

# Town of Tinmouth

## Zoning Regulations

Adopted June 21, 1977

Amended 1978, 1980, 1983, 1990, 1992, 1994, 2003, 2004

This amendment adopted October 13, 2005

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# Article I: Enactment and Objectives

## Section 101 - Enactment

In accordance with the Vermont Planning and Development Act, hereinafter referred to as the "Act", 24 V.S.A. Chapter 117, there are hereby established Zoning Regulations for the Town of Tinmouth which shall be known and cited as the "Town of Tinmouth Zoning Regulations".

## Section 102 - Objectives

1. To implement the policies of the duly adopted Town Plan for Tinmouth, Vermont.
2. To preserve the rural character of Tinmouth.
3. To maintain sustainable agriculture that minimizes impact on soil, water, and air quality as the economic base.
4. To protect and preserve scenic and historic features.
5. To provide for the conservation of natural resources, the protection of fragile and wildlife areas, and the preservation of open spaces.
6. To allot sufficient space in appropriate locations for agricultural, residential, recreational, and commercial development in order to meet the needs of the town.
7. To prohibit incompatible and uncoordinated development activity.
8. To allow for future growth to occur in a way which will not place an undue burden on the town to provide community services and facilities.
9. To assure that basic needs of health, safety, education, and housing will be met and maintained at satisfying levels in accordance with population growth.
10. To require that public utilities be located in such a way that they will not have an undue or adverse effect on the scenic quality and land values of the town.
11. To require that town highways permit safe and efficient movement of vehicles through the town while maintaining the rural character of Tinmouth.

# Article II: Establishment of Zoning Districts and Zoning Map

## Section 201 - Establishment of Zoning Districts

The Town of Tinmouth hereby establishes the following four (4) Zoning Districts and two (1) Overlay Zoning Districts:

- Protection
- Conservation
- Rural Residential
- Lakeshore
- Agricultural Overlay
- Flood Hazard Overlay

The permitted and conditional uses in each district are as specified in Article III: Table of Uses.

The minimum lot sizes, set back requirements, lot frontage requirements, and height limitations for each district are as specified in Article V: Lot Size, Setbacks, Yards.

### A. Protection District

1. Description: Protection areas contain lands that are extremely sensitive to development or which are critical for ensuring public health in the community. Areas of high elevation, significant wetlands, and the Tinmouth Gulf are included.
2. Purpose: To ensure for the long-term preservation and sustainability of the land and community in Tinmouth and to promote very low impact recreation.

### B. Conservation District

1. Description: Conservation areas contain lands that are sensitive to development. These include productive forests, steep slopes (often with shallow soils), high elevations, wetlands, stream banks and wildlife corridors, as well as areas of scenic, ecological, cultural, or historic significance.
2. Purpose: To preserve the physical, natural, and scenic characteristics of lands in the district and promote its use for low-impact recreation.
3. Agricultural Overlay Areas: Some land within this district is within the Agricultural Overlay District. Please examine the Official Zoning Map and see Section E below.

### C. Rural Residential District

1. Description: The Rural Residential District contains areas throughout the town historically centered on agricultural development. Homes should continue to be located on suitable land and compatibly related to a pattern of open fields and woodland.
2. Purpose: To preserve a traditional rural development pattern while accommodating the demand for new rural housing with minimal economic and environmental impacts. Development shall be located on sites which preserve open space, forested areas, and natural resource areas.
3. Agricultural Overlay Areas: Some land within this district is within the Agricultural Overlay District. Please examine the Official Zoning Map and see Section E below.

### D. Lakeshore District

1. Description: The Lake Shore District consists of all land between the normal mean watermark of Tinmouth Pond and a line 500 feet from such mean water mark. The area is characterized by a mixture of seasonal and permanent homes.

2. Purpose: The Lake Shore District shall protect Chipman Lake (Tinmouth Pond) from uses and settlement which would cause excessive erosion, prohibit public access, or significantly reduce scenic qualities or purity of the water.

#### E. Agricultural Overlay District

1. Description: The Agricultural Overlay District contains land areas presently used for agricultural purposes or containing agriculturally-friendly soil associations and slopes with the greatest agricultural resource value in the community.
2. Purpose: To retain large tracts of undeveloped, open land in areas identified as having a high resource value for agriculture. This Overlay District will preserve open space and prevent the fragmentation of land into parcels too small to farm .

#### F. Flood Hazard Overlay District

1. Description: The Flood Hazard Overlay District contains land areas identified as areas of special flood hazard on National Flood Insurance Program maps for Tinmouth. These maps are adopted by reference and declared to be a part of this Regulation.
2. Purpose: To promote the public health, safety and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in areas of special flood hazard, to maintain the wise use of agricultural land in flood-prone areas, and to minimize losses due to flooding by:
  - a. Restricting or prohibiting uses that are dangerous to health, safety or property in times of flood or cause excessive increase in flood heights or velocities;
  - b. Requiring that uses vulnerable to floods, including public facilities that serve such uses, be protected at the time of initial construction, against flood damage;
  - c. Protecting individuals from buying lands that are unsuitable for their intended purposes because of flood hazard.

### **Section 202 – Zoning Map**

The location and boundaries of Zoning Districts are established as shown on the Official Zoning Map which is hereby made a part of these zoning regulations. No changes shall be made to the Official Zoning Map except in accordance with the procedures for amending zoning regulations.

Regardless of the existence of copies of the Official Zoning Map which may periodically be made or published, the Official Zoning Map shall be that located in the Town Offices and shall be the final authority as to the current zoning status of land and water areas.

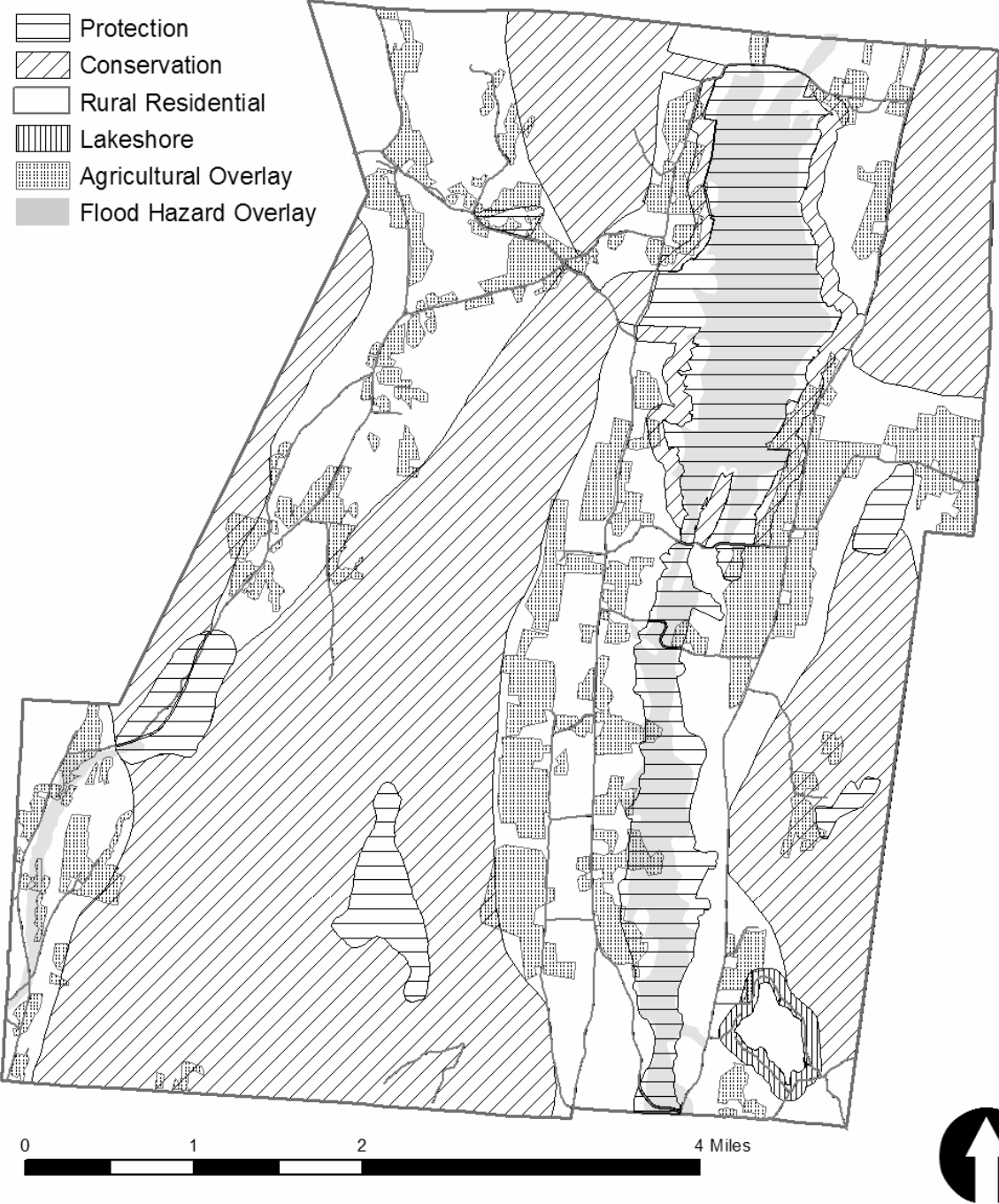
Maps included in the Tinmouth Town Plan are incorporated here by reference.

