. Enforcement.

The Sheriff of the County of Montgomery shall exercise control over and supervision of all games of chance conducted under an appropriately issued license and shall have all those powers and duties set forth in Article 9-A of the General Municipal Law.

§ 57-7. When effective.

This chapter shall take effect immediately upon filing with the Secretary of State's office, following the adoption thereof in accordance with the provisions of the Municipal Home Rule Law of the State of New York and after it shall have been approved by a majority of the electors voting on a proposition submitted at a general or special election held within the Town who are qualified to vote for officers of the Town.

Chapter 66

OUTDOOR FURNACES

- | | |
|------------------------------------|---|
| § 66-1. Title; authority. | § 66-7. Suspension of permit. |
| § 66-2. Legislative intent. | § 66-8. Waivers. |
| § 66-3. Definitions. | § 66-9. Penalties for offenses; revocation of permit. |
| § 66-4. Permit required. | § 66-10. Nuisance. |
| § 66-5. Existing outdoor furnaces. | § 66-11. Right to farm. |
| § 66-6. Specific requirements. | |

[HISTORY: Adopted by the Town Board of the Town of Minden 5-15-2008 by L.L. No. 2-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 50. Zoning — See Ch. 90.

§ 66-1. Title; authority.

This chapter shall be known as the "Town of Minden Outdoor Furnace Local Law." It is adopted pursuant to Municipal Home Rule Law § 10.

§ 66-2. Legislative intent.

Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environment of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This chapter is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town.

§ 66-3. Definitions.

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

FIREWOOD — Trunks and branches of trees and bushes but does not include leaves, needles, and vines or brush smaller than three inches in diameter.

OUTDOOR FURNACE — Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors or otherwise outside of the main structure for the primary purpose of heat for any interior space.

UNTREATED LUMBER — Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.

§ 66-4. Permit required.

No person shall cause, allow or maintain the use of an outdoor furnace within the Town of Minden without first having obtained a permit from the Town Code Enforcement Officer.

§ 66-5. Existing outdoor furnaces.

Any outdoor furnace in existence on the effective date of this chapter shall be permitted to remain, provided that the owner applies for and receives a permit from the Town Code Enforcement Officer within six months of such effective date; provided, however, that upon the effective date of this chapter all the provisions hereof except § 66-6B, C and D shall immediately apply to existing outdoor furnaces. All of the provisions of this chapter shall continue to apply to existing outdoor furnaces which receive permits except § 66-6B, C and D. If the owner of an existing outdoor furnace does not receive a permit within six months of the effective date of this chapter, the outdoor furnace shall be removed. In such event, a reinstallation or new installation on such premises must comply with all provisions of this chapter as a new outdoor furnace. "Existing" or "in existence" means that the outdoor furnace is in place on the site as of the effective date of this chapter.

§ 66-6. Specific requirements.

- A. Permitted fuel. Fuel shall be as per manufacturer's specifications. Only firewood, untreated lumber, coal or corn are permitted to be burned in any outdoor furnace. Burning of any and all other materials, including waste, in an outdoor furnace is prohibited.
- B. Permitted zones. Outdoor furnaces shall be permitted only in agricultural zones.
- C. Minimum lot size. Outdoor furnaces shall be permitted only on lots of two acres or more. Only one outdoor furnace shall be permitted per lot, except in the case of farming operations, where additional units shall be allowed if used to heat agricultural buildings for farm operations.
- D. Setbacks. Outdoor furnaces shall be set back not less than 35 feet from the nearest lot line; 300 feet from any church, school, private club or business or from any residence other than the residence they serve or owned by the owner of the outdoor furnace; 30 feet from any other structure; and 60 feet from the boundary line between the property and the right-of-way of the nearest road.
- E. Months of operation. Outdoor furnaces shall be operated only between September 1 and May 31.
- F. Perimeter requirement. The perimeter of the outdoor furnace building shall be of a noncombustible surface such as gravel, sand or a concrete pad for a distance of not less than 10 feet.

- G. Cap/spark arrestors. All outdoor furnaces shall be equipped with caps and/or functioning spark arrestors to protect against rain and to suppress sparks.
- H. Stack height. Stacks for outdoor furnaces shall be of sufficient height to avoid a downwash effect. If any residence other than a residence owned by the owner of such outdoor furnace is located less than 750 feet from the outdoor furnace, then such outdoor furnace must have an attached permanent stack extending higher than the roofline of the structure(s) being served by such outdoor furnace. In all cases, the stack shall be a minimum of 15 feet from the ground to the top of the stack, and the stack must be supported by cables or other noncombustible materials.
- I. Installation. All outdoor furnaces shall be installed as per the manufacturer's specifications and shall be UL listed and approved. The outdoor furnace must be placed on a concrete slab which is a minimum of four inches in depth and which is at least six inches wider at all points than the outdoor furnace.
- J. One per lot. Only one outdoor furnace shall be allowed on any lot.

§ 66-7. Suspension of permit.

- A. A permit issued pursuant to this chapter may be suspended as the Code Enforcement Officer may determine to be necessary to protect the public health, safety and welfare of the residents of the Town of Minden if any of the following conditions occurs:
 - (1) Emissions from the outdoor furnace exhibit greater than twenty-percent opacity (six-minute average), except for one continuous six-minute period per hour of not more than twenty-seven-percent opacity, which shall be determined as provided in 6 NYCRR 227-1.3(b);
- B. Malodorous air contaminants from the outdoor furnace are detectable outside the property of the person on whose land the outdoor furnace is located;
- C. The emissions from the outdoor furnace interfere with the reasonable enjoyment of life or property;
- D. The emissions from the outdoor furnace cause damage to vegetation or property; or
- E. The emissions from the outdoor furnace are or may be harmful to human or animal health.
- F. A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this chapter subject to the penalties provided in § 66-9 hereof.

§ 66-8. Waivers.

Where the Code Enforcement Officer finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter, he may vary the regulations so that substantial

justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of this chapter or of jeopardizing the health, safety or welfare of the public. In varying any regulations, the Code Enforcement Officer may impose such conditions and requirements as he deems reasonable and prudent. If the Code Enforcement Officer grants the waiver, a permit shall be issued for the outdoor furnace. If the Code Enforcement Officer does not take any action with respect to the waiver within 60 days from his receipt of an application for a waiver, the waiver shall be deemed denied.

§ 66-9. Penalties for offenses; revocation of permit.

Failure to comply with any of the provisions of this chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not more than \$500 or imprisonment for a period of not more than 10 days, or both, for the first offense. Any subsequent offense shall be punishable by a fine of not more than \$1,000 or imprisonment for a period of not more than 30 days, or both. In addition, any permit issued pursuant to this chapter shall be revoked upon conviction of a second offense, and the subject outdoor furnace shall not be eligible for another permit. Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this chapter. Any fine imposed hereunder shall constitute a lien upon the real property where the outdoor furnace is located until paid.

§ 66-10. Nuisance.

Notwithstanding that the outdoor furnace may be in compliance with all provisions of this chapter, such outdoor furnace may not be appropriate in some areas due to terrain that could render its operations to be a nuisance or a public health hazard.

§ 66-11. Right to farm.

No provision of this chapter shall be interpreted, administered or enforced in a manner that unreasonably restricts agricultural structures and farming practices occurring on the land that lies within a certified agricultural district established pursuant to Article 25AA of the New York State Agriculture and Markets Law, unless the public health or safety is threatened.

Chapter 72

SOLID WASTE

Part 1 **Garbage on Streets**

ARTICLE I **Statutory Regulations**

Part 2 **Waste Management Facilities**

ARTICLE II **Waste Management Facilities** **Law – Part A**

- § 72-1. Title.
- § 72-2. Findings.
- § 72-3. Purpose.
- § 72-4. Applicability.
- § 72-5. Definitions.
- § 72-6. Exemptions.
- § 72-7. Coordination with state law.
- § 72-8. Prohibitions.
- § 72-9. Penalties for offenses:
enforcement.
- § 72-10. Repealer: effect on other laws.
- § 72-11. Severability; effect on Part B.

ARTICLE III **Waste Management Facilities** **Law – Part B**

- § 72-12. Title.
- § 72-13. Findings.
- § 72-14. Purpose.
- § 72-15. Applicability.
- § 72-16. Definitions.
- § 72-17. Exemptions.
- § 72-18. Coordination with state law and
local state and federal agencies.
- § 72-19. Permit required.
- § 72-20. Prohibited facilities.
- § 72-21. Application process.
- § 72-22. Application contents.
- § 72-23. Decision criteria.
- § 72-24. Permit requirements.
- § 72-25. General regulations.
- § 72-26. Penalties for offenses:
enforcement.
- § 72-27. Repealer; effect on other laws.
- § 72-28. Severability.

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in Part histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 50.

Flood damage prevention — See Ch. 54.

**Part 1
Garbage on Streets**

**ARTICLE I
Statutory Regulations**

[The depositing, discarding or throwing of waste on town streets and highways shall be regulated by §§ 1219 and 1220 of the Vehicle and Traffic Law.]

**Part 2
Waste Management Facilities
[Adopted 1-21-1999 by L.L. No. 1-1999]**

**ARTICLE II
Waste Management Facilities Law – Part A**

§ 72-1. Title.

This article shall be known as and may be cited as the “Waste Management Facilities Law of the Town of Minden – Part A.”

§ 72-2. Findings.

The Town Board finds that environmental science is presently inadequate to satisfactorily evaluate and control pollution from solid and liquid waste management facilities such as landfills, ashfills, 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 groundwater 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.

- 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.

§ 72-3. Purpose.

The town intends by this Article II to:

- A. Restrict the operation of solid waste management facilities within the Town of Minden 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 operations, including:
 - (1) Unaesthetic results, including odors, blowing litter, increased traffic, dust, noise; and
 - (2) Deterioration in property values associated with an adjacent or proximate solid waste management 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 Environmental Conservation Law (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 operations than state law requires.

§ 72-4. Applicability.

This Article II shall apply to all areas within the Town of Minden.

§ 72-5. Definitions.

- A. Unless defined below or the context otherwise requires, the terms and words used in this Article II 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.
- B. As used in this Article II, 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 and the solid residue of any air pollution control device used in a solid waste incinerator.

ASHFILL — Any landfill designed to accept 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 or solid 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 dyestuffs.

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.

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 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 designed 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.

§ 72-6. Exemptions.

A. The following are not subject to this Article II:

- (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, nonhazardous 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 Article II 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.

§ 72-7. 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 Article II, and any violation thereof shall be considered to constitute a violation of this Article II.
- B. The provisions of this Article II shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of this Article II shall apply.

§ 72-8. Prohibitions.

No solid waste management facility shall be constructed or allowed to commence operation.

§ 72-9. Penalties for offenses: enforcement.

- A. All violations of this Article II 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 Article II is permitted to exist shall constitute a separate offense.
- B. Any violation of this Article II or regulations or provisions thereof shall create a liability to the people of the town for civil penalty not to exceed \$5,000 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 Article II occurs or continues shall constitute a separate violation for purposes of civil liability.
- C. Upon any violation of this Article II 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, and ordering that any land on which solid or liquid waste is disposed of in violation of this Article II 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.

§ 72-10. Repealer: effect on other laws.

All other ordinances and local laws or parts thereof in conflict herewith are superseded by this article; provided, however, that the provisions of the law shall not be interpreted as obviating any requirements or restrictions wherever it is possible to conform to the provisions of both this article and any other law or ordinance.

§ 72-11. Severability; effect on Part B.

If any part of this Article II shall be judicially declared to be invalid, void, unconstitutional or unenforceable, all unaffected provisions thereof shall survive such declaration, and this Article II shall remain in full force and effect as if the invalidated portions had not been enacted. If all substantive parts of this Article II shall be judicially declared to be invalid, void, unconstitutional or unenforceable, Part B ¹ will take effect immediately.

ARTICLE III
Waste Management Facilities Law – Part B

§ 72-12. Title.

This article shall be known as and may be cited as the “Waste Management Facilities Law of the Town of Minden – Part B.”

§ 72-13. Findings.

- A. The Town Board finds that environmental science is presently inadequate to satisfactorily evaluate and control pollution from solid and liquid waste management facilities such as landfills, ashfills, resource recovery and incineration facilities.
- B. Among other factors, the Board finds as follows:
 - (1) The inability of geological science to precisely ascertain the existence and flow of groundwater 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.
 - (2) 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.
 - (3) The town's need for solid and liquid waste disposal are being met.
 - (4) 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.

¹ Editor's Note: See Article III, Waste Management Facilities Law – Part B.

- (5) 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.
- (6) 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.
- (7) The Town of Minden lies in a particularly significant environmental area, located in the Mohawk River Valley region; it includes portions of the Mohawk River and its tributaries, which are important water resources. Also within or near the town are major aquifers, along with adjacent recharge areas. The wetlands contained within the town are a precious ecological resource and are deserving of the utmost protection.
- (8) These natural resources constitute crucial physical, ecological, social, aesthetic, recreational and economical assets, and their preservation is necessary to protect and promote the health, safety and general welfare of present and future residents of the town.
- (9) There are substantial floodplains within the town. Placement of solid waste management facilities in floodplains can result in wastes being carried by floodwaters and flow from the site, and filling in floodplains that may restrict the flow of floodwaters, causing greater flooding upstream and/or reduced water storage capacity in the floodplain.
- (10) The siting, constructions, operation of solid waste management facilities within the Town of Minden will affect and impact upon all residents. Furthermore, facilities which are poorly sited or operated may have a negative environmental impact on the surrounding communities because they can contaminate groundwater and surface water and lead to odors and air pollution.
- (11) Solid and liquid waste regulation under the New York Environmental Conservation Law (ECL) is inadequate to relieve the forgoing concerns.

§ 72-14. Purpose.

- A. It is the intent of this Article III to promote the public purposes identified in this section by providing for the proper regulation and use of solid waste management facilities within the town. Specifically, the town intends by this Article III to:
- (1) Regulate the siting construction, operation and expansion of solid waste management facilities within the Town of Minden in order to promote a clean, wholesome and attractive environment for the community.
 - (2) Improve the ability of public officials and town residents to participate in the process of siting and licensing of solid waste management facilities.
 - (3) Reduce the risk of pollution from solid waste management operations by regulating the type, scope and size of such activities.

- (4) Ensure that accurate, current information about solid waste management operations within the town is available to public officials and citizens.
 - (5) Protect the residents of the town from undesirable effects of solid waste management operations, including:
 - (a) Unaesthetic results, including odors, blowing litter, increased traffic, dust and noise, and;
 - (b) Deterioration in property values associated with an adjacent or proximate solid waste management operation that may interfere with the orderly development of properties; and
 - (c) Threats to public health or the environment by contamination of air, surface water or groundwaters.
 - (6) 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 operations than state law requires.
- B. It is not the intent of this Article III to restrict, obstruct or otherwise hinder the continuation of agricultural production. The Town Board believes that the community is enhanced by the farms that operate within its boundaries. This Article III affirms the town's commitment to agriculture for this generation, and future generations who will work the land.
- C. It is not the intent of this Article III in any way to regulate the composting of yard waste and food waste at the personal residence or farms at which such waste is produced.

§ 72-15. Applicability.

- A. This Article III shall be applicable to all areas within the Town of Minden.
- B. Nothing in this Article III shall prohibit the Town Board from entering into an agreement with any facility operator or owner, properly permitted by this Article III, concerning host fees or contractual services.

§ 72-16. Definitions.

- A. Unless defined below or the context otherwise requires, the terms and words used in the Article III shall have the same meanings as those defined in Article 27 of the ECL and Title 6, Part 360, of the New York Codes, Rules, and Regulations.
- B. As used in this Article III, these terms and words shall be defined as follows:

6 NYCRR — Title 6 of the New York Codes, Rules and Regulations.

AGRICULTURAL DISTRICT — A district created under Article 25AA of the New York State Agriculture and Markets Law.

APPLICANT — The person applying for a permit under this Article III and must be the owner or operator of the solid waste management facility.

AUTHORIZED REPRESENTATIVE — The individual responsible for the overall operation of a solid waste management facility or an operational unit of a facility, such as the plant manager, superintendent or individual of equivalent responsibility who has authority and knowledge to make and implement decisions regarding operation conditions at the facility.

BOUNDARIES OF A WETLAND, WATER BODY OR WATERCOURSE:

- (1) The mapped boundaries of wetlands which have been delineated by the DEC, pursuant to the New York State ECL, or the U.S. Army Corps of Engineers pursuant to the Federal Clean Water Act; or
- (2) The boundaries for a water body or watercourse defined by state or federal law or regulation within the Town of Minden under the authority of any part of the ECL or the Federal Clean Water Act or any regulations promulgated under either of those statutes; or
- (3) Any land or waters which is not so mapped or bounded on which the principal vegetation is that set forth in paragraphs (a), (b) or (c) of Subdivision 1 of § 24-0107 of the New York State ECL, or which meets the definition in Subdivision 1(d) therein.

COMPLETED APPLICATION — An application in which necessary information and other approvals, required by any other entity or relevant law or regulation, is provided to the Town Board. If the Town Board is engaged in coordinated review with other regulating agencies, such information may be provided to the Town Board in accordance with the applicable coordinated review procedure.

DEC — The New York State Department of Environmental Conservation.

DISPOSAL — The placement, distribution, storage, removal or transportation of solid wastes.

EPA — The United States Environmental Protection Agency.

FACILITY — Any solid waste management facility.

MAJOR MODIFICATION — A modification as defined in 6 NYCRR 621, 1(m), that the DEC determines to treat as 6 NYCRR 621, 13(e).

OWNER — A person who owns a solid waste management facility or part of one.

PERSON — Any individual, public or private corporation, political subdivision, government agency, authority, department or bureau of the state, municipality, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.

RELATED CORPORATIONS — All corporations included with the applicant in one or more chains of corporations connected by stock ownership with a common parent corporation.

SEQRA — The State Environmental Quality Review Act² and the review procedures required therein.

WATER BODY — Any body of water which exists at least nine months of the year, and which, when wet, is customarily more than 5,000 square feet in water surface area.

WATERCOURSE — Any body of water flowing in an identifiable channel or course at least nine months of the year.

WETLANDS — All lands and waters in the Town of Minden that:

- (1) Fall within the definition of freshwater wetlands in the ECL, as in effect on the date of the enactment of this Article III, without respect to whether such lands and waters have been mapped by the DEC, and without respect to size, except that such lands and waters must have a contiguous area of at least 7,000 square feet; or
- (2) Fall within the definition of wetlands or navigable waters promulgated by the EPA or the U.S. Army Corps of Engineers pursuant to the Federal Clean Water Act.

§ 72-17. Exemptions.

A. The following are not subject to this Article III:

- (1) Any disposal of manure in normal farming operations, but not including sewage sludge processing and spreading.
- (2) Any sewage treatment facility, but not including any sewage sludge spreading facility.
- (3) On-site facilities, other than disposal facilities and incinerators, located on an applicant's premises and serving only the applicant's waste products created at that site. Persons constructing, operating and expanding such facilities shall apply to the Town Board and request an on-site facility waiver. The request shall include copies of all applicable state and federal licenses, permits and pending permit applications. The Town Board may place reasonable restrictions on the waiver, including reporting requirements, to ensure compliance with this Article III. No person who qualifies for and receives this on-site facility waiver shall accept, handle, import or transport any other source or location.
- (4) Used engine lubricating oil retention facilities as defined in 6 NYCRR Part 360.14.
- (5) Recyclables handling and recovery facilities.

B. None of the above exemptions shall be construed to permit any activity contrary to existing building codes, zoning codes or other laws or as exempting any other permit required by the state or local law.

² Editor's Note: See ECL § 8-0101 et seq.

§ 72-18. Coordination with state law and local state and federal agencies.

- A. All relevant sections of § 27 of the ECL and 6 NYCRR, Parts 360 to 364, and 617, are deemed to be included within and as part of this Article III, and any violation thereof shall be considered to constitute a violation of this Article III.
- B. The provisions of this Article III shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of this Article III shall apply.
- C. The Town Board may coordinate all reviews of applications, including the SEQRA process, with other local, state and federal agencies having approval over the application. Nothing in this Article III shall limit the right or power of the town to participate in any permitting process held by another agency. Nothing in this Article III shall bind the town to any decision on any issue concerning any application, nor limit the right and power of the town to conduct any and all inquiries, hearings and investigations it deems necessary in taking any action on an application.

§ 72-19. Permit required.

- A. No solid waste management facility shall be sited, constructed, expanded or operated within the Town of Minden except as permitted by this statute.
- B. Renewals of facility permits, expansions, transfers of permits and major modifications of facility permits shall require a new permit and application. Applications for renewals shall be made no later than six months prior to the expiration of the expiring permit.
- C. Existing solid waste facilities, other than those prohibited by § 72-21, shall apply for a permit under this Article III within 30 days of the effective date of this Article III.

§ 72-20. Prohibited facilities.

- A. The following solid waste facilities may not be expanded, constructed or operated within the Town of Minden:
 - (1) Disposal facilities, including, but not limited to, landfills, sanitary landfills, ashfills, construction and demolition debris landfills, industrial waste landfills, disposal facilities and monofills, but not including landfill gas recovery facilities.
 - (2) Incinerators.
 - (3) Land application facilities.
 - (4) Transfer stations.
 - (5) Used oil storage, reprocessing and rerefining facilities, but not including used engine lubricating oil retention facilities as defined in 6 NYCRR Part 360.14.
 - (6) Waste tire storage facilities.
 - (7) Medical waste treatment facilities.
 - (8) Composting facilities.

- (9) Construction and demolition debris processing facilities.
 - (10) Hazardous waste facilities.
 - (11) Surface impoundments.
 - (12) Rail-haul and barge-haul facilities.
- B. If any part of this section prohibiting certain facilities should be judicially declared to be invalid, void, unconstitutional or unenforceable, applications for said affected facilities may be made in accordance with this Article III and shall be evaluated in accordance with the application procedures of this Article III, and unaffected provisions hereof shall survive such declaration, and this Article III shall remain in full force and effect as if the invalidated portions had not been enacted.
- C. Any facility listed in Subsection A of § 72-20 above currently licensed and operating within the town may continue operations until the expiration of the current necessary federal, state or local operating license or permit, or five years, whichever is sooner. Nothing in this provision shall authorize the transfer, expansion or major modification of an existing facility.

§ 72-21. Application process.

- A. Applicants, including new, renewal, major modifications, transfer and expansion applicants, shall submit 10 copies of any application, including any required application fee, which shall be filed with the Town Clerk.
- B. Upon receipt of all the requisite application materials, the Town Clerk shall notify the Town Board, which shall declare the application complete or incomplete within 30 days of such notification. If the Town Board does not so declare within 30 days of notification, the applicant may submit a demand for determination letter ("demand letter") to the Town Board. If the Town Board does not so declare within 30 days after the receipt of the demand letter, the application will be deemed complete. The time periods noted within this section shall not otherwise begin until the application has been declared complete. If in accordance with § 72-22A(13), the Town Board requests additional information of the applicant, the time period within this section to determine the application incomplete or complete shall commence with receipt of the additional information, and all time periods within this section shall be tolled until such additional information is deemed complete. If the Town Board does not so declare within 30 days of receipt of the additional information, the applicant may submit a demand letter to the Town Board. If the Town Board does not declare the additional information complete or incomplete within 30 days after the receipt of the demand letter, the additional information will be deemed complete. The Town Board shall give written decisions if the application or additional information is found to be incomplete.
- C. The approving authority with respect to all aspects of all applications hereunder shall be the Town Board.
- D. The Town Board has the right to obtain, in the manner established by General Municipal Law § 101 et seq., legal and/or engineering consultation from consultants of the Town.

Board's choice, with the cost of such consultation to be borne by the applicant. Additionally, the Town Board has the right to obtain, pursuant to 6 NYCRR 617.17, consultants for assisting in the SEQRA review, with cost of such consultation to be borne by the applicant. If the Town Board, or other agency acting as lead agency in the case of a coordinated SEQRA review, determines that an environmental impact statement shall be prepared, all time periods within this section shall be tolled until the completion of the SEQRA process. A separate account shall be established for each applicant. Fees shall be paid in advance and the time periods in this section shall be tolled while such fees are unpaid. Interest earned, if any, on such accounts shall belong to the applicant and all excess funds at the close of the application process shall be repaid to the applicant.

- E. The Town Board has the right to promulgate by resolution regulations establishing a special use permit, application, including new, renewal, expansion, major modification and transfer applications, and are due under submission of the application. Rejected applications may be resubmitted within one year of the date of rejection by the Town Board without requiring payment of another permit fee. Permit fees shall be initially set at \$50,000 annually, and are due upon issuance of the permit and on that date annually thereafter.
- F. The Town Board may refer any application submitted to it pursuant to this Article III to the Minden Planning Board for review and report. The Planning Board shall report back to the Town Board within 30 days of the date of referral or within such greater period as may be specified by the Town Board at the time of referral. Failure to comply within the specified time periods shall be interpreted by the Town Board as indicating no objection to the application.
- G. A public hearing shall be held by the Town Board, within 60 days after an application, including the receipt of requested additional information, is deemed complete, upon no less than 20 days' notice. The public hearing may be adjourned to subsequent dates if, in the opinion of the Town Board, such adjournment is necessary to allow full public participation.
- H. A determination shall be made to approve, approve with modifications, approve with conditions or disapprove an application within 60 days following completion of the public hearing or 60 days after the completion of the SEQRA process, whichever is later.

§ 72-22. Application contents.

- A. Any person who shall desire and intends to establish, construct, operate, expand or maintain a solid waste management facility in the Town of Minden shall for an application submit the information listed herein, including a transmittal letter with an oath that subject to the penalties of perjury the information in the application is correct.
 - (1) The name and address of the applicant, including the name, address and telephone number of the applicant's authorized representative.
 - (2) All information required to be submitted to the DEC or EPA for all state or federal permits required to locate, construct, expand, transfer or operate the facility, including

copies of all applicable county, state, and federal permits or permit applications required for the facility.

- (3) A description of the operations, including the type of waste streams, the type of storage, treatment, disposal or processing that will occur to each waste stream, the machinery and equipment which will be used and the number of employees expected to be engaged in the operations.
- (4) The maximum volume and the expected average volume of each waste stream the applicant will accept for disposal, processing, treatment or storage, on a weekly and on a monthly basis. Included shall be the maximum volume of each waste stream to be stored at the facility at any one time.
- (5) The name and address of the owner of the land upon which the site is to be located and, if the applicant is not the owner, the nature of his right of occupancy of such land.
- (6) If the applicant is a corporation the names of all parent, related and subsidiary corporations engaged in waste management activities, the names of shareholders owning a ten-percent or greater voting interest, and if the applicant is a partnership or limited liability company, the names of each partner holding a greater than ten-percent general or limited partnership or other interest.
- (7) Site map or maps, prepared by a licensed engineer or land surveyor, showing the following:
 - (a) Title of drawing, including the name and address of the applicant.
 - (b) North arrow, scale and date.
 - (c) The exact location of the area intended for use as a facility, including buffer zones.
 - (d) Existing and proposed contours at intervals of not more than 10 feet.
 - (e) Building orientation, footprint and elevations.
 - (f) Existing natural features such as water bodies, watercourses, wetlands, wooded areas, individual large trees, flood hazard areas within 2,000 feet of the area intended for use as a facility, including buffer zones.
 - (g) The location of all boundary lines and/or streets and highways abutting the facility and all dwellings situated within 2,000 feet of the area intended for use as a facility, including buffer zones.
 - (h) The location of any adjoining property boundary within 2,000 feet of the area intended to be used as a facility, excluding buffer zones.
 - (i) Location of any property boundary of an active farm within 2,000 feet of the area intended to be used as a facility, including buffer zones.
 - (j) The location of water wells within 2,000 feet of the area to be used as a facility.
 - (k) Provision for buffer areas and other landscaping.

- (l) Location of all parking and truck-loading areas, showing access and ingress drives.
 - (m) Zoning district and agricultural district boundaries within 2,000 feet of the area intended for use as a facility, including buffer zones.
 - (n) Grading and erosion control measures, including the proposed location of sediment sink/setting pond and interceptor swales, etc.
 - (o) Location and design for stormwater management facilities.
 - (p) The topography of the site.
 - (q) A soils overlay, if general site grades exceed 10% or if portions of the site have susceptibility to erosion, flooding or ponding.
 - (r) Such other topographical and perimeter surveys, hydrological computations, engineering studies and other factual scientific data and reports as deemed necessary by the Town Board.
- (8) A Full Environmental Assessment Form. If the Town Board or other agency issues a positive declaration of environmental impact for the proposed impact, no consideration of the application will occur prior to the completion of the SEQRA process.
- (9) Where applicable, a plan for the storage and/or disposal of collected leachate, including written commitments from any facilities where such leachate would be disposed.
- (10) A drainage report including supporting design data and copies if engineering computations used to determine the design capacities and performance requirements of drainage facilities.
- (11) A report outlining the vehicular traffic impact of the project, including recommendations for mitigating such impacts.
- (12) Description of all violations of any federal, state or local statute or regulation by the applicant; its parent corporation, subsidiaries or related corporation owners; shareholders (or their parent corporation, subsidiaries or related corporations) owning more than 10% of the applicant; or partners owning more than 10% of the applicant, including the affected statute or regulation involved, the circumstances of the violation, penalties assessed and remedial action required.
- (13) Such other information as deemed necessary by the Town Board, including information necessary for compliance with SEQRA.
- B. A waiver from any of the application content requirements of this section may be granted by the Town Board in its discretion, and on such conditions as it may reasonably establish, when the Town Board determines that the information requested is not necessary to carry out the purposes of this Article III or is otherwise available to the town.

§ 72-23. Decision criteria.

- A. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this Article III.
- B. In approving, disapproving or approving with modifications any application, the Town Board shall exercise its discretion in consideration of the following factors:
 - (1) The environmental impact of the proposed action.
 - (2) The overall need for the proposed action.
 - (3) The alternatives to the proposed action.
 - (4) Irreversible and irretrievable commitments of resources that would be involved in the proposed activity.
 - (5) The character and degree of injury to, or interference with, safety, health or the reasonable use of property that is caused or threatened.
 - (6) The suitability or unsuitability of such activity to the area for which is proposed, including current land uses, zoning and natural features of the site.
 - (7) The effect of the proposed activity with reference to the protection or enhancement of the town's natural resources, including, but not limited to, agricultural uses and districts, wildlife, flora, recreation, wetlands, water bodies and watercourses.
 - (8) The availability of preferable alternative locations on the subject parcel or, in this case of activity of sufficient magnitude, the availability of other reasonable locations.
 - (9) The availability of mitigation measures or safeguards that could feasibly be added to the plan or action.
 - (10) The extent to which the exercise of property rights and the public benefit derived from such use may outweigh or justify the possible degradation of the site, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety or welfare.
 - (11) Compliance with the Local Solid Waste Management Plan and Town Comprehensive Plan.
 - (12) Potential litter, noise, odor, rodent and other vermin infestation, air pollution and water (surface water and groundwater) pollution problems from the project.
 - (13) Effect of the project on vehicular traffic within the town, including adequacy and arrangement of vehicular traffic access and circulation, including emergency vehicle access.
 - (14) Adequacy of drainage and flood prevention.
 - (15) Adequacy of stormwater and sanitary waste disposal.
- C. Permit will be issued by the Town Board if it finds that the proposed regulated activity is consistent with the policy of this Article III.

- D. Nondiscrimination requirement. In evaluating any application request or permit condition under this statute, the Town Board shall not consider and shall not base any decision on the source, origin or destination of any waste stream, nor in the method or route of transporting any waste stream. No decision of the Town Board under this statute shall favor in-town interests over out-of-town interests nor act to subsidize local interests. No decision of the Town Board under this statute shall require any applicant to provide different services or prices for town residents or businesses.
- E. The Town Board shall be authorized to deny a permit application or renewal if it determines, after a public hearing and affording the applicant an opportunity to present evidence on the issue, that the applicant, including the applicant's parent, subsidiary and other related corporations or partnerships, has such a record of violations of applicable federal, state or local laws that, in the judgment of the Town Board, the applicant is unsuitable to operate a solid waste management facility.
- F. As part of any permit, the Town Board may impose such reporting requirements as it deems necessary to fully inform the public and public officials on the operation of the facility. The Town Board may also designate a location for deposition of such reports for public inspection. All reports, tests, correspondence, notices, etc., in connection with the facility, sent by the operator or owner to the DEC, EPA or other state or federal agency, shall also be provided to the town.

§ 72-24. Permit requirements.

- A. Any permit issued hereunder shall at all times be displayed conspicuously at or near the entrance to the site.
- B. Any permit issued hereunder shall be effective from the date of its issuance until the lesser of December 31 of the fifth year following its issuance or, so as to allow coordinated review, the date of the next renewal of the applicable state or federal permit. A permit hereunder may be renewed for the lesser of additional five-year periods or the period of applicable facility state or federal permit, provided that the operations are in conformance with this Article III and the permit would be approved as an original application if submitted at the time. The granting of an original or renewed permit shall in no way create vested rights for the permittee or the site.
- C. No permit issued under this Article III shall be transferable or assignable without the prior written approval of the Town Board. For the purpose of this section, if the permittee or licensee is a corporation whose stock is not sold to the general public on any recognized stock exchanged or over the counter, and any type transfer or assignment of the ownership of a share or shares of stock in said corporation is made, voluntarily or involuntary, which transfer or assignment would cause the controlling interest in said corporation to be vested in a party other than the party holding controlling interest in the corporation before such transfer, the Town Board must be notified in writing by the corporate licensee or permittee as to any transfer or assignment of ownership of controlling interest in the shares of stock in said licensee or permittee. Any transfer or assignment as defined in this section will cause an automatic revocation of any permit issued hereunder, unless the Town Board, in its sole discretion, consents in writing to such transfer.

- D. Such permit may be revoked, modified or suspended by the Town Board for the violation of any regulation herein after a public hearing at which the permittee shall have an opportunity to be heard.
- E. Such permit may be revoked, modified or suspended by the Town Board, for the reasons listed in 6 NYCRR 621.14 and in accordance with the procedures listed therein.
- F. All tipping fees paid to the town will reflect on an amount per ton charged. If the price goes up, so will the tipping fees.
- G. The applicant agrees to fund an environmental officer chosen by the Town Board to monitor the facility through inspections and samplings of the site to occur not less than one day per week nor more than seven days per week. The cost of all analyses, shipping and reporting of samples shall be borne by the applicant.
- H. For locations where there will be ground disturbance, the applicant will provide a Phase One archaeological survey performed by a 36 C.F.R. 61 qualified archaeologist approved by the Town Board.
- I. The 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 \$75,000. These funds shall accompany the filing of an application and the town will maintain separate escrow account for all such funds. The town's consultants and 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 \$25,000, applicant shall immediately, upon notification by the town, replenish said escrow account so that it has a balance of at least \$25,000. 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 the amount of the actual billing or invoicing, the difference shall be promptly refunded to the applicant.

§ 72-25. General regulations.

- A. A person who shall operate a facility site for which a permit is granted hereunder shall be responsible for the operation, management and security of said site.
- B. No disposal facility shall employ ash or ash residue of any kind as daily cover.
- C. The area designed to be used as a solid waste management facility, including any type of disposal facility, including associated buildings, utilities, construction staging areas and other apparent physical features and buffer areas, shall be:
 - (1) No less than 2,000 feet from active farm land.
 - (2) Not within and no less than 2,000 feet from the boundary of an agricultural district.
 - (3) No less than 2,000 feet from any aquifer or adjacent recharge area, as determined by the DEC Division of Water.
 - (4) No less than 2,000 feet from the first water bearing unit.