### **Section 203 - Interpretation of Zoning District Boundaries**

If uncertainty exists with respect to the boundary of any Zoning District on the Zoning Map, the Zoning Administrator, after consultation with the Planning Commission, shall determine the location of such boundary. The following shall serve as determining guidelines:

1. Boundaries which approximately follow the center lines of roads, streams, and transportation and utility rights-of-way shall be construed to follow such center lines;
2. Boundaries which approximately follow lot lines shall be construed to follow such lot lines;
3. Boundaries which follow shorelines shall be construed to follow the low mean water level;
4. Boundaries which are parallel to or extensions of features in (1) through (3) above shall be so construed.

# Tinmouth Zoning Map 2005



## Article III: Table of Uses

All uses are subject to Article V; Non-residential uses are subject to Article VIII; Conditional uses are subject to Article IV.  
 ANY USES NOT SPECIFICALLY ALLOWED (A), PERMITTED (P), OR CONDITIONAL (C) ARE PROHIBITED

USE	Rural Residential	Conservation	Lakeshore	Protection	Ag. Overlay See Section 408	FH Overlay See Footnote below	Notes
Accessory Apartment	P	P	P		P		See Definition
Accessory Uses and Buildings	P	P	P		C		See Section 908
Agriculture	A	A	A	A	A	P	See Section 918
Bed and Breakfast	P	P	P		C		See Definition
Boat Rental Facility			P				
Boathouse, Private			P				
Church, convent, cemetery, parish house	C	C			C		See Section 406
Commercial Spring Water	C	C					
Contractor's Storage Yard	P	P	P		C		See Definition
Convenience Store	P	P	P		C		See Definition
With Small Gas Station	C	C	C		C		See Definition
Community Center	P	P	P		C		
Day Care – six or fewer full time kids	P	P	P		P		See Section 916
– six to ten full time kids	P	P	P		P		See Section 916
Dwelling – Single Family	P	P	P		C		
– Two Family	P	P	C		C		
– Multi Family (in PRD only)	P	P			C		See Article VII
Educational Camp	P	P	P		C		See Definition
Educational Institutions & Schools	C	C			C		See Section 406
Fire Station	P	P	P		C		
Food Processing & Distribution	C	C	C		C		See Small Industry
Forestry	A	A	A		A	P	See Section 918
Game Bird Preserve	C	C			C		
Galleries, Art	P	P	P		C		
Group / Residential Care Home	P	P	P		P		See Section 915
Home Occupations	P	P	P		P		See Section 913
Hunting Camp	P	P			C		See Definition
Library	P	P			C		
Mobile Home Park	C						See Section 409
Municipal Offices	P	P			C		
Museums	P	P	P		C		
Outdoor Lighting – residential	A	A	A		A	P	Sec. 909 & 918
– non-residential	P	P	P		P		See Section 909
– Over 2,000' elevation	C	C	C		C		See Section 909
Parks, Municipal	P	P	P		C	P	See Section 918
Post Office	P	P	P		C		
Planned Residential Developments	P	P			P		See Article VII

USE	Rural Residential	Conservation	Lakeshore	Protection	Ag. Overlay See Section 408	FH Overlay See Footnote below	Notes
Plant Nurseries	P	P	P		C		
Recreation Areas, Commercial	P	P	P		C		See Definition
Recreation Areas, Public	P	P	P		C	P	See Def, Sec 918
Restaurant	P	P	P		C		See Definition
Sand and Gravel Pits	C	C			C		See Section 404
Small Industry	C	C			C		See Section 403
Small Professional Office	C	C			C		See Definition
Special Public Uses	C						See Section 406
Telecommunications Facilities	C	C			C		See Section 410
Temporary Uses and Structures	P	P	P	P	P		See Section 911
Windmills	C	C			C		See Section 405

Footnote on Flood Hazard Overlay Zone: With the exception of those uses listed as permitted in this column, all other uses listed as (P) or (C) in the underlying district are Conditional in the Flood Hazard Overlay (see Section 411).

## **Article IV: Uses Permitted Subject to Conditions**

A zoning permit shall be issued by the Zoning Administrator for any use or structure which requires conditional use approval only after the Board of Adjustment grants such approval. The Board shall consider the appropriate conditions of Sections 401 through 409. One-family and two-family dwellings or PRDs approved as part of lot created following the adoption of the Tinmouth Subdivision Regulations, amended March 4, 2003, are exempted.

### **Section 401 - General Considerations**

- A. All structures, parking and loading areas, and accesses shall be located and designed to:
  - 1. Minimize natural resource and aesthetic impacts of the development. Designs which retain the maximum meadowland for potential agricultural use and maximum land of scenic value shall be given favorable consideration.
- B. The proposed development shall not adversely affect:
  - 1. The capacity of existing or planned community facilities, including the Tinmouth grade school, the town offices, the fire department, and any public water supply or sewage disposal systems;
  - 2. Traffic on highways in the vicinity;
  - 3. The potential for renewable energy resources on affected or adjacent properties
  - 4. The safety and efficiency of pedestrian circulation. Walkways shall be maximized.
- C. The proposed development shall be landscaped or screened to ensure compatibility with adjoining areas. In particular, the Board of Adjustment may require structures, parking and loading areas, or accesses to be screened or landscaped according to the following criteria:
  - 1. Visibility of areas from roads and/or adjoining properties.
  - 2. The need to screen parking areas from roads and adjacent properties.
  - 3. Proximity of lots used for residential purposes.All landscaping and screening shall be completed and maintained in accordance with the conditional use permit as approved by the Board of Adjustment. Any dead or diseased planting shall be replaced as soon as seasonally possible.
- D. Parking and loading facilities shall be adequate with respect to on-site circulation, parking, loading, and emergency vehicle access. Particular consideration shall be given to the effect of noise, glare, and odors on adjoining properties and to the general aesthetics of the design.
- E. The applicant may be required to provide a suitable performance bond or other form of security to guarantee the performance and completion of all planting required.
- F. In granting conditional use approval, the Board may attach such reasonable conditions in addition to those outlined, as it deems necessary.

### **Section 402 - Applications for Conditional Use**

All uses requiring Conditional Use approval shall submit the following:

- A. Eight (8) sets of a map and plan to the Zoning Administrator. The documents shall include the following:
  - 1. Name and address of the owner of record of this and adjoining lands; name and address of applicant - if different than owner; name and address of person or firm preparing the plan; written and drawn description of the property giving location; scale of map, north point, and date.

2. Map of the property drawn to scale showing existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, land use and deed restrictions, zoning classification, existing surface waters (brooks, ponds, etc.), if any, and the location of proposed structures with distance from lot lines indicated.
  3. Scale Map showing proposed structure(s), locations and land use areas; streets, access points, driveways, traffic circulation, parking and loading spaces and pedestrian walks; utilities both existing and proposed; water wells and sewage treatment facilities
  4. Landscaping plans, noting all changes to the pre-existing landscape, including site grading, planting design, screening or fencing, detailed specifications of planting and landscaping materials to be used; existing and proposed above ground equipment such as propane tanks, transformers, etc.
  5. Construction sequence and anticipated time schedule for the completion of each phase for buildings, parking spaces and landscaped areas of the entire development.
  6. The location and size of proposed signs.
  7. Certification that the applicant has notified all adjoining property owners of the application.
- B. Any of the above information can be waived at the discretion of the Board of Adjustment. A request for a waiver shall be submitted to the Board of Adjustment and shall specify which portions are requested for waiver. The applicant shall include a preliminary plan providing sufficient information upon which the Board of Adjustment can make a decision. The Board of Adjustment may request additional information.
- A request for a waiver shall not be considered as submission for purposes of timing requirements relating to action on applications.
- C. The Zoning Administrator shall check to see whether all required information has been submitted and the fee paid and, if so, shall submit the completed application to the Board of Adjustment. Incomplete applications shall be returned to the applicant.

### **Section 403 - Small Industry**

In addition to the requirements set forth in Sections 401 and 402, the Board of Adjustment shall consider the following:

1. The development or use must not destroy or significantly alter wetlands or natural areas identified in the Comprehensive Town Plan or by the State of Vermont.
2. No noise which exceeds 70dB(A) at the property line or which represents a significant increase in the noise levels in the vicinity of the development so as to be incompatible with the reasonable use of the surrounding area shall be permitted.
3. Fly ash, dust, fumes, vapors, gases and other forms of air pollution. No emission shall be permitted which can cause any damage to health, to animals, vegetation or other forms of property or which can cause excessive soiling, at any point on the property of others.
4. Odors. No emission of detectable, objectionable odor beyond the property line of a premise shall be discharged, caused, allowed or permitted.
5. Fire, Explosive or Safety Hazard. No fire, explosive or safety hazard shall be permitted which significantly endangers other property owners or which results in a significantly increased burden on Municipal facilities.