- (5) No less than 2,000 feet from the boundary of the one-hundred-year floodplain.
 - (6) No less than 2,000 feet from any wetland, water body or watercourse.
 - (7) No less than 2,000 feet from any public water wellhead.
 - (8) Not within and no less than 2,000 feet from the boundary of any residential zoning district.
- D. The area designed to be used as an incinerator, including associated buildings, utilities, construction staging areas and other apparent physical features and buffer areas, in addition to the requirements of Subsection C of this section, shall be no less than 2,000 feet from any public or private school.
- E. The applicant shall execute a document binding itself, its successors, assigns and parent corporations or entities to indemnifying and holding harmless the Town of Minden for any costs associated with cleanup or remediation arising out of the operation of any solid waste management facility, including liability for such cleanup or remediation under current or future state or federal law or private civil legal action. The Town Board may impose such financial security requirements as it determines are necessary, when the financial security of the applicant is in question.
- F. The slope of any facility shall be no steeper than 4 to 1. The height of any facility shall not exceed 90 feet measured from its highest point to its base.
- G. The area designated to be used for facility purposes shall be enclosed with a suitable fence and entrance gate to contain blowing papers and to secure the area during nonoperational hours. All unloading of solid waste shall be conducted in such a manner as to eliminate any odor and litter. Any odor and litter from the facility that are detectable at any residence or commercial establishment will automatically require a temporary suspension of the permit until the violation is remedied.
- H. Refuse shall not be unloaded when weather conditions, e.g., high winds, etc., make it probable that the litter may be carried beyond the limits of the facility, at the permittee's expense.
- I. At the discretion of the Town Board, baseline testing and surface water monitoring systems may be required at any proposed or existing facility, at the permittee's expense.
- J. Recyclable items, e.g., glass, aluminum, newspaper, etc., shall not be deposited in any disposal facility. Such items shall be removed from any deposits of refuse by permittee and delivered to any appropriate recycling center for disposal.
- K. The Town of Minden reserves the right to promulgate rules and regulations applicable to permittees and the operation of facilities consistent with this Article III in order to clarify its terms and/or to monitor compliance with its provisions and/or promote enforcement thereof.
- L. Variances from the requirements of this section may be granted by the Town Board, upon a demonstration of practical difficulties and unnecessary hardship due to unique circumstances not caused by the applicant, at the sole discretion of the Town Board, only upon a super-majority (majority plus one of all seats, regardless of whether then-vacant) of the Town Board. No variance shall be granted if the site in question could yield a

reasonable return if used for other purposes allowable under town law. No variance shall be granted to allow a facility or operation otherwise prohibited by this Article III.

- M. Any permit for a facility will be required to provide liability insurance through the town's insurance company for an amount to be determined by the Town Board for a term of 99 plus one years, payable to the town half upon opening and the other half before the closing of the facility.

§ 72-26. Penalties for offenses: enforcement.

- A. All violations of this Article III 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 Article III is permitted to exist shall constitute a separate offense. Each and every provision of this Article III that is violated shall constitute a separate offense.
- B. Any violation of this Article III or regulations or provisions thereof shall create a liability to the people of the town for civil penalty not to exceed \$5,000 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 Article III occurs or continues shall constitute a separate violation for purposes of civil liability.
- C. Upon any violation of this Article III 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 or stored in violation hereof be removed from the town, an ordering that any land on which solid or liquid waste is disposed of in violation of this Article III be restored is 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.
- D. Any person who has been found by a judicial tribunal of the State of New York to have intentionally violated this Article III shall, in addition to the provisions found in Subsections A and B, be liable to reimburse the town and the citizens of the Town of Minden for its costs and expenses associated with bringing a particular prosecution to enforce this Article III, including, but not limited to, its reasonable attorney fees.
- E. The Town of Minden shall have the authority to appoint an enforcement officer(s) authorized to act on behalf of the Town of Minden to enforce the provisions of this Article III. Any peace officer, the Town Supervisor and members of the Town Board or their duly authorized representatives shall be granted access to any facility site permitted hereunder to inspect the same for compliance herewith, upon reasonable notice.

§ 72-27. Repealer; effect on other laws.

All other ordinances and local laws or parts thereof in conflict herewith are superseded by this Article III; provided, however, that the provisions of the law shall not be interpreted as

obviating any requirements or restrictions wherever it is possible to conform to the provisions of both this Article III and any other law or ordinance.

§ 72-28. Severability.

If any part of this Article III shall be judicially declared to be invalid, void, unconstitutional or unenforceable, all unaffected provisions thereof shall survive such declaration, and this Article III shall remain in full force and effect as if the invalidated portions had not been enacted.

Chapter 75

STREETS AND SIDEWALKS

ARTICLE I Notification of Defects

- § 75-1. Prior written notice required.
- § 75-2. Transmittal of notice; presentation to Town Board.
- § 75-3. Indexed record of notices.
- § 75-4. Effect on state law.

ARTICLE II Road Preservation

- § 75-5. Title.
- § 75-6. Purpose.
- § 75-7. Authority.
- § 75-8. Applicability.
- § 75-9. Delegation of authority.
- § 75-10. Definitions.
- § 75-11. Activities requiring road preservation vehicle permit.

- § 75-12. Exclusions.
- § 75-13. Highway Superintendent authority.
- § 75-14. Application; permit requirements; approval process.
- § 75-15. Suspension and revocation of permit.
- § 75-16. Highway permit bond/maintenance bond; escrow account.
- § 75-17. Multiple permits.
- § 75-18. Injunctions.
- § 75-19. Fees.
- § 75-20. Request for waiver.
- § 75-21. Severability.
- § 75-22. When effective.

Road Preservation Law
Worksheet

Road Preservation Law

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Notification of Defects [Adopted 9-18-2014 by L.L. No. 3-2014]

§ 75-1. Prior written notice required.

- A. No civil actions shall be maintained against the Town or Town Superintendent of Highways for damages or injuries to person or property sustained by reason of any highway, bridge, street, sidewalk, crosswalk, or culvert being defective, out of repair, unsafe, dangerous, or obstructed unless written notice of such defective, unsafe, dangerous, or obstructed condition of such highway, bridge, street, sidewalk, crosswalk, or culvert was actually given to the Town Clerk or Town Superintendent of Highways and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger, or obstruction complained of.

- B. 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, street, sidewalk, crosswalk, or culvert, 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 such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

§ 75-2. Transmittal of notice; presentation to Town Board.

The Town Superintendent of Highways shall transmit in writing to the Town Clerk within five days after the receipt thereof all written notices received pursuant to this article and Subdivision 2 of § 65-a of the Town Law. The Town Clerk shall cause all written notices received pursuant to this article and Subdivision 2 of § 65-a of the Town Law to be presented to the Town Board within five days of the receipt thereof or at the next succeeding Town Board meeting, whichever shall be sooner.

§ 75-3. Indexed record of notices.

The Town Clerk shall keep a separate indexed record (by location) of all such notices received.

§ 75-4. Effect on state law.

The article shall supersede in its application to the Town of Minden Subdivisions 1 and 3 of § 65-a of the Town Law.

ARTICLE II

Road Preservation

[Adopted 2-19-2015 by L.L. No. 1-2015]

§ 75-5. Title.

An article relating to preservation and protection of the roads of the Town of Minden and to the mitigation of damage due to heavy and/or high-volume truck traffic. This article may be cited as the "Town of Minden Road Preservation Law."

§ 75-6. Purpose.

- A. The purpose of this article is to maintain the safety and general welfare of Town residents by regulation of high-impact commercial activities that have the potential to adversely impact roads and property. Well-maintained roads are important to the economic well-being of the Town. Construction, maintenance, and operation of high-impact commercial endeavors (e.g., timber harvesting, mining, natural gas drilling, wind energy facilities and telecommunication facilities) can be economically beneficial. This article is not intended to regulate such endeavors, but the intent is to protect the

Town roads and property from damage from such endeavors that typically require high-frequency use of heavy equipment with heavy loads. It is the intent of this article to ensure that the Town's roads are not damaged or harmed to the overall detriment of the Town by a few individual users who utilize the roads in a manner that causes extraordinary deterioration to the roads.

- B. Heavier trucks deteriorate the pavement structure at an accelerated rate. A study at University of Texas found that one big rig pass causes the damage equivalent to 2,000 to 3,000 cars. That damage increases exponentially: A ninety-five-thousand-pound truck does two to three times the damage of an eighty-thousand-pound truck. One eighty-thousand-pound truck can cause the same damage as 800 to 1,000 cars. Multiple passes exacerbate the damage caused. As such, it is the intent of this article to protect Town roads from the frequent passes of heavier trucks. In the U.S. Department of Transportation's 1998 Draft Comprehensive Truck Size and Weight Study, it was written that "pavement deterioration increases with axle weight and with the number of axle loadings a pavement experiences."
- C. Nothing contained in this article shall be deemed to limit the right to farm as set forth in Article 25-AA of the New York State Agriculture and Markets Law.
- D. Nothing contained in this article shall be deemed to unlawfully interfere with interstate commerce.

§ 75-7. Authority.

- A. The Town Board of the Town of Minden enacts this article under the authority granted by § 10 of the New York State Municipal Home Rule Law, New York State Constitution Article IX, Section 2(c)6, and Town Law, specifically Subsection 1(ii)(a)(6), which allows Towns to adopt local laws regarding the acquisition, care, management and use of its highways, roads, streets, avenues and property.
- B. This article is also enacted pursuant to the authority of Subdivision 2 of § 23-0303 of the Environmental Conservation Law of the State of New York which provides that "The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries, but shall not supersede local government jurisdiction over local roads of the rights of local governments under the Real Property Tax Law."
- C. This article is enacted pursuant to the authority of Highway Law § 140, wherein the Commissioner of Public Works must cause certain highways and bridges within the Town to be kept in repair, to bring an action in the name of the Town, against any person or corporation, to sustain the rights of the public, in and to any Town highway corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such Town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway and other powers thereunder.
- D. Additionally, this article is enacted pursuant to the authority of Highway Law § 320, which requires that those that injure any highway or bridge maintained at the public

expense, by drawing or propelling over the same a load of such weight as to injure or destroy the culverts or bridges along the same, or of such weight that will destroy, break or injure the surface of any improved Town highway, or by any other act, shall for every such offense forfeit treble damages.

- E. This article also relies upon Town Law § 130, which allows towns to enact ordinances, rules and regulations not inconsistent with law, regulate the use of streets, highways, sidewalks and public places by motor and other vehicles and regulate the manner in which excavation may be made in or under the streets, highways, sidewalks or public places and requiring an indemnity bond as a condition precedent thereto, or the Town Board may require as the condition precedent thereto, the deposit in cash of such an amount as the Board may determine necessary to cover the probable expense to the Town of the replacement by the Town of the street, highway, sidewalk or public place, and the expended balance, if any, shall be refunded to the depositor.
- F. Lastly, this article is enacted pursuant to Vehicle and Traffic Law § 1660, which allows towns to provide for the creation of truck routes, for the permanent and temporary exclusion of certain traffic and for the adoption of additional reasonable ordinances and local laws with respect to traffic as local conditions require.

§ 75-8. Applicability.

This article shall apply to all Town roads and bridges, paved or unpaved, road shoulders, bridges, guard rails, driveways, easements, rights-of-way, culverts, sluice or drainage pipes, ditches, sidewalks, signs, or any utilities or improvements therein, thereon, or thereunder including seasonal and limited-use roads designated by the Town of Minden, open to travel by the public, and repaired and maintained by the Town of Minden.

§ 75-9. Delegation of authority.

The Town of Minden Highway Superintendent (herein called "Highway Superintendent") is authorized to receive, review, approve, approve with modifications, or deny road preservation vehicle permits to ensure high-impact or high-frequency truck traffic does not have an adverse impact on Town roads and properties. The Highway Superintendent is authorized to forward approval of a road preservation vehicle permit to the Town of Minden Code Enforcement Officer for issuance of the permit.

§ 75-10. Definitions.

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

APPLICANT — Refers to a person, as well as his/her agents, contractors, or subcontractors seeking road preservation vehicle permit to use one or more Town roads.

BOND — A commercial bond (monies) to ensure that the condition of the Town roads and/or property impacted by high-frequency, high-impact truck traffic is left in a good or better condition at the completion of the project as they were at the start of the project.

ESCROW — Money put into the custody of a third party, which shall be the Town of Minden, for delivery to a grantee only after the fulfillment of the conditions are specified.

FINAL BOND RELEASE — Final release of the bond (monies) by the Town of Minden Town Board.

HIGH-FREQUENCY AND HIGH-IMPACT TRUCK TRAFFIC — Travel over Town roads generated by a commercial project or activity that generates more than 10 truck trips per twenty-four-hour period for more than three consecutive days, involving trucks that are registered for 26,001 pounds or greater, and/or truck traffic of one or more vehicles that are oversized and/or overweight requiring a permit to travel New York State roads and highways pursuant to New York State Vehicle and Traffic Law § 385. See § 75-12 for truck traffic that is exempt from this article.

PERMITTEE — The holder of a road preservation vehicle permit including its contractors, subcontractors, employees and agents, issued pursuant to this article.

PRELIMINARY BOND RELEASE — A bond release given by the Highway Superintendent based on satisfactory road conditions at project completion and which requires final approval by the Town Board.

PROPERTY — Any real property (including any improvements therein, thereon or thereunder) or personal property owned by, or leased to, in the Town of Minden.

REGULATED VEHICLE OR EQUIPMENT — Trucks, trailers, semitrailers, tractors and other equipment, both wheeled and tracked vehicles, where self-propelled or towed, whether loaded or unloaded whose use and operation falls within the definitions in this article of either high-frequency or high-impact truck traffic.

ROAD — Any paved or unpaved road, shoulder, road right-of-way, bridge, guard rail, concourse, driveway, easement, right-of-way, culvert, sluice or drainage pipe, ditch, dock, tunnel, sidewalk, sign or any utilities or improvements therein, thereon, or thereunder including seasonal and limited-use roads designated by the Town of Minden, open to travel by the public and repaired and maintained by the Town of Minden.

ROAD PRESERVATION LOCAL LAW WORKSHEET (APPENDIX A) — Worksheet to be completed by the applicant summarizing the project or activity which will generate the traffic to which this article applies and submitted to the Highway Superintendent.¹

§ 75-11. Activities requiring road preservation vehicle permit.

- A. Any high-frequency or high-impact truck traffic use on Town roads as defined above shall require a written road preservation vehicle permit pursuant to this article prior to commencing use of any Town road. In the event that high-frequency or high-impact truck traffic uses Town roads without the required valid permit, the Highway Superintendent, any law enforcement officer, or code enforcement officer, has the authority to deny access to the roads.

1. Editor's Note: The worksheet is included as an attachment to this article.

- B. When related to high-frequency or high-impact truck traffic, no temporary or permanent altering, installing, constructing, modifying, filling, obstructing, or relocating any pavement, bridge, ditch, ditching, drainage flow, culvert, sluice or drainage pipe located on a Town road or within any Town road right-of-way shall take place until a valid road preservation vehicle permit has been issued.
- C. This article shall apply, and a road preservation vehicle permit shall be required, for all high-frequency or high-impact truck traffic even if the origin site or locale and/or the destination are located outside the Town of Minden so long as travel to and from the origin site and the destination is required over a Town road within the Town of Minden.
- D. When high-impact or high-frequency truck traffic is proposing to use Town roads to travel to more than one parcel or lot in the Town of Minden, or to travel through the Town on Town roads to access parcels outside the Town of Minden, a separate application for road preservation vehicle permit shall be made for each parcel, and for each road being used within the Town.
- E. All high-impact or high-frequency truck traffic utilizing seismic testing shall also require a road preservation vehicle permit.

§ 75-12. Exclusions.

- A. All rubber-wheeled vehicles, equipment and machinery, whether self-propelled or towed, utilized in the production of or transportation of agricultural products (as defined in § 301 of Article 25-AA of the NY AML), school buses, law enforcement vehicles, firefighting and emergency-rescue-type vehicles, ambulances, military vehicles, equipment operated by the National Guard, and municipal-owned and operated vehicles, are exempted from requiring a road preservation vehicle permit.
- B. This article shall not be construed to apply to, or prevent, the regular delivery or pickup of merchandise or other items common for residents, local business construction sites, and farms from property along Town roads.

§ 75-13. Highway Superintendent authority.

- A. The Highway Superintendent is hereby designated as the authority to receive, review, approve with modifications, approve, or deny all applications for road preservation vehicle permit. The Highway Superintendent must submit a copy of the road preservation vehicle application to the Town of Minden Code Enforcement Officer prior to the approving and issuing of any road preservation vehicle permit.
- B. The Highway Superintendent is hereby authorized to consult with others including but not limited to the New York State Department of Transportation and County Department of Public Works. The Superintendent may hire, in compliance with the Town local laws and procurement policies and with final approval from the Town of Minden Town Board, any engineer, consultant and/or expert which the Highway Superintendent deems necessary to assist in reviewing and evaluating any application hereunder for a road preservation vehicle permit.

- C. Use of escrow. If the Highway Superintendent determines that a source of funds is needed to promptly reimburse the Town for any reasonable costs and expenses incurred by the Town in processing an application for a road preservation vehicle permit, the applicant for a road preservation permit may be required by the Highway Superintendent to file with the Town of Minden Town Clerk an initial cash or certified funds deposit in the sum of \$10,000. These funds shall be required to accompany the filing of the application, and Town shall maintain a separate escrow account of all such funds.
- (1) The Town of Minden Town Board is hereby authorized to withdraw funds from said escrow account (without prior notice to or consent from the applicant) in order to promptly reimburse the Town of Minden for any costs and expenses related to the processing of an application for a road preservation vehicle permit.
 - (2) Funds from this escrow account may also be used to cover reasonable expenses if roads are to be repaired pursuant to § 75-16 of this article. The Town of Minden Town Board is hereby authorized to withdraw funds from said escrow account (without prior notice to or consent from the applicant) in order to promptly reimburse the Town of Minden for any costs and expenses needed for damages, injuries, discharges or spills involving Town roads or other Town property.
 - (3) Immediately following any such withdrawals, the Town of Minden shall give written notice to the applicant detailing such withdrawals and the reasons therefor.
 - (4) If, at any time during the review and approval period this escrow account has a balance of less than \$8,000, the applicant shall immediately, upon notification from the Town of Minden Town Clerk, replenish said escrow account to a balance of at least \$10,000, within 14 days of notification. Failure to do so will result in suspension of the road preservation permit review and approval process.
- D. The Highway Superintendent is authorized to temporarily suspend the travel of any truck or trucks having received a road preservation vehicle permit from the Town of Minden for emergency reasons including but not limited to flooding, heavy snow, or fire.

§ 75-14. Application; permit requirements; approval process.

- A. Application requirements. The application for a road preservation vehicle permit shall be submitted to the Highway Superintendent. In addition to all information required on Worksheet A,² the Highway Superintendent is authorized to request additional information from the applicant if deemed necessary in order to properly evaluate the permit application. In addition to Worksheet A, the following information shall be provided by the applicant:
- (1) A completed Road Preservation Local Law (RPLL) Worksheet (Attachment A),³ available from the Town of Minden Town Clerk or Highway Superintendent. All documents must be submitted to the Highway Superintendent prior to the start of any project and/or issuance of permit.

2. Editor's Note: The worksheet is included as an attachment to this article.

3. Editor's Note: The worksheet is included as an attachment to this article.

- (2) Identification of all Town roads to be used by the applicant along with a road map depicting the roads and proposed route.
- (3) A baseline survey, prepared by a qualified professional engineer, including, but not limited to, a written evaluation, video or photographic documentation demonstrating the condition of the proposed road and/or property described in the permit in accordance with methods described in the NYS Traffic Survey Methods Manual (NYSDOT 2010), and any other documents, maps, sketches, and plans which the Highway Superintendent may require.
- (4) Money in escrow, a highway permit bond, maintenance bond, or comparable blanket bond in an amount to be determined by the Town Board as listed on the fee schedule on file with the Town of Minden Town Clerk. The amount of the bond or money in escrow may be changed by the Town Board by resolution.
- (5) When a bond is required, it must be a bond with an AAA-rated company; with bond to be delivered and approved by the Town of Minden Town Board prior to issuance of the permit in the amount set by the Highway Superintendent, consistent with Attachment B, Bond/Fees Schedule.⁴
- (6) An itemized description of the regulated vehicle(s), equipment and/or machinery that shall be traveling or passing over a Town road(s) or Town highway(s). Such description shall include for each vehicle, piece of equipment or machinery the weight thereof. If such vehicle(s) is to be loaded, i.e., used for the transport of cargo, material(s), water, equipment, machinery, the description shall also state the gross loaded weight of such vehicle(s).
- (7) If such vehicle(s) is (are) to be loaded, the applicant shall describe the cargo, material(s), machinery and/or equipment to be transported over a Town road(s) or highway(s).
- (8) The applicant shall expressly state on the application whether any cargo to be transported over a Town road(s) or highway(s) is flammable, explosive, corrosive, toxic, hazardous or poisonous and, if so, describe such cargo with particularity such that in the event of a spill, leak or other discharge upon the surface of a Town road(s) or highway(s) and/or the lands adjoining thereto, responding fire, ambulance, emergency rescue, law enforcement and hazardous materials responder personnel shall be fully knowledgeable of the risks, hazards and dangers posed to themselves and members of the public arising out of any such spill, leak or other discharge and the proper procedure for dealing with same so as to prevent or minimize personal injury, death and property damage arising out of or in connection with any such spill, leak or other discharge.
- (9) A description of any special needs or requirements including alterations, modifications, excavations to Town road(s) or highway(s) such as the need for the installation of, widening or lengthening of travel lanes, culvert, sluices, ditching, snowplowing, etc. All special needs or requirements shall be subject to the prior approval of the Town of Minden Highway Superintendent and be at the sole cost

4. Editor's Note: The bond/fees schedule is included as an attachment to this article.

of the applicant, or otherwise as determined by the Town of Minden Highway Superintendent.

(10) Notification.

- (a) Whenever any such application for a road preservation vehicle permit required hereunder shall contain a disclosure that any flammable, explosive, corrosive, toxic, hazardous or poisonous cargo or material, whether same be a solid, semi-solid, liquid, or gas, shall be transported over a Town road(s) or highway(s), the Town of Minden Highway Superintendent shall forthwith cause a copy of such application to be forwarded within 10 days of determination that the application is complete to:

[1] The Chief of the Fort Plain Volunteer Fire Department, the Chief of South Minden Volunteer Fire Department and the Chief of Saint Johnsville Volunteer Fire Department.

[2] The Director of the Montgomery County Emergency Management Office.

[3] The Montgomery County Fire Coordinator.

- (b) The Town of Minden Highway Superintendent shall not grant or deny the application for the road preservation vehicle permit unless nor until all of aforesaid interested agencies shall have acknowledged in writing receipt of a copy of the application and made in writing to the Town of Minden Highway Superintendent its recommendations to either grant the application, grant the application with special conditions or to deny the application. Whenever one or more of the aforesaid interested agencies shall recommend that the application be denied, such recommendation shall state the grounds upon which denial is recommended.

- (11) For seismic testing, in addition to Worksheet A^s and other information as may be required, the following must be submitted:

- (a) Dates of intended testing, including start dates and completion dates;
- (b) Precise location(s) to be tested;
- (c) Numbers of vehicles, including size, weight, and description of each vehicle, that will go to each location;
- (d) Specific routes of ingress and egress to and from all testing locations; and
- (e) Agreement in writing to permit conditions as provided by the Town of Minden Highway Superintendent at time of approval.

B. Permit conditions.

5. Editor's Note: The worksheet is included as an attachment to this article.

- (1) In no event shall vehicles or equipment be parked or located inside the roadway boundaries or in the right-of-way or block access to neighboring landowners.
- (2) Traffic will be maintained in accordance with the Manual on Uniform Traffic Control Devices.
- (3) The permittee shall supply proof of insurance co-naming the Town of Minden with a minimum of \$5,000,000 in liability insurance coverage to the Highway Superintendent prior to the issuance of any permits. The Town of Minden Town Board shall be notified 30 days prior by the insurance company of termination of such coverage.
- (4) The permittee shall be responsible for any and all repairs of damages caused by their operation to any road or Town property.
- (5) This article applies to the entire duration of any project that induces high-frequency truck traffic and/or high-impact truck traffic, as defined in § 75-10, Definitions, of this article.
- (6) The road preservation vehicle permit shall not be assigned, conveyed, pledged or transferred without the express prior written consent of the Town of Minden Highway Superintendent.
- (7) The permittee shall provide the Highway Superintendent with advance written notice of the date upon which the permittee intends to begin the project or activity which is generating the traffic for which the permit was issued. That notice shall be delivered 14 days in advance of the date the project or activity is to begin. Once the activity or project is concluded or terminated, permittee shall provide written notice of conclusion or termination to the Highway Superintendent within 10 days of the actual conclusion or termination.
- (8) The road preservation vehicle permit shall not authorize the holder thereof to exceed the maximum gross weight limit authorized for crossing any bridge.
- (9) All road preservation permits must be renewed annually at no added expense to the permittee by the Town of Minden Highway Superintendent.
- (10) The Town shall, as a standard condition of every road preservation vehicle permit (RPVP), require that the permittee must comply with all other applicable laws, regulations and/or conditions of any other governmental permits which have been issued in connection with authorizing the project or activity which is generating the traffic.

C. Approval process.

- (1) Not later than 10 business days from the receipt of the applicant the Town of Minden Highway Superintendent shall review the application and determine whether same is complete or whether more information is required.
- (2) An application determined by the Town of Minden Highway Superintendent to be incomplete shall be forthwith returned to the applicant by the Town of Minden

Highway Superintendent together with a written request for the required information.

- (3) The Town of Minden Highway Superintendent will determine if the scope of work is such that a bond or money in escrow is required.
 - (4) If a bond or escrow is required, the Town of Minden Highway Superintendent must inform the Town of Minden Town Board of this determination and recommend the amount prior to review of any application (for escrow) and issuance of any permit (for a bond). If no bond or money in escrow is needed, the Road Preservation Local Law Worksheet⁶ may be approved by the Highway Superintendent and become the work permit. (See Attachment B, Bond/Fees Schedule).⁷
 - (5) The Highway Superintendent shall approve the application, approve it with conditions, or deny the application within 30 days of determining that the application is complete.
 - (6) The Superintendent of Highways shall file with the Town Clerk one copy of his/her decision, including any permit conditions, together with one copy of any complete application. The Town Clerk and the Town of Minden Highway Superintendent shall keep and maintain as part of their official Town records all applications, resubmitted applications, correspondence, notices of determination, permits and subsequent correspondence and submittals generated in connection with each such application. As official Town records all such documents shall be open and accessible to the public for viewing and copying pursuant to the statutes and FOIL (Freedom of Information Act) opinions of the State of New York regarding access to public records.
- D. Requirements after approval but prior to commencement of traffic. Upon issuance of the road preservation vehicle permit and prior to commencement of the traffic, the permittee will arrange for:
- (1) Video or photographic documentation of condition of the roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic;
 - (2) Ongoing documentation and analysis to include a written report including video or photographic documentation to be conducted monthly throughout the duration of the activity and within two weeks after the conclusion of the permitted traffic;
 - (3) All ongoing analysis reports and required documentation, with included video or photographic documentation, shall be submitted to the Highway Superintendent within one week of recording.

6. Editor's Note: The worksheet is included as an attachment to this article.

7. Editor's Note: The bond/fees schedule is included as an attachment to this article.

§ 75-15. Suspension and revocation of permit.

- A. Failure to submit the required ongoing analysis report will result in immediate suspension of the road preservation vehicle permit for two weeks by the Highway Superintendent and failure to comply at the end of such two weeks will result in immediate permit revocation. If revoked, a new permit application has to be filed and new fee paid as though it was a whole new application.
- B. The Highway Superintendent shall have the right and authority to issue an order to stop all high-impact or high-frequency traffic to those operating in violation of the terms of the road preservation vehicle permit, in violation of this article, in violation of applicable provisions of law, or contrary to the conditions upon which its road preservation vehicle permit was issued.
- C. Upon violation of any provisions of the road preservation vehicle permit, or violation of any provisions of this article, the Highway Superintendent may suspend for a period of 14 days and all work shall cease until violations are corrected by the permittee and then approved by the Highway Superintendent. A public hearing may be scheduled by the Town Board of the Town of Minden, at which the permittee shall have the right to appear and be heard. The Highway Superintendent may permanently revoke any road preservation vehicle permit after failure to correct the violation within the fourteen-day period upon written notice to the permittee.

§ 75-16. Highway permit bond/maintenance bond; escrow account.

- A. Bonds. If the Highway Superintendent determines that a bond is required, the bond must be paid by the applicant to the Town of Minden and remitted to the Town Clerk prior to the initiation of road uses. At such time, if ever, said highway permit bond, maintenance bond, or a comparable blanket bond is expended:
 - (1) The permittee or applicant shall replace the same within five days of the receipt of written notice from the Town Clerk;
 - (2) Failing to act on the written notice of instructions, the road preservation vehicle permit shall be subject to revocation. The Original Worksheet will then have to be reviewed by the Highway Superintendent and approved again as the permit.
- B. The road preservation vehicle permit holder is responsible for all damages done to the roadways, ditches, curbs, culverts, bridges, or other improvements and to public utilities in, under, over and along the roadway related to their traffic activities. Upon written due notice being given by certified U.S. mail, the road use permittee, and at the Town's sole option, the Town, may request the road use permit holder to repair all damages, or the Town may at its option contract with a third party for the necessary repairs.
- C. All such third-party contracts, involving the expenditure of more than \$10,000 for materials or the expenditure of more than \$20,000 for labor and materials, shall be deemed to be a public works contract, advertised and awarded pursuant to the competitive bidding requirements of General Municipal Law § 103 and the payment of New York State Department of Labor published prevailing wage rates.

- D. The escrow funds as per § 75-13C of this article may be used when the road preservation vehicle permit is in effect to also cover the reasonable fees charged by engineers, consultants and/or experts hired in accordance with the provisions of this article; reasonable administrative costs and expenses incurred by the Town of Minden in connection with the permitting process and the repair, restoration and preservation of Town roads and other Town property; and reasonable legal fees, accountant's fees, engineer's fees, costs, expenses, disbursements, expert witness fees and other sums expended by the Town in pursuing any rights, remedies or claims to which the Town may be entitled under this article or under applicable provisions of law, as against any permittee who has violated this article, any insurance company, any bonding company, any issuer of a letter of credit, and/or any United States or State of New York agency, board, department, bureau, commission or official.
- E. In the event that there is any balance remaining in the account as of the date that the Highway Superintendent determines the road preservation vehicle permit has expired and further determines that no damages or injuries have been caused to any Town road or other Town property for which the Town of Minden has not been fully reimbursed, the Town of Minden shall pay the permittee the balance remaining in the escrow account.
- F. Upon completion of the project, the permittee will apply to the Highway Superintendent for a preliminary bond release. Upon inspection of the work site, as necessary, the Highway Superintendent may approve the release of the bond after a period of one-year completion. If the release is not approved, the Highway Superintendent will specifically document the tasks that must be accomplished in order for the bond to be released. In this case the permittee will remedy the specified problem items and then reapply for a bond release. Final bond release must be approved by the Town Board for repayment of the bond funds.

§ 75-17. Multiple permits.

- A. In the event more than one permit is in effect at any time for any given road or road section, the Highway Superintendent may, at his discretion, limit the number of trucks allowed under each permit (see § 75-10, Definitions).
- B. In the event damage results from multiple uses, the Highway Superintendent will make a reasonable allocation of responsibility to and cause repairs to be funded proportionately from each permittee.

§ 75-18. Injunctions.

The Town is authorized to go to the New York State Supreme Court to seek an injunction against any permittee who defies either a permit suspension or revocation.

§ 75-19. Fees.

- A. A nonrefundable processing fee as indicated in the Town of Minden Fee Schedule (Appendix B),⁸ payable to the Town of Minden in certified funds, must accompany each worksheet submitted to the Highway Superintendent for the Town Clerk's records.
- B. The Town of Minden Town Board shall, by resolution, establish, and from time to time modify, a schedule of fees for road preservation vehicle permits.
- C. The Town of Minden Town Board may consult with the Montgomery County Commissioner of Public Works related to any county-controlled bridges, or hire any consultant and/or expert necessary to assist the Highway Superintendent in reviewing and evaluating the application, including but not limited to road evaluations or engineering to determine road and bridge structure capacity, baseline traffic, baseline road conditions, potential impacts on roads. An applicant shall deposit with the Town of Minden Town Board escrow funds sufficient to reimburse the Town of Minden for all reasonable costs of consultant and expert evaluation and consultation with the Highway Superintendent and/or Code Enforcement Officer in connection with the review of the application.

§ 75-20. Request for waiver.

- A. Request for a waiver from the standards set forth in this article shall be made to the Town of Minden Town Board in writing and shall contain the grounds on which the appellant relies for requesting the waiver, including all allegations on any facts on which the appellant will rely.
- B. No waiver shall be granted unless the Town of Minden Town Board finds in its sole and absolute discretion and records in its minutes that:
 - (1) Granting the waiver should be in keeping with the intent and spirit of local laws and is in the best interests of the community, as set forth in the Town of Minden Comprehensive Plan;
 - (2) There are special circumstances involved in the particular case as stated in § 75-8, Applicability, is justified; and
 - (3) The waiver is the minimum necessary to accomplish the purpose.

§ 75-21. Severability.

- A. If any part or provision of this article or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances, and the Town of Minden hereby declares that it would have

8. Editor's Note: The bond/fees schedule is included as an attachment to this chapter.

passed this article or the remainder thereof had such invalid application or invalid provision been known.

- B. If at any time there is conflict between this article and any other Town of Minden law, this article shall control.

§ 75-22. When effective.

This article shall take effect immediately upon filing in the office of the New York State Secretary of the State in accordance with the provisions of § 27 of the Municipal Home Rule Law of the State of New York.

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STREETS AND SIDEWALKS

75 Attachment 1

Town of Minden

Attachment A

Road Preservation Law Worksheet

All information from § 75-14 of the Town of Minden Road Preservation Law shall be included and attached as per of a complete application including the following information:

Date: _____

1. Hauler/Project Sponsor: _____

Address: _____

Phone: _____ Email: _____

2. Name and address of individual who will have overall responsibility and authority for activity for which a Road Preservation Vehicle Permit is sought.

3. Work Description (i.e., time, hydrofracking, pipeline construction, telecommunications facility construction, gravel mining, natural gas drilling, wind energy facility construction, etc. See page #1 of Road Preservation Law):

4. Work Location and Description:

5. Proposed Truck Routes (includes miles to be traveled on each road, maps of proposed truck routes for all construction in a road right of way, including pipelines, etc.) Such designation shall constitute the "approved designated route of travel" which shall not be changed or deviated without prior written approval by the Highway Superintendent.

6. Landowner:

Tax Parcel ID (Attach map of tax parcel): _____

Address: _____

Phone: _____

Email: _____

MINDEN CODE

7. Start Date: _____
Completion Date: _____
Expected maximum gross vehicle weight: _____
Maximum truck trips per day: _____
Hours such travel will occur: _____
8. Bond Amount: _____ Date Paid: _____
Approval Date: _____ Town Clerk: _____
9. Preliminary Bond Release Application Date: _____
10. Deficiencies to be repaired: _____

- Deficiencies Repaired Date: _____
Verification Date: _____
Verified and Approved by: _____
Highway Superintendent
11. Final Bond Release Application Date: _____
12. Final Bond Release: \$ _____ Date: _____
- Town Clerk: _____
Signature
- Town Supervisor: _____
Signature

Comments:

STREETS AND SIDEWALKS

75 Attachment 2

Town of Minden

Attachment B
Road Preservation Law

Bond/Fee Schedule

Date: _____

Road Type:	Dirt	Surface Treated
Bond per mile traveled:	\$25,000	\$100,000
<u>Road Totals:</u>		
Structures (all bridges and/or culverts by diameter)	Up to 19'-11"	20' and greater
Bond per structure	\$500,000	\$1,500,000
Multiply by number of structures		
<u>STRUCTURE TOTALS:</u>		
<u>ROAD TOTALS:</u> (from above)		
<u>STRUCTURE TOTALS:</u> (from above)		
<u>BOND TOTAL:</u>		
Bond/Fees assigned and/or paid to:	TOWN OF MINDEN 134 STATE HIGHWAY 80 FORT PLAIN, NY 13339	

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Chapter 77

SUBDIVISION OF LAND

ARTICLE I General Provisions

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[HISTORY: Adopted by the Town Board of the Town of Minden 6-17-1999 by L.L. No. 3-1999. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 50.
Flood damage prevention — See Ch. 54.

Waste management facilities — See Ch. 72, Part 2.
Zoning — See Ch. 90.

ARTICLE I General Provisions

§ 77-1. Title. ¹

This chapter shall be known and may be cited as "The Subdivision Law of the Town of Minden, New York."

§ 77-2. Purpose.

The purpose of this chapter is to provide for orderly efficient growth within the community and to afford adequate facilities for the transportation, housing, comfort, convenience, safety,

1. Editor's Note: Former Section 105, Enactment and authorization, which preceded this section, was repealed 4-19-2001 by L.L. No. 1-2001.

health and welfare of its population. The provisions in this chapter shall be administered to supplement and facilitate the provisions of the Town of Minden Comprehensive Plan.

§ 77-3. Administration.

This chapter shall be administered by the Town of Minden Planning Board.

§ 77-4. Fees. [Amended 4-19-2007 by Res. No. 20047-20²]

Application filing, consulting, environmental quality review and inspection fees shall be set by Town Board resolution. A filing fee of \$30 per lot shall be paid to the Town Clerk.

§ 77-5. Applicability.

Any subdivision of any parcel of land as defined in Article II of this chapter is subject to these regulations.

**ARTICLE II
Definitions**

§ 77-6. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings herein indicated:

CLUSTER DEVELOPMENT — A planned development in which lots are platted with less than the minimum lot size and dimension requirements of land use regulations, if such exist, but which have access to common open space that is a part of the overall development plan approved by the Planning Board.

COMPREHENSIVE PLAN — A long-range plan for the development of the town.

CONDITIONAL APPROVAL OF FINAL PLAT — Approval of a final plat subject to conditions set forth by the Planning Board in a resolution conditionally approving such plat. Conditional approval does not qualify a final plat for recording nor authorize issuance of building permits prior to final plat approval.

ENVIRONMENTAL ASSESSMENT FORM — A form used by the Planning Board in the State Environmental Quality Review process to assist in determining the environmental significance or nonsignificance of an action or project.

FINAL PLAT — A scale drawing, in final form and clearly marked "final plat," showing a proposed subdivision containing all information or detail required by law and by these regulations to be presented to the Planning Board for approval, and which, after final plat approval, may be duly filed or recorded by the applicant in the office of the County Clerk.

2. Editor's Note: This resolution also provided that it shall be effective retroactive to 1-1-2007.

FINAL PLAT APPROVAL — The signing of a final plat by a duly authorized officer of a Planning Board after a resolution granting final approval to the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the County Clerk.

LOT — A designated parcel, tract or area of land established by a plat and/or that having its own Tax Map number or described in a deed or otherwise as permitted by law.

OFFICIAL SUBMISSION DATE — The date on which an application for plat approval, complete and accompanied by all required information, endorsements and fees, has been filed and acknowledged by the Planning Board.

PARCEL — A designated tract, or area of land established by a plat and/or that having its own Tax Map number or described in a deed or otherwise permitted by law.

PLANNING BOARD — The Town of Minden Planning Board.

PLAT — A scale drawing or drawings showing the layout of a proposed subdivision, including, but not restricted to, road and lot layout and dimensions, key plan, topography and drainage and all proposed facilities.

PRELIMINARY PLAT — A scale drawing or drawings clearly marked "preliminary plat" showing the layout of a proposed subdivision, 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.

RESUBDIVISION — The further division of parcels, lots, plots, sites or other division of land or the relocation of lot lines of any lot within a subdivision previously made and approved or recorded according to law; or changes in the lines of existing streets, highways or public areas within any such subdivision; but not including conveyances made so as to combine existing lots by deed or other instrument.

REVERSE FRONTAGE LOT — Lots with the rear lot line abutting an existing or proposed street.

ROAD, MAJOR — A road intended to serve heavy flows of traffic from minor roads or as a business road providing access to business properties.

ROAD, MINOR — A road intended to serve primarily as an access to abutting residential properties.

SEQR — The New York State Environmental Quality Review Act (6 NYCRR Part 617).

SKETCH PLAN — A scale sketch of a proposed subdivision 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.

SUBDIVIDER — A person who is the record owner or the authorized agent of the record owner of the land proposed for subdivision.

SUBDIVISION — The division of any parcel of land into two or more lots, blocks or sites for the purpose of conveyance, transfer of ownership, improvement, building development or sale. The term "subdivision" shall include "resubdivision."

SUBDIVISION, MAJOR — Any subdivision not classified as a minor subdivision, including, but not limited to, subdivisions of five or more lots, or any size subdivision requiring any new public street or extension of municipal facilities.

SUBDIVISION, MINOR — Any subdivision containing not more than four lots fronting on an existing street or private lane, not involving any new public street or road, or the extension of municipal facilities, not adversely affecting the development of the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the Town Zoning Law or this chapter.

UNDEVELOPED PLAT — A plat where 20% or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

ARTICLE III Review and Approval Procedure

§ 77-7. Purpose.

The purpose of this article is to establish the procedure for Planning Board review and action on applications for subdivisions. The procedure is intended to provide orderly and expeditious processing of such application.

§ 77-8. Review procedure for minor subdivisions.

Minor subdivisions shall be processed in the following steps:

- A. Sketch plan conference (optional).
- B. Application for final plat approval. Environmental Assessment Form must be completed and submitted with application.
- C. Planning Board review of final plat and Environmental Assessment Form.
- D. Public hearing.
- E. Planning Board determination of environmental significance pursuant to SEQR.
- F. Planning Board action on final plat.

§ 77-9. Review procedure for major subdivisions.

Subdivisions shall be processed in the following steps:

- A. Sketch plan conference (optional).
- B. Application for preliminary plat approval. Environmental Assessment Form must be completed and submitted with application along with the required filing fee.
- C. Planning Board review of Environmental Assessment Form and preliminary plat.
- D. Planning Board determination of environmental significance pursuant to SEQR.
- E. Public hearing.
- F. Planning Board action on preliminary plat.
- G. Final plat submittal to Planning Board.
- H. Planning Board review.
- I. Public hearing (optional).
- J. Planning Board action on final plat.

§ 77-10. Sketch plan conference.

The subdivider may request an appointment with the Planning Board for the purpose of reviewing a sketch plan. The Planning Board Clerk shall notify the subdivider of the time, date and the place that the Planning Board will meet to consider and review such sketch plan as it relates to the comprehensive plan, design standards and required improvements as defined in Article V of these regulations. This meeting is intended to assist the subdivider in the planning and preparation of the preliminary plat to save both time and money in preparing maps and plans. The sketch plan meeting does not require formal application, fee or filing with the Planning Board.

§ 77-11. New York State Department of Health.

New York State Department of Health approval may be required for any subdivision containing five or more lots. Early contact by the subdivider with such department is advised.

§ 77-12. Application for preliminary plat approval - subdivision.

All subdivisions shall be subject to the preliminary plat requirements of this chapter. The subdivider shall file an application for approval of the preliminary plat on forms available from the Town Clerk accompanied by all documents specified in Article IV of these regulations. The application for approval of the preliminary plat shall not be considered complete until the entire SEQR process has been completed pursuant to 6 NYCRR Part 617, and all fees and reimbursable costs have been deposited by the subdivider with the Town of Minden. Such application shall be filed at least 10 days prior to the meeting at which it is to be considered by the Planning Board.

§ 77-13. Public hearing for preliminary plat.

Following the review of the preliminary plat and supplementary material submitted for conformity to these regulations, and following negotiations with the subdivider on changes deemed advisable and the kind and extent of improvements to be made by him/her, the Planning Board shall hold a public hearing. This hearing shall be held within 62 days after receipt of a complete preliminary plat by the Clerk of the Planning Board. The subdivider, or a duly authorized representative, shall attend the hearing. The hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before the hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems appropriate.

§ 77-14. Action on preliminary plat.

Within 62 days after the public hearing, the Planning Board shall approve, with or without modifications, or disapprove the preliminary plat and state its reasons for disapproval. The time in which the Planning Board must take action on such plat may be extended by mutual consent of the subdivider and the Planning Board. Within five days of approval of such preliminary plat it shall be certified by the Clerk of the Planning Board as having been granted preliminary approval, a copy filed in the Clerk's office, and a certified copy mailed to the subdivider.

§ 77-15. Effect of preliminary plat approval.

Approval of a preliminary plat shall not constitute approval of the final plat. The preliminary plat shall be a guide to the preparation of the final plat. Before submission of the final plat or any portion thereof for formal approval, the subdivider must comply with these regulations and all requirements set forth by the Planning Board in its review of the preliminary plat, and any other State Health Department requirements.

§ 77-16. Application final plat approval.

All major and minor subdivisions shall require final plat approval by the Planning Board. The subdivider shall file for final plat approval on forms available from the Town Clerk, and accompanied by documentation as specified in Article IV of these regulations, to the Planning Board. The final plat shall be submitted at least 10 days prior to the meeting at which it is to be considered by the Planning Board, and no later than six months after the date of the preliminary plat approval.

§ 77-17. Public hearing for final plat.

A public hearing shall be held by the Planning Board after the final plat is filed and prior to rendering a decision. This hearing shall be held within 62 days of the official submission date of the plat. The subdivider shall attend the hearing. The hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before the hearing.

§ 77-18. Waiver of public hearing for final plat.

The public hearing for subdivisions may be waived by the Planning Board if the final plat is in substantial agreement with the preliminary plat.

§ 77-19. Guarantees for required improvements.

Prior to final plat approval, the subdivider shall construct all required infrastructure and improvements. As an alternative, a performance bond or other security sufficient to cover the full cost of same shall be furnished to the town by the subdivider as provided in Article VI of these regulations.

§ 77-20. Action on final plat.

The Planning Board shall by resolution conditionally approve, with or without modifications; disapprove; or grant final approval to the final plat within 62 days after the public hearing. If the public hearing has been waived pursuant to § 77-18 above, the Planning Board shall act within 62 days after the official submission date. The time in which the Planning Board must take action on such plat may be extended by mutual consent of the subdivider and the Planning Board. The subdivider shall be notified of the final action of the Planning Board by mail within five days. If disapproved, the grounds for disapproval shall be stated in the record of the Planning Board, including reference to the provision violated by the plat.

§ 77-21. Conditional approval of final plat.

Upon conditional approval of such final plat, the Planning Board shall empower a duly authorized officer to sign the plat and grant final approval upon completion of such requirements as may be stated in the conditional approval resolution. The plat shall be certified by the Planning Board Clerk. A certified statement of the requirements shall accompany the plat which, when completed, will authorize the signing of the conditionally approved final plat. Upon completion of the requirements, the plat shall be signed by said duly authorized officer of the Planning Board. Conditional approval of a final plat shall expire 180 days after the date of the resolution granting conditional approval. The Planning Board may, however, extend the expiration time not to exceed two additional periods of 90 days each.

§ 77-22. Filing of plats in sections.

Prior to granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be subdivided into two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to ensure the orderly development of the plat be completed before such sections may be signed by the duly authorized officer of the Planning Board. Conditional or final approval of the sections of a final plat, subject to any conditions imposed by the Board, may be granted concurrently with conditional or final approval of the plat.

§ 77-23. Recording of final plat. [Amended 4-19-2001 by L.L. No. 1-2001]

The subdivider shall record the final plat, or section thereof, in the office of the Clerk of Montgomery County, New York, within 62 days after the date of approval; otherwise the plat shall be considered void and must again be submitted to the Planning Board for approval before recording in the office of the Clerk of Montgomery County, NY.

§ 77-24. Compliance with State Environmental Quality Review Act.

The Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617.

ARTICLE IV
Documents to be Submitted

§ 77-25. Purpose.

The documents to be submitted are intended to provide the approving authority (Planning Board) with sufficient information and data to assure compliance with all municipal codes and specifications and ensure that the proposed development meets the design and improvement standards contained in this chapter.

§ 77-26. Requirements.

The documents to be submitted are shown on the following pages. In specific cases and for documented reasons, the approving authority may waive the submission of a particular document. The reason for the waiver shall be indicated in the minutes of the approving authority.

§ 77-27. Information required for all plat submissions.

- A. A completed Town of Minden Subdivision Application Form and the required fee.
- B. Name and address of subdivider and professional advisors who may appear in public with subdivider or on subdivider's behalf.
- C. Map of property, prepared and stamped by a licensed land surveyor in the State of New York, at a scale of one inch to 50 feet or one inch to 100 feet, and on appropriate material. All such maps must be printed upon linen or canvas-backed paper or drawn with a pen and India ink upon tracing cloth or printed on Mylar and must be a minimum of 8 1/2 inches by 11 inches, and a maximum of 34 inches by 44 inches in size, showing:
 - (1) Subdivision name; the Tax Map section, block and lot number(s); scale; North arrow; location map showing on a Tax Map, USGS map or street map the general location of the plat, and date.
 - (2) Subdivision boundaries.

- (3) Contiguous properties and names of owners.
 - (4) Existing and proposed roads, sidewalks, utilities, structures, parking lots and drainage systems.
 - (5) Watercourses, marshes, wooded areas, public facilities and other significant physical features on or near the site.
 - (6) Proposed layout of lots, including lot widths and depths, road layout, open space, drainage, water supply and sewage disposal facilities.
 - (7) Land contours at ten-foot intervals, or other suitable indicators of slope.
 - (8) Proposed alterations of existing topography.
- D. Copy of Tax Map(s).
- E. Existing restrictions on the use of land, including easements, covenants and land-use regulations.
- F. Total acreage of subdivision and number of lots proposed.
- G. Environmental Assessment Form.

§ 77-28. Agricultural data statement.

- A. An application for subdivision approval that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located in an agricultural district shall include an agricultural data statement.
- B. In addition to the information required in § 77-27, an agricultural data statement shall include the following:
- (1) The name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the property is proposed; and
 - (2) A Tax Map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

§ 77-29. Minor subdivisions.

The following shall be submitted with all applications for approval of a final plat for a minor subdivision:

- A. One copy of the plat to be submitted to the County Clerk, drawn with ink on Mylar or such other material as is acceptable for filing, plus three paper copies.
- B. All information specified under §§ 77-27 and 77-28, updated and accurate.

- C. Data acceptable to the Planning Board to readily determine the location, bearing and length of every road line, lot line and boundary line, sufficient to allow for the reproduction of such lines on the ground.
- D. A statement that all on-site sanitation and water supply facilities shall be designed to meet the specifications of the State Department of Health, and a note attesting to this shall be stated on the plat and signed by a licensed engineer. All sanitary facilities shall be shown on the plat.
- E. A copy of any covenants or deed restrictions that are intended to cover all or part of the tract.
- F. Any additional information which is deemed necessary by the Town of Minden Planning Board.
- G. Any required fees.

§ 77-30. Preliminary plat, major subdivision.

The following shall be submitted with all applications for approval of a preliminary plat subdivision:

- A. Three copies of the plat map, drawn to scale. The map scale shall be one inch to 100 feet unless otherwise specified by the Planning Board.
- B. All information specified under §§ 77-27 and 77-28, updated and accurate.
- C. All parcels of land proposed to be dedicated to public use and the conditions of such use.
- D. Grading, erosion control and landscaping plans.
- E. The width and location of any roads or public ways and the width, location, grades and road profiles of all roads or public ways proposed by the developer.
- F. The approximate location and size of all proposed water lines, hydrants and sewer lines, showing connection to existing lines.
- G. Drainage plan, indicating profiles of lines or ditches and drainage easements on adjoining properties.
- H. Plans and cross sections showing sidewalks, road lighting, roadside trees, curbs, water mains, sanitary sewers and storm drains; the character, width and depth of pavements and subbase; and the location of any underground cables.
- I. Preliminary designs for any bridges or culverts.
- J. The proposed lot lines with approximate dimensions and area of each lot.
- K. An actual field survey of the boundary lines of the tract, giving complete description by bearings and distances, made and certified by a licensed surveyor. The corners of the tract shall also be marked by monuments of such size and type as used in the surveying industry and shown on the plat.

- L. A copy of all covenants or deed restrictions intended to cover all or part of the tract.
- M. Where the preliminary plat submitted covers only a part of the subdivider's entire holding, a sketch of the prospective future road and drainage system of the unsubdivided portion.
- N. Any additional information as deemed necessary by the Planning Board.
- O. Any required fees.

§ 77-31. Final plat, major subdivision.

The following shall be submitted with all final plats submitted for approval for a major subdivision:

- A. One copy of the plat to be submitted to the County Clerk, drawn with ink on Mylar or such other material as is acceptable for filing and clearly marked "Final Plat," plus three copies. The map scale shall be one inch to 100 feet unless otherwise specified by the Planning Board.
- B. Proposed subdivision name and the name of the town and county; the name and address of record owner and subdivider: name, address, license number and seal of the surveyor and/or engineer.
- C. Road lines, pedestrianways, lots, easements and areas to be dedicated to public use.
- D. Data acceptable to the Planning Board to readily determine the location, bearing and length of every road line, lot line and boundary line, sufficient to allow for the reproduction of such lines on the ground.
- E. The length and bearing of all straight lines, radii, length of curves and central angles of all curves. Tangent bearings shall be given for each road. All dimensions of the lines of each lot shall also be given. The plat shall show the boundaries of the property, locations, graphic scale and true North point.
- F. All offers of cession and any covenants governing the maintenance of uncaded open space shall bear the certificate of approval of the Town Attorney as to their legal sufficiency.
- G. Permanent reference monuments shall be shown at block corners and other points selected by the Planning Board.
- H. Approval of the State Health Department of water supply systems and sewage disposal systems proposed or installed.
- I. Construction drawings including plans, profiles and typical cross sections, as required, showing the proposed location, size and type of road, sidewalks, road lighting standards, roadside trees, curbs, water mains, sanitary sewer or septic systems, storm drains or ditches, pavements, subbase and other facilities.
- J. Evidence of legal ownership of property.

- K. Existing and proposed deed restrictions, in form for recording.
- L. Any other data such as certificates, affidavits, endorsements or other agreements as may be required by the Planning Board.

§ 77-32. Waiver of submission requirements.

The Planning Board may waive, when reasonable, any requirements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare.

ARTICLE V

Design, Standards and Required Improvements

§ 77-33. Purpose.

- A. The purpose of a good subdivision is to create a functional and attractive development, to minimize adverse impacts and to ensure a project will be an asset to the community. To promote this purpose, the subdivision shall conform to the following standards which are designed to result in a well-planned community without adding unnecessarily to development costs.
- B. The overall character and design of the subdivision shall be in conformance with the Town of Minden Comprehensive Plan.

§ 77-34. General road standards.

- A. The arrangement, width, location and extent of all proposed roads shall conform to and be in harmony with the Comprehensive Plan and Official Map of the town as they may exist, or shall conform to the recommendation of the Planning Board based on existing and planned roads, topography, public safety, convenience and proposed uses of the land.
- B. Marginal access roads may be required parallel to major highway rights-of-ways. Marginal access roads shall be separated from major highways by a distance which allows for an appropriate use of the intervening land. Such distance shall also be determined with regard for the requirements of approach grades and future grade separation.
- C. Reverse frontage lots may be required along major highway rights-of-way. Screen planting contained in a nonaccess reservation along the rear property line may be required or such other treatment as may be necessary for adequate protection of residential properties.
- D. Stub roads providing access to parcels adjacent to the subdivision may be required. Turnarounds may not be required for stub roads which do not provide access to dwellings within the subdivision.

- E. Roads shall intersect at right angles where possible. Roads shall not intersect at angles of less than 60°. Right-of-way lines at right-angled intersections shall be rounded by curves of at least 20 feet radius. All other intersections shall be rounded by curves suitable to the Planning Board.
- F. Road offsets with center-line offsets of less than 125 feet shall be avoided.
- G. Dead-end roads shall not exceed 800 feet in length or 20 dwelling units and shall be provided with a turnaround suitable for snowplowing and the turning of school buses and emergency vehicles.
- H. New road names shall not duplicate the names of existing or platted roads. Extensions of existing roads shall bear the name of the extended road. Signs bearing road names shall be erected by the subdivider at all intersections consistent with specifications for existing signage.
- I. House numbers shall be consistent with the numbering system currently in effect.
- J. Roadside vegetation shall not be planted in such a way as to impair snow removal and safe driver visibility at intersections.
- K. The Town Highway Superintendent and the appropriate Fire Chief shall be consulted by the Planning Board for an advisory opinion prior to the approval of any plat containing a new road or any plat containing lots whose only existing or proposed access to a public road is by easement or right-of-way.
- L. Road design standards are as follows:
 - (1) Minimum width right-of-way:
 - (a) Minor roads: 50 feet.
 - (b) Major roads: 60 feet.
 - (2) Minimum width of pavement:
 - (a) Minor roads: 18 feet.
 - (b) Major roads: 24 feet.
 - (3) Minimum width of shoulders: four feet.
 - (4) Minimum radius of horizontal curves:
 - (a) Minor roads: 150 feet except for road intersection corners.
 - (b) Major roads: 400 feet.
 - (5) Minimum length of vertical curves:
 - (a) Minor roads: shall be such that at least 100 feet line of sight exists measured three feet above the road surface.
 - (b) Major roads: 200 feet.

- (6) Minimum length of tangents between reverse curves:
 - (a) Minor roads: 100 feet, except where excessive grades may be reduced to reasonable grades by shortening tangent.
 - (b) Major roads: 200 feet.
 - (7) Maximum grade:
 - (a) Minor roads: 10% or 14% on short runs.
 - (b) Major roads: 6% to 8%.
 - (8) Minimum braking sight distance:
 - (a) Minor roads: 200 feet.
 - (b) Major roads: 300 feet.
- M. The Planning Board may reduce standards for road width if warranted based on the size of the subdivision and anticipated traffic levels.

§ 77-35. Road construction standards.

- A. Road improvements shall be installed by the subdivider.
- B. Roads shall be built as follows:
 - (1) Remove topsoil a minimum of six inches prior to the laying of base material.
 - (2) Subgrade. Subgrade shall be rough graded the full width of the road right-of-way. The subbase shall consist of a suitable gravel and stone material approved by the Town Highway Superintendent and compacted the full width of the road right-of-way to a depth of 12 inches.
 - (3) Base course.
 - (a) Base course of gravel should be minimum of eight inches with a maximum size stone of four inches.
 - (b) Top course of gravel a minimum of four inches with maximum size stone of two inches.
 - (4) Bituminous asphalt concrete.
 - (a) Base should be a minimum of three inches compacted depth.
 - (b) Top coat to have a minimum of two inches compacted depth.
- C. All slopes shall be graded and seeded.
- D. Culs-de-sac are required on dead end roadways with a sufficient turning radius for school buses and emergency vehicles.

- E. The Planning Board may reduce standards for roadway surface based on the size of the subdivision and anticipated traffic levels.

§ 77-36. Pedestrianways.

- A. In order to facilitate safe and convenient pedestrian access from roads to schools, parks, play areas or nearby roads, perpetual unobstructed easements of at least 20 feet in width may be required.
- B. In areas of heavy vehicular or pedestrian traffic, sidewalks may be required.
- C. All required sidewalks shall be installed at the expense of the subdivider and shall conform to the specifications of the Planning Board.
- D. All required sidewalks shall be of concrete or of a material approved by the Planning Board and shall have a minimum width of four feet in residential areas and five feet in commercial and industrial areas. Sidewalks shall also have a minimum depth of four inches, with sidewalks in driveway crossings having a minimum depth of six inches.

§ 77-37. Utilities.

Public utility improvements may be required and shall be installed as follows:

- A. Electricity. Power lines shall be placed underground and shall conform to Public Service Commission standards.
- B. Other utility services. All telephone and other service lines and cable shall be placed underground.
- C. Streetlighting. Poles, brackets and lights shall be of size, type and location approved by the local power company.
- D. Fire protection. The Planning Board may require the provision of a supply of water for fire-fighting purposes consisting of dry hydrants and a water source. This supply may be provided through fire hydrants connected to a community water supply system or by means of fire ponds. The design, location and capacity of fire ponds and hydrants shall conform to standards and specifications of the National Fire Protection Association and be acceptable to the Chief of the fire department in whose district the subdivision is located. Hydrants shall be of size, type and location specified by the Insurance Services Organization.

§ 77-38. Water supply.

If, in the opinion of the Planning Board, it is feasible and desirable to require a public water supply system, such system shall be installed at the expense of the subdivider to the approval of the Planning Board. The subdivider shall connect each lot at the property line with the public water supply. If no water supply is required, individual on-site wells shall be designed to meet the specifications of the New York State Department of Health.

§ 77-39. Sewage disposal.

- A. If, in the opinion of the Planning Board, a subdivision can be reasonably served by the extension of a public sanitary sewer or by a neighborhood system, the subdivider shall provide sanitary sewers and laterals for each lot for such service. Where public or neighborhood sanitary sewers are not feasible, the subdivider shall provide and install an individual system for each lot or a sewage treatment facility adequate for all proposed development within the subdivision, in accordance with state and local requirements.
- B. In case the subdivider sells lots, rather than lots improved with houses, it shall be the responsibility of the subdivider to obtain approval of the proposed sewage disposal systems. The installation of the approved individual sewage disposal facilities shall be the responsibility of the purchasers.
- C. In order to determine that the proposed lots are large enough to accommodate future improvements, subdivision plats shall indicate the location of septic tank, leach field, water well and residence for each proposed lot. The size of the leach field will be based on percolation test results pursuant to State Health Department standards.

§ 77-40. Lot requirements.

- A. Each lot shall directly abut a public or approved private road. This abutment shall include at least 15 feet of road frontage suitable for access by emergency vehicles. Easements may be considered for access. A private road constructed to the standards of § 77-35 of this chapter may be required.
- B. Corner lots shall have sufficient width to allow appropriate building setbacks from, and orientation to, all abutting roads.
- C. All lot dimensions and areas shall conform to the Town of Minden's land use regulations, if such exist.
- D. Each lot shall have a buildable area, free from development restrictions such as wetlands, floodplains, steep slopes, rock outcrops and unbuildable soils.
- E. Where a community sewage disposal system is not required, each lot shall have sufficient area so as to make adequate provision for septic absorption fields or seepage pit systems as required by the New York State Uniform Building and Fire Code. A percolation test shall be required for each lot. Each lot shall be of sufficient size to accommodate on-site sewage disposal system and well pursuant to New York State Health Department standards.
- F. One or more off-street parking spaces may be required at the base of a steep driveway to facilitate parking, in inclement weather.

§ 77-41. Unique and natural features.

- A. Unique physical features such as historic landmarks and sites, rock outcrops, desirable natural contours and similar features shall be preserved where possible.

- B. All surfaces shall be graded and restored, leaving no unnatural mounds or depressions.
- C. Topsoil moved during construction shall be returned and stabilized by seeding and plantings. An erosion control plan may be required to prevent soil erosion and sedimentation of surface waters during construction. Erosion control measures shall conform to guidelines available from the Montgomery County Soil and Water Conservation District.
- D. The removal or damage of existing trees and shrubs shall be minimized.

§ 77-42. Reservation of parkland.

- A. Before the Planning Board approves a subdivision plat containing residential units, such subdivision plat shall show, when required by the Planning Board, a park or parks suitably located for a playground or other recreational purposes.
- B. Land for park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring such park land. Findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular subdivision will contribute.
- C. If the Planning Board makes a finding that the proposed subdivision presents a proper case for requiring a park, but that a suitable park or parks of adequate size cannot be located on the subdivision plat, the Planning Board may require a sum of money in lieu thereof, in an amount to be established by the Town Board.
- D. Any moneys required by the Planning Board in lieu of land for park, parks or recreational purposes pursuant to this section shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

§ 77-43. Unsuitable land for subdivisions.

As a safety measure for the protection of the health and welfare of the people of the town, that portion of a proposed lot which is found to be unsuitable for subdivision due to harmful features (e.g., steep slopes, flood-prone areas, wetlands) shall not be included in the subdivision until adequate methods to mitigate adverse impacts are formulated by the subdivider and approved by the Planning Board.

§ 77-44. Cluster development.

The purpose of this section is to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open lands.

- A. Modification of land use regulations. The Planning Board may modify the provisions of land use regulations, if such exist, simultaneously with the approval of a subdivision plat, to permit the development of cluster subdivisions. Subdivision plats for cluster developments shall be approved in the same manner and subject to the same procedural requirements as any other subdivision plat.
- (1) The subdivider desiring this modification shall present a sketch plan to the Planning Board consistent with all the criteria established by these regulations and land use regulations, if such exist. Before modifying these requirements, the Planning Board shall find that such modifications would be consistent with the purpose of these regulations and beneficial to the interests of the town and the neighborhood in which the subdivision is located.
 - (2) The Planning Board, in reviewing any plat for which modifications are not requested, may determine that the proposed subdivision should be considered as a cluster development pursuant to the design standards and required improvements of these regulations.
 - (3) The application of this procedure shall result in no more than the number of lots or dwelling units which, in the Planning Board's judgment, could be permitted if the land were subdivided in conformance with design standards of these subdivision regulations and with Town of Minden's land use regulations, if such exist.
- B. Cluster developments. Cluster developments shall result in lands made available for open space. Such lands shall be clearly identified and labeled on the subdivision plat and shall be subject to the following requirements for dedications, ownership or maintenance.
- (1) Dedications.
 - (a) Any land dedicated for open space purposes shall be used only for park, recreation, conservation or selective timbering and agricultural purposes. Such land shall be encumbered by appropriate covenants or conservation easements approved by the Planning Board ensuring that the open space cannot be further subdivided; the use of the open space will continue in perpetuity for the stated purpose; and appropriate provisions will be made for maintenance.
 - (b) Any land dedication for purposes of this section shall be recorded in the County Clerk's office. Such land shall be clearly identified on a final plat. Such identification shall note use, ownership and management as well as liber and page of relevant filings with the County Clerk's office.
 - (2) Ownership. The ownership of land dedicated for park, recreation or open space use shall be determined by the property owner or applicant subject to approval by the Planning Board. Ownership shall be with one of the following:
 - (a) The town;
 - (b) Another public jurisdiction or agency subject to their acceptance;

- (c) A private, nonprofit organization incorporated with a purpose consistent with the use and management requirements of the dedicated land;
 - (d) Shared, common interest by all property owners in a subdivision;
 - (e) A homeowners', condominium or cooperative association or organization; or
 - (f) Private ownership encumbered by a conservation easement pursuant to § 247 of the General Municipal Law or §§ 49-0301 through 49-0311 of the Environmental Conservation Law.
- (3) Maintenance.
- (a) The person or entity having the right of ownership shall be responsible for its proper maintenance or continued upkeep. Where a homeowners', condominium or cooperative association or organization fails to properly maintain any required open space, the town shall be authorized to enter and repair or maintain such areas and assess said owners for the cost thereof. For the purpose of this subsection, "proper maintenance" may include the removal of brush and weeds, snow removal, mowing of grass, removal of waste, refuse or garbage or maintenance of workable drainage facilities.
 - (b) In the case of a residential plat, the dwelling units may be, at the discretion of the Planning Board, in detached, semidetached, attached or multistory structures.
 - (c) The provisions of this section shall not be deemed to authorize a change in the permissible use of the land as provided in the land use regulations, if they exist.
 - (d) Upon filing of the subdivision plat with the Montgomery County Clerk, the subdivider shall file a copy with the Town Clerk who shall make an appropriate note or reference thereto on the Town Land Use Map, if such exists.

§ 77-45. Waiver of standards.

The Planning Board may waive, subject to appropriate conditions, the provision of any or all of such improvements as in its judgment of the special circumstances of a particular plat or plats are not required in the interest of the public health, safety and general welfare, or which in its judgment are inappropriate because of inadequacy or lack of infrastructure adjacent or in proximity to the subdivision.

ARTICLE VI
Financial Guaranties for Public Improvements

§ 77-46. Purpose.

Improvement guaranties shall be provided to ensure the proper installation and maintenance of required street, utility and other improvements. The nature and duration of the guaranty shall be structured to achieve this goal without adding unnecessary costs to the developer.

§ 77-47. Required public improvements.

If required by the Planning Board Pursuant to § 77-18 of this chapter, applicants for subdivision plat approvals shall provide the town with acceptable financial security in an amount sufficient to guarantee the installation of basic public improvements. Such public improvements may include public water supply, sewage disposal systems, storm drains and sewers, roads, pavement markings and traffic signs and signals, sidewalks and other public improvements.

§ 77-48. Time limit on installation of improvements.

The construction or installation of any improvements or facilities, other than roads, for which a financial guaranty has been made pursuant to this article shall be completed within one year from the date of the approval of the subdivision plat or special use. Road improvements shall be completed within two years from the date of approval of the plat. At the end of such time, if the required public improvements are not completed and accepted by the town, the town may use as much of the financial security required by this article to construct and install, maintain or perfect the improvements as necessary to meet all applicable state and local laws, ordinances, rules and regulations.

§ 77-49. Extension of time limit.

The applicant may request an extension of time to perform required public improvements provided reasonable cause can be shown for the inability to construct and install said improvements within the required time. Such extension of time shall not exceed six months.

§ 77-50. Phasing of improvements.

The applicant may request a phasing of required improvements provided reasonable cause can be shown that is directly a part of the documenting phasing schedule for a subdivision reviewed by the Planning Board.

§ 77-51. Inspections of improvements.

At least five days prior to commencing construction of the required public improvements, the applicant shall pay to the Town Clerk the inspection fee required by the municipality and shall notify the Town Board or an official designated by the Town Board in writing of the time when the construction of such improvements will be commenced so that the Town Board

may cause inspections to be made to assure that all applicable specifications and requirements shall be met in the construction of such improvements and to assure the satisfactory completion of public improvements required by the Planning Board.

§ 77-52. Financial security options.

Acceptable financial security shall be provided to the town in one of the following ways:

- A. The applicant shall furnish a bond executed by a surety company in an amount equal to the cost of construction of the public improvements required by the Planning Board pursuant to these regulations.
- B. The applicant shall present to the Town Clerk a certified check in an amount equal to the cost of construction of the public improvements required by the Planning Board pursuant to these regulations.
- C. The applicant shall present to the Town Clerk an irrevocable letter of credit drawn in favor of the town in an amount equal to the cost of construction of the public improvements required by the Planning Board pursuant to these regulations.

§ 77-53. Review of proposed financial security.

All required public improvements shall be shown on the subdivision plat, and the total amount of the required financial security shall be based thereon. Such estimates shall be certified by a licensed professional engineer and shall be reviewed by the Town Board for financial adequacy as a guaranty of construction and of reasonable performance during a warranty period. The Town Board and the Town Attorney shall jointly review the guaranty agreement for sufficiency of form and execution and for the soundness of the financial guaranty offered by the applicant.

§ 77-54. Schedule of improvements.

When a guaranty agreement has been approved by the Town Board and the required surety bond, certified check or letter of credit has been received by the Town Clerk, the town and the applicant shall enter into a written agreement itemizing the required public improvements, establishing a schedule for the construction and installation of such improvement, and itemizing the cost of construction and installation for each improvement. Whenever feasible, costs shall be organized by logical phases of work completion in order to facilitate the partial release of funds held as a financial guaranty by the municipality to the applicant as work is satisfactorily completed.

§ 77-55. Staged refunding of financial guaranties.