6. Storage of Flammable Liquids. - The storage of any highly flammable liquid above ground with a total capacity greater than 550 gallons shall be prohibited within 500 feet' of the nearest lot line and must conform with the State Fire Code regarding the storage of flammable liquids.
7. Hazardous Materials. All generation, handling, and disposal of hazardous materials shall be in compliance with Chapter 6, Subchapter VI of the Environmental Protection Regulations adopted by the Vermont Agency of Environmental Conservation. The storage, handling and disposal of nuclear and radioactive waste shall comply with Title 10, Chapter 157, VSA and 10 CFR.
8. Adequate space for loading and unloading must be provided within the boundaries of the lot. At no time shall any part of a truck or van be allowed to extend onto the traveled portion of a public road while the truck or van is being loaded or unloaded.
9. No outdoor storage of materials, equipment, or products of the industry shall occur within the lot setbacks and required yards.
10. Hours of operation – The Board of Adjustment may set hours of operation for an approved business.

#### **Section 404 – Sand and Gravel Pits**

In addition to the requirements set forth in Sections 401 and 402, the Board of Adjustment shall consider the following:

1. All surface drainage affected by excavation operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, road, or private property. All provisions to control natural drainage shall meet with the approval of the Zoning Administrator.
2. No excavating or stock piling of materials shall be located within 75 feet of the nearest property line or 300 feet of the nearest dwelling.
3. No power-activated sorting machinery or equipment shall be located within 75 feet of the nearest property line or 300 feet of the nearest dwelling.
4. No blasting or crushing shall be permitted.
5. Stripping of top soil for sale or for use on other premises, except as may be incidental to a construction project or sand or gravel operation on the same premises, shall be prohibited.
6. No sand or gravel pit shall be located in a wetland area as designated on the National Wetlands Inventory Map. Said map is incorporated herein by reference.
7. Hours of operation shall be limited to 8:00 am - 5:00 pm, Monday through Friday.
8. Dust must be controlled on any private access road. Dust from a screen must be contained on site.
9. Access to a sand or gravel pit should not be located through a wetland, unless no reasonable alternative is available.
10. Entry access shall have a locked gate.
11. Provisions shall be made to prevent spills/discharges of oil, grease, lubricants, etc.
12. Evergreen buffer screen consisting of a staggered double row of 8' to 10' (minimum) evergreens, 10' on center, must be planted and maintained to screen residential views of

site/activities. These may be thinned to maintain the screen. Screen may be required up to 300' from access road or pit.

13. A reclamation/restoration plan shall be submitted and include:
  - a. all boundaries of the area proposed for restoration
  - b. final topography of the area proposed for restoration
  - c. final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities
  - d. schedule of final restoration activities including seeding mixtures, cover vegetation, fertilizer types and rates;
  - e. photographs of the site before excavation (from at least two different points); and,
  - f. subsequent use of the site, if known or anticipated.
14. The extension or expansion of existing sand and/or gravel pits by more than 2 acres in 5 years shall require a permit.
15. The Board of Adjustment may require a bond for reclamation
16. Applicant must obtain all necessary State permits and comply with all applicable regulations.
17. A sand or gravel pit on a farm shall be termed accessory to an agricultural use and shall not be subject to provision (5) of this Section if all of the following requirements are met:
  - a. The excavation area is confined to one-half acre or less.
  - b. No trucks whose primary function is hauling sand, gravel or soil are kept on the premises.
  - c. The sand or gravel pit is not a primary source of income or the owner thereof.
  - d. No power-activated sorting machinery or equipment is located on the premises.
18. Slopes are not to exceed 2 to 1.
19. No more than 1 acre per year may be excavated.

#### **Section 405 - Windmills (Wind Energy Conversion Systems)**

All systems to be connected to the power grid must go through Section 248 of V.S.A. Title 30 and are exempt from town regulation. In addition to the requirements set forth in Sections 401 and 402, the Board of Adjustment shall consider the following when reviewing applications for off grid windmills / Wind Energy Conversion Systems (WECS).

1. Natural screening using existing landscape features is encouraged.
2. Where feasible, structures and facilities shall be sited to avoid open fields.
3. The maximum design output for a facility shall be 30 kw.
4. The maximum height for any windmill facility shall be 130 feet.
5. Towers shall have a minimum setback from all property lines, power lines, and public rights of way of either 100 feet or 1½ times the height of the tower, whichever is greater.
6. Wind energy systems shall not exceed sound levels of 70 dBA as measured at the nearest neighboring property boundary. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.

7. No wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### **Section 406 - Special Public Use Limitations**

- A. This section applies to uses specified under 24 VSA Chapter 117 §4413 and listed below:
  - 1 State- or community-owned and operated institutions and facilities
  - 2 Public and private schools and other educational institutions certified by the state department of education
  - 3 Churches and other places of worship, convents and parish houses
  - 4 Public and private hospitals
  - 5 Regional solid waste management facilities certified under 10 V.S.A chapter 159
  - 6 Hazardous waste management facilities for which a notice of intent to construct has been received under section 6606a of Title 10.
- B. In addition to the requirements set forth in Sections 401 and 402, the Board of Adjustment shall consider the following:
  1. Additional yard space or setbacks of the use from the property line other than what is already required in the district may be required to protect the privacy of adjoining property owners.
  2. The density, size, height or bulk of buildings may be increased or decreased as needed to ensure compatibility with established patterns of land use in the district, and to ensure orderly growth and development in the community.

#### **Section 407 - Conditional Use in the Agricultural Overlay**

For a listing of uses relevant to this section, see Article III, Table of Uses.

In addition to the requirements set forth in Sections 401B and 402, the Board of Adjustment shall consider the following:

1. Where feasible, all structures, landscaping, and accesses shall:
2. Retain a maximum amount of contiguous open land for agricultural use by
  - a. siting structures in treed areas or on the edges of open land, or
  - b. by implementing other innovative programs such as clustering under PRD provisions with the permission of the Board or of these regulations;
3. Utilize the least productive land for development
4. Protect historic resources and outstanding natural resources;
5. Be compatible with existing uses; and,
6. Provide shared driveways for separate homes.

#### **Section 408 – Game Bird Preserve**

1. All State requirements regarding “Game Bird Preserves” must be met.
2. Only fowl are permitted.

#### **Section 409 – Mobile Home Park**

In addition to the requirements set forth in Sections 401 and 402, the Board of Adjustment shall consider the following when reviewing an application for the establishment of a mobile home park:

A. Mobile home lots in a mobile home park shall not be located within a flood way, and all mobile home pads within the park, if located in a Flood Hazard Area, shall meet the requirements of Section 411.

- B. All mobile home parks shall have individual lots for units, adequate driveways and sufficient parking.
- C. There shall be no dead-end rights-of-way unless with a turnaround having at least a fifty (50) foot interior radius.
- D. All roads within a mobile home park shall comply with Town road standards, and adequate walkways shall be provided.
- E. The minimum size for a mobile home park shall be ten acres and shall have at least 2.5 acres per individual mobile home lot.
- F. A mobile home park shall consist of no more than ten (10) mobile home lots.
- G. Each mobile home lot shall be at least 20,000 square feet in area, and shall have an average width of at least 100 feet and an average depth of at least 120 feet and shall have planted thereon at least 4 trees of native species at least 1 inch diameter at chest height.
- H. Minimum setbacks shall be 15 feet from all mobile home lot edges. All buildings not physically connected to a mobile home must be at least fifteen (15) feet from all buildings.
- I. A minimum of twenty (20) percent of the total land area in any mobile home park shall be set aside for common recreational use.
- J. The project must meet all state and local septic and water standards.

**Section 410 - Wireless Telecommunications Facilities**

A. Definition and Purpose

Wireless telecommunication facilities shall include all wireless telecommunication providers, licensed and/or regulated by the Federal Communications Commission, and associated equipment and buildings. The purpose of this section is to protect the public health, safety and general welfare of the Town of Tinmouth while accommodating the communication needs of residents and businesses. This bylaw shall:

1. Preserve the character and appearance of the Town of Tinmouth while allowing adequate wireless telecommunications services to be developed.
2. Protect the scenic, historic, environmental, and natural resources of the Town of Tinmouth.
3. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.
4. Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers and sites where possible and appropriate.
5. Facilitate the provision of telecommunications services to the residences and businesses of the Town of Tinmouth.
6. Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.
7. Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals and childcare facilities.

B. Consistency with Federal Law

The bylaw does not:

1. Prohibit or have the effect of prohibiting the provision of personal wireless services

2. Unreasonably discriminate among providers of functionally equivalent services; or
3. Regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) Regulations concerning such emissions.

#### C. Definitions

See Glossary of Terms included in Article XIII, Section 1302.

#### D. Permitted and Prohibited Locations

Freestanding telecommunications towers or antennas over 20 feet in height may not be located in any of the following locations:

1. Within 100 ft. of a State or Federally designated wetland.
2. The habitat of any State listed Rare or Endangered Species.
3. Closer than 1,500 ft. horizontally to any structure existing at the time of the application which is used as either a primary or secondary residence, to the property of any school, or to any other habitable building.
4. Within 100 ft. horizontally of any river or perennial stream.
5. The Protection District as defined in the Tinmouth Town Plan and detailed these zoning regulations.