At such times as the applicant wishes to have guaranty funds released in consideration of work performed and accepted, the applicant shall cause to be prepared an accurate statement of the work performed and accepted as of a date certain. This statement shall use the same item structure as was employed in the written agreement itemizing the required public

improvements. The applicant, after preparing such statement, shall submit it for review, approval and signature by an engineer acting on behalf of the town, by the appropriate municipal inspectors and by the town fiscal officer. If the statement is approved by the town fiscal officer, the statement shall be forwarded promptly to the Town Clerk, together with a recommendation that the amount approved on said statement be released from the financial guaranty provided by the applicant. Where the financial guaranty provided by the applicant makes staged refunding possible, the Town Clerk will then direct in writing to the surety company or financial institution having custody of the guaranty funds to release the approved amount of those funds to the applicant.

§ 77-56. Acceptance of required public improvements.

When the project inspector, following final inspection of the project, certifies to the Planning Board and the Town Board that all required public improvements have been completed in accordance with all applicable requirements, the Town Board may act by resolution to accept the public improvements.

**ARTICLE VII
Miscellaneous Provisions**

§ 77-57. Subdivision compliance.

No permit or certificate of occupancy shall be issued by the Code Enforcement Officer, except upon the authorization by and in conformity with an approved subdivision where required.

§ 77-58. Penalties for offenses.

- A. Any person, firm or corporation who commits an offense against, disobeys, neglects or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall, upon conviction, be deemed guilty of a violation. Each week an offense is continued shall be deemed a separate violation of these regulations.
- B. In addition to the penalties provided by statute, 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 these regulations.

§ 77-59. Certification and filing with county.

Upon adoption, the Town Clerk is hereby directed to forthwith file a certified copy of this chapter with the Clerk of Montgomery County.

§ 77-60. Amendments.

The Town Board may, on its own, on petition or on recommendation of the Planning Board, after public notice and hearing, amend this chapter pursuant to all applicable requirements of law.

§ 77-61. Interpretation and/or conflict of provisions.

- A. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements. More stringent provisions may be required if it is demonstrated that different standards are necessary to promote the public health, safety and welfare.
- B. Where conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of these regulations or of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

Chapter 83

TAXATION

ARTICLE I **Alternative Veterans Exemption**

- § 83-1. Declaration of purpose and policy.**
- § 83-2. Veterans exemptions.**

ARTICLE II **Real Property Exemption for Removal of Barriers for the Disabled**

- § 83-3. Purpose.**
- § 83-4. Justification.**
- § 83-5. Exemption schedule.**
- § 83-6. Eligibility for exemption.**

ARTICLE III **Real Property Partial Exemption for Persons with Disabilities and Limited Income**

- § 83-7. Statutory authorization.**
- § 83-8. Grounds for exemption.**
- § 83-9. Eligibility; exemption schedule.**

ARTICLE IV **Cold War Veterans Exemption**

- § 83-10. Title.**
- § 83-11. Legislation authority.**
- § 83-12. Exemption granted.**
- § 83-13. Maximum exemption.**

ARTICLE V **Grievance Day for Real Property Assessment Review**

- § 83-14. Title.**
- § 83-15. Legislative authority.**
- § 83-16. Statement of purpose.**
- § 83-17. Grievance date.**

ARTICLE VI **Real Property Tax Exemption**

- § 83-18. Purpose.**
- § 83-19. Opt out of exemption.**

[HISTORY: Adopted by the Town Board of the Town of Minden as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Assessors — See Ch. 5.

ARTICLE I

Alternative Veterans Exemption

[Adopted 1-10-1985 by L.L. No. 1-1985; amended in its entirety 11-20-2008 by L.L. No. 4-2008]

§ 83-1. Declaration of purpose and policy.

The purpose of this article is to increase the maximum veterans exemption allowable pursuant to § 458-a of the Real Property Tax Law of the State of New York.

§ 83-2. Veterans exemptions.

- A. Qualifying residential real property shall be exempt from taxation to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed the lesser of \$12,000 or the product of \$12,000 multiplied by the latest state equalization rate for the Town of Minden.
- B. In addition to the exemption provided by Subsection A of this section, where the veteran served in a combat theater or combat zone of operations, as documented by the award of a United States campaign ribbon or service medal, qualifying residential real property also shall be exempt from taxation to the extent of 10% of the assessed value of such property; provided, however, that such exemption shall not exceed the lesser of \$8,000 or the product of \$8,000 multiplied by the latest state equalization rate for the Town of Minden.
- C. In addition to the exemptions provided by Subsections A and B of this section, where the veteran received a compensation rating from the United States Veterans' Administration because of a service-connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by 50% of the veteran's disability rating; provided, however, that such exemption shall not exceed the lesser of \$40,000 or the product of \$40,000 multiplied by the latest state equalization rate for the Town of Minden.

ARTICLE II

Real Property Exemption for Removal of Barriers for the Disabled

[Adopted 6-19-1996 by L.L. No. 1-1996]

§ 83-3. Purpose.

The general purpose of this article is to exempt from taxation, real property, altered, installed or improved, subsequent to the Americans with Disabilities Act of 1990 for the purposes of removal of architectural barriers for the disabled. This article has been authorized by enabling legislation of an amendment to the Real Property Tax Law of the State of New York which added a new § 459-a. The State Legislature and the Governor enacted such legislation into law during the 1995 Legislative Session.

§ 83-4. Justification.

This article provides for a percentage of exemption from real property taxation and is sought to encourage the removal of architectural barriers for the disabled in existing property.

§ 83-5. Exemption schedule.

Such real property shall be exempt pursuant to the following exemption schedule:

Year of Exemption	Percentage of Exemption
1	50%



Year of Exemption	Percentage of Exemption
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%

§ 83-6. Eligibility for exemption.

No exemption shall be granted for alterations, installations or improvements unless:

- A. Such alterations, installations or improvements were commenced subsequent to the effective date of this article.
- B. If such alterations, installations or improvements were commenced prior to the effective date of this article, such alterations, installations or improvements may be subject to the exemption schedule of this article beginning from the date of such alterations, installations or improvements pursuant to the Americans with Disabilities Act of 1990 for existing buildings and shall not be eligible for refunds of property taxes or special ad valorem levies due to the exemption prior to the effective date of this article.
- C. Such exemption shall be granted only upon application by the owner or all the owners of such building on a form prescribed by the State Board. The application shall be filed with the Assessor of the town having the power to assess property for taxation on or before the appropriate taxable status date of Montgomery County.
- D. If satisfied that the applicant is entitled to an exemption pursuant to this section, the Assessor shall approve the application and such building shall thereafter be exempt from taxation and special ad valorem levies as herein provided commencing with the assessment roll prepared on the basis of the taxable status date referred to in Subsection C of this section. The assessed value of any exemption granted pursuant to this article shall be entered by the Assessor on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.

ARTICLE III

Real Property Partial Exemption for Persons with Disabilities and Limited Income [Adopted 2-18-1999 by L.L. No. 2-1999]

§ 83-7. Statutory authorization.

This article is adopted pursuant to authority of Real Property Tax Law § 459-c. All definitions, terms and conditions of such statute shall apply to this article.

§ 83-8. Grounds for exemption.

Real property owned by a person with disabilities whose income is limited by such disabilities, and used as the legal residence of such person, shall be entitled to a partial exemption from taxation to the extent of 50% of assessed valuation.

§ 83-9. Eligibility; exemption schedule.

To be eligible for this exemption authorized by such § 459-c and implemented by this article, the maximum income of such person shall not exceed \$6,000. Any such person having a higher income shall be eligible for exemption in accordance with the following schedule:

Annual Income	Percentage of Assessed Valuation Exempt from Taxation
More than \$6,000 but less than \$7,000	45%
\$7,000 or more but less than \$8,000	40%
\$8,000 or more but less than \$9,000	35%
\$9,000 or more but less than \$9,900	30%
\$9,900 or more but less than \$10,800	25%
\$10,800 or more but less than \$11,700	20%
\$11,700 or more but less than \$12,600	15%
\$12,600 or more but less than \$13,500	10%
\$13,500 or more but less than \$14,400	5%

ARTICLE IV**Cold War Veterans Exemption**

[Adopted 10-16-2008 by L.L. No. 3-2008¹]

§ 83-10. Title.

This article shall be entitled "Cold War Veterans Exemption Law of the Town of Minden."

§ 83-11. Legislation authority.

This article is enacted pursuant to the provisions of § 458-b of the Real Property Tax Law of the State of New York, as the same may be amended from time to time.

§ 83-12. Exemption granted.

Real property in the Town of Minden which meets the requirements for qualified residential real property, as defined in § 458-b of the Real Property Tax Law, shall be exempt from

1. Editor's Note: This local law also provided that it shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after 1-1-2009.

taxation by the Town of Minden to the extent authorized therein, subject to the following maximum exemption.

§ 83-13. Maximum exemption.

Qualifying residential real property shall be exempt from taxation by the Town of Minden to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed \$12,000 or the product of \$12,000 multiplied by the latest state equalization rate of the assessing unit or, in the case of a special assessing unit, the latest class ratio, whichever is less. In addition, where the Cold War veteran received a compensation rating from the United States Veterans Affairs or from the United States Department of Defense because of a service-connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property, multiplied by 50% of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed \$40,000.

ARTICLE V

Grievance Day for Real Property Assessment Review
[Adopted 3-21-2013 by L.L. No. 1-2013]

§ 83-14. Title.

This article shall be known as "Local Law No. 1 of the Year 2013, a Local Law Changing the Date Established for Grievance Day for Real Property Assessment Review."

§ 83-15. Legislative authority.

- A. On legislative authority this article is enacted pursuant to New York Real Property Tax Law § 512, which enables a town to enact a local law to change grievance day from the fourth Tuesday of May.
- B. This article supersedes and is in place of the date for the hearing of complaints set forth in Subsection 1 of § 512 of the Real Property Tax Law.

§ 83-16. Statement of purpose.

The Town of Minden in the County of Montgomery employs an Assessor who is at the same time employed by another assessing unit. Pursuant to the authority granted by § 512 (1-a) of the Real Property Tax Law, the Town of Minden desires to establish a date for the meetings of the Board of Assessment Review other than that provided in Subdivision 1 of § 512 of the Real Property Tax Law.

§ 83-17. Grievance date.

The Town of Minden hereby adopts as and for its grievance day the first Thursday after the fourth Tuesday of May and so many days thereafter as the Board of Assessment Review

deems necessary, such board shall meet to hear complaints in relation to assessments pursuant to § 512 of the New York State Real Property Tax Law.

ARTICLE VI
Real Property Tax Exemption
[Adopted 3-24-2016 by L.L. No. 1-2016]

§ 83-18. Purpose.

Real Property Tax Law Section 487 provides for an exemption from taxation for certain solar energy systems, wind energy systems or farm waste energy systems, and further provides in Subsection 8 of such section that a town may by local law provide that no exemption under this section shall be applicable within its jurisdiction with respect to any solar energy systems, wind energy systems or farm waste energy system constructed subsequent to the effective date of this article.

§ 83-19. Opt out of exemption.

Pursuant to the authority of Real Property Tax Law Section 487, Subsection 8, the Town of Minden hereby opts out of the exemption from real property taxes granted by Real Property Tax Law Section 487, Subsection 2, and related subsections, so that no exemptions under the provisions of said Real Property Tax Law shall be applicable to town taxes with respect to solar energy systems, wind energy systems or farm waste energy systems in the Town of Minden.

Chapter 87

WIND ENERGY FACILITIES

ARTICLE I Wind Energy Facilities

- § 87-1. Title.
- § 87-2. Purpose.
- § 87-3. Authority.
- § 87-4. Findings.
- § 87-5. Applicability; preexisting facilities.
- § 87-6. Permits.
- § 87-7. Waivers.
- § 87-8. Inspection.
- § 87-9. Construction-related damage.
- § 87-10. Enforcement; violations and penalties.
- § 87-11. Appeals.

ARTICLE II Definitions

- § 87-12. Definitions.

ARTICLE III Commercial Wind Energy Facilities

- § 87-13. Application requirements.
- § 87-14. Application review process.
- § 87-15. Physical standards for commercial wind energy facilities.
- § 87-16. Required site safety measures.
- § 87-17. Traffic routes and road maintenance.
- § 87-18. Setbacks and noise standards.

- § 87-19. Waivers from noise and setback criteria.
- § 87-20. Issuance of wind energy permits.
- § 87-21. Decommissioning.
- § 87-22. Limitations on approvals; easements on Town property.
- § 87-23. Permit revocation.

ARTICLE IV Wind Measurement Towers

- § 87-24. Site assessment.
- § 87-25. Application requirements.
- § 87-26. Standards for wind measurement towers.

ARTICLE V Small Wind Energy Conversion Systems

- § 87-27. Purpose and intent.
- § 87-28. Authority.
- § 87-29. Procedure.
- § 87-30. Application requirements.
- § 87-31. Standards for small WECS.
- § 87-32. Setbacks.
- § 87-33. Abandonment.

ARTICLE VI Fees; Tax Exemption; Redesignation for Codification Purposes

- § 87-34. Fees.
- § 87-35. Tax exemption.
- § 87-36. Numerical/lettering designations.

[HISTORY: Adopted by the Town Board of the Town of Minden 4-24-2008 by L.L. No. 1-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 50.

Zoning — See Ch. 90.

ARTICLE I Wind Energy Facilities

§ 87-1. Title.

This chapter may be cited as the "Wind Energy Facility Law of the Town of Minden, Montgomery County, New York."

§ 87-2. Purpose.

The Town Board of the Town of Minden adopts this chapter to promote the effective and efficient use of the Town's wind energy resources through wind energy conversion systems (WECS) and to regulate the placement of such systems so that the public health, safety, and welfare shall not be jeopardized.

§ 87-3. Authority.

The Town Board of the Town of Minden enacts this chapter under the authority granted by:

- A. Article IX of the New York State Constitution, § 2(c)(6) and (10).
- B. New York Statute of Local Governments, § 10, Subdivisions 1 and 7.
- C. New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii) and (ii)(a)(6), (11), (12) and (14).
- D. New York Town Law § 130, Subdivisions 1 (Building code); 3 (Electrical code); 5 (Fire prevention); 7 (Use of streets, highways, sidewalks and public places); 7-a (Location and construction of driveways); 11 (Peace, good order and safety); 15 (Promotion of public welfare); 15-a (Excavated lands); 16 (Unsafe buildings and collapsed structures); 19 (Trespass); and 25 (Building lines).
- E. New York Town Law § 64, Subdivisions 17-a (protection of aesthetic interests) and 23 (general powers).

§ 87-4. Findings.

The Town of Minden finds and declares that:

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

§ 87-5. Applicability; preexisting facilities.

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

- (3) Any wind measurement tower existing on the effective date of this chapter shall be removed no later than 24 months after said effective date, unless a permit for said wind measurement tower is obtained.

§ 87-6. Permits.

- A. No wind energy facility shall be constructed, reconstructed, modified, or operated in the Town of Minden except in compliance with this chapter.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Minden except with a wind energy facility permit approved pursuant to this chapter.
- C. No wind measurement tower shall be constructed, reconstructed, modified, or operated in the Town of Minden except pursuant to a wind energy facility permit issued pursuant to this chapter.
- D. No small wind energy conversion system shall be constructed, reconstructed, modified, or operated in the Town of Minden except pursuant to a wind energy permit issued pursuant to this chapter.
- E. Exemptions. No permit or other approval shall be required under this chapter for mechanical, nonelectrical WECS utilized solely for agricultural operations.
- F. Transfer. No transfer of any wind energy facility or wind energy permit, nor sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), shall occur without written prior notification to the Town and the written acceptance of the transferee of the obligations of the transferor under this chapter. No transfer shall eliminate the liability of an applicant nor of any other party under this chapter.
- G. Notwithstanding the requirements of this section, replacement in kind or modification of a wind energy facility may occur without Town Planning Board approval when:
 - (1) There shall be no increase in total height;
 - (2) No change in the location of the WECS;
 - (3) No additional lighting or change in facility color; and
 - (4) No increase in noise produced by the WECS.
- H. Prior to commencement of operation of any WECS, the applicant must provide a certification that the project complies with all applicable codes, industry practices, conditions of approval, and all applicable requirements of this chapter.

§ 87-7. Waivers.

- A. The Planning Board may, after a public hearing (which may be combined with other public hearings on wind energy facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this chapter

if, in the opinion of the Planning Board, the grant of said waiver is in the best interests of the Town. The Planning Board may consider as reasonable factors in evaluating the request, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.

- B. The Planning Board may attach such conditions as it deems appropriate to waiver approvals to minimize the impact of the waiver.

§ 87-8. Inspection.

- A. The owner of each wind energy facility shall submit an annual inspection report to the Town Board or its designee on the structural and operational integrity of the facility. Such report shall be prepared by or under the direction of a professional engineer licensed by the State of New York. If such report recommends that repairs or maintenance measures be undertaken, the owner shall provide with such report a written schedule for undertaking such repairs or maintenance.
- B. Wind energy facilities shall not begin operation until all approvals required under this law are obtained and all required certifications are provided.
- C. Following the issuance of any approval required under this chapter, the Town Board or its designee shall have the right to enter onto the site upon which a wind energy facility has been placed, at reasonable times, in order to inspect such facility and its compliance with this chapter.
- D. After undertaking such inspection, the Town Board or its designated representative shall provide notice of any noncompliance with the terms of this chapter or the conditions of approval of any permit issued hereunder and shall provide the owner or applicant with a reasonable time frame to cure such violation, such time frame to be determined based upon the seriousness of the violation, its impact upon public safety, and the impact of the violation upon the residents of the Town.

§ 87-9. Construction-related damage.

The owner of every wind energy facility constructed pursuant to this chapter shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the construction of such facility.

§ 87-10. Enforcement; violations and penalties.

- A. The Planning Board shall appoint such Town staff or outside consultants as it sees fit to enforce this chapter.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this chapter or in noncompliance with the terms and conditions of any permit issued pursuant to this chapter, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an

offense and subject to a fine of not more than \$500 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$500 for each violation, and each week said violation continues shall be deemed a separate violation.

- C. In case of any violation or threatened violation of any of the provisions of this chapter, including the terms and conditions imposed by any permit issued pursuant to this chapter, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

§ 87-11. Appeals.

Any person or persons jointly or severally aggrieved by the decision of the Town in regard to the administration of this chapter may apply to the Supreme Court for review under Article 78 of the New York State Civil Practice Law and Rules.

ARTICLE II Definitions

§ 87-12. Definitions.

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

AMBIENT SOUND LEVEL — Also referred to as "ambient noise level" and "ambient sound pressure level," the background sound level (exclusive of the development proposed) found to be exceeded 90% of the time over which sound is measured in a noise analysis, utilizing the A-weighting scale (unless another weighting curve is required by this chapter).

COMMERCIAL WIND ENERGY CONVERSION SYSTEM (COMMERCIAL WECS) — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

DECIBEL (dB) — A unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to a standard pressure of 20 micronewtons per square meter.

EAF — Environmental assessment form used in the implementation of the State Environmental Quality Review Act as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

ENVIRONMENTAL IMPACT STATEMENT (EIS) — An EIS is a written "draft" or "final" document prepared in accordance with § 617.9 of State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An

EIS facilitates the weighing of social, economic, and environmental factors in the planning and decisionmaking process. A draft EIS (DEIS) is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment by all involved and interested agencies before a final EIS (FEIS) is prepared.

FACILITY OWNER — The entity or entities having an equity interest in the wind energy conversion system, including their respective successors and assigns.

HUB HEIGHT — The distance measured from the surface of the tower foundation to the height of the wind turbine hub, to which the blade is attached.

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) — NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the state's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

RESIDENCE — Any dwelling suitable for habitation existing in the Town of Minden on the date an application is received. A residence may be part of a multidwelling or multipurpose building but shall not include buildings such as hotels or motels, hospitals, day-care centers, dormitories, sanitariums, nursing homes, municipal buildings, schools or other buildings used for educational purposes, or correctional institutions.

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

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

SMALL WIND ENERGY CONVERSION SYSTEM (small WECS) — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

SOUND LEVEL — Also referred to as "noise level," the statistical sound pressure level expressed as the sound level that is exceeded for a given proportion of the time over which sound is measured. "L[10]" shall mean the standard abbreviation for the sound pressure level that is exceeded for 10% of the time over which the sound is measured. "L[90]" shall mean the standard abbreviation for the sound pressure level that is exceeded for 90% of the time over which the sound is measured. Unless another weighting curve is required to be used by this chapter, all measurements required hereunder shall utilize the A-weighting scale (unless another weighting curve is required by this chapter).

SOUND PRESSURE LEVEL — According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, a measure of sound pressure in the atmosphere which can be determined according to the International Standard for Acoustic Noise Measurement

Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also refers to the perceived loudness of a sound as expressed in decibels (dB) or A-weighted decibel scale dBA. For example, an L[10] of 30 dBA indicates that in any hour of the day, 30 dBA can be equaled or exceeded only 10% of the time, or for six minutes.

TRANSMISSION OWNER — Companies which own the electric distribution networks.

UNREASONABLY INTRUSIVE — Any sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities under the circumstances.

WIND ENERGY CONVERSION SYSTEM (WECS) — A machine that converts the kinetic energy in the wind into a usable form such as a wind turbine or windmill.

WIND ENERGY FACILITY — Any wind energy conversion system, small wind energy conversion system, or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY PERMIT — A permit pursuant to this chapter granting the holder the right to construct, maintain and operate a wind energy facility.

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

WIND TURBINE HEIGHT — Also referred to as "total height," the distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

ARTICLE III

Commercial Wind Energy Facilities

§ 87-13. Application requirements.

- A. A complete application for a wind energy permit for commercial WECS shall include the following:
- (1) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent, as well as the original signature of the applicant authorizing the representation.
 - (2) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed application(s) and authorizing the submission of the application.
 - (3) Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.
 - (4) A description of the project, including the number and maximum rated capacity of each WECS.

- (5) A copy of an executed interconnection agreement with NYISO and the applicable transmission owner.
- (6) A site plan prepared by a licensed surveyor or engineer drawn to a scale to be established by the Planning Board consistent with the size of the site and in sufficient detail to clearly describe the following:
 - (a) Property lines and physical dimensions of the site.
 - (b) Location, approximate dimensions and types of major existing structures and uses on the site, public roads, and adjoining properties within 500 feet of the boundaries of the proposed WECS site.
 - (c) Location and elevation of each proposed WECS.
 - (d) Location of all above- and belowground utility lines on the site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
 - (e) Location and size of structures above 35 feet within a one-and-one-half-tower radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
 - (f) To further demonstrate compliance with the setback requirements of this chapter, buffers shall be drawn around each proposed tower location in accordance with the requirements set forth in § 87-18A.
 - (g) Location of the nearest residential structure(s) on the site and located off the site, and the distance from the proposed WECS.
 - (h) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
- (7) For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include manufacturers' Material Safety Data Sheet (MSDS) documentation for the type and quantity of all materials used in the operation of all equipment, including, but not limited to, all lubricants and coolants. Copies of the MSDS must be placed on file with the surrounding local fire departments, including the Fort Plain Fire Department, the South Minden Fire Department, the Canajoharie Fire Department, and the St. Johnsville Fire Department.
- (8) Vertical drawing of each proposed WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.
- (9) Landscaping plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations. The plan must be drawn to a scale

established by the Planning Board consistent with the size of the site and in sufficient detail to clearly describe the existing and proposed vegetation.

- (10) Lighting plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
- (11) Erosion and sediment control plan prepared to NYSDEC Phase II stormwater requirements.
- (12) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- (13) The applicant shall submit an operations and maintenance plan for the proposed facility which shall include:
 - (a) A regular periodic maintenance schedule.
 - (b) Any special maintenance requirements.
 - (c) Procedures and notification requirements for restarts during icing events.
- (14) Decommissioning plan. The applicant shall submit a decommissioning plan, which shall include:
 - (a) The anticipated life of the WECS;
 - (b) The estimated decommissioning costs in current dollars;
 - (c) How said estimate was determined;
 - (d) The method of ensuring that funds shall be available for decommissioning and restoration;
 - (e) The method, such by annual reestimate by a licensed engineer, that the decommissioning cost shall be kept current; and
 - (f) The manner in which the WECS shall be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
- (15) List of property owners, with their mailing address, within 500 feet of the outer boundaries of the proposed site.
- (16) Complaint resolution. The application shall include a complaint resolution process to address complaints from nearby residents. The process may use an independent

mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.

- (17) Completed Part 1 of the full EAF along with a visual EAF addendum.
- (18) If a positive declaration is determined by the SEQRA lead agency, the following information shall be included in the draft environmental impact statement (DEIS) prepared for a wind energy facility. Otherwise, the following studies shall be submitted with the application:
 - (a) Shadow flicker. The applicant shall employ an independent engineering firm experienced with shadow flicker studies to conduct a study on potential shadow flicker. The study shall include a graphic to identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate potential impacts on any residences.
 - (b) Visual impact. Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, digital elevation models, and the like, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence. The NYSDEC Program Policy Assessing and Mitigating Visual Impacts must be referenced by the applicant when completing the visual impact study.
 - (c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site, as well as the Montgomery County Department of Emergency Services.
 - (d) Noise analysis. A noise analysis that includes the low frequency of turbines and other noises generated shall be prepared by a competent acoustical consultant. The analysis shall include an assessment of ambient sound surveys at the site property lines and nearby residences to document environmental sound levels before the turbines are installed for comparison to similar measurements after the project is operational. The noise analysis shall also include a projection of noise levels generated from each WECS using noise contours in increments of 10 decibels (dBA) out to a level of 30 dBA. Noise level contours from one or more proposed turbines should be laid over an aerial photograph or topographic map of the site vicinity in order to visualize the cumulative noise impacts from the entire wind farm on surrounding properties. All residences surrounding the proposed site vicinity should be clearly shown. Since the turbines only produce noise under windy conditions, the noise modeling shall take into account the direction and speed of winds because this also affects sound propagation. The applicant shall also

submit a design for post-development noise monitoring and how it could be mitigated.

- (e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS sites.
 - (f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication, done by a qualified engineering firm.
 - (g) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species.
 - (h) An assessment of the impact of the proposed development on area federal and state-listed historic resources.
- (19) A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.
- (20) Applications for wind energy permits for wind measurement towers subject to this chapter may be jointly submitted with the WECS application.
- B. The Planning Board may, in its sole discretion, require the most recent annual audited financial report of the applicant prepared by a certified public accountant, licensed by the State of New York during the review process. If such a report does not exist, the Planning Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the applicant and its ability to comply with the requirements of this chapter. All financial documents shall be delivered to the Planning Board as part of the application process.

§ 87-14. Application review process.

- A. The Town of Minden Planning Board is designated as the reviewing board with regard to any and all applications submitted pursuant to this chapter. In the event that financial offsets are offered, the Town Board of the Town of Minden shall act as the review board with regard to said offsets.
- B. Applicants may request a preapplication meeting with the Planning Board or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.¹
- C. Ten copies of the complete application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission.
- D. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this

1. Editor's Note: See Public Officers Law § 100 et seq.

article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.

- E. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information, unless the number of WECSs proposed is increased.
- F. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
- G. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by registered or certified mail, return receipt requested, to property owners within 1,000 feet of the boundaries of the proposed WECSs and published in the Town's official newspaper no less than 10 nor more than 20 days before any hearing, but where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the notice of public hearing prepared by the Town and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- H. The public hearing may be combined with any other public hearings required to be held, including any hearings for purposes of SEQRA or for requested waivers.
- I. Notice of the project shall also be given, if applicable, to the Montgomery County Planning Board, as required by General Municipal Law §§ 239-l and 239-m.
- J. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. As a result, the Town must conduct a coordinated review. The Town Planning Board shall seek lead agency status for the coordinated review.
- K. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a statement of findings, which statement may also serve as the Town's decision on the applications.
- L. Upon receipt of the recommendation of the County Planning Board (if applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the WECS application, in accordance with the standards in this chapter.

§ 87-15. Physical standards for commercial wind energy facilities.

The following standards shall apply to commercial WECS, unless specifically waived by the Planning Board as part of a wind energy permit:

- A. All power transmission lines from the tower to any building or other structure shall be located underground.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.
- C. In order to minimize adverse visual impacts associated with the wind energy facility, no advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
- D. Lighting of tower. No tower shall be artificially lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground-level facilities shall be allowed as approved on the wind energy facility development plan.
- E. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, nonreflective matte-finished color or a camouflage scheme. WECSs within a multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
 - (1) The use of guy wires is prohibited.
 - (2) No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. 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. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference, including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the wind energy permit for the specific WECS or WECSs causing the interference.
 - (3) All solid waste and hazardous waste and construction debris shall be removed from the site and managed in a manner consistent with all appropriate rules and regulations.
 - (4) WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas shall be given priority wherever possible. To the extent practicable, development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the State Department of Agriculture and Markets.

- (5) WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
- (6) Wind energy conversion facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- (7) Stormwater runoff and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- (8) Construction of the WECS shall be limited to the hours of 7:00 a.m. to 7:00 p.m., except for certain activities that require cooler temperatures than possible during the day, subject to prior written approval from the Town Planning Board.
- (9) The maximum total height of any WECS shall be 410 feet. The allowed height shall be reduced if necessary to comply with all applicable FAA requirements, including Subpart B (commencing with Section 77.19) of Part 77, Title 14, of the Code of Federal Regulations regarding installation close to airports.
- (10) Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened to eliminate its views from such residences.
- (11) Turbine blades shall pass no closer than 30 feet to the ground during the operation of the WECS.
- (12) Applications must conform to any New York State or federal guidelines and/or regulations for organic farmlands when siting any WECS within the buffer zone as outlined within these guidelines and/or regulations.
- (13) All WECSs shall conform to the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Windpower Projects.

§ 87-16. Required site safety measures.

- A. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- B. Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage and the hazard of falling ice. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Planning Board may require additional signs based on safety needs.

- D. No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the structure for freestanding single-pole or guyed towers.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§ 87-17. Traffic routes and road maintenance.

- A. Traffic corridors to be established.
 - (1) Construction of WECSs poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads and bridges. Construction and delivery vehicles for WECSs and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include minimizing:
 - (a) Traffic impacts from construction and delivery vehicles;
 - (b) WECS-related traffic during times of school bus activity;
 - (c) Wear and tear on local roads; and
 - (d) Impacts on local business operations.
 - (2) Wind energy permit conditions shall limit WECS-related traffic to specified routes and include a plan for disseminating traffic route information to the public.
- B. The applicant is responsible for remediation of damaged roads and bridges upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads and bridges. The applicant must consult with the Town Highway Superintendent and Montgomery County Department of Public Works to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Planning Board.
- C. The applicant shall be liable for any property damage and/or personal injury which may result from damage caused to roads and bridges during the construction phase up until such time as any damaged roads and bridges are repaired. The applicant will indemnify the Town against any liability and hold the Town harmless from and pay any loss, damage, cost, expense, penalty or claim which may result from such damaged roads and bridges, including, without limitation, legal fees, disbursements and court costs.
- D. The applicant shall provide photographic evidence of the condition of the roads and other public infrastructure along the proposed route.

- E. The applicant and the owner of every wind energy facility constructed pursuant to this chapter shall, to the maximum extent practicable, immediately repair or replace all real and/or personal property, public or private, damaged during the construction, operation and/or decommissioning of such facility.

§ 87-18. Setbacks and noise standards.

- A. Each WECS shall be set back:

- (1) A minimum of 450 feet from the nearest site boundary line or public road.
- (2) Twelve hundred feet from the nearest off-site residence, hotel or motel, hospital, day-care center, dormitory, sanitarium, nursing home, church, municipal building, school or other building used for educational purposes, or correctional institution, measured from that building. Notwithstanding any other provision of this chapter regarding waivers or setback easements, no WECS shall be within 1,200 feet of an off-site residence, whether or not said residence is located in the Town of Minden.
- (3) One and one-half times the wind turbine height of the largest proposed WECS from the nearest road or aboveground utilities, unless waived in writing by the electric, gas and telephone utility company(ies).
- (4) Airports: 2,000 feet from the ends of any airport property line, and 1,000 feet from the side lots of any airport, or otherwise in compliance with FAA regulation, whichever is greater.

- B. Due to the nonindustrial nature of the Town of Minden, the sound level statistical sound pressure level (L[90]) generated by a WECS shall not exceed the ambient sound level by more than 6 dBA measured at the nearest residence located off the site or property line. Sites can include more than one piece of property, and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement.

- C. In the event audible noise due to wind energy facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Subsection B of this section shall be reduced by 5 dBA. A pure tone is defined to exist if the one-third octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dBA for center frequencies of 500 Hz and above, by 8 dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.

- D. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than six minutes per hour. Ambient noise levels shall be measured at the exterior of potentially

affected existing residences, schools, hospitals, churches and public buildings. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 miles per hour at the ambient noise measurement location.

- E. Any noise level falling between two whole decibels shall be deemed to be the lower of the two.

§ 87-19. Waivers from noise and setback criteria.

In the event a wind energy facility does not meet a setback requirement or exceeds noise or other criteria established in this chapter as it existed at the time the wind energy permit is granted, a waiver may be granted from such requirement by the Planning Board in the following circumstances:

- A. Written consent from the affected property owners has been obtained stating that they are aware of the wind energy facility and the noise and/or setback limitations imposed by this chapter, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed or setbacks less than required; and
- B. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this chapter or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
- C. Waivers granted under this section differ from waiver requests under § 87-7 of this chapter in that no § 87-7 waiver is required if a waiver is given under this section, and a § 87-7 waiver must be sought rather than a waiver under this section if the adjoining property owner shall not grant an easement pursuant to this section.

§ 87-20. Issuance of wind energy permits.

- A. Upon completion of the review process, the Planning Board shall, upon consideration of the standards in this chapter and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Planning Board shall direct the Town Clerk to issue a wind energy permit upon satisfaction of all conditions for said permit, and direct the Building Inspector/Code Enforcement Officer to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this chapter.
- C. The decision of the Planning Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first-class mail.

- D. If any approved wind energy facility is not substantially commenced within one year of issuance of the wind energy permit, the wind energy permit shall expire.

§ 87-21. Decommissioning.

- A. If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant agrees that, without any further action by the Planning Board, the applicant shall remove said system at its own expense following the requirements of the decommissioning plan. Removal of the system shall include four feet below grade and the entire aboveground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- B. Nonfunction or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a nondisclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual wind energy conversion systems, if requested, necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- C. Decommissioning bond or fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of nonfunctional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund must consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully described in the decommissioning plan.

§ 87-22. Limitations on approvals; easements on Town property.

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

§ 87-23. Permit revocation.

- A. Testing fund. A wind energy permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Planning Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the wind energy permit and this chapter and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the ninety-day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- B. Operation and inspection. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the ninety-day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this chapter and consistent with §§ 87-22 and 87-23B if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular timeframe, or revocation of the wind energy permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Planning Board shall have the right to use the security posted as part of the decommissioning plan to remove the WECS.
- D. The owner of each wind energy facility shall submit an annual report to the Planning Board or its designee on the structural and operational integrity of the facility. Such report shall be prepared by, or under the direction of, a professional engineer licensed by the State of New York. If such report recommends that repairs or maintenance measures be undertaken, the owner shall provide with such report a written schedule for undertaking such repairs or maintenance.
- E. Following the issuance of any approval required under this chapter, the Town Board or its designee shall have the right to enter onto the site upon which a wind energy facility has been placed, at reasonable times, in order to inspect such facility and its compliance with this chapter.

ARTICLE IV
Wind Measurement Towers

§ 87-24. Site assessment.

The Planning Board acknowledges that prior to construction of a WECS, a wind site assessment must be conducted to determine the wind speeds and the feasibility of using particular sites. Installation of wind measurement towers, also known as "anemometer ('Met') towers," shall be permitted on the issuance of a wind energy permit in accordance with this article.