Notwithstanding three (3) above, the landowner on which the proposed facility is to be sited may waive the 1,500 foot setback requirement from structures on their property.

#### E. Small Scale Facilities / Exemptions

1. The placement of wireless telecommunications antennas, repeaters or micro-cells on existing buildings, structures, roofs, or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the Zoning Administrator, provided the antennas meet the applicable requirements of section 410A of these Regulations, upon submission of:
  - a. A final site and building plan.
  - b. A report prepared by a qualified engineer indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.
  - c. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure. However no such device may be located closer than 50' horizontally to an existing residence.
2. The following telecommunications facilities are exempt from the requirements of this ordinance: police, fire, ambulance, and other emergency dispatch; amateur (ham) radio, citizens-band radio, single-use local business radio dispatch, and television antennas for home use.

#### F. Application Requirements for Wireless Telecommunications Facilities not Covered under Section F

1. An applicant for a permit must be a personal wireless service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Zoning Administrator at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.
2. Applications shall include the following information:
  - a. The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is

- not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
- b. The name, address and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
  - c. The names and addresses of the record owners of all abutting property.
  - d. A report from qualified engineers that:
    - i. Describes the facility height, design and elevation.
    - ii. Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas.
    - iii. Describes the tower's proposed capacity, including the number, height and type(s) of antennas that the applicant expects the tower to accommodate.
    - iv. In the case of new tower proposals, demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within five miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the Town of Tinmouth. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
    - v. Demonstrates that the applicant has analyzed the feasibility of using "repeaters" or micro-cells in conjunction with all facility sites listed in compliance with Section G2d, iv (above) to provide coverage to the intended service area.
    - vi. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
    - vii. Describes the output frequency, number of channels, sector orientation and power output per channel, as appropriate for each proposed antenna.
    - viii. Includes a written explanation for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town.
    - ix. Demonstrates the tower's compliance with Tinmouth's structural standards and setbacks for towers and support structures.
    - x. Provides assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and Regulations, particularly with respect to radio frequency exposure. The Zoning Board of Adjustment may hire independent engineers to perform evaluations of compliance with the FCC Regulations, standards and requirements on an annual basis at unannounced times.
    - xi. Includes other information required by the Board that is necessary to evaluate the request. Includes an engineer's stamp and registration number, where appropriate.
    - xii. A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.
  - e. Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two-mile radius of the proposed facility site.
  - f. Vicinity Map showing the entire vicinity within a 2500-foot radius of the facility site, including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights of way needed for access from a public way to the facility.
  - g. Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
  - h. Elevations showing all facades and indicating all exterior materials and color of towers,

- buildings and associated facilities.
  - i. Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
  - j. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
  - k. Construction sequence and time schedule for completion of each phase of the entire project.
3. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.
  4. To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
  5. A copy of the application or draft application for an Act 250 permit, if applicable.
  6. A schematic of the network segment showing the three (3) previous and three (3) following towers indicating the service radius provided by each tower.

Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet.

#### G. Collocation Requirements

1. An application for a new wireless telecommunications facility shall not be approved unless the Zoning Board of Adjustment finds that the facilities planned for the proposed structure cannot be accommodated on, or immediately adjacent to, an existing or approved tower or structure due to one of the following reasons:
  - a. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
  - b. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
  - c. The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radio frequency exposure.
  - d. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
  - e. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
  - f. There is no existing or approved tower in the area in which coverage is sought.
  - g. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
2. Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate both the applicant's antennas and additional antennas when overall permitted height allows.

#### H. Access Roads and Above Ground Facilities

Where the construction of new wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within forest or forest fringe areas, and not in open fields. Utility or

service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the area. The Town may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same and where maintenance personnel can reasonably access the facility site on foot.

#### I. Tower and Antenna Design Requirements

Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.

1. Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth design, including those which imitate natural features, may be required in visually sensitive locations.
2. Towers, antennas and tower-related fixtures shall not be more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. The Board of Adjustment may approve additional height if it is necessary to provide adequate coverage in the Town of Tinmouth or to accomplish collocation of facilities and provided that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
3. Towers, antennas and any necessary support structures shall be designed to avoid having an undue adverse aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:
  - i. the period of time during which the proposed tower would be viewed by the traveling public on a public highway;
  - ii. the frequency of the view experienced by the traveling public;
  - iii. the degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
  - iv. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
  - v. the distance of the proposed tower from the view point and the proportion of the facility that is visible above the skyline;
  - vi. the sensitivity or unique value of a particular view affected by the proposed tower;
  - vii. significant disruption of a view shed that provides context to a historic or scenic resource.The Board may require that an alternative location for the tower be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. [In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.]
4. All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw.
5. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than the height of the tower, including antennas and other vertical appurtenances.
6. Ground mounted equipment or antennas as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity.

Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved.

Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

7. The location and type of security fencing, if necessary, shall be shown on the site plan.

#### J. Amendments to Existing Wireless Telecommunications Facility Permit

An alteration or addition to a previously approved wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

1. Change in the number of buildings or facilities permitted on the site;
2. Addition or change of any equipment resulting in greater visibility or structural wind loading, or additional height of the tower, including profile of additional antennas, not specified in the original application.

#### K. Tower Lighting and Signage; Noise Generated by Facility

1. Unless required by the Federal Aviation Administration ("FAA"), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting or another location selected.
2. No commercial signs or lettering shall be placed on a tower or facility. Signage shall be limited to that required by federal or state Regulation.
3. The Board may impose conditions to minimize the affect of noise from the operation of machinery or equipment upon adjacent properties.

#### L. Temporary Wireless Communication Facilities

Any wireless telecommunications facility designed for temporary use is subject to the following:

1. Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town of Tinnmouth.
2. Temporary facilities are permitted for no longer than five days use during a special event.
3. The maximum height of a temporary facility is 50 feet from grade.
4. Temporary facilities must comply with all applicable portions of these Regulations.

#### M. Continuing Obligations

Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding radio frequency exposure, and provide the basis for his or her representations.

#### N. Facility Removal

Abandoned, unused, obsolete, or noncompliant towers or facilities governed under these Regulations shall be removed as follows:

1. The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Tinnmouth's Zoning Administrator certifying the continuing safe operation of every facility/tower installed subject to these Regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
2. Abandoned or unused towers or facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Zoning Board of Adjustment. In the event the tower or facility is not removed within 180 days of the cessation of operations at a site, the municipality shall notify the owner and may remove the tower or facilities. Costs

- of removal shall be assessed against the property or tower owner.
3. Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of cessation of operations at the site unless a time extension or negotiated solution is approved by the Zoning Board of Adjustment. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
  4. An owner who has failed to file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
  5. The Applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of Tinmouth and acceptable to the Board to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.

#### O. Maintenance Requirements

The Applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the facility, the Town of Tinmouth may undertake such maintenance at the expense of the applicant or landowner.

#### P. Insurance Requirements

The facility owner shall maintain adequate insurance on all facilities.

### **Section 411 - Conditional Uses in the Flood Hazard Overlay**

- A. In addition to the requirements set forth in Sections 401B and 402, the Board of Adjustment shall require, as a condition of approval in all flood hazard areas, that:
1. All development be designated to (i) minimize flood damage to the proposed development and to public facilities and utilities, and (ii) to provide adequate drainage to reduce exposure to flood hazards.
  2. Structures be (i) designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure during the occurrence of the base flood, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damage, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  3. The flood carrying capacity within any altered or relocated portion of a watercourse be maintained.
  4. New and replacement water supply and sanitary sewage systems be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
  5. On-site waste disposal systems be located to avoid impairment to them or contamination from them during flooding.
  6. New and replacement manufactured homes be elevated on properly compacted fill such that the top of the pad under the entire manufactured home is above the base flood elevation.
  7. Development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in any increase in flood levels during the occurrence of the base flood.

8. The lowest floor, including the basement, of all new residential buildings shall be at or above the base flood elevation.
  9. New nonresidential buildings and existing buildings to be substantially improved for nonresidential purposes shall either meet the requirements of subsection B.8 or be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capacity of buoyancy. A permit for a building proposed to be flood proofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
  10. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids or other hazardous or toxic materials are prohibited within the floodway. These facilities may be permitted outside of the floodway, provided that the area is filled to at least one (1) foot above the base flood elevation.
  11. All new construction and substantial improvements with fully enclosed areas below the lowest floor that are subject to flooding shall be 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 professional engineer or architect or meet or exceed the following minimum criteria:
    12. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
    13. The bottom of all openings shall be no higher than one (1) foot above grade.
    14. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
  15. The Board may attach additional conditions as are necessary to meet the purpose of this chapter.
- B. In reviewing each application for a conditional use permit in the Flood Hazard District the Board of Adjustment may consider the following:
1. The danger to life and property due to increased flood heights or velocities caused by encroachments;
  2. The danger that materials may be swept onto other lands or down stream to the injury of others;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
  4. The importance of the services provided by the proposed facility to the community;
  5. The necessity to the facility of a waterfront location;
  6. The availability of alternative locations not subject to flooding for the proposed use;
  7. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
  8. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions under conditions of flooding;
  9. The safety of access to the property in times of flood of ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
11. The costs of providing governmental and public facilities and services during and after flooding.