§ 87-25. Application requirements.

An application for a wind measurement tower shall include:

- A. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- B. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
- C. Address of each proposed tower location, including Tax Map section, block and lot number.
- D. Proposed development plan and map.
- E. Decommissioning plan, including a letter of credit for removal.

§ 87-26. Standards for wind measurement towers.

- A. The distance between a wind measurement tower and the property line shall be at least 1.5 times the total height of the tower. Sites can include more than one piece of property, and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Wind energy permits for wind measurement towers shall be issued for a period of two years and may be renewable upon application to the Planning Board.

ARTICLE V
Small Wind Energy Conversion Systems

§ 87-27. Purpose and intent.

The purpose of this article is to provide standards for small wind energy conversion systems (small WECS) designed for residential, farm, institutional and business use on the same parcel and that are primarily used to reduce consumption of utility power at a single location. The

intent of this article is to encourage the development of small WECS and to protect the public health, safety, and community welfare.

§ 87-28. Authority.

The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small WECS applications in accordance with this chapter. The Planning Board may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense.

§ 87-29. Procedure.

- A. Completed applications for siting small WECS shall be submitted to the Town Clerk at least 10 days prior to the regular meeting of the Planning Board. Applications may be made by the owner of the property or his/her duly authorized representative, who shall attend the meeting of the Planning Board to discuss the application.
- B. Within 62 days after the Planning Board meeting where the complete application is submitted, a public hearing shall be held. Notice of such public hearing shall be published in the official newspaper of the Town at least 10 days prior to the date thereof. The applicant shall give notice in writing by certified mail to all property owners of the land immediately adjacent to the proposed parcel where site is proposed. The applicant shall mail these notices at least 10 days in advance of the hearing and furnish the Planning Board with post office receipts as proof of notification.
- C. Within 62 days of the public hearing, the Planning Board may approve, conditionally approve, or disapprove the application. The time in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. The decision of the Planning Board on the application shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.
- D. Applications for small WECS are subject to classification and review pursuant to SEQRA.

§ 87-30. Application requirements.

Applications for small WECS permits shall include:

- A. Property owners contact information. If the applicant shall be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
- B. Site plan map of the proposed tower, at a scale to be established by the Planning Board consistent with the size of the site, including Tax Map section, block and lot number.

- C. Manufacturer's drawings and specifications of the proposed system as indicated in § 87-13A(4), along with evidence that the proposed total height does not exceed the maximum height recommended by the manufacturer or distributor of the system.
- D. Engineering drawings of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the New York State Uniform Fire Prevention and Building Code.
- E. The applicant must provide a written statement demonstrating that the system shall be used primarily to reduce consumption of electricity at that location.
- F. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and states so in the application, to connect the system to the electricity grid.
- G. A visual analysis of the small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

§ 87-31. Standards for small WECS.

All small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this chapter that are not in conflict with the requirements contained in this article.

- A. A system shall be located on a lot a minimum of one acre in size; however, this requirement can be met by multiple owners submitting a joint application.
- B. Only one small WECS per legal lot shall be allowed, unless there are multiple applicants, in which case their joint lots shall be treated as one site for purposes of this article.
- C. Small WECS shall be used primarily to reduce the on-site consumption of electricity.
- D. Total heights may be allowed as follows:
 - (1) On parcels between one and five acres: 65 feet or less.
 - (2) On parcels of five or more acres: 80 feet or less.
 - (3) The allowed height shall be reduced if necessary to comply with all applicable FAA requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
- E. The maximum turbine power output is limited to 100 kW.

- F. The system's tower and blades shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate nonreflective surfaces to minimize any visual disruption.
- G. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- H. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the FAA.
- I. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- J. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- K. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- L. Towers shall be constructed to provide one of the following means of access control or other appropriate method of access:
 - (1) Tower-climbing apparatus located no closer than 12 feet from the ground.
 - (2) A locked anticlimb device installed on the tower.
 - (3) A locked, protective fence at least six feet in height that encloses the tower.
- M. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three feet to eight feet above the ground.
- N. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be regraded and revegetated to the preexisting natural condition after completion of installation.
- O. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two-hundred-fifty-foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height shall not jeopardize the safety of the wind turbine structure.

- P. All small WECS structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
- Q. All small WECS shall be equipped with manual and automatic overspeed controls. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.

§ 87-32. Setbacks.

Small WECS shall comply with the following standards:

- A. Setback requirements. A small WECS shall not be located closer to a property line than one and a half times the total height of the facility.
- B. Noise. Except during short-term events, including utility outages and severe wind storms, a small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed ambient noise levels (exclusive of the development proposed) by more than six dBA, as measured at the closest neighboring inhabited dwelling or property line. In the event that the ambient sound pressure level exceeds 50 dBA, the noise generated by the small WECS shall not exceed ambient noise levels by more than 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

§ 87-33. Abandonment.

- A. A small WECS which is not used for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.
- B. All small WECS shall be maintained in good condition and in accordance with all requirements of this section.

ARTICLE VI

Fees; Tax Exemption; Redesignation for Codification Purposes

§ 87-34. Fees.

- A. Permit fees.
 - (1) Commercial WECS permit: \$2,500 per tower.
 - (2) Wind measurement towers permit: \$1,000 per tower per year.
 - (3) Small WECS permit: \$50 per WECS.
- B. Retention of expert assistance and reimbursement by applicant.

- (1) The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to site inspections, the construction and modification of the site, once permitted, and any requests for recertification.
 - (2) 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 Town in connection with the review of the application.
 - (a) The initial deposit shall be \$8,500 for commercial WECS and shall be placed with the Town preceding the preapplication meeting. The initial deposit for small WECS shall be \$100.
 - (b) The Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services in reviewing the application, including the modification of the site, once permitted.
 - (c) For commercial WECS only if at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.
 - (d) In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.
 - (3) The total amount of the funds needed as 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 to complete the necessary review, analysis and inspection of any construction or modification.
- C. Host agreements. Nothing in this chapter shall limit the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community.

§ 87-35. Tax exemption.

The Town hereby exercises its right to opt out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subdivision 8 of that law.

§ 87-36. Numerical/lettering designations.

The chapter designations and numerical/lettering designations of the sections and articles included in this chapter shall be delegated to the discretion of General Code Publishers, which may renumber the chapters, sections and articles included in this chapter as necessary to accommodate incorporation of this chapter in the Code of the Town of Minden.

Chapter 90

ZONING

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- § 90-16. General.
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- § 90-18. Floodplain Overlay District (FP).
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- § 90-20. Purpose and authorization.
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- § 90-30. General land use performance standards.
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- § 90-68. Periodic review of Zoning Law.
- § 90-69. Interpretation of provisions.
Zoning Map

ZONING

[HISTORY: Adopted by the Town Board of the Town of Minden 10-18-2000 by L.L. No. 3-2000. Amendments noted where applicable.]



GENERAL REFERENCES

Fire prevention and building construction — See Ch. 50.
Flood damage prevention — See Ch. 54.

Waste management facilities — See Ch. 72, Part 2.
Subdivision of land — See Ch. 77.

ARTICLE I
General Provisions

§ 90-1. Title.

This chapter shall be known and may be cited as "Town of Minden Zoning Law."

§ 90-2. Statutory authority; purposes.

This chapter is enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, § 10; and the Town Law of the State of New York, § 264, of the Consolidated Laws, to protect and promote public health, safety, morals, comfort, convenience, economy, aesthetics, general welfare and for the following specific purposes:

- A. To lessen congestion in the streets;
- B. To secure safety from fire, flood, panic and other dangers;
- C. To promote health and general welfare;
- D. To provide adequate light and air;
- E. To prevent overcrowding of land;
- F. To avoid undue concentration of population;
- G. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- H. To conserve the value of buildings;
- I. To encourage the most appropriate use of land throughout the town;
- J. To avoid the pollution of air and water;
- K. To ensure the gradual elimination of nonconforming uses;
- L. To preserve and protect lands and buildings that are historically significant.

§ 90-3. Right-to-farm. [Amended 7-21-2005 by L.L. No. 1-2005]

No provision of this chapter shall be interpreted, administered or enforced in a manner that unreasonably restricts agricultural structures and farming practices occurring on land that lies within a Certified Agricultural District established pursuant to Article 25AA of the New York State Agricultural and Markets Law, unless the public health or safety is threatened.

ARTICLE II Definitions

§ 90-4. Word usage.

- A. For the purpose of this chapter, certain words or terms used herein shall be interpreted or defined as follows.
- B. Words used in the present tense shall include the future. The singular number includes the plural, and the plural the singular. The word "person" includes a corporation as well as an individual.
- C. The word "building" includes the word "plot" or "parcel." The word "used" or "occupied" as applied to any land or building shall be construed to include the words "built, arranged or designed to be used or occupied."

§ 90-5. Definitions.

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

ACCESSORY BUILDING — A building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.

ACCESSORY USE — A use customary incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

ALLEY — A minor way which is used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

ANIMAL HOSPITAL/VETERINARY CLINIC — A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

ANTENNA — A device used in communications which converts radio frequency electrical energy to radiated electromagnetic energy and vice versa in a transmitting station, an antenna is the device from which radio waves are emitted.

AREA, BUILDING — The total area taken on a horizontal plane at the main grade level of the principle building and all accessory buildings exclusive of uncovered porches, terraces and steps.

AREA, FLOOR — The total interior floor space measured in square feet of a structure.

BASEMENT — A space of full story height partly below grade and having at least half of its clear floor-to-ceiling height above the average grade, and which is not designed or used primarily for year-round living accommodations.

BED-AND-BREAKFAST — An establishment in a private dwelling that supplies temporary accommodations to overnight guests for a fee. Meals may or may not be provided. Tourist homes and inns are included here.

BILLBOARD — See "sign, advertising."

BOARDING OR ROOMING HOUSE — Any dwelling in which more than three persons, either individually or as families, are housed or lodged, except those engaged in farm work, for hire with or without meals, and/or any dwelling with 10 or fewer sleeping rooms in which more than three persons, either individually or as families, are housed or lodged, except those engaged in farm work, for hire or otherwise, without separate kitchen facilities, with or without meals. If there are more than 10 sleeping rooms, such buildings shall be considered hotels.

BUFFER AREA — An undeveloped part of a property or an entire property specifically intended to separate and thus minimize the effects of a land use activity (noise, dust, visibility, glare, etc.) on adjacent properties.

BUILDING — A structure designed to be used as a place of occupancy, business, storage or shelter. The term "building" shall include the term "structure," as well as receiving and transmitting commercial, radio, television and other utility communication towers, personal wireless service facilities, mobile manufactured homes and factory manufactured homes.

BUILDING AREA — All land covered by structures, interior roads, parking areas, sidewalks and loading areas.

BUILDING, FLOOR AREA — The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, including basement areas devoted to residential use and the area of bays, dormers, roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

BUILDING LINE — A line established by law, usually parallel with a property line, beyond which a structure may not extend.

CELLAR — That space of a building which has more than half of its height, measured from floor to ceiling, below the average grade.

CHANGE OF USE (CONVERSION) — The change of use or occupancy of a building from either residential, commercial or industrial to one of the other uses, or change in the intensity of the same use.

CO-LOCATION — The mounting of personal wireless service facilities shared by two or more persons, firms or corporations on the same equipment mounting structure.

COMMERCIAL COMPOSTING OPERATION — The use of any property in the Town for the manufacture or manufacture and storage of compost primarily for commercial resale or any purpose other than for use in a primary farming or other agricultural use on such property where the storage or manufacture occurs. [Added 7-21-2005 by L.L. No. 1-2005]

COMMUNITY PARK OR PLAYGROUND — Land managed by the public and set aside for public use which may or may not have developed recreational facilities, such as playground, tennis courts, horse and bike trails, baseball fields, picnic areas, swimming pools and/or lavatories.

COMPREHENSIVE PLAN — The Comprehensive Plan adopted by the Town Board for future preservation and development of the Town of Minden pursuant to § 272-a of the Town Law.

CONVENT — An establishment used as housing for a religious order or congregation (e.g., parish house, monastery, establishment for nuns or monks).

COVERAGE — That percentage of the lot covered by the building area, as defined herein.

DRIVEWAYS AND PASSAGEWAYS — Private access routes which directly service a parking area; or serving parking spaces not directly serving more than two dwelling units, and not providing a route for through traffic. Minimum driveway widths shall be as follows:

Parking Angle	Driveway Width
No parking	18 feet
Parallel	20 feet
45° one-way	20 feet
60° one-way	20 feet
90° one-way	24 feet

DWELLING, ONE-FAMILY — A detached building, other than a mobile manufactured home or other temporary structure, designed for exclusive year-round occupancy by one family only.

DWELLING, MULTIPLE-FAMILY — A building or group of buildings, designed for year-round occupancy by more than two families, including apartment houses and group houses, but excluding hotels and rooming houses.

DWELLING, TWO-FAMILY — A detached building, other than a trailer or other temporary structure, designed for exclusive year-round occupancy by two families living independently of each other.

DWELLING UNIT — One or more rooms with provision for living, sanitary and sleeping facilities arranged for the use of one family.

ENVIRONMENTAL ASSESSMENT FORM (EAF) — A form used to determine whether a project will have significant environmental impacts. Depending on the site's environmental features and the project's magnitude, either a short or long SEQR Environmental Assessment Form will be completed.

ENVIRONMENTAL IMPACT STATEMENT (EIS) — A document prepared pursuant to SEQR, subsequent to a determination of potential adverse impacts that examines the existing and developed environment, and identifies and presents impacts, mitigation measures and alternatives.

EQUIPMENT MOUNTING STRUCTURE — Any structure used primarily to support reception or transmission equipment, including but not limited to antenna support structures, towers and monopoles.

FACTORY MANUFACTURED HOME — A factory manufactured home incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part

manufactured in a manufacturing facility and is intended for permanent installation on a building site. Every factory-manufactured home or component shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council; falls under the category of one-family dwelling.

FAMILY — Any number of persons or recognized relationships maintaining a common household, including domestic help.

FARM — A parcel or tract of land which is used for growing agricultural products, horticulture products, raising livestock, raising fruits and/or vegetables or agriculture production. For the purposes of §§ 90-10A and 90-11A, an agricultural operation shall not include any farm having less than \$10,000 gross sales in the year preceding the date on which the owner applies for a building permit to erect a mobile manufactured home as an accessory use. In addition, the occupant of a mobile manufactured home as an accessory use must be a full-time employee of the agricultural operation whose total documented compensation, including salary, lodging, board, etc., is not less than \$10,000 a year.

FARM PRODUCTS PLANT — Any operation which starts with a farm product, including but not limited to vegetables, fruits, milk, beef, pork, lamb, chicken, eggs, turkey, etc., and whose end product packages that product in a form suitable for retail market distribution. This definition includes but is not limited to dairies, cheese plants, vegetable/fruit canneries, slaughterhouses etc.

FARM STAND — The sale of agricultural products that are produced on the premises.

FLOOD HAZARD, AREA OF — Land within a community subject to a one-percent or greater chance of flooding in any given year; also commonly referred to as "base floodplain" or "one-hundred-year floodplain."

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.

FRONT — That part of a parcel of land or building abutting or facing the principal street or road. In the case of corner lots on two intersecting streets or roads, the parcel will be considered to have two front yards, one side yard and one rear yard at minimum.

GARAGE, PRIVATE — A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

GARAGE, PUBLIC — A building or part thereof for the storage, hiring, selling, greasing, washing, servicing or repair of motor-driven vehicles, operated for gain.

GASOLINE STATION — Any area of land, including structures thereon, that is used or designed to be used for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for lubricating, washing, cleaning or otherwise servicing motor vehicles, not including the painting or major repair thereof. The term "gasoline station" shall be deemed to include "filling station" and "service station."

HISTORIC BUILDING OR SITE — A building or area which has historic and special public value because of notable architectural or other features relating to the cultural, historic or artistic heritage of the community.

HOME OCCUPATION, HIGH-IMPACT — [Amended 2-20-2014 by L.L. No. 1-2014]

- A. A business activity resulting in a product or service for financial gain, conducted wholly or partly within a dwelling unit or accessory structure as a nonresidential use that is secondary and subordinate to the use of the dwelling for living purposes, and which is conducted in a manner which does not change the residential character of the dwelling unit or vicinity. A high-impact occupation has exterior evidence of a business activity, including but not limited to customers, clients or sales representatives entering the premises; requires a sign; or produces noise or odors. High-impact occupations are conducted by an owner/operator who must reside on the premises and do not employ more than four persons, in addition to the owner/operator and any other family participants in the home occupation who reside on the premises. A special use permit issued by the Planning Board is required for all high-impact home occupations, and all requirements of Article VIII, § 90-51.2A and C shall be met.
- B. The following shall be considered high-impact home occupations:
- (1) Two low-impact home occupations carried on within the same dwelling unit and:
 - (a) Carried on by two residing family members;
 - (b) The use is allowed in the Zoning Law for such district.
 - (2) An occupation carried on in a residential accessory building by a residing family member and:
 - (a) The occupation is carried on solely in the accessory building; and
 - (b) The use is allowed in the Zoning Law for such district.
 - (3) One low-impact home occupation carried out within the dwelling unit along with an occupation that uses an accessory building. These include, but are not limited to, flower design/florist, day care, dentist, family practitioner, antique shop, bakeries needing a 20C license, basket maker, bike shop, building/plumber/electrical contractor, bulk food/canned goods, fabric shop, housewares, nursery/greenhouse, furniture maker, gifts and craft sales, gunsmith, harness maker/tack shop, machinist, produce stand, small engine repair, welding, custom butchering, appliances and small tools.

HOME OCCUPATION, LOW-IMPACT — An occupation or profession carried out within the dwelling unit and which is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and which occupation is carried on by a member of the family residing in the dwelling unit. Low-impact home occupations are those where the activity is carried out solely within the dwelling, other than limited storage only in an accessory building, are a use that is allowed in the Zoning Law for such district, and where no accessory building is required. These include, but are not limited to, architect, attorney, 20C exempt bakery, bookkeeper/financial services, consulting, crafts/dressmaking, insurance, hairdresser,

photographer, real estate agent, engineer/surveyor, and web design/computer business (not sales). [Amended 2-20-2014 by L.L. No. 1-2014]

HOSPITAL — A building or structure for the diagnosis and medical or surgical care of human ailments.

HOTEL — Facility offering transient lodging accommodations to the general public and providing additional service such as restaurants, meeting rooms and recreational facilities. The word "hotel" includes the words "motel," "motel court," "inn," "tourist court" or similar names, excluding rooming houses and bed-and-breakfast establishments.

JUNK — The outdoor storage or deposit of any of the following shall constitute junk:

- A. Two or more junk vehicles.
- B. One or more junk mobile manufactured homes or travel trailers.
- C. Two or more abandoned or inoperable appliances, including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.
- D. Two or more abandoned or irreparably damaged pieces of indoor furniture, including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests or drawers.
- E. Any combination of the above or parts of the above that total two or more items.

JUNK MOBILE MANUFACTURED HOME — A structure, transportable in one or more sections, built on a permanent chassis and designed to be used as a dwelling unit, which is currently not inhabited and is no longer habitable under the New York State Uniform Fire Prevention and Building Code; includes, but is not limited to, mobile homes, trailers and campers.



JUNK STORAGE AREA — The areas of any parcel of land or water used or intended to be used for the placement, storage or deposit of junk.

JUNK VEHICLES — One unregistered, old secondhand motor vehicle, no longer intended or in condition for legal use on the public highways, or used parts or waste materials therefrom. A vehicle is considered junked when it meets one or more of the following conditions for a period of six months:

- A. It is unregistered.
- B. It is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled.
- C. It is not in any condition for legal use upon the public highways.
- D. It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time before such repair.

JUNKYARD — A lot, land or structure, or part thereof, used for the outdoor storage, sale or deposit of any of the following:

- A. Two or more junk vehicles.
- B. One or more junk mobile manufactured homes.
- C. Two or more junk appliances.
- D. Two or more pieces of junk furniture.
- E. Any combination of the above that totals three items.

KENNEL — A structure used for the harboring for hire of four or more dogs or cats more than six months old.

LAUNDERETTE — A business premises serviced by municipal sewerage or a NYSDOH-approved system, equipped with individual clothes washing or cleaning machines for use by retail customers, exclusive of laundry facilities provided in an apartment, fraternity, sorority, residential hotel or club.

LIGHT ASSEMBLY PLANT — A use engaged in the creation, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

LIVING AREA — The sum of the gross horizontal area of the several floors of a building, including areas below grade devoted to residential use. All dimensions shall be measured between exterior faces of walls.

LOADING SPACE — A paved area designed for the parking, loading and unloading of delivery vehicles.

LOT — A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

LOT AREA — The total horizontal area included within lot lines. No part of the area within a public right-of-way may be included in the computation of lot area.

LOT, CORNER — A lot located at the intersection of and fronting on two or more intersecting streets, and having an interior angle at the corner of intersection of less than 135°.

LOT COVERAGE — The percentage of the lot area covered by the combined area of all buildings, structures, parking areas or other impervious surfaces on the lot.

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

LOT, FLAG — A large lot not meeting minimum frontage requirements and where access to the public road is by a narrow private right-of-way or driveway.

LOT, INTERIOR — A lot other than a corner lot.

LOT LINES — The property lines bounding a lot. The front line shall be the right-of-way line of a street, road, or highway giving access to the lot. In the case of a corner lot, the owner may designate either street, road or highway lot line as the front lot line.

LOT, THROUGH — A lot having frontage on two approximately parallel or converging streets, other than a corner lot.

LOT WIDTH — The distance between side lot lines measured parallel to the front lot line at a distance from the front lot line equal to the front yard specified for the district, except as noted in § 90-15.

MOBILE MANUFACTURED HOME — A mobile manufactured home is a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. Every mobile manufactured home shall bear a plate of approval from HUD.

MOBILE MANUFACTURED HOME PARK — A parcel of land which has been planned and improved for the placement of two or more mobile manufactured homes for nontransient use.

MOTOR VEHICLE — All vehicles propelled or drawn by power other than muscular power originally intended for use on public highways, including but not limited to automobiles, buses, vans, campers, motor homes, tractor-truck trailer, etc.

NONCONFORMING USE — A structure or land occupied by a use which lawfully existed prior to the adoption, revision or amendment of this chapter, but which fails to conform to the requirements of the district in which it is located by reason of such adoption, revision or amendment.¹

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

NURSERY — Land or greenhouses used to raise flowers, shrubs and plants for sale.

NURSING OR CONVALESCENT HOME or HOME FOR THE AGED — A building used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished, or for the accommodation and care of persons of advanced age.

OWNER/OPERATOR — Person, persons, corporation, etc., that owns and/or operates the business or facility.

PARKING SPACE — The area required for parking one automobile which in this chapter is held to be an area at least nine feet wide and 20 feet long, exclusive of passageways and driveways thereto.

PERMANENT FOUNDATION — Concrete, concrete blocks or stone walls which support the bottom floor and exterior walls of a building and extending below the ground deeper than the average annual frost level, or a reinforced concrete base below the bottom floor of a building of sufficient thickness and having a suitable subway to resist shifting and heaving from changes in temperature and moisture conditions in the ground beneath the building.

PERSON — Any individual, firm, partnership, association, corporation, company or organization of any kind.

PERSONAL SERVICE SHOPS — Establishments providing services or entertainment, as opposed to products, to the general public, including but not limited to cleaning and garment services, beauty shops, photography shops, shoe repair, barbershops, funeral services, clothing rental, reduction salons and tanning parlors.

PERSONAL WIRELESS SERVICE — Commercial mobile services, wireless telecommunication services using duly authorized devices which do not require individual licenses (excluding the provision of direct-to-home satellite services) and common carrier wireless exchanges, including cellular radiotelephone, specialized mobile radio systems and personal communication services.

PERSONAL WIRELESS SERVICE FACILITIES — A facility for the provision of personal wireless services. A personal wireless service facility includes, but is not limited to, an antenna equipment mounting structure and accessory buildings and equipment. For the purposes of this chapter, a personal wireless service facility shall not be included within the definition of a "public utility station or structure," as specified in this chapter, since personal wireless service facilities, although they are facilities operated by public utilities with certain rights under the laws of the United States and the State of New York, are exclusively regulated as such by Article VIII, § 90-31, of this chapter.

PRINCIPAL USE — See "use, principal."

PROFESSIONAL OFFICE — Offices for a person or persons whose vocation or occupation requires advanced training in a liberal art or science and whose service usually involves nonmanual work.

PUBLIC BUILDING — Any town, county, state or federally owned building(s) or land, including but not limited to town halls and highway department garages.

PUBLIC UTILITY STATION OR STRUCTURE — A facility other than a personal wireless service facility for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewage, collection of other such services to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar equipment, but shall not include offices or administration buildings.

RESTAURANT — A building or portion of a building wherein food and beverages are available for on-site or off-site consumption.

RETAIL FARM MARKET — The sale of agricultural products either produced on or off the premises.

RETAIL STORE — Any building or permanent structure or portion thereof in which one or more services or one or more articles of merchandise are sold at retail, including department stores.

ROAD — A public thoroughfare or right-of-way dedicated, deeded or condemned for use as such, which affords the principal means of access to abutting property.

ROAD, PRIVATE — An access drive or roadway that is longer than 500 feet, privately owned and maintained, and not meant for use by the general public.

SALON — An establishment for the cutting and care of hair or fingernails, tanning, facial makeup consulting, waxing, one or any combination of the above, and other beauty related services.

SIGN — Any device affixed to or painted or represented directly or indirectly upon a building, structure or land and which directs attention to an object, product, place, activity, person, institution, organization or business, but not including any flag, badge or insignia of any government or government agency, school or religious group or of any civic, charitable, religious, patriotic, fraternal or similar organization, nor any official traffic control device. Each display surface shall be considered to be a "sign."

SIGN, ADVERTISING — A sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere than upon the premises where such sign is located, or to which it is affixed, only incidentally on the premises, if at all.

SIGN, BUSINESS — A sign which directs attention to a business or profession conducted or a commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is affixed. A "For Sale" or "For Let" sign relating to the lot on which it is displayed shall be deemed to be a business sign.

SIGN, FLASHING — Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color when such sign is in use. For the purpose of this chapter, any revolving illuminated sign shall be considered a "flashing sign."

SIGN, FREESTANDING — A sign that is attached to, erected on or supported by some structure such as a pole, mast, frame or other structure that is not itself an integral part of or

attached to a building or other structure having a principal function other than the support of the sign.

SIGN, HEIGHT OF — The distance from the ground level, measured from the midpoint of the base of the sign to the top of the sign.

SIGN, TEMPORARY — A sign that advertises or gives direction to a business or activity that will terminate within seven days.

SITE PLAN — A rendering, drawing or sketch prepared to specifications and containing necessary elements, as set forth in the applicable Zoning Law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.

SITE PLAN REVIEW — Review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in this chapter and as authorized by the Town Law.

SPECIAL PERMITTED USE — A use or property that is basically appropriate to a given zoning district, but which may be incompatible in some locations within the district and therefore is not permitted by right everywhere within such district. A special permitted use, therefore, is one which is allowable only when facts and conditions specified in this chapter as those upon which the use is permitted are found to exist.

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

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

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) — Review of an application according to the provisions of the State Environmental Quality Review Act, 6 NYCRR Part 617 (statutory authority: Environmental Conservation Law, § 8-0113), which incorporates the consideration of environmental, social and economic factors into the planning, review and decision-making processes of state, county and local government agencies.

STORAGE FACILITY — Any object constructed, installed or placed on the ground and intended for the shelter, housing or storage of animals or property of any type. Any vehicle propelled or drawn (ex. car, truck, bus, trailer, motor home, camper, etc.), or parts therefrom, originally intended for use on public highways shall not be included in the definition of a storage facility.

STORY — That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between any floor and the ceiling next above it.

STORY, HALF — That part of a building between a pitched roof and the uppermost full story, and having a floor area at least half as large as the floor below. Space with less than five feet clear headroom shall not be considered as floor area.

STREET — A public way which affords the principal means of access to abutting property.

STRUCTURAL ALTERATION — Any change in the supporting members of a building.

STRUCTURE —

- A. A static construction of building materials affixed to the ground, including but not limited to a building, dam, display stand, fence, gasoline pump, installed mobile home or travel trailer, reviewing stand, shed, sign, stadium, storage bin or wall.
- B. Anything constructed or built, any edifice or building of any kind, which requires location on the ground or is attached to something having a location on the ground, including, but without limitation, swimming pools, covered patios, towers, poles, sheds, signs, tanks, etc., excepting outdoor areas such as paved areas and walkways.

THEATER, OUTDOOR — An open lot or part thereof, with its appurtenant structures and facilities, devoted primarily to the showing of motion pictures or theatrical production on a paid admission basis.

TOURIST HOME — A dwelling where transient guests are lodged for hire.

TOWNHOUSE — One of several units in a building designed for and occupied exclusively as a residence for not more than one family living independently of any other family, separated from other units by a party wall or walls, and erected on a lot intended to be held in the form a condominium or in a single and separate ownership from any adjoining units.

TRAILER — A mobile unit designed for camping, recreational travel or vacation use which is equipped with a chassis and provides partial housekeeping facilities such as plumbing, heating, electrical, cooking or refrigeration systems or equipment. A trailer shall not be considered a permanent dwelling unit.

TRAILER CAMP — An area occupied or designed for occupancy by two or more trailers.

TRUCK TERMINAL — A building or area in which freight brought by truck is assembled and/or stored for routing or reshipment, or in which semitrailers, including tractor and/or trailer units and other trucks, are parked or stored:

USE, ACCESSORY — A use or structure which is incidental but associated with the principal use such as a separate garage or shed, fencing and recreational facilities (e.g., pool, tennis court, etc).

USE, PRINCIPAL — The specific purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

VARIANCE — Permission to depart from the literal requirements of this chapter.

VARIANCE, AREA — A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district, or a departure from any provision of this chapter, except as to use.

VARIANCE, USE — A variance granted for a use or structure that is not permitted in the zoning district.

WHOLESALE STORAGE OR WAREHOUSE — A building or buildings used as a wholesale distribution center.

YARD, FRONT — An open, unoccupied and unobstructed space on the same lot with a main building, extending the full width of the lot and situated between the front property line and the front line of the main building projected to the side lines of the lot.

YARD, REAR — A space on the same lot with a main building, open and unoccupied except for accessory buildings, extending the full width of the lot and situated between the rear line of the main building projected to the side lines of the lot and the rear line of the lot.

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

ARTICLE III Districts and Boundaries

§ 90-6. Establishment of districts.

- A. For the purpose of this chapter, the Town of Minden is divided into the following types of classes of districts:
- (1) R-1 Residential.
 - (2) A Agricultural.
 - (3) C-1 Commercial.
 - (4) Planned Development District.
- B. Said districts are bounded and defined as shown on a map entitled "Town of Minden Zoning Map," hereinafter called the "Zoning Map," adopted by the Town Board and certified by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is hereby made a part of this chapter.²

§ 90-7. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines, such center lines, street lines or highway right-of-way lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located midway between the main tracks of said railroad line.

2. Editor's Note: Said Zoning Map is on file in the Town offices.

- D. Where the boundary of a district follows a stream or other body of water, said boundary line shall be deemed to be the center line of such stream or body of water unless otherwise indicated.
- E. Where the district boundary lines are indicated to be approximately parallel to a street or highway, they will be considered to be 500 feet from the nearest street or highway line and parallel to it, or along the back line of properties of record fronting on said street or highway, whichever line is closer to the street at the time this chapter becomes effective, unless otherwise noted.

ARTICLE IV Use Regulations

§ 90-8. General provisions.

The principal permitted uses of each zoning district are permitted as of right. All special permitted uses require both special permit review and site plan review. Uses not listed for a specific zoning district are prohibited from that district and would therefore require a use variance.

§ 90-9. R-1 Residential District.

In the R-1 Residential District, no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

A. Principal permitted uses:

- (1) One-family dwelling.
- (2) Two-family dwelling.
- (3) Community park or playground.
- (4) Accessory use and building.
- (5) Low-impact home occupation. [Amended 2-20-2014 by L.L. No. 1-2014]

B. Uses permitted as a special permit by the Planning Board:

- (1) Nursing or convalescent home or home for the aged.
- (2) Mobile manufactured home park.
- (3) Parish house, convent.
- (4) Launderette.
- (5) Retail store.
- (6) Townhouses.
- (7) Multiple-family dwelling.

- (8) Bed-and-breakfast establishment.
- (9) Farm and accessory use and building.
- (10) Public building.

§ 90-10. A Agricultural District.

In the A Agricultural District, no building or premises shall be used and no building shall be erected or altered except for one of more of the following uses:

A. Principal permitted uses:

- (1) Farm and accessory buildings and uses.
- (2) Picnic grove, fish or game club (private).
- (3) Nursery.
- (4) One-family dwelling.
- (5) Two-family dwelling.
- (6) Community park or playground.
- (7) Low-impact home occupation. [Amended 2-20-2014 by L.L. No. 1-2014]
- (8) Mobile manufactured home as part of a farm operation.
- (9) Accessory use and building.
- (10) Mobile manufactured home.

B. Uses permitted as a special permit by the Planning Board:

- (1) Commercial recreation.
- (2) Bed-and-breakfast establishment.
- (3) Golf course or country club.
- (4) Nursing or convalescent home or home for the aged.
- (5) Public utility station with building.
- (6) Farm products plant.
- (7) Radio, TV transmitter, receiving tower, personal wireless service facility with building.
- (8) Boarding or rooming house.
- (9) Church.
- (10) Parish house or convent.

- (11) Animal/veterinary hospital.
- (12) Public or parochial school or college.
- (13) Retail farm market.
- (14) Multiple-family dwelling.
- (15) High-impact home occupation. [Added 2-20-2014 by L.L. No. 1-2014]

§ 90-11. C-1 Commercial District.

In the C-1 Commercial District, no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

A. Principal permitted uses:

- (1) Bed-and-breakfast establishment.
- (2) Personal service shop.
- (3) Retail store.
- (4) Museum.
- (5) Custom work shop.
- (6) Radio, television or household appliance sales or service.
- (7) Funeral home.
- (8) Antique shop.
- (9) Animal/veterinary hospital.
- (10) Feed, lumber, seed or fertilizer building.
- (11) Carwash.
- (12) Fire station or municipal building.
- (13) Cabinet, electrical, heating, plumbing or air-conditioner shop.
- (14) Mobile manufactured home as part of a farm operation.
- (15) Community park or playground.
- (16) Retail bakery.
- (17) Historic building or site.
- (18) Laundry or dry cleaning plant.
- (19) Farm and accessory use or building.

- (20) One-family dwelling.
- (21) Accessory use or building.
- (22) Low-impact home occupation. [Amended 2-20-2014 by L.L. No. 1-2014]
- (23) Salons.
- (24) Taverns.

B. Uses permitted as a special permit by the Planning Board:

- (1) Gasoline station.
- (2) Professional office, studio.
- (3) Bank.
- (4) Utility substation.
- (5) Hotel.
- (6) Public garage.
- (7) Restaurant.
- (8) Fuel sales and storage.
- (9) Automobile, boat, farm implement or mobile manufactured home sales or rental.
- (10) Indoor storage of nonliquid, nongaseous fuel.
- (11) Industrial/manufacturing.
- (12) Bowling alley.
- (13) Multiple-family dwelling.
- (14) Two-family dwelling.
- (15) High-impact home occupation. [Added 2-20-2014 by L.L. No. 1-2014]

§ 90-12. Planned Development District.

The Planned Development District (PDD) is hereby established as a floating zone with potential applicability to any property in the Town.

A. Purpose:

- (1) To provide for well-located, clean, safe and pleasant industrial sites involving a minimum strain on transportation facilities;
- (2) To encourage innovations in residential, commercial and industrial development and renewal so that the growing demands of the population may be met by greater

variety in type, design and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings;

- (3) To encourage a more efficient use of land and public services or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may ensure to the benefit of those who need homes;
- (4) To lessen the burden of traffic on streets and highways;
- (5) To conserve the value of land;
- (6) To provide a procedure which can relate the type, design and layout of residential, commercial and industrial development to the particular site thereby encouraging preservation of the site's natural characteristics; and
- (7) To encourage integrated planning in order to achieve the above purposes.

B. Criteria.

- (1) The boundaries of each PDD shall be fixed by amendment to the Official Zoning Map wherever this district is applied. A metes and bounds description of each such district shall be kept on file in the office of the Town Clerk. Although it is anticipated that the PDD rezoning applications will be submitted on a voluntary basis by applicants, the Town Board may, on its own motion, rezone property to a PDD. This district is intended for sites of at least 30 acres, but the Town Board may consider applications for smaller properties if special circumstances warrant.
- (2) The following is a list of standards to be considered when reviewing a PDD:
 - (a) Compatibility with the surrounding area.
 - (b) Harmony with the character of the neighborhood.
 - (c) Need for the proposed development.
 - (d) The effect of the proposed PDD on the immediate area.
 - (e) The effect of the proposed PDD on the future development of the area.
 - (f) Whether or not an exception from this chapter's requirements and limitations is warranted by virtue of design and amenities incorporated in the development plan.
 - (g) That land surrounding the proposed PDD can be planned in coordination with the proposed PDD.
 - (h) That the proposed change to a PDD District is in conformance with the general intent of the Comprehensive Plan.
 - (i) That the existing and proposed roads are suitable and adequate to carry anticipated traffic in and around the proposed district.

- (j) That existing and proposed utility services are adequate for the proposed development.
- (k) That the PDD creates a desirable and stable environment.



- (l) That the PDD makes it possible for the creation of a creative, innovative, and efficient use of the property.

C. Procedure.

- (1) Application for establishment of a Planned Development District shall be made to the Town Board; the Town Board shall refer the application to the Town Planning Board for consideration.
- (2) The Planning Board shall require the applicant to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development. In reaching its decision on the proposed development, the Planning Board shall consider all of the criteria listed in § 90-12B(2) above.
- (3) The Planning Board shall approve, approve with modifications or disapprove such application and shall report its decision to the Town Board.
- (4) The Town Board shall refer the proposed Planned Development District to the County Planning Board in accordance with General Municipal Law, § 239-m.
- (5) The Town Board shall hold a public hearing on the proposed PDD, with public notice as provided by law.
- (6) The Town Board may then approve the Planned Development District so as to define the boundaries of the PDD as required in § 90-12B(1) above, but such action shall have the effect only of granting permission for development of the specific proposed use in accordance with the specifications, plans and elevations filed with the Town Board. In the event the Planning Board has disapproved such proposal, or approved with modifications which the applicant is not willing to make, an affirmative vote of at least four members of the Town Board shall be required to establish such Planned Development District.

ARTICLE V

Area and Height Regulations Lots, Yards and Buildings

§ 90-13. Regulations in Schedule A.³

- A. Regulations governing lot area and lot width; front, side and rear yards; building coverage and building height are specified in Schedule A and in the additional regulations of Article V, VI and supplementary regulations of Article VIII. Schedule A accompanies and is hereby made a part of this chapter.
- B. Clustering. It is the policy of the Town of Minden to preserve its open space and encourage development that is compatible with the existing character of the town. Accordingly, the Planning Board may vary the dimensional requirements specified in Schedule A and in Article V and supplementary regulations of Article VIII during the subdivision review process, provided that it issues a written explanation of the reasons for such variation.

3. Editor's Note: Schedule A is included at the end of this chapter.

§ 90-14. Area regulations.**A. Lots of less than required dimensions.**

- (1) Any single lot or parcel of land which was of record at the time of adoption of this chapter, that does not meet the requirements for minimum lot width and area, may be utilized for a permitted principal use.
- (2) In the event that compliance with the yard and coverage requirements of the district would result in a residential structure of less width than 24 feet, the Board of Appeals shall determine and fix yard and coverage requirements for said lot to permit its reasonable utilization for a permitted use.

B. Reduction of lot area. The minimum yards and open spaces, including lot area per family, required by this chapter shall not be encroached upon nor considered as yard or open space requirements for any other building, nor shall any lot be reduced below the district requirements of this chapter.**C. Corner lots.** On a corner lot in any district where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on each such street. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his application for a permit. The Board of Appeals shall determine the yards and building width of a corner lot facing an intersecting street, and of record at the time of the passage of this chapter, if the yard requirements would result in a residential structure less than 24 feet wide.**D. Visibility at street corners.** On a corner lot in any district where a front yard is required, no fence, hedge, wall or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines. Intersections with county or state road shall be in accordance with corresponding transportation department regulations and restrictions imposed by this chapter.**E. Front yard exceptions.** The minimum front yard of all principal buildings and structures hereafter constructed within a Residential District shall conform with Schedule A; and in addition shall be not less than the average front yard of all principal buildings in the block for a distance of 300 feet on each side of such building. A vacant lot within the three-hundred-foot distance shall be considered as having the minimum front yard required in the district for the purpose of computing such average front yard.**F. Transition yard requirements.**

- (1) Where two districts abut on the same street between two intersecting streets, and the front yard requirements of one district are less than those of the other district, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the district boundary line in the less restricted district a front yard equal in depth to the average of the required depth in the two districts.

- (2) Where the side or rear yard of a lot in a Residential District abuts a side or rear yard of a lot in a Commercial District, there shall be provided along such abutting line or lines in the Commercial District a side or rear yard equal in depth to that required in the more restricted district; and in addition, a planting buffer at least 10 feet wide, having evergreen vegetative screening and/or opaque fencing at least eight feet high, may be required by the Town Planning Board in an easement in any Commercial District.
- G. Overlay District boundaries. Where Overlay District boundaries are based upon natural features such as steep slopes, contour lines, elevations, soil types or ecological communities, such boundaries may be more precisely established through field investigation by a qualified professional. In all other cases, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon.
- H. Projecting architectural features, terraces, porches, fire escapes.
- (1) The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than two feet into any required yard.
 - (2) A paved terrace shall not be considered as part of a building in the determination of yard size or lot coverage, provided that such terrace is without a roof and without walls, parapets or other form of enclosure exceeding six feet in height.
 - (3) In determining the percentage of building coverage or the size of yards for the purpose of this chapter, enclosed porches, or porches open at the side but roofed, shall be considered a part of the building.
 - (4) An open fire escape may extend into any required yard no more than four feet six inches, provided such fire escape shall not be closer than four feet at any point to any lot line.
 - (5) Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard a distance not to exceed six feet.
- I. Walls, fences and hedges. The yard requirements of this chapter shall not prohibit any necessary retaining wall nor any fence, wall or hedge permitted by this chapter, provided that in any Residential District such fence, wall or hedge shall be no closer to any front, side or rear lot line than two feet, and shall comply with visibility at street corners as provided in this article.

§ 90-15. Height regulations.

- A. Chimneys, spires, etc. The height limitations of this chapter shall not apply to belfries, church spires, cupolas and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks or other storage tanks/silos and necessary mechanical appurtenances usually carried above the roof level; nor to flagpoles, monuments, transmission towers and cables, radio and television antennas or towers and similar structures. Such features, however, shall be erected only to such height as is

necessary to accomplish the purpose for which they are intended, and are subject to Planning Board review and approval. No advertising device of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations.

- B. On through lots. On through lots 120 feet or less in depth, the height of a building may be measured from the grade of either street. On through lots more than 120 feet deep, the height regulations and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than 120 feet from that street.

ARTICLE VI Preservation Overlay Districts

§ 90-16. General.

- A. Purpose. The Town of Minden declares that the protection of its stream corridors, floodplains, wetlands and steep slopes is an important public purpose and that, to the extent practicable, future development of the town should minimize disturbance of these areas.
- B. Effect of regulations.
- (1) In furtherance of the objective in Subsection A above, the town hereby creates Overlay Districts which regulate the use of these areas of public importance. The restrictions applicable in these districts are supplementary to, and do not replace, the underlying use, density and dimensional regulations in each base zoning district (e.g. A Agricultural, R-1 Residential, C-1 Commercial).
 - (2) These regulations do not limit or reduce the allowable density of residential development permitted in Article V.
 - (3) In considering any application for special permit, site plan, subdivision or zoning amendment, the Zoning Board of Appeals, Planning Board or Town Board shall attempt, to the extent practicable, to maintain areas delineated in Preservation Overlay Districts as open space, directing permissible development into those areas not mapped as Overlay Districts.
- C. Mapping of districts. The Town Board may adopt and revise, as part of the Zoning Map, an Overlay District Map or Maps delineating the districts established herein. The provisions of this article shall take effect only when each Overlay District created herein has been placed on a specific map.
- D. Interpretation of boundaries. In the event of uncertainty as to the exact boundaries of any Overlay District, the Zoning Board of Appeals shall interpret this article by designating the exact boundary pursuant to the criteria established below for creating each Overlay District, with information prepared by a professional consultant as provided in Article V, § 90-14G.

§ 90-17. Stream Corridor Overlay District (SC).

- A. Purpose. The protection of stream corridors is essential to the maintenance of water quality and the scenic beauty of the town. It is, therefore, necessary to protect these stream corridors from sedimentation and water pollution.
- B. Boundaries. The Stream Corridor Overlay District shall consist of all lands lying within 200 feet of either side of the center line of all streams classified by the New York State Department of Environmental Conservation, as well as such other streams and tributaries as may be designated and mapped by the Town Board. Where these streams are split into two or more channels by islands, the SC District shall include such islands, and district boundaries shall be measured from the center lines of the outer channels.
- C. Regulations. The Stream Corridor Overlay District regulates activities within the delineated corridors. Within this district, a special permit shall be required for any construction, filling, excavation, clear-cutting of more than 10,000 square feet of vegetation over a five-year period, grading or other alteration of the natural landscape, application of fertilizers or pesticides or dumping or disposal of any materials. This regulation shall not apply to agricultural uses existing as of the adoption of this chapter.
- D. Special permit requirements. The Planning Board may issue a special permit pursuant to § 90-16, Subsection B(3) above, only if it finds that the granting of the special permit, with appropriate conditions attached, will not result in erosion or stream pollution from surface or subsurface runoff.

§ 90-18. Floodplain Overlay District (FP).

Development of land lying within an area of special flood hazard (one-hundred-year floodplain), as delineated on the Flood Insurance Rate Map (FIRM) for the Town of Minden which is produced by the Federal Emergency Management Agency, or as delineated by any succeeding local law regulating floodplains, shall require compliance with such local law.

§ 90-19. Wetland Overlay District (W).

- A. Purpose. The purpose of this overlay zone is to protect the town from overdevelopment in and around natural areas important to the people and the future of the Town of Minden.
- B. Boundaries: all land areas within 100 feet of a New York State regulated wetland.
- C. Procedure. No permit shall be issued by the Code Enforcement and/or Zoning Officer for any construction within 100 feet of a New York State regulated wetland until the applicant has obtained applicable approvals from the New York State Department of Environmental Conservation.

ARTICLE VII
Site Plan Approval and Special Permits

§ 90-20. Purpose and authorization.

- A. The purpose of site plan approval and special permit approval is to ensure compliance with the objectives of this chapter, thereby promoting the public health, safety and general welfare.
- B. This article of the Minden Zoning Law is enacted under the authority of § 274-a of the Town Law of the State of New York to protect the health, safety, convenience and general welfare of the inhabitants of the town. This article regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development proposals to eliminate or minimize potential problems and nuisances.
- C. The power to approve, approve with conditions, or deny site plans and special permits as required by this article is vested in the Planning Board. All site plan and special permit applications shall comply with the adopted current requirements and procedures of the Planning Board.

§ 90-21. Developments requiring site plan review.

All special permits require site plan review. Site plan review and special permit review should be conducted jointly by the Planning Board.

§ 90-22. Procedure.

- A. Prior to the submission of a formal site plan, a pre-submission conference may be held wherein the applicant shall meet in person with the Code Enforcement Officer to discuss the proposed site plan so that the necessary subsequent steps may be undertaken with a clear understanding of the town's requirements in matters relating to the development of the site.
- B. Within six months following the pre-submission conference, seven copies of the site plan and any related information shall be submitted to the Code Enforcement Officer, accompanied by a fee in accordance with the schedule of fees of the Town of Minden, payable to the Town Clerk. If the application is not submitted within this six-month period, another pre-submission conference may be required. An Environmental Assessment Form, as required by the State Environmental Quality Review Act, shall also be submitted with the application.
- C. The Code Enforcement Officer shall certify on each site plan or amendment whether or not the application is complete in accordance with the requirements of this section, and whether the plan meets the requirements of all zoning law provisions other than those of this section, such as setbacks, number of parking spaces, etc. The Code Enforcement Officer shall act to certify the application or return it to the applicant for completion or revision within 10 days of submission by the applicant.

- D. Following certification of a complete application, the Code Enforcement Officer shall forward the application to the Planning Board no later than 20 days prior to its next meeting.
- E. The Planning Board may, at its discretion, hold a public hearing on the application. If the application for site plan review is because a special permit is required, then the public hearing is mandatory. Said hearing shall be held within 62 days of submission to the Planning Board of said complete application. The Planning Board shall mail notice of said hearing to the applicant at least 10 days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the town at least five days prior to the date of the hearing. If action is subject to review by the County Planning Board in accordance with § 239-m of General Municipal Law, then the Planning Board shall mail notice to the County Planning Board at least 10 days before such hearing; this notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision 1 of § 239-m of General Municipal Law.
- F. The Planning Board shall make a determination of significance of the proposed site plan according to SEQR. The time limitations of Subsection H of this section shall not apply until the conclusion of the SEQR process.
- G. Whenever any site plan involves real property in an area described in § 239-m of the General Municipal Law, said site plan shall be referred to the County Planning Board, which Board shall report its recommendations to the Town Planning Board. Failure of the County Planning Board to report within 30 days may be construed to be an approval. The concurring vote of a majority plus one of the Town Planning Board shall be necessary to override County Planning Board recommendations of approval with modifications or disapproval. The Town Planning Board shall file a report of the final action with the County Planning Board within 30 days.
- H. Planning Board approval.
 - (1) The Planning Board shall within 62 days of the public hearing, if one is held, or within 62 days of the receipt of a complete site plan application, either:
 - (a) Approve the site plan if the Planning Board finds that the plan meets the requirements of this chapter and any other applicable rules and regulations; or
 - (b) Conditionally approve the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be set forth in writing by the Planning Board; or
 - (c) Disapprove the site plan, the reasons for such action to be set forth in writing by the Planning Board.
 - (2) Failure to act by the Planning Board within the required time shall be deemed approval. Should the Planning Board need an additional amount of time to consider the application, then it may do so with the consent of the applicant. Said agreement shall be recorded in the minutes.

- I. Review of amendments to an approved site plan shall be acted upon in the same manner as the review of the original plan.

§ 90-23. Enforcement.

- A. The Planning Board may require the posting of a bond or other similar performance guaranty to ensure compliance with the plan and stated conditions of approval. The Code Enforcement Officer may suspend any permit or license when work is not performed as required.
- B. Any special permit issued under this article shall lapse within one year if a substantial use thereof has not commenced, except for good cause. The time required to pursue and await determination of a judicial appeal pursuant to § 274-b of the Town Law shall be included within the one-year time limit.
- C. The Planning Board may adopt additional detailed design guidelines and performance standards, as it deems necessary by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing shall be advertised once in a newspaper of general local circulation, at least seven days prior to the hearing. Such standards and guidelines shall not become effective until adopted by the Town Board following a public hearing.
- D. No topsoil, tree, shrubs or other vegetation shall be removed from the site until a site plan has been approved for the property in question.

§ 90-24. Submission requirements.

- A. The site plan shall include the following data, details and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan except in accordance with § 90-24, Subsection B below.
- B. The Planning Board may waive any of the requirements of § 90-24, Subsections C or D or parts thereof, prior to the submission of a formal site plan, when such requirements are not material to the project under review.
- C. Site plans shall be prepared by a surveyor, registered professional engineer, architect, landscape architect at a scale of one inch equals 20 feet or less on standard twenty-four-inch by thirty-six-inch sheets, with continuation on eight-and-one-half-inch by eleven-inch sheets as necessary for written information.
- D. Items required for submission include:
 - (1) Name of the project, boundaries, location maps showing site's location in the town, date, North arrow and graphic scale of the plan.
 - (2) Name and address of the owner or record, developer and seal of the engineer, architect, surveyor or landscape architect.

- (3) Name and address of all owners of record of abutting parcels and those within 500 feet of the property line.
- (4) All existing lot lines, easements and rights-of-way. Include all areas in acres or square feet, abutting land uses and the location and size of structures within 500 feet of the site.
- (5) The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and show all exterior entrances and all anticipated future additions and alterations.
- (6) The location of all present and proposed public and private ways, parking areas, driveways, sidewalks, ramps, curbs, fences, paths, landscaping and walls. Location, type and screening details for all waste disposal containers shall also be shown.
- (7) The location, height, intensity and bulb type (e.g., fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.
- (8) The location, height, size, materials and design of all proposed signage.
- (9) The location of all present and proposed utility systems, including:
 - (a) Sewage or septic systems.
 - (b) Water supply system.
 - (c) Telephone, cable and electrical systems.
 - (d) Storm drainage system, including existing and proposed drainage lines, culverts, catch basins, headwalls, end walls, hydrants, manholes and drainage swales. The Planning Board may also require soil logs, soil profile analysis (deep hole test pits), percolation test and stormwater runoff calculations for large developments in environmentally sensitive areas.
- (10) Plans to prevent the pollution of surface or groundwater erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table and flooding of other properties, as applicable. There shall be pre- and post-drainage calculations for the site done by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site. The use of ponds, dry wells, etc., shall be used, but all sites shall have zero increase in runoff so as not to disturb neighboring properties.
- (11) Existing and proposed topography at five-foot contour intervals. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the one-hundred-year floodplain, the area will be shown and base flood elevations given. Indicate areas within the site where ground removal or filling is required, and give its approximate volume in cubic yards.
- (12) A landscape plan showing all existing and natural land features, trees, forest cover and water sources, and all proposed changes to these features, including size and

type of plant material, and erosion control measures. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.

- (13) Zoning district boundaries within 200 feet of the sites perimeter shall be drawn and identified on the plan.
 - (14) Traffic flow patterns within the site, entrances and exits, loading and unloading areas, curb cuts on the site and within 200 feet of the site. The Planning Board may require a detailed traffic study for large developments or for those in heavy traffic areas to include:
 - (a) The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;
 - (b) The projected traffic flow pattern, including vehicular movements at all major intersections likely to be affected by the proposed use of the site;
 - (c) The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.
 - (15) For new construction or alterations to any existing building, a table containing the following information must be included:
 - (a) Area of building to be used for a particular use such as operation, office, storage, etc.;
 - (b) Maximum number of employees;
 - (c) Maximum seating capacity, where applicable;
 - (d) Number of parking spaces existing and required by this chapter for the intended use.
 - (16) Elevation plans at a scale of 1/4 inch equals one foot for all exterior facades of the proposed structures and/or existing facades, plus addition(s) showing design features and indicating the type of color of materials to be used.
- E. An Environmental Assessment Form (either short or long form, depending upon the nature of the proposal) shall be submitted with the site plan to ensure compliance with the New York State Environmental Quality Review Act (6 NYCRR 617), to identify the potential environmental, social and economic impacts of the project.

§ 90-25. Standards for review.

The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Pursuant to § 90-23, Subsection C, detailed design guidelines and performance standards may be adopted by the Planning Board to guide decisions with respect to these objectives and to help ensure consistency in the review of all applications.

- A. Legal. Conformance with the provisions of the local laws of the town, the Town Law of New York State and all other applicable state Laws, and all applicable rules and regulations of state and federal Agencies.
- B. Traffic. Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.
- C. Parking. Provision for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting and internal traffic.
- D. Public services. Reasonable demands placed on public services and infrastructure.
- E. Pollution control. Adequacy of methods of sewage and refuse disposal and the protection from pollution of both surface waters and groundwater. This includes minimizing soil erosion both during and after construction.
- F. Nuisances. Protection of abutting properties and Town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust odors, glare, stormwater runoff, etc.
- G. Existing vegetation. Minimize the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees.
- H. Amenities. The applicant's efforts to integrate the proposed development into the existing landscape through design features, such as vegetative buffers, roadside plantings and the retention of open space and agricultural land.
- I. Town character. The building setbacks, area and location parking, architectural compatibility, signage and landscaping of the development, and how these features harmonize with surrounding landscape and the natural landscape.

§ 90-26. Consultant review.

In its review, the Planning Board may consult with the Town Code Enforcement Officer, Fire Commissioners, Highway Superintendent and other local and county officials, and its private consultants, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of Transportation, the State Department of Environmental Conservation and the State Department of Health. If a consultant is retained by the Planning Board, the developer shall agree to pay his/her fees. An estimate of his/her fees shall be provided at the beginning of the project. The developer will be required to pay 1/3 at this time, another third at the time of the public hearing and a final third before a decision is rendered by the Planning Board.

§ 90-27. Additional requirements.

The Planning Board may require such additional provisions and conditions that appear necessary for advancement of the public environment. Such shall included, but shall not be limited to, the following:

- A. Reimbursable costs. Reasonable costs incurred by the Planning Board for private consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the fee required in the Town of Minden Schedule of Fees for site plan review.
- B. Performance guaranty. No Certificate of Occupancy shall be issued until all improvements shown on the final site plan are installed or a performance guaranty, a letter of credit or certificate of deposit has been posted for improvements not yet completed. Other requirements relating to performance guaranties may be established from time to time by the Town Board. The amount and sufficiency of such performance guaranty shall be established by the Planning Board after consultation with the Building Inspector, Attorney(s) for the town and the Planning Board's designated consultants, or other competent persons.
- C. Inspection of improvements. The Code Enforcement Officer shall be responsible for the overall inspection of site improvements, including coordination with the town's private consultants, as may be appropriate on multifamily residential, commercial and industrial projects.

§ 90-28. Appeals.

Any person or persons jointly or severally aggrieved by any decision of the Planning Board concerning review of a site plan may bring a proceeding to review in a manner provided by Article 78 of the Civil Practice Laws and Rules in a court of record.

§ 90-29. Special permits.

On application and after public notice and hearing by the Planning Board, said Board may authorize, by resolution, the issuance of a special permit only for those uses in a district where this chapter requires such a permit. In authorizing the issuance of a special permit, the Planning Board shall take into consideration the public health, safety and general welfare and shall prescribe appropriate conditions and safeguards to ensure the accomplishment of the following objectives. Unless otherwise provided, all special permits shall be valid for a period as determined by the Planning Board.

A. Objectives:

- (1) That all proposed structures, equipment or material shall be readily accessible for fire and police protection.
- (2) That the proposed use is of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly

development of adjacent properties in accordance with the zoning classification of such properties.

- (3) That, in addition to the above, in the case of any use located in or directly adjacent to a residential district:
 - (a) The location size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access street shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or incongruous with said residential district or conflict with the normal traffic or the neighborhood.
 - (b) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of screening and landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or diminish the value thereof.
- B. Procedure. Since all special permits require site plan review, the procedure for a special permit shall be the same as specified for a site plan review, §§ 90-18 through 90-28, except that a public hearing is mandatory. Site plan and special permit review should be conducted jointly to save time, effort and repetition of information.
- C. Conditions and safeguards. In authorizing the issuance of a special permit, it shall be the duty of the Planning Board to attach such conditions and safeguards as may be required in order that the results of its action may, to the maximum extent possible, further the general objectives of this chapter. The Planning Board may require that special permitted uses be periodically renewed. Such renewal shall be granted allowing due public notice and hearings, and may be withheld only upon determination that such conditions as may have been prescribed by the Planning Board in conjunction with the issuance of the original permit have not been or are no longer being complied with. In such cases, a period of 60 days will be granted the applicant for full compliance prior to the revoking of the permit. Any use for which a special permit may be granted shall be deemed to be a conforming use in the district in which such use is located, providing that:
 - (1) The provision in this chapter under which such exception was issued is still in effect.
 - (2) Such exception was issued in conformity with the provisions of this chapter.
 - (3) Such use shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.
- D. Appeals. Any person or persons jointly or severally aggrieved by any decision of the Planning Board concerning review of a special permit may bring a proceeding to review in a manner provided by Article 78 of the Civil Practice Laws and Rules in a court of record.

ARTICLE VIII
Supplementary Regulations

§ 90-30. General land use performance standards.

In any district, the following performance standards for all land uses shall apply, subject to the limitations on the regulation of agricultural uses contained in Article I, §§ 90-2 and 90-3:

- A. No offensive or objectionable vibration, glare or odor shall be noticeable at or beyond the property line, and no building materials, junk, leaves or other waste materials shall be deposited within 10 feet of a property line.
- B. No activity shall create a safety or health hazard, by reason of fire, explosion, radiation or other such cause, to persons or property.
- C. There shall be no discharge of liquid or solid waste or of any other materials in a manner that may contaminate surface water or groundwater.
- D. There shall be no storage of any material either indoors or outdoors that endangers public health and safety or the natural environment.
- E. Emission into the ambient air of smoke, dust, gases or other material which can cause damage to the health of persons, animals, plants or damage to property is prohibited.
- F. Only one permitted principal use or special permitted use is allowed per lot. This § 90-28F shall not be applicable to a mobile manufactured home as part of a farm operation.

§ 90-31. Personal wireless service facilities.

All personal wireless services facilities shall comply with the following requirements in addition to all the requirements of the underlying zoning requirements:

A. Purpose.

- (1) The purpose of these regulations is to promote the health, safety and general welfare of the residents of the Town of Minden.
- (2) The purpose of the Personal Wireless Service Facilities Overlay District is to provide a suitable choice of locations for the establishment, construction and maintenance of personal wireless services facilities, while protecting the integrity of the established neighborhoods of the Town of Minden.
- (3) To provide standards for the safe provision of wireless telecommunications facilities consistent with applicable federal and state regulations, and to protect the natural features and aesthetic character of the Town of Minden.
- (4) To accommodate the need for wireless telecommunications facilities while regulating their location and number in the Town of Minden.
- (5) To minimize the adverse visual effects of wireless telecommunications facilities support structures through proper design, siting and vegetative screening.

- (6) To avoid potential damage to adjacent properties from wireless telecommunications facilities support structure failure and falling ice through engineering and proper siting of such towers.
 - (7) To encourage the joint use of any new wireless telecommunications facilities, thereby reducing the number of towers needed in the future.
- B. Permitted uses. All new personal wireless service facilities shall be allowed by special use permit granted by the Town of Minden Planning Board. All new personal wireless service facilities, and all additions and/or modifications to currently existing personal wireless service facilities, shall be allowed only in the Personal Wireless Service Facilities Overlay District. The Personal Wireless Service Facilities Overlay District shall apply to all property within the following zoning districts: Agricultural (A) and Commercial (C-1). In no event shall any personal wireless services facility be allowed within any zoning district without completing the procedural and other requirements of the Personal Wireless Service Facilities Overlay District.
- C. Conditional uses.
- (1) All new personal wireless service facilities shall be allowed by special use permit granted by the Town of Minden Planning Board, after a public hearing.
 - (2) Data requirements. Applications for site plan approval shall file with the Planning Board seven copies of the following documents:
 - (a) Site plan. An applicant shall be required to submit a site plan which will show all existing and proposed wireless telecommunications facilities structures (plan and elevation of the facility) and improvements, including roads, buildings, tower, guy wire anchors, parking and landscaping, and will include grading plans for new facilities and roads.
 - (b) Supporting documentation. An applicant shall be required to submit documentation on the intent and capacity of use as well as justification for the height of any tower or antenna and justification for any clearing required.
 - (c) Environmental Assessment Form. A Full Environmental Assessment Form (EAF), including the Visual EAF Addendum.
 - (d) Structural engineering report. A report prepared by a New York State licensed professional engineer specializing in structural engineering as to the structural integrity of the personal wireless service facility. In the case of a tower or monopole, the structural engineering report shall describe the structure's height and design, including a cross section of the structure, demonstrating the structure's compliance with applicable structural standards and describing the structure's capacity, including the number of antennas it can accommodate and the precise point at which the antenna shall be mounted. In the case of an antenna mounted on a existing structure, the structural engineering report shall indicate the ability of the existing structure to accept the antenna, the proposed method of affixing the antenna to the structure and the precise point at which the antenna shall be mounted.

- (e) Engineering analysis of radio emissions. An engineering analysis of the radio emissions, and a propagation map for the proposed personal wireless service facilities. The analysis shall be prepared and signed by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio-communication facilities. The results from the analysis must clearly show that the power density levels of the electromagnetic energy generated from the proposed facility are within the allowable limits established by the FCC which are in effect at the time of the application. If the proposed personal wireless service facilities would be co-located with an existing facility, the cumulative effects of the facilities must also be analyzed. The power density analysis shall be based on the assumption that all antennas mounted on the proposed facility are simultaneously transmitting radio energy at a power level equal to the maximum antenna power rating specified by the antenna manufacturer.
- (f) Map of proposed coverage and existing facilities. A map showing the area of coverage of the proposed facility and listing all existing personal wireless service facilities in the town and bordering municipalities containing personal wireless service facilities used by the applicant, and a detailed report indicating why the proposed personal wireless service facilities is required to provide service to locations which the applicant is not able to serve with existing facilities which are located within and outside the town by co-location and otherwise.
- (g) Shared use of existing towers. The co-location of existing personal wireless service facilities only within the Personal Wireless Service Facilities Overlay District shall be strongly preferred to the construction of a new personal wireless service facilities. If a new site for a personal wireless service facilities is proposed, the applicant shall submit a report setting forth in detail an inventory of existing personal wireless service facilities within the Personal Wireless Service Facilities Overlay District which are within a reasonable distance from the proposed facility with respect to coverage; an inventory of existing personal wireless service facilities in other municipalities which can be utilized or modified in order to provide coverage to the locations the applicant is seeking to serve; and a report on the possibilities and opportunities for co-location as an alternative to a new site. The applicant must demonstrate that the proposed personal wireless service facilities cannot be accommodated on a existing facility within the Personal Wireless Service Facilities Overlay District or on a existing facility in another municipality due to one or more of the following reasons:
- [1] The proposed equipment would exceed the existing and reasonably potential structural capacity of existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District, considering existing and planned use for those facilities.
 - [2] The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be prevented or mitigated.

- [3] Existing or approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District or in neighboring municipalities do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and the applicant has not been able, following a good faith effort, to reach an agreement with the owners of such facilities.
- [4] Other reasons make it impracticable to place the proposed equipment on existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District on existing facilities in other municipalities.
- [5] Service to the locations to which the applicant seeks to provide service cannot be provided by existing facilities within or outside the town.

D. Standards.

- (1) Personal wireless service facilities. No personal wireless service facility shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a commercial communications tower unless in conformity with these regulations.
- (2) Siting and visual impact. All antenna and accessory facilities shall be sited to have the least practical adverse visual effect on the community. Applicant shall be required to perform a visual impact test at the proposed site and notify the Town of Minden 10 days in advance of visual test.
- (3) Maintenance of facility (annual inspections).
 - (a) Unless otherwise preempted by federal or state law, personal wireless service facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for structural integrity, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement Officer. The structural inspection shall be performed by a New York State licensed professional engineer specializing in structural engineering. The structural inspection report shall describe the structural integrity of the personal wireless service facility, maintenance issues and repairs need or made, if any. In the event that the structural inspection indicates structural deficiencies, then the deficiencies must be remedied within the time reasonable set by the Code Enforcement Officer.
 - (b) Unless otherwise preempted by federal or state law, personal wireless service facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for radio emissions, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement Officer. Radio emission inspection shall be performed by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities. The radio emission inspection shall describe the power density levels of the electromagnetic energy

generated from the facility, including the cumulative effects of co-located antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the Facility are above the allowable limits stated within applicable FCC and ANSI standards or other applicable state or federal guidelines in effect at the time of the inspection, the applicant shall cease all use of the facility until such time as it proves to the satisfaction of the Code Enforcement Officer that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

- (4) Location. The applicant shall demonstrate, using technological evidence, that the antenna must be placed where it is proposed in order to satisfy its function in the company's grid system.
- (5) Co-location. If the applicant proposes to build a tower as opposed to mounting the antenna on a existing structure, the town may require the applicant to demonstrate that it contacted the owners of tall structures within not less than a mile radius of the site proposed, asked for permission to install the antenna on those structures, and was denied for reasons other than economic ones.
- (6) Antenna height. The applicant shall demonstrate that the antenna is the minimum height required to function satisfactory. No antenna that is taller than this minimum height shall be approved.
- (7) Minimum lot size. The minimum lot size for a wireless telecommunication facility antenna shall be equal to the square of twice the tower or monopole height or the minimum lot size required by the underlying zoning district, whichever is greater.
- (8) Setbacks from base of antenna support structure. If a new antenna support structure is constructed as opposed to mounting the antenna on an existing structure, the minimum distance between the base of the support structure and the property lines shall be 10% greater than the height of the antenna. All personal wireless service facilities shall be separated from all residential dwellings by a distance of no less than 500 feet, and by no less than 500 feet from the road right-of-way. All guy wire anchors and accessory facilities shall be set back a minimum of 30 feet from the property line.
- (9) Antenna support structure safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by manufacturers.
- (10) Fencing. Fencing will be required around the antenna support structure and other equipment including each guy anchor. The fence shall be a minimum of eight feet in height. Barbed wire shall be used along the top of the fence to preclude unauthorized access to the tower.
- (11) Landscaping. Vegetative screening shall be provided to effectively screen the tower base and accessory facilities. At a minimum, screening shall consist of one

row of native evergreen shrubs or evergreen trees capable of forming continuous hedge. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement toward meeting landscaping requirements. Additional screening may be required to screen portions of the structure from nearby residential property or important views. All landscaping shall be properly maintained to ensure good health and viability.

- (12) Signage. Signage shall be prohibited on personal wireless service facilities except for signage to identify the facility which is located along the right-of-way frontage. Except as specifically required by federal, state or local authority, no signage shall be permitted on equipment mounting structures or antennas.
- (13) Other uses. In order to reduce the number of antenna support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including other cellular phone companies and local fire, police and ambulance companies.
- (14) Licenses. The applicant must demonstrate that it has obtained the required licenses from the Federal Communications Commission, the State of New York and other necessary agencies.
- (15) Access and parking. A road and parking area shall be constructed to provide adequate emergency and service access. The road shall be constructed to town standards, the parking shall be constructed to the number of required parking spaces needed to accommodate all of the people needed to maintain this facility under normal circumstances.
- (16) Lighting and color. No antenna support structure shall be artificially lighted except when required by the Federal Aviation Administration (FAA). In order to reduce the visual impact, the tower or monopole shall either have a galvanized finish or be painted gray or blue gray above the surrounding treeline and gray, green or tannish brown below the surrounding treeline.
- (17) Performance bond or other security. Prior to site plan approval, a performance bond or other security sufficient to cover the full cost of the removal and disposal of the personal wireless service facility upon abandonment of said facility shall be provided by the owner/operator. This cost shall be determined by an estimate of the town-designated engineer. Any such security must be provided pursuant to a written security agreement with the town, approved by the Town Board and also approved by the town attorney as to form, sufficiency and manner of execution. The form of security shall be limited to those permissible under New York State Town Law.
- (18) Abandonment. The applicant shall annually file a declaration with the Town of Minden as to the continuing operation of every facility installed to these standards. A communication tower and appurtenances shall be removed within 120 days of the date that such tower ceases to be used for communication. Failure to file the yearly report will constitute nonuse.

§ 90-32. Access to improved street.

In any district, a lot to be used for building purposes shall have direct frontage on a improved street or highway or on a street in a subdivision plot approved by the Planning Board.