## Article V: Lot Size, Setbacks, Yards

The following requirements apply to all uses shown as Permitted (P) in Article III, Table of Uses. Conditional Uses shall meet the requirements of Article IV and Article V.

District	Min Lot Size	Setbacks <sup>1, 2</sup>				Min Lot Frontage <sup>1</sup>	Max Bldg Height <sup>1</sup>	Notes
		Front	Side	Rear	Shore			
Protection		-	-	-			-	
Conservation	25 acres	50'	35'	35'		400'	35'	
Rural Residential	5 acres	50'	35'	35'		150' plus 50' for each acre above three, up to 400'	35'	
Lakeshore	1 acre	25'	10'	25'	50' <sup>3</sup>	80'	35'	
Agricultural	Same as underlying district							See Section 408
Flood Hazard	Same as underlying district							See Section 411

<sup>1</sup> See Article XII for definition and Article IX for front yard setback from road.

<sup>2</sup> A 25' buffer of undisturbed natural vegetation, measured perpendicular to the shore, should be left along the edge of rivers and streams.

<sup>3</sup> Setback from low mean water mark of the lake is 50' (Does not apply to boathouses or docks).

## **Article VI: Nonconformities**

### **Section 601 – Construction Approved Prior to Adoption or Amendment to Regulations**

Nothing contained in these Regulations shall require any change in a ~~nonconforming~~ use where such nonconformity conformed to all applicable laws, ordinances, and regulations, or the permit for which was issued, prior to the enactment of these regulations.

All nonconformities shall be subject to the provisions of Sections 602 through 605 of this regulation.

### **Section 602 - Completion of Construction**

All construction of nonconforming structures for which permits were granted under the provisions of previous regulations must be completed within one year of the effective date of these regulations.

### **Section 603 - Changes in Use Nonconformity**

A use nonconformity may be changed to another use nonconformity only with the approval of the Board of Adjustment and then only to a use which in the judgment of the Board is of a lesser, or no more, non-conforming nature. Whenever a use nonconformity has become conforming, it shall not revert back to a use nonconformity.

### **Section 604 - Enlargement of a Use Nonconformity**

A nonconformity may be enlarged on the same lot, provided that:

1. All provisions of this Regulation, except type of use, are complied with;
2. The Board of Adjustment determines that there will be no undue, adverse effect on the character of the neighborhood,
3. Only one such extension is made; and
4. The total enlargement does not exceed fifty percent (50%) of the area of the use nonconformity in existence at the time of the adoption of these Regulations.

### **Section 605 - Restoration of a Use Nonconformity**

Any use nonconformity which has been destroyed or damaged by fire, explosion, act of God, or by vandalism or public enemy, may be restored within a one-year period to the same use nonconformity as existed before such damage. The Board of Adjustment may extend this for up to an additional year where it can be demonstrated that restoration within one year is not possible.

### **Section 606 - Discontinuance of a Use Nonconformity**

Any use nonconformity which has ceased by discontinuance or abandonment for a period of one year shall thereafter conform to the provisions of this Regulation. Intent to resume a use nonconformity shall not confer the right to do so unless actual resumption occurs within the specified time period.

### **Section 607 – Maintenance of a Dimensional Nonconformity**

A dimensional nonconformity may be normally maintained or repaired provided that such action does not increase the degree of nonconformance.

### **Section 608 – Expansion of a Dimensional Nonconformity**

A dimensional nonconformity of a structure may be expanded provided such action:

1. Does not create a greater nuisance, detriment to the public health, safety or welfare than the existing dimensional non conformity; and
2. The extension, expansion or intensification of the dimensional nonconformity shall conform to all other requirements applicable under these Regulations; and
3. The total enlargement does not exceed fifty percent (50%) of the area of use nonconformity in existence at the time of adoption of these Regulations.

### **Section 609 – Restoration of a Dimensional Nonconformity**

Any dimensional nonconformity of a structure which has been destroyed or damaged by fire, explosion, act of God, or by vandalism or public enemy, may be restored within a one year period, to the same dimensional nonconformity as existed before such damage.

### **Section 610 – Development of Lot or Parcel with Dimensional Nonconformity**

An existing lot or parcel with a dimensional nonconformity may be normally developed provided that all provisions of these Regulations, except those which create the dimensional nonconformity, are complied with. See also existing small lots (Section 906).

### **Section 611 – Alteration of Lot or Parcel with Dimensional Nonconformity**

The boundaries of a lot or parcel with dimensional nonconformity may be altered only in a manner that decreases, or does not increase, its degree of nonconformity.

### **Section 612 – Repair, relocation, replacement, or enlargement of nonconformities within a regulated Flood Hazard Area**

The Board of Adjustment, after a public hearing, may approve the repair, relocation, replacement, or enlargement of a structural use or dimensional nonconformity within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws, and provided that the following criteria are met:

1. The Board of Adjustment finds that the repair, relocation, or enlargement of the structural use or dimensional nonconformity is required for the continued economically feasible operation of a non-residential enterprise;
2. The Board of Adjustment finds that the repair, relocation, or enlargement of the structural use or dimensional nonconformity will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners;
3. The permit so granted states that the repaired, relocated, structural use or dimensional nonconformity is located in a regulated flood or other hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner; and,
4. A copy of such permit granted by the Board of Adjustment shall be affixed to the copy of the deed of the concerned property on file in the municipal clerk's office.

### **Section 613 - Record of Nonconformities**

Within one year after the adoption of these Regulations or any amendments thereto, the Zoning Administrator shall prepare a complete record of nonconformities existing at the time of such Regulations or amendment and shall notify the owners of record of said lands, buildings and structures.

Such record shall contain the names and addresses of the owners of record of such non-conforming use or non-complying structure and of any occupancy other than the owner, and the nature and extent of such use. Such list shall be available at all times in the office of the Zoning Administrator.

## Article VII – Planned Residential Developments

### Section 701 - Planned Residential Development (PRD)

*General intent:* A planned residential development is intended to permit and encourage more flexibility and creativity in the design of larger parcels. In addition, its purpose is to encourage flexibility in the siting of structures, patterns of subdivision, and the development of land in such a way as to preserve the natural and physical features of Tinmouth, including agricultural land, wildlife corridors, and scenic viewscapes.

The Planning Commission may permit a Planned Residential Development and modify these zoning regulations subject to the following:

1. The application shall include a written statement setting forth the nature of all proposed modifications, changes or supplementations of existing zoning regulations.
2. If no subdivision of land is to take place, the application shall include a site plan in accordance with Article VIII of these regulations. The planning commission may approve the site plan simultaneously with approval of the PRD
3. Dwelling units may, at the discretion of the Planning Commission, be of varied types, including one family, two-family, and multi-family construction.
4. If the application of this procedure results in lands available for park, recreation, open space, or other municipal purposes, the Planning Commission as a condition for its approval may establish such conditions on the ownership, use, and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes.
5. The minimum size of a PRD shall be five acres.
6. The base density for the development shall be calculated by dividing the maximum number of dwelling units normally permitted on a single lot under Article III by the minimum lot size under Article V. For example, if two-family homes are acceptable in a 5-acre district, the maximum density allowed is  $2/5 = .4$  units/acre.
7. At the discretion of the Planning Commission, the development's overall density may be increased by up to 25 percent beyond the maximum listed for the district in which such land is situated. The Planning Commission's decision will be based on the criteria listed in section 702 and conditions limiting development on this site such as shallow depth of soil, wetness, and steep slopes.
8. At the discretion of the Planning Commission, and where the proposed development is an affordable housing development, overall density may be increased by up to 50 percent beyond the maximum listed for the district in which such land is situated. The Planning Commission's decision will be based on the criteria listed under section 702 conditions limiting development on this site such as shallow depth of soil, wetness, and steep slopes, and the site plan or subdivision review.
9. The Planning Commission may increase or decrease the setback requirements if, in its judgment, the special circumstances of a proposed development would make such requirements inappropriate. Side and rear setback requirements, as listed in Article V and as used in this Section, shall be interpreted as the side and rear setback requirement required for the PRD as a whole and not as the setback requirements for each particular structure placed in such PRD.
10. The Planning Commission may allow for a greater density or intensity of residential land use within some section or sections of the development than within others, which shall be offset by a lesser density in any other section.
11. Where a PRD is to be located in more than one zoning sub-district, the lot sizes, densities, and the number of allowable dwelling units must be separately calculated for each individual zone in the PRD.

### Section 702 - General Standards for Review

The following general standards, in addition to those listed under Article VIII and Section 701 of these regulations, shall be met in order for the planning commission to approve the application:

1. The PRD is consistent with the Town Plan

2. The PRD is an effective and unified treatment of the project site. Specifically, the plan makes appropriate provisions for the protection of the town's fragile natural resource and scenic areas.
3. The development plan is proposed over a reasonable period of time.

# Article VIII: Site Plan Approval

## Section 801 - Site Plan Approval

No zoning permit shall be issued by the Zoning Administrator for any use or structure until the planning commission grants site plan approval. Notwithstanding, the following uses or structures are exempted:

- One-family and two-family dwellings
- Accessory structures
- Uses or structures requiring a conditional use permit
- Uses or structures approved as part of lot created following the adoption of the Tinmouth Subdivision Regulations, amended March 4, 2003.