§ 90-33. Lots in two districts.

Where a district boundary line divides a lot in one ownership at the time of adoption of said district line, the regulation for either district may be used up to 100 feet into the other district, provided the lot has the minimum required frontage on a street.

§ 90-34. Drive-in food services.

Any drive-in food service building shall be located 60 feet or more from any public right-of-way. Such businesses, where persons are served in automobiles, shall not be closer than 200 feet to a Residential District. Arrangements of ingress and egress of vehicles, lights, fences and screening shall be approved by the Planning Board in such a way as not to interfere with uses in the Residential District.

§ 90-35. Accessory buildings: number, height and location.

- A. Number. On any lot intended or used primarily for residential purposes, an accessory building, such as private garage for use in connection with the principal dwelling, is permitted.
- B. Height. Maximum height of accessory buildings shall be 25 feet, except that there shall be no height limitation on barns, silos and other farm structures.
- C. Location.
 - (1) Accessory private garage buildings in Residential Districts which are not attached to a principal building may be erected within the rear yard accordance with the following requirements:
 - (a) Rear yard: five feet from side or rear property line, except when abutting an alley, then 10 feet.
 - (b) Side yard. Street side of corner lot: same as for principal building.
 - (c) Not closer to a principal or accessory building than 10 feet.
 - (2) In any district, accessory buildings other than private garages shall comply with front and side yard requirements for the principal building to which they are accessory and shall be not closer to any rear property line than 10 feet.
- D. Attached accessory building in Residential District. When an accessory building is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.
- E. Maximum lot coverage is to include all principal and accessory structures.

§ 90-36. Mineral extraction.

In any district, the removal of more than 1,000 tons per year of soil, sand, gravel or quarried stone for sale, except when incidental to or connected with construction of a building on the same premises, requires a New York State Department of Environmental Conservation (DEC) permit and approval. Local review by the Planning Board is not authorized. The Town Board will be sent a copy of the applicant's proposal and may make suggestions on ingress, egress and hours of operation, but final decisions are that of the DEC.

§ 90-37. Junkyards.

No junk shall be located so as to be visible from public roads.

- A. Location. Except as a continuation of a nonconforming use, no junk storage area shall be located within:
- (1) One hundred feet of any adjoining property line;
 - (2) Five hundred feet of any existing dwellings;
 - (3) Five hundred feet of any public park, church, educational facility, nursing home, public building or other place of public gathering;
 - (4) Two hundred feet of any stream, lake, pond, wetland or other body of water;
 - (5) Two hundred feet from the right-of-way of any public highway.
- B. Fencing. There must be erected and maintained an eight-foot-high fence enclosing the entire junkyard and a locking gate, adequate to prohibit the entrance of children and others into the area of the activity or business and to contain within such fence the materials dealt with by the operator of the junkyard.
- C. Screening. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence provided in § 90-37B above shall be of wood or other materials sufficient to totally screen the junkyard from view.
- D. Burning. No materials shall be burned in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see NYCRR Part 215).
- E. Burying. No junkyard items shall be buried in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see NYCRR Part 360).
- F. Approved junkyard items. No junkyard items shall be stored in any junk storage area other than those items specified on a junkyard permit approved by the Town Board pursuant to this section.
- G. Fire lane. Inside and adjacent to and contiguous with the fence mentioned in § 90-37B above, a strip of land at least 15 feet in width shall be kept free of all dry grass or other growth or combustible material so as to provide a fire lane or line around the whole junkyard. There shall be internal fire lanes within every 100 feet apart, and 15 feet in width.

H. Junkyard permit.

- (1) No person shall establish or maintain a junkyard within the Town of Minden unless a permit has first been issued for such junkyard pursuant to this section.
- (2) No person owning, having any right to or interest in any real property within the Town of Minden shall license, rent, lease or otherwise permit the use of such real property or any part thereof for a junkyard unless a permit has first been issued for such junkyard pursuant to this section.
- (3) All permits issued shall be effective from the date of its issuance until the 30th day of June of the following year, after which a new application for a permit must be made yearly if the permittee desires to continue such activity or business.

I. Application procedure:

- (1) The applicant for a junkyard permit shall obtain application forms from the Town Clerk. The completed forms along with one copy of the proposed site plan, and the appropriate fees, shall be returned to the Clerk. The Clerk shall submit the application materials to the Town Board.
- (2) Site plan contents. The site plan shall be drawn to scale or indicating all dimensions and show:
 - (a) All existing and proposed structures, including fences;
 - (b) All property lines, including the names of owners of adjacent property;
 - (c) All streams, lakes, wetlands, floodplains and other water bodies;
 - (d) All well and sanitary facilities;
 - (e) All roads and easements;
 - (f) All existing and proposed junk storage areas;
 - (g) All existing and proposed accessways, and parking and loading areas.
- (3) Environmental impact statement. An Environmental Assessment Form shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Act, 6 NYCRR Part 617. If the EAF indicates that the proposed activity may have significant environmental consequences, the Town Board shall require that a Draft Environmental Impact Statement (DEIS) be submitted with the application. The application shall not be considered complete until the DEIS has been accepted by the Town Board.
- (4) Application fee. An application fee as set from time to time by resolution of the Town Board shall accompany all applications.⁴

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

- (5) Public hearing. The Town Board shall fix a time within 45 days of the date a complete application is received for a public hearing. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. At the hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a junkyard permit.
- (6) Town Board action. Within 45 days of said hearing the Town Board shall render decision to approve, approve subject to conditions, or disapprove the application for a junkyard permit. The forty-five-day period may be extended by mutual consent of the applicant and the Town Board. All findings of the Town Board shall be entered into the official minutes of the town. The decision of the Town Board shall immediately be filed in the office of the Town Clerk and the applicant shall be notified of the decision and the reasons for such decision by certified mail within five days of the decision of the Town Board. Upon approval of the site plan and application, and payment of the fees and reimbursable costs due the town, the Town Board shall endorse its approval upon a copy of the final site plan and application.
- (7) Issuance of permit:
 - (a) If the application is approved by the Town Board, a junkyard permit shall be issued by the Clerk.
 - (b) If the application is approved with conditions by the Town Board, the Clerk shall issue a junkyard permit upon notification by the Code Enforcement Officer that said conditions have been complied with.

J. General considerations.

- (1) Aesthetic considerations. In granting or denying a permit, the Town Board shall take the following aesthetic factors into consideration:
 - (a) Type of road servicing the junkyard or from which the junkyard can be seen.
 - (b) Natural or artificial barriers protecting the junkyard from view.
 - (c) Proximity of the site to established residential or recreational areas or main access routes thereto.
- (2) Locational considerations. In granting or denying a permit, the Town Board shall take the following locational factors into consideration:
 - (a) The nature and development of surrounding property, such as the proximity of public parks, churches, educational facilities, nursing homes, public buildings or places of public gathering.
 - (b) Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
 - (c) The proximity of streams, lakes, wetlands, floodplains, groundwater supplies and public water supplies.

- (d) Local drainage patterns.
 - (e) The long-range Comprehensive Plan for the town.
 - (f) Proximity of the site to established residential or recreational areas.
 - (g) Availability of other suitable sites for the junkyard.
- K. Revocation of permit. The Town Board may revoke a junkyard permit upon reasonable cause should the applicant fail to comply with any provision of this chapter. Before a permit may be revoked, a public hearing shall be held by the Town Board. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. The permit holder shall be notified of the hearing by certified mail at least five days prior to the hearing. At the hearing the Town Board shall hear the permit holder and all other persons wishing to be heard on the revocation of the junkyard permit. Should the Town Board decide to revoke a permit, the reasons for such revocation shall be stated in the Town Board minutes. The permit holder shall be immediately notified of the revocation by certified mail.

§ 90-38. Signs.

Signs shall comply with the following regulations.

- A. General. A sign shall be permitted to advertise nonresidential uses on site. Signs shall be of such design and construction so as to convey information with clarity and without disruption to the character of the community. Such signs shall conform to the following general design principles:
- (1) The lowest point of a hanging sign in a pedestrian circulation area should be at least 7 1/2 feet above ground.
 - (2) Signs should be a subordinate part of the local landscape and as small as practicable.
 - (3) Signs should have a minimum of information in order to avoid clutter and confusion.
 - (4) Whenever feasible, multiple signs should be combined into one to avoid clutter.
 - (5) No sign shall be located so as to project into the public right-of-way or to be a hazard to traffic or pedestrians, to obstruct any door, window, ventilating system or fire escape or to cause any other hazard to public safety or peril.
 - (6) If sign is illuminated, the source of light shall not be visible.
- B. Exempt signs. The following signs shall be exempt from the requirements from the requirements of this section:
- (1) Historical markers, tablets and statues, memorial signs and plaques, names of buildings and dates of erection, when cut into masonry surface or when constructed of bronze, stainless steel or similar materials; and emblems installed by

government agencies, religious or nonprofit organizations; not exceeding 32 square feet.

- (2) Flags and insignia of any government except when displayed in connection with a commercial promotion.
 - (3) Traffic or other municipal signs.
 - (4) Legal notices or such temporary, emergency or nonadvertising signs may be authorized by the town.
 - (5) A farm produce sign not exceeding six square feet.
 - (6) Temporary nonilluminated signs on the premises for up to one year for the following purposes:
 - (a) Real estate "For Sale" or "For Rent" signs not exceeding six square feet and located on the front wall of the building or if freestanding, not nearer than 10 feet from a roadway edge on the subject property.
 - (b) Signs which announce anticipated occupancy of a site or building or identifies the contractors, architects, engineers, etc., on a building or site under construction, not exceeding 20 square feet in area. Such sign shall be a minimum of 10 feet from a roadway edge on the subject property.
 - (7) Temporary off-premises directional signs for the convenience of the general public not exceeding two square feet in area.
 - (8) Signs or bulletin board customarily incidental to places of worship, libraries or museums, erected on the premises for purposes of displaying temporary public information notices, not exceeding 15 square feet in area.
- C. Prohibitions. The following signs shall be prohibited unless otherwise exempted by the Planning Board:
- (1) Except for holiday seasons, grand openings and other special or temporary events, not to exceed 30 days, no sign shall include or consist of pennants, ribbons, streamers, spinners or other moving, fluttering or revolving devices.
 - (2) No sign shall contain flashing lights.
 - (3) No revolving, moving or animated signs shall be permitted.
 - (4) No advertising sign (i.e., billboard) shall be allowed on-site.
 - (5) No temporary, movable signs, except for holiday seasons, grand openings and other special events, for up to 60 days, shall be allowed.
- D. Freestanding signs. All freestanding signs shall comply with the following standards:
- (1) Only one freestanding sign, which may be doublefaced, shall be permitted for the primary frontage of a property on a public street. Not more than one freestanding

sign shall be permitted for each business structure, plaza, etc. regardless of the number of stores housed therein.

- (2) All signs should be erected a minimum of 15 feet from any roadway edge.
- (3) The maximum height for a freestanding sign, unless otherwise indicated, shall be 15 feet.
- (4) Total area of freestanding sign, not including supports, is 30 square feet.

E. Building signs. Signs attached to a building shall conform to the following standards:

- (1) The maximum area of the sign shall not exceed 10% of the building face area.
- (2) Signs shall not project above the highest point along the face of the building.
- (3) Iconic signs, such as barber poles, eyeglasses, etc., which are traditional in appearance and size should not extend more than four feet from a building wall, nor occupy a space of more than 15 square feet when viewed from any angle.
- (4) One sign not exceeding four square feet in area may be hung under a roof overhang perpendicular to each store front in a shopping center.
- (5) Directional signs for pedestrian and traffic control should not exceed four square feet in area each.

F. In R-1 Residential and A Agricultural Districts, nonilluminated and nonadvertising signs are permitted as follows:

- (1) One nameplate, identification or professional sign, not to exceed an aggregate of 12 square feet of sign area, showing the name or permitted home occupation of the occupant of the premises.
- (2) One sign not to exceed six square feet of sign area during and pertaining to the sale, lease or rental of the land or building.

G. In C-1 Commercial and R-1 Residential and A Agricultural Districts (if applicable), a business sign is permitted, provided it is in conformance with § 90-38A, C, D and E above.

§ 90-39. Permanent building foundations.

All dwellings, including one-family, two-family, multiple-family, boarding or rooming houses, mobile manufactured homes and factory manufactured homes, shall be placed upon a permanent foundation, except for temporary (no longer than six months) mobile manufactured homes permitted by special permit by the Planning Board.

§ 90-40. Vision clearance at intersections.

No obstructions to vision, such as shrubbery, brush, trees, earth or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center

lines and a line drawn between points along such lines 20 feet distance from their point of intersection.

§ 90-41. Landscaping requirements.

- A. Where any permitted nonresidential land use, multiple-family development, mobile manufactured home park, etc., abuts an existing residential parcel or vacant parcel where residential development could occur, a strip of land at least 20 feet wide shall be maintained as a landscaped area in the front, side and/or rear yard which adjoin these uses.
- B. Required landscaping shall be installed and maintained in a healthy growing condition and shall take the form of any or all of the following: shade trees, deciduous shrubs, evergreens, well-kept grassed areas or ground cover. In any case, all such landscaping shall be a minimum of four feet in height.

§ 90-42. Corner and through lots.

Front yard setbacks and minimum road frontages are required on both road fronts. The two remaining yards shall be designated by the applicant as to which will be the rear yard and which will be the side yard.

§ 90-43. Flag lots.

- A. The access strip of land shall be a minimum of 60 feet wide and no more than 300 feet deep.
- B. The minimum lot area, lot width and lot depth requirements shall be met exclusively of the land contained in the access strip.
- C. Minimum front, side and rear setback requirements shall be met, excluding the narrow access strip.
- D. No more than one flag lot shall be served by a single access strip.
- E. Access strips shall be a minimum distance apart of at least the minimum lot width in the zoning district.
- F. Access strip shall not be a deeded right-of-way or shall be owned in fee title by the owner of the flag parcel.
- G. No more than 10% of the lots in a new residential subdivision approved after the date of the adoption of this chapter shall be flag lots.

§ 90-44. Environmental Quality Review.

The State Environmental Quality Review requires that local government examine the environmental impact of all actions they permit, fund or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations are hereby adopted by reference.

§ 90-45. Dish antennas.

- A. All dish antennas over 36 inches shall be located in either the side or rear yards, unless the owner can prove his/her only "window of reception" is in the front yard. In the event that no "window of reception" is available on the ground, such antennas may be placed on the roof of the dwelling structure.
- B. The location and design of dish antennas shall minimize the visual impact on adjacent property as determined by the Zoning Enforcement Officer, appealable to the Zoning Board of Appeals.

§ 90-46. Exterior lighting.

In no case shall any exterior lighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots.

§ 90-47. Mobile manufactured homes.

Individual mobile manufactured homes shall be subject to all the regulations pertaining to detached one-family dwellings, in addition to the following standards:

- A. General requirements.
 - (1) All mobile manufactured homes shall have an adequate supply of pure water for drinking and domestic purposes, and a sewage disposal system. Both systems shall satisfy the requirements of the New York State Department of Health.
 - (2) All mobile manufactured homes shall have a minimum size of 720 square feet of living area and a minimum width of 12 feet.
- B. No additions shall be made to a mobile manufactured home except a canopy and/or porch open on three sides, or an addition made by the mobile manufactured home manufacturer and/or built in conformance with New York State Uniform Fire Prevention and Building Code Regulations.
- C. All mobile manufactured homes installed in the town shall meet current U.S. Department of Housing and Urban Development (HUD) standards and shall have a seal by HUD designating and verifying the age of the mobile manufactured home.
- D. Foundation construction. Each mobile manufactured home shall be set on a foundation constructed as follows:

- (1) Foundation to consist of a six-inch minimum reinforced concrete slab and must be equal to the external measurements of the mobile manufactured home to facilitate fastening of the foundation enclosure.
 - (2) Slab must have at least eight inches of compactible material under it.
 - (3) Suitable tie down anchors must be installed under the main rails of the mobile manufactured home in the concrete; maximum of 15 feet apart.
 - (4) A 10 feet by six feet by six inches reinforced concrete slab is required where the main door to the mobile manufactured home is located.
- E. Foundation closure. The mobile manufactured home foundation shall be enclosed by a skirt securely fastened and extending from the outside wall of the mobile manufactured home to ground level around the entire perimeter of the mobile manufactured home. The skirt shall be constructed of sturdy wood, plastic, masonry or metal material capable of withstanding extreme weather conditions over extended periods of time. No skirt shall be required where a perimeter foundation fully encloses the area between the unit and the ground level. The tongue must be removed or fully enclosed by the skirt. No mobile manufactured home foundation shall exceed 48 inches in height above ground level.

§ 90-48. Trailers.

Trailers are not to be considered a permanent dwelling unit. The Zoning Board of Appeals may grant a temporary certificate of occupancy to live in a trailer for a period longer than 30 days, after inspection and report of the Town Code Enforcement Officer and a public hearing.

§ 90-49. Public utility and facilities.

Public utility substations and similar structures shall comply with the following:

- A. Facility shall be surrounded by a fence set back from property lines in conformance with district regulations for front, side and rear yards.
- B. Landscaped area at least 20 feet wide shall be maintained in front, side and rear yards.
- C. There shall be no equipment visible from surrounding property.
- D. Utility poles and attendant lines will be allowed, as necessary, in all districts.

§ 90-50. Swimming pools.

- A. Accessory to single-family dwellings. Swimming pools, whether permanent or portable, having depth of at least two feet, shall meet the front, rear and side setback requirements.
- B. Accessory to residential developments. Swimming pools accessory to residential developments, whether clustered single-family dwellings, seasonal dwelling, bungalow colonies, camps or multifamily dwelling, shall be of permanent construction and shall be

located not closer than 10 feet to any lot line and closer than 10 feet to any dwelling unit and shall meet the setback of the existing house.

- C. Nonresidential. Swimming pools that are part of nonresidential uses, whether commercial or noncommercial, such as hotels, motels, clubs, campgrounds, day-use recreational facilities or institution, shall be of permanent construction and shall be located not closer than the setback requirements for the district in which it is located.
- D. Fencing. Fencing of swimming pools shall comply with the New York State Uniform Fire Prevention and Building Construction Code requirements.

§ 90-51. Sanitary regulations.

- A. A separate and independent waste disposal system shall be provided for in new construction for individual household systems. No septic tank, absorption field, seepage pit, chemical toilet, privy, pipe or other means for the disposal or discharge of sewage or sink wastes shall be installed anywhere in the Town of Minden except as herein provided for in this § 90-51.
- B. In addition to the individual aspects of the sewage treatment systems discussed in this section, the design and construction of all individual sewage treatment systems shall conform with the New York State Department of Health standards as filed with the New York State Secretary of State, 10 NYCRR Appendix 75-A, and any amendments or revisions thereto, more commonly known as "Waste Treatment Handbook, Individual Household Systems" (Waste Treatment Handbook, from hereon referred to as the "Handbook"), a copy of which is on file at the Town Clerk's office.
- C. General standards.
 - (1) Only sewage may be discharged into the on-site sewage disposal system. Surface and subsurface water, including roof, cellar, foundation and storm drainage, shall be excluded from such systems and shall be disposed of so they will in no way affect the septic system.
 - (2) No leaching facilities shall be located under driveways, roads, parking areas or areas subject to heavy loading unless approved by the Code Enforcement Officer.
 - (3) No leaching facility will be permitted within 200 feet of the shoreline of a lake, river, pond, stream if the percolation rate is less than three minutes per inch or less.
 - (4) Any alternative system must be designed in accordance with approved standards by a licensed professional engineer and must be approved by the New York State Department of Health.
 - (5) The design capacity of the sewage systems shall be calculated as provided for in the Handbook, with the following exception to septic tank capacity:
 - (a) All septic capacities will be based on the number of household bedrooms, including an expansion attic which is to be considered as a individual

bedroom, and percolation test results. The minimum size of an approved septic tank for the Town of Minden for any zone shall be 1,000 gallons or working capacity and shall be one-piece concrete, fiberglass or plastic and not steel or metal. Homes with more than three bedrooms shall be guided by the following table. Based on percolation test results, the Code Enforcement Officer shall have the authority to require a larger septic tank than referenced in the table below, and the Code Enforcement Officer may also require a leaching field be installed with larger dimensions than planned.

Number of Bedrooms	Minimum Capacity (in gallons)
1, 2 or 3	1,000
4	1,200
5 or more	1,250

- (6) All building sites constructing new sanitary septic systems and existing sites considering rehabilitation of the septic tank, leach field, etc. (restoring the existing septic system to its original state, condition or proper function), must have a percolation test performed at the site as described in the Handbook. A permit is not required to make minor repairs to the septic system that does not directly disturb the septic tank and/or the leaching areas (i.e., replacing or repairing the drain line from the house to the septic tank, having the septic tank pumped by an authorized company). The time for the stabilization rate of percolation is the basis for determining the absorption or leaching area required for the proposed sewage system. The results of the percolation test can be applied to the Required Absorption Area Tables in the Handbook to determine the necessary size of the leaching area. An investigation of subsoil conditions and a percolation test shall be made in conformance with the procedures described in the New York State Department of Health's Waste Treatment Handbook or in an amended and revised edition of the Handbook.

D. Sewage flows.

- (1) The design capacity of sewage systems shall be calculated as provided for in the Handbook as long as the minimum septic tank requirements as set forth in the above table have been met. Discharge into the sewage system shall be limited to wastes from plumbing fixtures. As required by the Handbook, salt wastes from water softeners and surface and subsurface water shall be excluded from the sewage disposal system.
- (2) All other aspects of the sewage system, including but not limited to the distribution devices, tile field, seepage pits, maintenance, installation shall conform to the Handbook's requirements.

E. Application procedure.

- (1) No installation, alteration or extension of any septic tank, absorption field, seepage pit, chemical toilet, privy, pipe or other discharge of sewage or sink waters shall be begun on new installations, or rehabilitation or reconstruction of existing installations, nor shall construction or erection of any structure or the placement of any mobile manufactured home intended for human occupancy be commenced until an application is filed with and approved by the Code Enforcement Officer. All applications for disposal systems must be made only by the owner or lessee of the lot which the system is proposed or by his duly authorized agent or assign.
- (2) A permit is needed for any modifications, alterations, extensions of or repairs to an existing on-site sewage disposal system.
- (3) This section has application to single-family and two-family dwellings only and does not apply to community, public, industrial, multiple-family (more than two) dwellings, subdivisions or other sewage disposal systems.
- (4) All applications shall be submitted to the Code Enforcement Officer and include such information as the Code Enforcement Officer shall require, including the following:
 - (a) The name and address of the applicant.
 - (b) A copy of the Tax Map section with specific location of the property on which the construction, alteration, repair or extension is proposed.
 - (c) A plan of the proposed disposal system with substantiating data indicating that the minimum standards set forth in this section would be complied with.
 - (d) A sketch of the property showing the location of the proposed disposal system construction, alteration, repair or extension and including delineation of the property lines and sources of water supply for the property and adjoining properties.
 - (e) Evidence to demonstrate to the satisfaction of the Code Enforcement Officer that there is no public sewer available into which the sewage can be discharged from plumbing facilities in the proposed site, or that it is impracticable to discharge sewage from on-site plumbing facilities into a public sewer system.
 - (f) A percolation test is required for the site of a proposed leaching facility. The percolation rate shall be determined by the methods described in the New York State Department of Health's Waste Treatment Handbook - Individual Household System, a copy of which is on file at the Town Clerk's office.
 - (g) Site data which might affect, or be affected by, the proposed system, including but not limited to specifications regarding soil types, topography, depth to seasonal high groundwater, depth to impervious materials, depth to bedrock and distance to surface bodies of water. The determination of depth to seasonal high groundwater shall be made in the months of March, April, May or June, within six weeks of the time that the frost leaves the ground.

All determinations shall be accompanied by a statement of the testing methods used as well as the basis for the determination.

- (h) It shall be the duty of the applicant to notify the Code Enforcement Officer when the installation of the disposal system is ready for inspection. NO SUCH INSTALLATION SHALL BE COVERED UNTIL IT HAS BEEN APPROVED.
- (5) The Code Enforcement Officer may verify any and/or all results of such tests and require supporting information from the applicant necessary for his review and approval. When his discretion warrants, the Code Enforcement Officer shall request an individual designated by the Town Board to conduct any and all tests he deems necessary to complete his review. When this is necessary, all charges will be assumed by the applicant.
- (6) The Code Enforcement Officer shall determine whether or not an application is complete. The Code Enforcement Officer shall have the authority to require certification on retesting to verify information submitted as part of the application.
- (7) The Code Enforcement Officer may conduct such investigations, examinations, tests and site evaluations as he/she deems necessary to verify information contained in an application for a disposal system building permit, and the application or owner of the land on which the system is proposed shall grant the Code Enforcement Officer or his agent permission to enter on his land for these purposes.
- (8) The Code Enforcement Officer shall not issue an approval for a disposal system unless all pertinent site data has been submitted, verified and certified as required by this section, all permit fees have been paid, and the Code Enforcement Officer has determined that the alteration, repair or construction as proposed in the application complies with all specifications contained in this section.
- (9) The Code Enforcement Officer may, by written notice, order all further work stopped on any individual sewage disposal system which is being constructed or installed in violation of this section.

§ 90-51.1. Commercial composting operations. [Added 7-21-2005 by L.L. No. 1-2005]

Commercial composting operations shall be prohibited in the Town of Minden. This provision shall not be interpreted, administered or enforced in a manner that unreasonably restricts the use, manufacture and sale of compost in normal farming or other agricultural practices in the Town of Minden. Farms that compost to remove excess agricultural waste generated on-site, when off-farm material (e.g., leaves as a carbon source; bulking agents; manure for nutrient content; etc.) is only a minor component of the composting stream and is necessary to properly compost the farm operation's waste, may sell all of the compost generated. Farms that obtain material from off-site sources to compost for agricultural use on the property where the composting occurs may sell not more than 25% of the total compost produced.

§ 90-51.2. Low- and high-impact home occupations. [Added 2-20-2014 by L.L. No. 1-2014]**A. General standard for low- and high-impact home occupations.**

- (1) No home-based business shall generate significantly greater traffic volumes or increased traffic hazards than would normally be expected in a residential district.
- (2) The home-based business must be clearly incidental and subordinate to the residential use.
- (3) The home-based business shall be allowed to be conducted within the dwelling unit or an accessory structure on the parcel, as more particularly set forth in the definitions of low- and high-impact home occupations.
- (4) The residential character of the single-family dwelling or accessory building and the lot shall not be altered to accommodate a home-based business.
- (5) The equipment used by the home-based business and the operation of the home-based business shall:
 - (a) Not create any vibration, heat, glare, dust, odor, or smoke discernible at the property lines.
 - (b) Not generate noise exceeding 55 decibels at the property line from 8:00 a.m. to 6:00 p.m.
 - (c) Not generate any noise discernible by the human ear at the property line from 6:00 p.m. to 8:00 a.m.
 - (d) Not create electrical, magnetic or other interference off the premises.
 - (e) Not consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.
 - (f) Not use or store hazardous materials in excess of the quantities permitted in a residential structure.
- (6) No other business shall be permitted to share, let or sublet space for professional use.

B. Low-impact home occupations.

- (1) No external evidence of such use shall be permitted.
- (2) No more than 15% of floor area of the dwelling unit or 500 square feet of an accessory building may be used in connection with a low-impact occupation, whichever is lesser.
- (3) There shall be no exterior storage of materials to be used in conjunction with a low-impact home occupation. All storage used in conjunction with a low-impact home occupation must be stored within the structure and not be visible from the public way or adjacent properties.

- (4) There shall be no heavy earthmoving equipment, tractor trailers, or other similar specialized vehicles upon the property utilized for the low-impact home occupation.
- (5) Only the person or persons who occupy the dwelling and one additional person may be employed by the low-impact home occupation at any one time.

C. High-impact home occupations.

- (1) No more than 25% of the floor area of the dwelling unit or 1,499 square feet or less of an accessory building may be used in connection with a high-impact home occupation.
- (2) All storage of equipment, materials, goods or supplies used in conjunction with a high-impact home occupation must be stored within the structure and not visible from the public way or adjacent properties.
- (3) Only the person or persons who occupy the dwelling and four additional persons may be employed by the high-impact home occupation at any one time.
- (4) Adequate parking shall be provided for all high-impact home occupants, employees and customers so as not to cause parking congestion or a visual disturbance to the character of the neighborhood. The Planning Board may require all parking areas to be screened with fencing or vegetation.
- (5) One nonilluminated identification sign not more than six square feet shall be permitted.
- (6) All lighting, noise, sign and parking requirements of this chapter shall be met.
- (7) In order to ensure that a high-impact home occupation is consistent with the neighborhood in which it is located, the Planning Board may specify one or more of the following conditions:
 - (a) Hours of operation.
 - (b) Maximum number of customer/client visits that may occur in any one day.
 - (c) Maximum number of customers/clients that can be present at any one time.
 - (d) Limit retail sales to goods made and/or prepared on site.
 - (e) Additional screening to reduce visual or noise impacts upon neighbors.
 - (f) Other conditions as determined by the Planning Board.
- (8) Any high-impact home occupation that expands to exceed the definition and standards of this subsection shall require a site plan approval by the Planning Board prior to operation pursuant to Article VII (site plan review).

§ 90-51.3. Sawmill regulations. [Added 11-17-2016 by L.L. No. 4-2016]

- A. All sawmills shall require a special use permit and site plan review by the Planning Board.
- B. Hours of operation shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday and Saturday 7:00 a.m. to 12:00 noon. Operation of the sawmill business shall not occur on the following holidays: Memorial Day, Labor Day, July Fourth, Thanksgiving, Christmas and New Year's Day.
- C. Vehicular access to the sawmill shall be by means of an access drive at least 12 feet wide and the first 50 feet of which from the road along the drive must be paved. The rest of the drive beyond the first 50 feet can be a stone surface.
- D. All aspects of the sawmill operation (except access drives) shall be set back no less than 200 feet from the front and rear of the property and 100 feet from the side property lines and 500 feet from any residentially zoned and used property or church or school. The Planning Board may require a visual screen comprised of evergreen trees to be planted along any site boundary line that abuts one or more residential lots. The Planning Board shall have the discretion to require greater front, back and side setbacks of up to 500 feet and/or to require a berm or other appropriate noise barriers where circumstances require to prevent a disturbance to persons or farm animals on neighboring properties.
- E. All sawmill by-products shall be disposed of on a regular basis so as not to create a nuisance or hazard and shall in no event be allowed to accumulate longer than three months before being removed and properly disposed of. No storage of logs, lumber, sawdust, bark, scrap wood or equipment of any kind shall be permitted within any yard setback area at any time. Lumber/logs shall be piled with due regard to stability of piles and in no case higher than 20 feet.
- F. No sawmill activity or storage shall be within 100 feet from the edge of any stream or any wetland as defined by state or federal law.
- G. The minimum lot size for a sawmill shall be five acres with 400 feet of road frontage; provided, however, that in the event a residence is located on the premises, which is limited to being the residence of the owner/operator of the sawmill, then the minimum lot size shall be seven acres with 600 feet of road frontage.
- H. Timber and logs shall not be skidded across any roads or highways nor shall log skidders cross same as part of operations at anytime.
- I. At such times as the sawmill is operating the maximum noise level may not exceed 55 decibels at all property lines. Should complaints arise concerning noise levels, the Town CEO shall take noise readings at the property lines. Should noise levels exceed the 55 decibel level at any property line, the Town Planning Board may require sound mitigation measures as it deems appropriate which could include building insulation, vegetation, buffering along the property lines, equipment silencers, etc. If found in violation of the 55 decibel noise level, the owner/operator has 30 days to comply or a stop work order will be issued by the Town CEO.
- J. Sawmills shall be housed in the confines of a building.

- K. No burning of shavings, sawdust and refuse materials shall be permitted on the premises.
- L. These sawmill regulations apply to all operations involving the processing of timber not constituting a "timber operation," as defined in Section 301 subdivision 14 of the NYS Agriculture and Markets Law.

ARTICLE IX Off-Street Parking and Loading

§ 90-52. Automobile parking facilities.

- A. Where one or more motor or other vehicles recurrently parks by reason of the use and occupancy of the premises, there shall be provided on or in convenient connection therewith adequate garage or vehicular parking spaces for the number and in proportion to the size of the vehicles which so park, the minimum to be not less than 180 square feet per automobile, in addition to driveway and backing and turning space. The recurrent parking of any such vehicle shall be evidence of the failure to provide adequate and suitable garage or parking source on or in convenient connection with such premises.
- B. Parking requirements for certain uses are specified in Schedule B.⁵ For uses not specified, the Board of Appeals shall establish parking requirements after recommendation of the Planning Board.
- C. For any building having more than one use, parking shall be required for each use.

§ 90-53. Off-street loading facilities.

- A. Off-street loading facilities shall be provided for each commercial or industrial establishment hereafter erected or substantially altered and shall be so arranged as not to interfere with pedestrian or motor traffic on the public street or highway.
- B. Loading space requirements for certain uses are specified in Schedule B.⁶ For uses not specified, the Board of Appeals shall establish loading requirements, after recommendation of the Planning Board.
- C. Loading requirements apply to each separate occupancy and are exclusive of driveways, aisles and other necessary circulation areas.

ARTICLE X Nonconforming Uses

§ 90-54. Continuation of nonconforming uses.

The lawful use of any land or building existing at the time of adoption of this chapter may be continued although such use does not conform with the provisions of this chapter. Any such

5. Editor's Note: Schedule B is included as an attachment to this chapter.

6. Editor's Note: Schedule B is included as an attachment to this chapter.

building may be reconstructed or structurally altered and the nonconforming use thereby changed, provided the following conditions prevail.

§ 90-55. Nonconforming uses of buildings.

- A. Reconstruction or alteration. A nonconforming building may not be reconstructed or altered during its life to exceed 50% of its fair value, unless such building is changed from a nonconforming use to a conforming use as defined by this chapter, except that a mobile manufactured home which is a pre-existing nonconforming use may be replaced with a new or larger mobile manufactured home, provided that such exchange is made within 30 days, and the owner has obtained a building permit to make the exchange.
- B. Restoration. A building, nonconforming as to use, which has been damaged by fire or other causes to the extent of 75% of its fair value, and has not been repaired or reconstructed for the same nonconforming use within a period of 12 months, shall not be repaired or reconstructed except in conformance with the regulations of the district in which such building is located.
- C. Discontinuance. When a nonconforming use has been discontinued for a period of 12 months, any future use of such building shall conform with the regulation for the district in which it is located.
- D. Changes. A nonconforming use may not be changed to another nonconforming use under the provisions of this section.
- E. Completion of building. Any building lawfully under construction at the time of enactment of this chapter may be completed.

§ 90-56. Nonconforming use of land.

The nonconforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of adoption of this chapter. A nonconforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of adoption of this chapter. If a nonconforming use of land is discontinued for a period of 12 consecutive months, it shall not be renewed, and any subsequent use of the land shall conform to the regulations of the district in which the land is located.

**ARTICLE XI
Administration**

§ 90-57. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer designated by the Town Board. The Code Enforcement Officer shall in no case grant any building permit where the proposed erection, alteration, relocation or use would be in violation of any provision of this chapter. The Code Enforcement Officer shall make inspections of buildings or premises necessary to carry out his duties. No permit or certificate of occupancy required hereunder shall be issued by the Code Enforcement Officer except in compliance with the provisions of this chapter or as directed by the Zoning Board of Appeals under the provisions of Article XII.

§ 90-58. Building permit.