### A. Submission of Site Plan Map and Supporting Data

The owner shall submit ten (10) sets of site plan maps and supporting data to the Planning Commission which shall include the following information presented in drawn form and accompanied by written text:

1. Name and address of the owner of record and adjoining lands; name and address of person or firm preparing the map (if different); scale of map, north point and date.
2. Survey or sketch of the property showing existing features, including contours (if available), structures, roads, utility easement, rights of way, land use and deed restrictions.
3. Site plan showing proposed structure(s), locations and land use areas; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscaping plans, including site grading, landscape design and screening.
4. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development.

### B. Site Plan Review Procedure

The Planning Commission shall take into consideration the following objectives in conducting its review:

1. Innovative siting of buildings that consider the Tinmouth Town Plan's objectives of preserving open fields. Site plans that retain the maximum possible meadowland for potential agricultural use and maximum possible land of scenic value shall be given favorable consideration. The Planning Commission shall encourage structures and roads to be located on the edges of properties, where such siting furthers the preservation of meadowland.
2. Maximum safety of pedestrian and vehicular circulation between the site and the street network including:
  - a) location, number and width of access points, curve radii at access points, acceleration or deceleration lanes on adjacent public streets;
  - b) sight distance improvements;
  - c) shared access with adjoining properties; and,
  - d) location of sidewalks and/or other walkways.Particular consideration shall be given to visibility at intersections, to traffic flow and control, to pedestrian safety and convenience, and to access in case of an emergency.
3. Consideration shall be given to the items in (2) above and effect of noise, glare, or odors on adjoining properties. Refuse and service areas should be included in this consideration. Provisions for snow removal should also be made.
4. Adequacy of circulation, parking and loading facilities. Adequacy of on-site circulation, parking, and loading facilities. In the case of a Planned Residential Development, no more than eight parking spaces shall be accommodated in any single parking area.

Particular attention shall be given to safety, including aisle widths to accommodate emergency vehicles, traffic movement patterns and location of parking areas to prevent conflicts with entering and exiting traffic onto a public street, location of loading docks and number and size of parking spaces.

5. Adequacy of landscaping, screening and setbacks with regard to achieving maximum compatibility and protection to adjacent properties.

Particular consideration shall be given to preservation of existing vegetation, visibility of unsightly areas from the road and adjoining properties and the adequacy of landscaping materials to meet seasonal conditions and soils conditions.

6. Protection of existing or proposed renewable energy resources, such as solar collectors and windmills, on this and adjoining properties.

7. Adequate storm water management measures to ensure that no additional storm water runoff is generated beyond the boundaries of the property and that existing drainage patterns are not altered in a manner which impacts neighboring properties, town highways or surface waters.

Plans for handling storm water runoff shall utilize the best available technology to minimize off-site storm water runoff, increase on-site infiltration, and encourage natural filtration functions.

- C. The Planning Commission shall act to approve, approve with conditions, or disapprove any such site plan within sixty days after the date upon which it receives the proposed plan. Failure to so act within such period shall be deemed approval.

- D. Copies of the Planning Commissions decision, along with findings of fact shall be sent to the applicant and filed with the town clerk.

## **Article IX – General Regulations**

### **Section 901 - Required Frontage on, or Access to, Public Roads or Waters**

No land development may be permitted on lots which do not have either frontage on a public road or public waters, or access to such road or waters by a permanent easement or right-of-way at least 25 feet in width.

### **Section 902 - Front Yard Setback**

Notwithstanding provisions for front yards elsewhere in these regulations; the front yard setback shall be measured starting 25 feet from the center line of the roadway.

### **Section 903 - Waste Water Disposal**

Waste water must be disposed of in a safe, non-polluting manner, as evidenced by connection to a properly functioning private waste water system or by acquisition of a permit for such a facility issued in accordance with the Health Ordinance of the Town of Tinmouth. In addition, all systems must conform to Chapter I of the Environmental Protection Rules, *Wastewater System and Potable Water Supply Rules*, issued by the State of Vermont Agency of Natural Resources, Department of Environmental Conservation.

### **Section 904 - Lots in More than One Zoning District**

Where a District boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than 30 feet into the more restricted part, provided the lot has frontage on a road in the less restricted district.

To build in a lot which is located in two districts, the dwelling must meet the requirements of the district in which the dwelling will be built.

### **Section 905 - Reduction of Lot Area**

No lot shall be so reduced in area that the area, yards, lot width, frontage or other requirements of these Regulations shall be smaller than herein prescribed for each District. The provisions of this section shall not apply when part of a lot is taken for a public purpose.

### **Section 906 - Existing Small Lots**

Any lot described in a deed in the town land records in existence on the effective date of the Regulations may be developed for the purpose permitted in the District in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than one-eighth acre with a minimum width or depth dimension of 40 feet.

### **Section 907 - More Than One Use on a Lot or of a Structure**

Nothing in this ordinance shall prevent two separate uses from occupying a single lot (meeting minimum lot size) or structure, provided that each use complies with all other applicable provisions of this ordinance.

### **Section 908 - Accessory Structures**

An accessory structure shall comply with the required lot setbacks and height limitations. Agricultural buildings are exempt from height limitations.

### **Section 909 - Outdoor Lighting**

All private lighting shall be placed, directed, and shielded so that the light points downward and does not create direct light to shine on other properties. Lighting shall not interfere with pedestrian or motorist vision.

Lighting shall be placed in a manner that will not create a nuisance to other premises, interfere with traffic, and which is in keeping with Tinmouth's rural character.

Lighting shall not be neon and shall be in a steady, non-fluctuating or non-undulating manner (Temporary, Holiday lighting is exempt from this requirement)

### **Section 910 - Off-Street Parking Space Requirements**

For every building hereafter erected, altered, extended or changed in use, there shall be provided sufficient off-street parking spaces..

### **Section 911 - Temporary Uses and Structures**

Temporary permits may be issued by the Zoning Administrator for a period not exceeding one year for non-conforming uses incidental to construction projects provided such permits are conditioned upon agreement by the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional period not exceeding one year.

### **Section 912 - Camping Trailers, Travel Trailers, and Pick-Up Coaches**

It shall be unlawful for any person to park a camping trailer, travel trailer, pick-up coach on any public or private property, except in accordance with the following regulations:

1. The owner of a trailer may park it on his own property and no closer than 15 feet to any lot line. A trailer so parked shall not be used as permanent living quarters and shall not be hooked up to any utilities.
2. A camping trailer may be occupied on any lot by a non-paying guest of the owner of the lot for a period not to exceed 45 days in any 12 month period.

### **Section 913 - Home Occupations**

Residents may use a minor portion of a dwelling or accessory structure for an occupation which is customary in residential areas and which does not change the character of those areas as long as:

- 1.The dwelling, accessory structures and the lot maintain a residential appearance at all times;
- 2.The home occupation is clearly secondary to the use of the site for residential purposes;
- 3.The use is conducted within a portion of the dwelling or a building accessory thereto by a resident or the principal practitioner of the home occupation and not more than two (2) employees;
- 4.The use does not generate unsafe or intrusive traffic, parking, noise, vibration, glare, fumes, odors or electrical interference.
- 5.A permitted home occupation is granted to the applicant for the length of time that the applicant occupies the dwelling. The permit shall expire upon relocation by the applicant and shall neither remain with subsequent occupants of the dwelling nor transfer to a new location with the original applicant.

### **Section 914 - Equal Treatment of Housing**

This regulation shall not have the effect of excluding mobile homes, modular homes, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.

This regulation shall not have the effect of excluding from the municipality housing to meet the needs of the population as determined in the Town Plan.

### **Section 915 - Residential Care Home or Group Home**

A state licensed or registered residential care home, or group home, serving not more than eight persons who are developmentally disabled or physically handicapped, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another such home.

### **Section 916 - Day Care Facilities**

A state registered or licensed family child care home serving six or fewer children shall be considered by right to constitute a permitted single family use of property.

A state registered or licensed family child care home serving no more than ten full time children and five part-time children, as defined in VSA Title 33 4902(3)(A) shall be considered to constitute a permitted use of property, but requires site plan approval .

### **Section 917 - Protection of Ridgelines**

Buildings shall generally be sited to avoid ridgelines, mountain peaks, hilltops and steep slopes or in a manner that would not disrupt their scenic quality and would take advantage of the natural terrain of intermediate slopes and terraces.

### **Section 918 – Open Space Uses in the Flood Hazard Overlay**

Open space uses permitted in the Flood Hazard Overlay District as detailed in Article III above are subject to additional requirements due to the District’s special environmental sensitivities and public safety concerns.

All open space uses detailed in Article III shall be permitted to the extent that they are not prohibited by any other ordinance or Regulation and provided that they do not:

1. require the erection of structures, storage of materials and equipment;
2. require importing fill from outside the flood hazard area;
3. require channel modification or relocation;
4. obstruct flood flows;
5. increase the flood level within the floodway during the occurrence of the base flood;
6. increase off-site flood damage potential; and,
7. propose the construction of water supply, sanitary sewage or on-site waste disposal systems.