- A. No building shall hereafter be erected, relocated or altered as to outside dimensions or so as to permit a change in its use and no excavation for any building shall be begun unless and until a permit therefor has been issued by the Code Enforcement Officer.
- B. No such permit shall be issued until there has been filed with the Code Enforcement Officer a sketch or plot plan showing the actual dimensions and angles of the lot to be built upon, the exact size and location of the lot of the building or accessory buildings to be erected, relocated or altered and such other information of this chapter. Each application shall state the purpose for which the structure of land is to be used and a general description of the type of construction. A working drawing of any proposed building shall be filed with the application for a building permit.
- C. The Code Enforcement Officer shall act upon all applications for building permits within a reasonable time not to exceed 10 days, and shall, within such period, issue or refuse to issue such permits. Notice of refusal to issue any permit shall be given to the owner or to his authorized representative, in writing, and shall state the reason for said refusal. The fee for any such permit shall be determined by the Town Board from time to time.
- D. Permits will not be necessary for minor repairs, painting, plumbing, water wells and corncribs, provided they conform to the present use of the land or buildings, as provided for in this chapter. All swimming pools and new roofs shall require a building permit.
- E. A building permit shall be issued for a period of one year and may be renewed for two additional years. If the improvements described in the application for a building permit have not been completed within three years from the date that the permit is issued, the owner shall apply to the Zoning Board of Appeals to continue the permit in force.
- F. No building permit shall be issued for lots in an approved subdivision except as provided for in the subdivision regulations.⁷

§ 90-59. Certificate of occupancy.

- A. No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Code Enforcement Officer. Under such rules as may be established by the Zoning Board of Appeals, a temporary Certificate of Occupancy for not more than 30 days for a part of a building may be issued by the Code Enforcement Officer. For previously existing construction, the Code Enforcement Officer may, on request, issue such certificate if he determines that the use of the building in question meets the requirements of this chapter.
- B. A Certificate of Occupancy shall be issued only if the proposed use and construction of the building or land conforms to the provisions of this chapter and to the plot plan, purpose and description of which the permit was issued. The Code Enforcement Officer shall make or cause to have made an inspection of each building or lot for which a

7. Editor's Note: See Ch. 77, Subdivision of Land.

Certificate of Occupancy has been applied before issuing such certificate. Such inspection shall be made within 10 days from the date of application, Saturday, Sundays and legal holidays excepted.

- C. The Code Enforcement Officer shall deny a certificate of occupancy if any violation of the state or county health regulations is discovered. The issuance of a Certificate of Occupancy shall not be construed as a representation by the town that the premises comply with such health regulations, but solely that no violations have been found.

§ 90-60. Penalties for offenses.

- A. Any person, firm or corporation who or which commits an offense against, disobeys, neglects or refuses to comply with or resist the enforcement of any of the provisions of these regulations shall, upon conviction, be deemed guilty of a violation, punishable by a fine of \$350, or by imprisonment not exceeding 20 days, or by both such fine and imprisonment. Each week an offense is continued shall be deemed a separate violation of these regulations.
- B. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained; or any building, structure or land is used; or any land is divided into lots, blocks or sites in violation of this chapter, the Town Board or the Code Enforcement Officer may institute an action or proceeding in the Minden Town Court or in the Montgomery County Court to prevent such unlawful conduct; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about subject premises. In any such action by the Town Board or the Code Enforcement Officer, any person found to have violated this chapter shall be liable to the town.

ARTICLE XII
Zoning Board of Appeals

§ 90-61. Creation, appointment and organization.

A Zoning Board of Appeals is hereby created. Said Board shall consist of five members appointed by the Town Board. The Town Board shall also designate the Chairman. The Zoning Board of Appeals shall prescribe rules for the conduct of its affairs.

§ 90-62. Powers and duties.

The Zoning Board of Appeals shall have all the powers and duties prescribed as by statute and by this chapter, which are more particularly specified as follows:

- A. Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

B. Appeals for variances. The Zoning Board of Appeals shall hear requests for variances. Not all requests for variances need include a denial from the Zoning Enforcement Officer. New state laws passed in 1993 allow applicants with proposed subdivisions or site plans which lack minimum area, frontage or setback requirements to appeal directly to the Zoning Board of Appeals.

C. Area variances.

(1) Area variances may be granted where setback, frontage, lot size, density or yard requirements of this chapter cannot be reasonably met. In making decisions, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Zoning Board of Appeals shall also consider:

- (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance;
- (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) Whether the requested area variance is substantial;
- (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(2) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate and yet at the same time which will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

D. Use variance. Use variances may be granted by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulation. No use variance shall be granted by a Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The applicant shall demonstrate to the Zoning Board of Appeals that:

- (1) Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
- (2) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district of neighborhood;

- (3) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) That the alleged hardship has not been self-created.

E. Procedure.

- (1) All applications for variances shall be in writing on forms established by the Zoning Board of Appeals. They are available from the Code Enforcement Officer.
- (2) Every application shall refer to the specific provision of the law involved and establish the details of why the variance should be granted.
- (3) Upon receipt of the completed application, the Zoning Board of Appeals shall:
 - (a) Schedule a public hearing within 62 days;
 - (b) Arrange publication of notice of public hearing in the town's official newspaper;
 - (c) Notify the applicant of the date of the public hearing at least 15 days in advance of such hearing;
 - (d) Refer application to the County Planning Board as required by General Municipal Law § 239m, if required;
 - (e) Determine whether a Draft Environmental Impact Statement should be required.
- (4) The applicant shall notify by certified mail, return receipt required, all landowners within 500 feet of the applicant's parcel.
- (5) Within 62 days of the close of the public hearing, the Zoning Board of Appeals shall render a decision. If the matter was referred to the County Planning Board, a copy of the Zoning Board of Appeal's findings and decision must be sent to the County Planning Board.
- (6) Every decision of the Zoning Board of Appeals shall be by resolution, each of which will contain a full record of the findings of the Zoning Board of Appeals in the particular case. Each such resolution shall be filed in the office of the Town Clerk by case number under one or another of the following headings: Interpretations, Use Variances and Area Variances; together with all documents pertaining thereto. The Zoning Board of Appeals shall notify the Town Board of each variance granted under the provisions of this chapter.

ARTICLE XIII
Amendments

§ 90-63. Amendments; how initiated.

- A. The Town Board may, from time to time, on its own motion, amend, supplement, repeal or change the regulations or district boundaries established by this chapter.
- B. Whenever the owners of 50% or more of the frontage in any district or part thereof included in such change shall present a petition duly signed and acknowledged the Town Board requesting an amendment, supplement or change of the regulations prescribed for such district or part thereof, it shall be the duty of the Town Board to vote upon said petition within 90 days after the filing of the same by the petitioners with the Town Clerk.
- C. The Planning Board may, by resolution, propose an amendment to the Town Board suggesting a change or repeal of specific portions of the regulation. Within 90 days from the time such resolution is filed with the Town Clerk, it shall be the duty of the Town Board to vote on such proposed amendment.

§ 90-64. Referral of amendments to Town Planning Board.

All proposed amendments, supplements or changes originating by petition, or by motion of the Town Board, shall be referred to the Planning Board for a report and recommendation thereon. The Planning Board shall submit its report within 45 days after receiving referral. Failure of the Planning Board to report within the required time may be deemed to be approval of the proposed amendment.

§ 90-65. Hearing on proposed amendment.

Before any amendment, supplement or change in the regulations or district boundaries, there shall be a public notice and hearing thereon as provided by law. The notice of hearing shall be published in the official newspaper at least 10 days prior to the hearing. Such hearing may be held by the Town Board, by a committee of the Board, or by the Planning Board on request of the Town Board.

§ 90-66. Adoption of amendment.

After the public hearing, and referral to and report by the Planning Board, a majority vote of the members of the Town Board shall be required to amend this chapter except as described in § 90-67, Protest petition.

§ 90-67. Protest petition.

If a protest against a proposed amendment, supplement or change is presented to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of the land included in such proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly

opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of 3/4 of the Town Board.

ARTICLE XIV
Miscellaneous

§ 90-68. Periodic review of Zoning Law.

From time to time, at intervals of not more than three years, the Planning Board shall re-examine the provisions of this chapter and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or the general welfare.

§ 90-69. Interpretation of provisions.

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, morals, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules or regulations or laws, the more restrictive, or that imposing the higher standard, shall govern.



ZONING

90 Attachment 1

Town of Minden Zoning Schedule A

District	Permitted Principle Uses	Special Permitted Uses	Minimum Lot Size		Maximum Lot Coverage	Minimum Living Area	Building Height		Yard Dimensions (feet)			
			Area (feet)	Width (feet)			Stories	Feet	Front	Side		Rear
										One	Both	
A	Farm and accessory buildings and uses		****	****	****	****	****	****	40	25	50	50
	Picnic grove, fish and game club (private)		****	****	****	****	2.5	35	35	25	50	50
	Nursery		2 acres	200 Lf	25%	****	****	****	35	25	50	50
	1-family dwelling		2 acres	200 Lf	25%	720 sf	2.5	35	35	10	20	25
	Community park or playground		20,000 sf	100 Lf	25%	****	1	15	50	10	20	10
	Mobile manufactured home as part of farm operation		****	****	****	500 sf	1	15	35	10	20	25
	Accessory use and building		****	****	See § 90-35	****	2	35	35	10	20	10
	Home occupation		2 acres	200 Lf	25%	1,000 sf	2.5	35	35	10	20	25
	Mobile manufactured home		2 acres	200 Lf	25%	720 sf	1	15	35	10	20	25
		2-family dwelling	2 acres	200 Lf	25%	1,000 sf/unit	2.5	35	35	10	20	25
		Commercial recreation	25 acres	600 Lf	25%	****	2.5	35	100	100	200	100
		Bed-and-breakfast est.	2 acres	200 Lf	25%	1,000 sf	2.5	35	35	10	20	25
		Golf course or country club	75 acres	500 Lf	****	****	2.5	35	100	50	100	100
		Nursing, convalescent or home for aged	2 acres	200 Lf	25%	1,000 sf	2.5	35	35	25	50	50
		Public utility station with building	2 acres	200 Lf	25%	****	1	35	35	25	50	50
		Farm products plant	****	****	****	****	****	****	100	100	200	100
		Radio, TV transmitter, PWSF receiving tower with building	10,000 sf	100 Lf	25%	****	****	****	35	25	50	50
		Boarding or rooming house	2 acres	200 Lf	25%	1,200 sf	2.5	35	35	25	50	50
		Church	2 acres	200 Lf	30%	****	****	****	35	25	50	50
		Parish house or convent	2 acres	200 Lf	30%	1,000 sf	2.5	35	35	25	50	50
		Animal/veterinary hospital	2 acres	200 Lf	30%	****	1	30	35	25	50	50
		Public, parochial school or college	5.0 acres	500 Lf	30%	****	2	35	40	50	50	50
		Retail farm market										

MINDEN CODE

District	Permitted Principle Uses	Special Permitted Uses	Minimum Lot Size		Maximum Lot Coverage	Minimum Living Area	Building Height		Yard Dimensions (feet)			
			Area (feet)	Width (feet)			Stories	Feet	Front	Side		Rear
										One	Both	
R-1	1-family dwelling		2 acres	200 Lf	25%	720 sf	2.5	35	35	10	20	25
	Community park or playground		5 acres	200 Lf	****	****	2.5	15	50	10	20	25
	Accessory use and building		****	****	See § 90-35	****	2	35	35	10	20	10
	Home occupation		2 acres	200 Lf	25%	1,000 sf	2.5	35	35	10	20	25
		Mobile manufactured home park	6,000 sf/M.H.	600 Lf 70 per M.H.	25% per M.H.	720 sf per M.H.	1	15	100	50	100	50
		Nursing, convalescent or home for aged	2 acres	200 Lf	25%	1,000 sf	2.5	35	50	25	50	50
		Parish house or Convent	2 acres	200 Lf	25%	1,000 sf	2.5	35	50	25	50	50
		Launderette	2 acres	200 Lf	30%	****	1	35	50	25	50	50
		Retail store	2 acres	200 Lf	30%	****	1	35	50	25	50	50
		Townhouse	2 acres	200 Lf	30%	1,000 sf/unit	2.5	35	50	25	50	50
		2-family dwelling	2 acres	200 Lf	25%	1,000 sf/unit	2.5	35	35	10	20	25
		Multifamily dwelling	2 acres	200 Lf	25%	1,000 sf/unit	2.5	35	35	25	50	50
		Bed-and-breakfast est.	2 acres	200 Lf	25%	1,000 sf	2.5	35	50	10	20	25
		Farm and accessory use or building	****	****	****	****	****	****	50	25	50	50
		Public building	****	****	****	****	****	****	50	25	50	50
C - 1	Bed-and-breakfast establishment		1acre	150 Lf,	40%	1,000 sf	2.5	35	35	10	20	25
	Personal service shop		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Retail store		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Museum		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Custom work shop		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Radio, TV or household appliance sales or service		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Funeral home		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Antique shop		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Animal/veterinary hospital		1 acre	150 Lf	40%	****	****	****	35	10	20	25
	Feed, lumber, seed or fertilizer building		1 acre	150 Lf	40%	****	****	****	35	10	20	25
	Carwash		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Fire station or municipal building		****	****	****	****	****	****	35	10	20	25
	Cabinet, electrical, heating, plumbing or air-conditioner shop		1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Mobile manufactured home		2 acres	200 Lf	25%	720 sf	1	15	35	25	50	25
	Mobile manufactured home as part of farm operation		****	****	****	500 sf	1	15	35	10	20	25

ZONING

District	Permitted Principle Uses	Special Permitted Uses	Minimum Lot Size		Maximum Lot Coverage	Minimum Living Area	Building Height		Yard Dimensions (feet)				
			Area (feet)	Width (feet)			Stories	Feet	Front	Side		Rear	
										One	Both		
	Community park or playground		20,000 sf	100 Lf	30%	****	1	15	50	10	20	30	
	Retail bakery		1 acre	150 Lf	40%	****	1	30	35	10	20	25	
	Historic building or site		****	****	****	****	****	****	****	****	****	****	
	Laundry or dry-cleaning plant		1 acre	150 Lf	40%	****	2.5	35	35	10	20	25	
	Farm and accessory use or building		****	****	****	****	****	****	50	25	50	30	
	Salon		1 acre	150Lf	40%	****	1	30	35	10	20	25	
	Tavern		1 acre	150 Lf	40%	****	1	30	35	10	20	25	
	1-family dwelling		2 acres	200 Lf	25%	720 sf	2.5	35	35	25	50	25	
	Accessory use or building		****	****	See § 90-35	****	****	****	35	10	20	10	
	Home occupation		2 acres	200 Lf	25%	720 sf	2.5	35	35	25	50	25	
		Gasoline station		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Professional office, studio		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Bank		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Utility substation		10,000 w/o bldg	150 Lf	40%	****	1	30	35	10	20	25
		Hotel		****	****	40%	****	****	30	35	10	20	25
		Public garage		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Restaurant		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Industrial/manu- facturing		5 acres	500 Lf	40%	****	1	30	100	20	40	40
		Fuel sales and storage		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Automobile, boat, farm implement or mobile home sales or rental		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Indoor storage of non- liquid, nongaseous fuel		1 acre	150Lf	40%	****	1	30	35	10	20	25
		Bowling alley		1 acre	150 Lf	40%	****	1	35	35	10	20	25
		2-family dwelling		2 acres	200Lf	25%	1,000 sf/un	2.5	35	35	25	50	25
		Multifamily dwelling		2 acres	200 Lf	25%	1,000 sf/un	2.5	35	35	25	50	25

NOTES:

****Planning Board shall determine if applicable. If item is applicable, the exact measurement(s) shall be determined during site plan review.

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ZONING

90 Attachment 2

Town of Minden

Schedule B

Off-Street Parking and Loading

Parking Use	Spaces Required
1. Dwelling	2 spaces for each dwelling unit or 1 1/2 space per dwelling w/3+ units
2. Rooming house, tourist home, hotel, motel	1 space for each guest room
3. Administrative, professional, utility, governmental office or eleemosynary	1 space for each 400 square feet (sf) of floor space
4. Funeral home	10 spaces, plus space for all employee and resident personnel
5. Church	1 space for each 3 seating spaces in main assembly room
6. Elementary school	2 spaces for each classroom
7. High school	4 spaces for each classroom
8. Theater or other place of assembly	1 space for each 2 seating spaces, plus 1 for each employee
9. Hospital	1 space for each 3 beds, plus 1 for each staff member (max. shift)
10. Nursing or convalescent home	1 space for each 4 beds, plus 1 for each staff member (max. shift)
11. Retail store or bank	3 spaces for each 250 square feet of floor space devoted to customer use
12. Clubs or restaurants	1 space for each 2 customer seats, plus 1 for each employee based on maximum working shift
13. Bowling alley	5 spaces for each alley, plus 1 for each employee (max. shift)
14. Wholesale, storage, freight terminal or utility use	1 space for each 1,000 square feet of gross floor area
15. Industrial	1 space for each 2 employees for manufacturing use based on the maximum working shift
16. Home occupation	1 space for each client or patient
Off-Street Loading Use	Spaces Required
1. All commercial use	1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area
2. All industrial use	1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area

MINDEN CODE

- | | | |
|----|-------------|---|
| 3. | Institution | 1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area |
| 4. | Hospital | 1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area |
| 5. | Hotel | 1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area |



APPENDIX

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**DISPOSITION
LIST**

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Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Minden adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk. The last legislation reviewed for the original publication of the Code was Local Law No. 3-2000, adopted 10-18-2000. A complete listing, including disposition, of all legislation reviewed in conjunction with the original publication of the Code is on file in the office of the Town Clerk.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
L.L. No. 1-2001	4-19-2001	Adoption of Code	Ch. 1, Art. I
L.L. No. 1-2002	4-18-2002	Games of chance	Ch. 57
Res.	9-30-2004	Required contribution for elected officials who desire to participate in Teamster Health and Hospital Fund	NCM
Res.	10-8-2004	Provision of additional pension benefits of §§ 75-e, 75-g and 75-i of Retirement and Social Security Law	NCM
L.L. No. 1-2005	7-21-2005	Zoning amendment	Ch. 90
L.L. No. 1-2006	10-19-2006	Moratorium on installation of wind towers	NCM
Res. No. 20047-20	4-19-2007	Subdivision of land amendment	Ch. 77
L.L. No. 1-2007	4-19-2007	Moratorium on installation of wind towers	NCM
L.L. No. 1-2008	4-24-2008	Wind energy facilities	Ch. 87
L.L. No. 2-2008	5-15-2008	Outdoor furnaces	Ch. 66
L.L. No. 3-2008	10-16-2008	Exemption for Cold War veterans	Ch. 83, Art. IV
L.L. No. 4-2008	11-20-2008	Alternative veterans exemption amendment	Ch. 83, Art. I

Enactment	Adoption Date	Subject	Disposition
L.L. No. 1-2010	11-18-2010	Animals: dog licensing	Superseded by L.L. No. 2-2015
L.L. No. 1-2012	3-14-2012	Moratorium on horizontal and directional gas drilling and hydraulic fracturing	NCM
L.L. No. 2-2012	3-14-2012	Animals: control of dogs	Superseded by L.L. No. 2-2015
L.L. No. 3-2012	6-21-2012	Assessor	Ch. 5
L.L. No. 4-2012	7-26-2012	Planning Board and Zoning Board of Appeals: alternate members	Ch. 20, Art. I
L.L. No. 1-2013	3-21-2013	Taxation: grievance day for real property assessment review	Ch. 83, Art. V
L.L. No. 1-2014	2-20-2014	Zoning amendment	Ch. 90
L.L. No. 2-2014	3-20-2014	Moratorium extension	NCM
L.L. No. 3-2014	9-18-2014	Streets and sidewalks: notification of defects	Ch. 75, Art. I
L.L. No. 4-2014	11-20-2014	Tax levy limit override	NCM
L.L. No. 1-2015	2-19-2015	Streets and sidewalks: road preservation	Ch. 75, Art. II
L.L. No. 2-2015	3-19-2015	Animals: dog control and licensing	Ch. 40, Part 1
L.L. No. 1-2016	3-24-2016	Taxation: real property tax exemption	Ch. 83, Art. VI
L.L. No. 2-2016	6-16-2016	Officers and employees: indemnification and defense of employees	Ch. 17, Art. II
L.L. No. 3-2016	4-21-2016	Officers and employees: Town Supervisor	Ch. 17, Art. III
L.L. No. 4-2016	11-17-2016	Zoning amendment	Ch. 90

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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 MINDEN

FILED
STATE RECORDS

MAY 31 2017

DEPARTMENT OF STATE

Local Law No. 1 of the year 2017

A local law regulating solar facilities in the Town of Minden by adding Section 90-52.24
(Insert Title)
to the Code of the Town of Minden

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

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

of Minden as follows:

Section 1. Section 90-52.24 is added to the Minden Town Code as follows:

See Attached

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

§ 90-52.24 Solar Facilities

A. Purpose and Intent

- (1) The Town of Minden recognizes that solar energy is a clean, readily available, and renewable energy source. It further recognizes that energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.
- (2) The Town of Minden has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Town, its residents, and its businesses. This section aims to accommodate solar energy systems while balancing the potential impact on neighbors while preserving the rights of property owners to install solar energy systems. This section is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to be consistent with the Town of Minden Comprehensive Plan; to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the environment, and on aesthetic qualities and character of the Town.
- (3) Intent; greater restrictions to prevail. It is not intended by this section to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this section imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this section shall control.

B. Applicability

- (1) The requirements of this section shall apply to all solar energy system and equipment installations modified or installed after the effective date of this local law.
- (2) Solar energy system installations for which a valid building permit has been issued, or, if no building permit is presently required, for which installation has commenced before the effective date of this local law shall not be required to meet the requirements of this local law.
- (3) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the State Building Code.

C. Requirements for Small Scale Solar Energy Systems

- (1) No small scale solar energy system shall be installed or operated in the Town except in compliance with this section.
- (2) The installation of a solar collector or panel, whether attached to the main structure, an accessory structure, or as a detached, free standing or ground mounted solar collector is permitted as an accessory structure, shall meet all requirements of this sub-section (C), and shall require a building permit.
- (3) All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- (4) Setbacks for Solar Energy Systems: Solar collectors or panels shall be set back a minimum of 25 feet on any side and rear lot. No solar collector is allowed to be ground mounted in the required front yard setback except in the following circumstance:

- (a) In the case where a lot's width and road frontage is greater than the depth, and where it is not feasible to meet all setbacks to place ground mounted solar panels in the rear, ground mounted solar panels may be placed in the front yard setback placed to the side of the principal structure. No ground mounted solar panels may be placed directly in front of the home or principal structure.
- (5) Height limits for solar collectors mounted on buildings shall be five feet above the level of the permitted building height. The height of ground mounted or freestanding solar collectors height shall not exceed 20 feet when oriented at maximum tilt.
- (6) All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
- (7) Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this section. However, all applicable building codes shall be met and necessary permits obtained. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered exempt or not.
- (8) In order to ensure the safety of firefighter and other emergency responders, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and pathways to provide space on the roof for walking around all solar collectors and panels.
- (9) Free standing or ground mounted solar collectors are permitted as accessory structures in all zoning districts of the Town subject to the following additional conditions:
 - (a) In the Agricultural and Residential districts, a lot must have a minimum size of 2 acres in order for a ground-mounted or free standing solar system to be permitted.
 - (b) Screening shall be provided when practicable from adjoining lots through the use of architectural features, earth berms, landscaping, fencing, or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with normal operation of the solar collectors.
 - (c) The total surface areas of all ground mounted and freestanding solar collectors shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, not including patios and decks.

D. Solar Farms/Utility-Scale Solar Energy Systems

(1) Applicability

- (a) Any utility-scale solar energy system erected, constructed, modified, or operated in the Town of Minden after the effective date of this local law shall be in compliance with this Section. Subsection D is applicable to utility-scale solar energy systems and shall not apply to small-scale solar energy systems, as defined herein.

- (b) Utility-scale solar energy systems are allowed with a special use permit and site plan review by the Planning Board only in the Agricultural District. Such systems are prohibited from all other zoning districts in the Town of Minden.
- (c) In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this section. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.

(2) Applications, Permits and Approvals Required and Applicable Zoning Districts

- (a) All applications for utility-scale solar energy systems shall be accompanied by an application for special use permit and site plan review, and all applicable fees as may be established by the Town Board. Both site plan and special use permit reviews and approvals are required. The Planning Board shall however, concurrently review the site plan and special use permit applications. All applications shall include the name and contact information for both the landowner(s) of the parcel where the project is proposed and the solar facility operators.
- (b) All applications for utility-scale solar energy systems shall include the following:
 - (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of site plan approval.
 - (2) An electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices identified.
 - (3) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
 - (4) Plan for clearing and/or grading of the site. The clearing and grading plan shall also include methods to stockpile, reduce erosion of, and reuse all top soil from the site.
 - (5) A stormwater pollution prevention plan as per NYS DEC requirements to detail stormwater runoff management and erosion control plans for the site.
 - (6) Documentation of utility notification, including an electric service order number.
 - (7) Decommissioning plan and description of financial surety that satisfies the Town that all required improvements shall be made for utility-scale systems only. For all utility-scale solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value.

- (8) The Town shall require any applicant to pay all associated costs for any application review, including but not limited to engineering, legal, environmental, planning, and the review required under SEQRA to the Town Clerk. When the Planning Board determines that a review will require engineering, legal, environmental, or planning costs, they shall provide an estimate to the applicant. Subsequently, such payment shall be made prior to commencement of any further Planning Board review.
- (9) Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specifications and photos of the proposed solar energy system, solar collectors, and all other components.
- (10) Part I of the Full Environmental Assessment Form filled out.
- (11) Details of the proposed noise that may be generated by inverter fans. The Planning Board shall require a noise analysis to determine potential adverse noise impacts.

(3) General Provisions

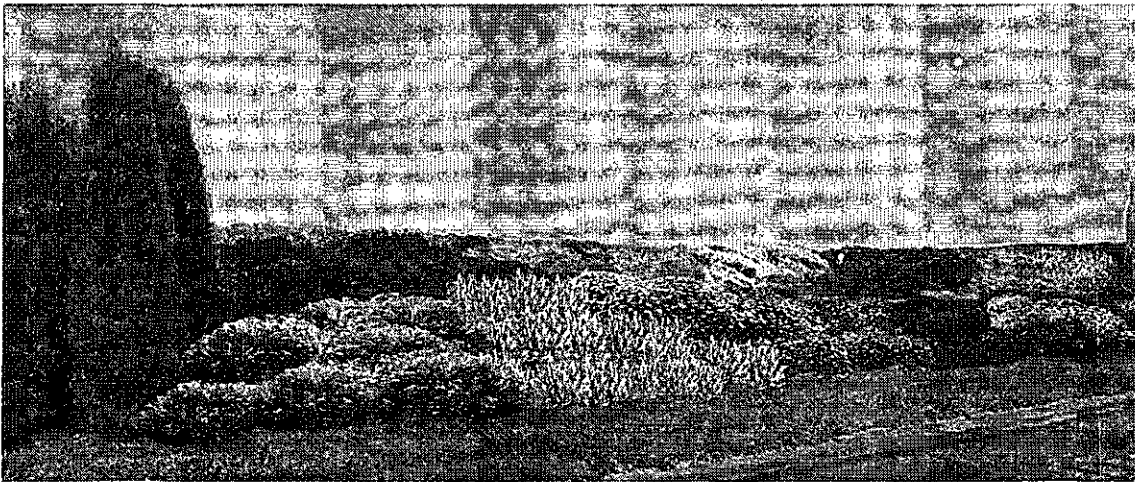
All applications for utility-scale solar energy systems shall be in accordance with the following:

- (a) All utility-scale solar energy systems shall adhere to all applicable Town of Minden building, plumbing, electrical, and fire codes.
- (b) A minimum parcel size of 20 acres is required for utility-scale solar energy systems.
- (c) Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Minden or other federal or state regulatory agencies. Applicants shall use the adopted Town of Minden Comprehensive Plan, showing sensitive environmental features along with other site information to identify and describe how the proposed utility scale solar energy system shall avoid or mitigate adverse impacts to these resources. Lands which have the highest ecological values as evidenced by large, contiguous areas of forest, undisturbed drainage areas, wetlands, or NYS DEC identified critical habitats or rare plant and animal populations shall be avoided.
- (d) There shall be a minimum 100 foot buffer between any component of the utility-scale solar energy system and the parcel boundary line. The Planning Board is authorized to increase the width of this buffer after analysis of site conditions and adjacent land uses.
- (e) Any site containing a utility-scale solar energy system shall be enclosed by perimeter fencing at a height of 8 ½ feet to restrict unauthorized access.
- (f) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
- (g) Previously cleared or disturbed areas are preferred locations for solar panel arrays. The clearing of additional lands to accommodate a proposed utility-scale solar facility may be permitted, provided the percentage of newly cleared land on any parcel does not exceed 30% of the existing woodlands on that parcel.
- (h) Solar arrays and agriculture. In accordance with the Comprehensive Plan, the Town of Minden does not support conversion of productive farmland to support grid-supply facilities. When proposed on an active farm located within the New York State Certified Agricultural District in Minden, a utility-scale solar energy system may occupy up to 20% of

any farmed parcel but in no case shall exceed 10 acres. Arrays shall be located on a parcel in such a manner as to avoid, to the maximum extent feasible, soils classified as prime farmland by the USDA, NYS or NRCS.

- (i) Native grasses and vegetation shall be maintained below the arrays.
- (j) The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid or minimize visual impacts as viewed from:
 - (1) Publicly dedicated roads and highways, including Route 5S, 163, 80 and I-90;
 - (2) Existing residential dwellings located on contiguous parcels;
- (k) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of fully screening the site, shall be provided (See example illustration, below).

Figure 1: Example of a landscaped berm designed to fully screen a utility-scale solar energy facility.



- (l) The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- (m) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color to aid in blending the facility into the existing environment.
- (n) All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.

- (o) Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (p) Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations. The manufacturers or installer's identification, contact information, and appropriate warning signage shall be posted at the site and clearly visible.
- (q) The average height of the solar panel arrays shall not exceed fifteen feet.
- (r) Due to the need to keep the solar skyspace for solar energy systems free from obstructions, the Planning Board may recommend modifying the landscaping requirements on an adjacent parcel when it is subject to a site plan or special use permit request to ensure that any landscaping proposed there is low-growth vegetation that will not obstruct the solar skyspace at mature height.
- (s) Following construction of a large-scale or utility-scale ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
- (t) Special use permits granted for utility-scale solar energy systems shall be assignable or transferable to future landowners of that system on the approved parcel so long as they are in full compliance with this section and all conditions, and the Code Enforcement Officer is notified of the property transfer at least 15 days prior thereto.
- (u) Any post-construction changes or alterations to the solar energy system shall be done by amendment to the special use permit only and subject to the requirements of this article.
- (v) After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

E. Abandonment or Decommissioning of Utility-Scale Systems

- (1) All applications for a utility-scale solar energy facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the utility-scale solar energy facility or structure. Prior to issuance of a building permit, the owner or operator of the facility or structure shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost, as determined by the engineer retained by the Town, to ensure removal of the facility or structure in accordance with the decommissioning plan described below. The form of the guarantee must be reviewed and approved by the consulting Engineer and Town Attorney, and the guarantee must remain in effect until the system is removed. Review of the guarantee by the consulting Engineer and Town Attorney shall be paid from an escrow established by the applicant. Prior to removal of a utility-scale solar energy facility or structure, a demolition permit for removal activities shall be obtained from the Town of Minden.
- (2) If the applicant ceases operation of the utility-scale solar energy facility or structure for a period of 18 months, or begins but does not complete construction of the project within 18 months after receiving final site plan approval, the applicant will submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without delay, including but not limited to the following:

- (a) Removal of all aboveground and belowground equipment, structures and foundations including but not limited to ground anchors, cables, wiring, concrete foundations, switchyards, control houses, fencing, and inverters.
 - (b) Restoration of the-surface grade and top soil after removal of equipment. Compacted portions shall be decompacted and excavations shall be backfilled to restore the site.
 - (c) Revegetation of restored top soil areas with native seed mixes, excluding any invasive species.
 - (d) The plan shall include a time frame for the completion of site restoration work.
- (3) In the event that construction of the utility-scale solar energy facility or structure has been started but is not completed and functioning within 18 months of the issuance of the final site plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of notification by the Town.
- (4) Upon cessation of activity of a fully constructed utility-scale solar energy facility or structure for a period of one year, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator shall either restore operation equal to at least 80% of approved capacity, or implement the decommissioning plan.
- (5) If the owner and/or operator fails to fully implement the decommissioning plan within the 180-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.
- (6) The Planning Board is authorized to seek and use legal, engineering, planning, or other professional assistance for the review of any utility-scale solar energy facility. All costs incurred related to retention of any such assistance shall be paid in full by the applicant.

E. Definitions

BUILDING-MOUNTED SOLAR ENERGY SYSTEM- A solar energy system that is affixed to the roof or side(s) of a building or other structure either directly or by means of support structures or other mounting devices. Solar energy systems constructed over a parking lot are considered building-mounted solar energy systems.

GROUND-MOUNTED SOLAR ENERGY SYSTEM- A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices and that is not attached or affixed to an existing structure. Pole mounted solar energy systems shall be considered ground-mounted solar energy systems for the purposes of this local law.

LESSEE -- A landowner who has a legally binding contractual lease with the Owner of a Solar Facility.

NET-METERING -- a billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

OPERATOR OF SOLAR FACILITY -- A person, corporation or other entity that manages, maintains, and operates a utility-scale solar facility on a day to day basis. An operator of a solar facility may also be the owner of such facility.

OWNER OF SOLAR FACILITY -- A person, corporation, or other entity that owns a utility-scale solar facility.

REFLECTOR, SOLAR- A device for which the sole purpose is to increase the solar radiation received by a solar collector.

SOLAR ACCESS -- Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun so as to permit the use of a solar energy system on individual properties.

SOLAR COLLECTOR- A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.

SOLAR ENERGY SYSTEM - A complete system intended for the collection, inversion, storage; and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, storage, maintenance and/ or other accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical structures.

SOLAR ENERGY SYSTEM, SMALL-SCALE - Any solar energy system that cumulatively on a lot meets all of the following provisions:

- (a) Is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site.

- (b) Produce up to ten kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings beyond the lot. Small-scale solar energy systems located on a farm operation (as per AML §301(11) definition of that term) and located in a New York State Agricultural District can produce up to 110% of the farm's needs as per the Department of Agriculture and Markets guidance document.

SOLAR PANEL -- a device for the direct conversion of solar energy into electricity.

SOLAR SKYSPACE- The space between a solar collector and the sun through which solar radiation passes.

SOLAR THERMAL SYSTEM – A system that directly heats water or other liquid using sunlight.

UTILITY-SCALE SOLAR ENERGY SYSTEM OR SOLAR FARM- Energy generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, designed and intended to supply energy solely into a utility grid for sale to the general public.

Section 2. 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.

Section 3. Repealer

This Local Law shall supersede all prior local laws, ordinances, rules and regulations inconsistent with it and any such prior local laws, ordinances, rules and regulations shall be, upon the effective date of this local law, null and void.

Section 4. Effective date

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

Section 5. Numerical/Lettering Designations

The chapter designations and numerical/lettering designations of the section and article(s) included in the Local Law shall be delegated to the discretion of General Code Publishers, which may renumber the chapter, sections and Article(s) included in this local law as necessary to accommodate incorporation of this local law in the Code of the Town of Minden.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2017 of the ~~(County)(City)~~(Town)(Village) of Town of Minden was duly passed by the Minden Town Board on May 22 2017, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

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

3. (Final adoption by referendum.)

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

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

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

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

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

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

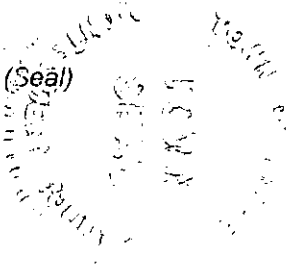

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified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

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

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

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

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



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

Date: May 22, 2017