### **Section 919 -- Seasonal Use Change**

A permit is required for a change of use from seasonal to year-round. A permit will not be granted unless evidence of septic capability in compliance with the Tinmouth Sewage Ordinance is provided.

# **Article X: Other Regulations**

## **Section 1001 - Interpretation of Regulation**

The provisions of these Regulations shall be held to be minimum requirements adopted for the promotion of the public's health, safety, comfort, convenience and general welfare. Except as provided to the contrary in the Act or these Regulations, these Regulations are not intended to repeal, annul or in any way impair any Regulations or permits previously adopted or issued. Where these Regulations impose a greater restriction upon the use of a structure or land than are required by any other statute, ordinance, rule, Regulations, permit, easement or agreement, however, the provisions of these Regulations shall control.

## **Section 1002 - Notice of Hearing**

Any public notice required for public hearing under this Zoning Regulation shall be given in accordance with Section 4444 of the Act.

## **Section 1003 - Fees**

Fees may be established by the Selectboard in amounts necessary to cover all costs of the Zoning Administrator, the Board of Adjustment and the Planning Commission for such items as processing applications, including costs of material, administrative time, and reasonable overhead such as postage, telephone, etc.

## **Section 1004 - Severability**

If any provision of this Regulation is held invalid, the invalidity does not affect other provisions or applications of this Regulation which can be given effect without the invalid provision or application.

## **Section 1005 - Effective Date**

This Regulation shall take effect upon approval in accordance with the voting and other procedures contained in Title 24 VSA, Chapter 117.

## **Section 1006 - Precedence of Regulation**

The provisions of this Regulation shall take precedence over any conflicting and less restrictive local laws.

## **Section 1007 - Disclaimer of Liability**

These Regulations do not imply that land outside the areas of special flood hazard or land uses permitted within such districts will be free from flooding or flood damages.

These Regulations shall not create liability on the part of the Town of Tinmouth or any local official or employee thereof for any flood damages that result from reliance on this Regulation or any administrative decisions lawfully made there under.

# Article XI: Administration and Enforcement

## Section 1101 - Municipal Appointments

### A. Zoning Administrator

The Selectboard shall appoint an Zoning Administrator from nominations submitted by the Planning Commission for a term of three (3) years in accordance with the Act [§4448]. The Selectboard may remove a Zoning Administrator for cause at any time after consultation with the Planning Commission.

An acting Zoning Administrator may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. In the event an acting Zoning Administrator is appointed, Selectboard shall establish clear policies regarding the authority of the Zoning Administrator relative to the authority of the acting Zoning Administrator.

The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

In addition, the Zoning Administrator shall coordinate the municipality's development review programs. If other municipal permits or approvals are required, the Zoning Administrator shall provide the applicant with necessary forms. The Zoning Administrator may also inform any person applying for municipal permits or authorizations that they should contact the Vermont Agency of Natural Resource's Regional Permit Specialist to assure timely action on any related state permits. The applicant retains the obligation to identify, apply for, and obtain relevant state permits.

### B. Planning Commission

#### 1. Continuation of the Planning Commission

There shall be a Planning Commission for the municipality. The Planning Commission shall consist of not less than three (3) or more than nine (9) members appointed by the Selectboard in accordance with the Act [§§4321– 4323]. At least a majority of members shall be residents of the municipality. Any member of the Commission may be removed at any time by a unanimous vote of the Selectboard

#### 2. Powers and Duties

The Commission shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to

- a. The duty to:
  - i. prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, including amendments submitted by petition;
  - ii. prepare and approve written reports on any proposed amendments to these regulations as required by the act (Section 4441C);
  - iii. hold one or more warned public meetings on proposed amendments to these regulations, prior to submission of a proposed amendment and a written report to the Legislative Body (Section 4441(d). See also Article XII).
- b. The power to hear and act upon:
  - i. applications for site plan approval (Article VIII);
  - ii. applications for subdivision approval (Subdivision Regulations);
  - iii. applications for planned residential development (Article VII)

As part of the accomplishment of its duties the Planning Commission shall maintain complete records of its proceedings, studies and recommendations, as well as keep the Selectboard informed on the current status of the Zoning Regulations and their effectiveness within the Town.

3. Advisory Counsel to Other Agencies

Upon request, the Planning Commission shall serve as guide and counsel to the Selectboard of the Town, the Zoning Administrator, the Board of Adjustment, and other public offices in matters relative to the Zoning Regulations.

4. General Rules of Procedure

The Planning Commission shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act [§4461(a)] and Vermont's Open Meeting Law.

5. Quorum and Votes

No meeting or hearing in any way affecting the zoning ordinance may be held by the Planning Commission without the attendance of a majority of the Commission members; neither may any official action be taken with respect to the Zoning Regulations without the concurrence of a majority of the Commission members.

C. Board of Adjustment

1. Appointment and Term of the Board

- a. The Board of Adjustment shall consist of seven (7) members unless otherwise determined by the Selectboard.
- b. Members of such Board shall be appointed and any vacancy filled by the Selectboard. The terms of each member shall be for three (3) years unless otherwise determined by the Selectboard [terms are completely up to Selectboard]. Members may be reappointed to successive terms. The Selectboard may appoint alternates to serve on the Board for a term of two years unless otherwise determined by the Selectboard [terms are completely up to Selectboard].
- c. Any member of the Board of Adjustment may be removed for cause by the Selectboard upon written charges and after public hearing.

2. Appropriations

The Town may make such appropriations in its annual budget as are sufficient to afford the Board of Adjustment the technical and material assistance necessary to the fulfillment of its duties as outlined herein.

3. Officers of the Board

The Board of Adjustment shall annually elect its own officers (Chair, Vice Chair, Secretary and Assistant Secretary). The officers of the Board may administer oaths and compel the attendance of witnesses and the production of material pertinent to any issue under appeal.

4. Meetings

Meetings of the Board shall be held at the call of the Chair and at such times as the Board may determine. All such meetings shall be open to the public, except as otherwise provided by law.

5. Rules of Procedure

The Board shall adopt, from time to time, such rules of procedure as it determines are necessary to effect the provisions of this Regulation. The Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act [§4461(a)] and Vermont's Open Meeting Law. The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations.

The Board, in connection with any proceeding, may examine or cause to be examined any property, maps, books or records bearing upon the matters concerned in such proceeding. The Board may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information. The Board may administer oaths or take acknowledgment in respect of such matters. Any of the powers granted to a Board of Adjustment may be delegated by the Board to a specifically authorized agent or representative.

#### 6. Minutes and Findings

The Board shall keep minutes of its proceedings, indicating the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the clerk of the municipality as a public record.

All findings and actions of the Board shall be in writing and shall include the reasons for the action taken irrespective of its nature. Findings shall be detailed and in specific terms, discussing the reason for the decisions, beyond such generalities as "in the interest of public health, safety and general welfare." In every instance, a statement of the facts upon which such action is based shall appear in the decision.

#### 7. Quorum and Votes

For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of the members of the Board and any action thereof shall be taken by the concurrence of a majority of the members of the Board.

#### 8. General Powers and Duties of the Board

##### a. General Powers.

Except as specifically provided herein and in accordance with the provisions of 24 VSA, Chapter 117, the Board of Adjustment may not amend, alter, invalidate or affect any plan or bylaw of the Town or the implementation or enforcement thereof, or allow any use not permitted by the Zoning Regulations or any other bylaw.

##### b. General Duties

The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- i. appeals from any decision, act or failure to act by the Administrative Officer (Section 1101),
- ii. applications for conditional use approval (Article IV),
- iii. requests for waivers from one or more dimensional standards (see Section 1104 E)
- iv. requests for a variance in the application of provisions of the Zoning Regulations (Section 1104 A & B), and
- v. requests for the construction, repair, relocation, replacement, or enlargement of a structure within a Flood Hazard District (Section 1104 C).

##### c. Applications

Requests to the board of Adjustment for review of items in 8.b.ii, iii, and v (above) shall be filed with the Zoning Administrator in accordance with the appropriate provisions of the zoning regulations. Requests to the board of Adjustment for appeals (8.b.i.) and variances (8.b. iv) shall be filed with the Secretary of the Board of Adjustment.

## Section 1102 – Zoning Permits

### A. Applicability

No land development as defined herein, which is subject to these regulations, shall be commenced in the Town of Tinmouth until a zoning permit has been issued by the Zoning Administrator, as provided for in the Act [§§4448, 4449].

The division of a parcel into two (2) or more parcels, the construction, exterior reconstruction, conversion, structural alteration, relocation or enlargement of any building(s) or other structure(s), or of any excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land shall commence only in compliance with all regulations in this bylaw for the district in which such building or land is located.

### B. Exemptions

No zoning permit shall be required for the following activities

1. Accepted agricultural practices (AAPs), including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets, in accordance with the Act [§4413(d)]. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Zoning Administrator prior to any construction, as required for AAPs. Such structures shall meet all setback requirements under these regulations, unless specifically waived by the Secretary.
2. Accepted management practices (AMPs) for silviculture (forestry) as those practices are defined by the Commissioner of Forests, Parks and Recreation, in accordance with the Act [§4413(d)].
3. Power generation and transmission facilities, which are regulated under 30 V.S.A. §248 by the Vermont Public Service Board. Such facilities, however, should conform to policies and objectives specified for such development in the Municipal Plan.
4. Hunting, fishing, and trapping as specified under 24 V.S.A. §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs, which for the purposes of these regulations are defined as outdoor recreation facilities [or other use].
5. Normal maintenance and repair of an existing structure which do not result in exterior alterations or expansion or a change of use.
6. Interior alterations or repairs to a structure which do not result in exterior alterations or expansion or a change in use.
7. Exterior alterations to structures which do not result in any change to the footprint or height of the structure or a change in use.
8. Residential entry stairs (excluding decks and porches), handicap access ramps, walkways, and fences or walls less than four (4) feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibilities or sight distances for vehicular traffic.
9. Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing), and lawn and yard maintenance (e.g., for gardening or landscaping), or which is otherwise incidental to an approved use. This specifically does not include extraction and quarrying activities regulated under Section 404.
10. Outdoor recreational trails (e.g., walking, hiking, cross-country skiing and snow mobile trails) which do not require the installation of structures or parking areas.
11. Small accessory buildings associated with residential uses which are less than 64 square feet of floor area and less than eight (8) feet in height, and are not located within required setback areas
12. Garage sales, yard sales, auctions, or similar activities that do not exceed three (3) consecutive days, nor more than twelve (12) total days in any calendar year.

### C. Application Requirements

An application for a zoning permit shall be filed with the Zoning Administrator on form(s) provided by the municipality. Required application fees, as set by the Selectboard, also shall be submitted with each application. In addition, the following information will be required as applicable:

1. Permitted Uses: Applications for a permitted use shall include 2 copies of a sketch plan, no smaller than 8.5" x 11", drawn to scale, that depicts the following:
  - c. the dimensions of the lot, including existing property boundaries,
  - d. the location, footprint and height of existing and proposed structures or additions,
  - e. the location of existing and proposed accesses (curb cuts), driveways and parking areas,
  - f. the location of existing and proposed easements and rights-of-way,
  - g. existing and required setbacks from property boundaries, road rights-of-way, surface waters and wetlands,
  - h. the location of existing and proposed water and wastewater systems,
  - i. a surveyor's plot plan of the property, if available, and
  - j. other such information as required by the Zoning Administrator to determine conformance with these regulations.

Permits are required for all other changes, including the addition of a deck, story, or room, a foundation or new roof structure, the finishing of a basement, or the placement of a mobile home on the property

If the Zoning Administrator determines that the application must be reviewed by the Planning Commission and/or Zoning Board of Adjustment, the number of copies required shall increased from two to a number up to 15.

An application for any permit shall be accepted by the Zoning Administrator only if it is complete and is accompanied by payment in cash, check or money order made out to the municipality for the amount of the specified fee.

2. Uses Subject to Board of Adjustment Review: For development requiring one or more approvals from the Board of Adjustment prior to the issuance of a zoning permit, application information and fees as required for such approvals shall be submitted concurrently with the application for a zoning permit and referred to the Secretary of the Board of Adjustment.
3. Applications in the Flood Hazard District: In the Flood Hazard District, in addition to the above, every application shall contain the following additional information in order to meet the requirements of the National Flood Insurance Program floodplain management regulations (44 CFR Parts 59 and 60):
  - a. The existing and proposed land contours, streams, roads, other pertinent physical features, buildings and structures.
  - b. The elevation of the lowest habitable floor including basement of new or substantially improved structures and confirmation as to whether such structure contains a basement.
  - c. Proposed location of fill and/or storage of materials.
  - d. Proposed flood proofing measures and the level to which any structure will be flood proofed.
  - e. Base flood elevation for subdivisions and developments which involve more than 50 lots or 5 acres (whichever is smaller).
  - f. The status of all necessary permits required by Federal or State law.
  - g. A description of the extent of which any watercourse will be altered or relocated as a result of the proposed development.
  - h. Any clarifying or supplementary information and data necessary to pass upon the application.
  - i. The relationship of the proposal to the location of the channel.
  - j. The extent of the flood hazard area and the base flood elevation using the best information available.

k. Permitted open space uses shall be exempt from the requirements of paragraphs B, D, and E above.

#### D. Issuance

A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act [§4449] and the following provisions:

1. Within thirty (30) days of receipt of a complete application, including all application materials, and fees, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or to refer the application to the appropriate municipal panel and/or state for consideration. In accordance with the Act [§§4448, 4449], if the Zoning Administrator fails to act within the 30-day period, a permit shall be deemed issued on the 31<sup>st</sup> day.
2. No zoning permit shall be issued by the Zoning Administrator for any use or structure which requires the approval of the appropriate municipal panel or Selectboard until such approval has been obtained. For permit applications that must be referred to a state agency for review, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state.
3. If public notice has been issued by the Selectboard for their first public hearing on a proposed amendment to these regulations, for a period of 150 days following that notice the Zoning Administrator shall review any new application filed for compliance with the proposed amendment and applicable existing bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the 150 day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under all applicable provisions of this bylaw [§4449(d)]. Upon request of the application, an application that has been denied under a proposed amendment that has been rejected, or that has not been adopted within the 150-day period, shall be reviewed again, at no cost, under the existing bylaw. .
4. A zoning permit shall include a statement of the time within which appeals may be taken under Section 1003; and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.
5. The Zoning Administrator, within three (3) days of the date of issuance, shall deliver a copy of the zoning permit to the Listers; and shall post a copy of the permit in the municipal offices for a period of fifteen (15) days from the date of issuance.

#### E. Effective Date

If a zoning permit is issued, it shall not take effect until the expiration of a fifteen (15) day appeal period. In the event that notice of appeal is properly filed, such permit shall not take effect until the final adjudication of said appeal.

No site work or building shall occur until the effective date of the permit.

#### F. Completion

Zoning permits and associated approvals shall remain in effect for two years from the date of issuance, unless the permit and associated approvals specify otherwise. All development authorized by the permit shall be substantially commenced within this two year period, or reapplication and approval shall be required to continue development. The Zoning Administrator may administratively renew a permit for a period not to exceed one (1) additional year upon finding that there was reasonable cause for delay in the start of the development.

#### G. Exclusivity of Remedy

The exclusive remedy of an interested person with respect to any decision or act of the Zoning Administrator, or any failure to act with respect to any one or more of the provisions of this regulation shall be the appeal to the Board of Adjustment.

#### H. Special Duties Relating to Flood District Permits

The Zoning Administrator shall, to the extent possible, submit to the Federal Emergency Management Administration the information required by the Federal Emergency Management Administration Report Form with respect to the administration and enforcement of the flood hazard area sections of this bylaw. A copy of the Report shall be submitted to the State coordinating agency.

### **Section 1103 – Appeals**

#### A. Zoning Administrator Actions

Any interested person as defined under the Act [§4465] may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the Board of Adjustment or the Municipal Clerk if no Secretary has been elected, and by filing a copy of the notice with the Zoning Administrator.

- 1 . The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The Board shall give public notice of the hearing under Section 1106, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- 2 . The Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].
- 3 . In accordance with the Act [§4468], all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place of the adjourned hearing shall be announced at the hearing.
- 4 . A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under the Act [§4464(b)]. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Municipal Clerk as part of the public records of the municipality, in accordance with Section 1107. Failure of the Board to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46<sup>th</sup> day.

#### B. Interested Persons

The definition of an interested person under the Act [§4465(b)] includes the following:

- 1 . a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;
- 2 . the Town of Tinmouth or any adjoining municipality;
- 3 . a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;
- 4 . any ten (10) voters or property owners within the municipality who, by signed petition to the Board of Adjustment, allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and
- 5 . any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

### C. Notice of Appeal to Board of Adjustment

A notice of appeal filed under this section shall be in writing and include the following information, in accordance with the Act [§4466]:

1. the name and address of the appellant,
2. a brief description of the property with respect to which the appeal is taken,
3. a reference to applicable provisions of these regulations,
4. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
5. the alleged grounds why such relief is believed proper under the circumstances.

### D. Appeals to Environmental Court

In accordance with the Act [§4471], an interested person who has participated in a regulatory proceeding of the appropriate municipal panel(s) may appeal a decision rendered by the panel(s) under Section \_\_\_\_, within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

1. "Participation" in a proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
2. The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Municipal Clerk, or the Zoning Administrator if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

## **Section 1104 – Variances and Waivers**

### A. Variance Criteria

The Board of Adjustment shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Section 1103. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. The Board may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

### B. Renewable Energy Structures.

Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act [§4469(b)], the Board may grant such variance only if *all* of the following facts are

found in the affirmative and specified in its written decision:

1. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
2. The hardship was not created by the appellant;
3. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
4. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

#### C. Variances within the Flood Hazard Area.

On an appeal where a variance from the provisions of the Zoning Regulation is requested for the repair, relocation, replacement or enlargement of a nonconforming structure within a regulated flood hazard area, the Board of Adjustment may grant such variances, and render a decision in favor of the appellant, if all the following facts are established by the Board and are specified in its decision:

1. That the variance is required for the continued economically feasible operation of a nonresidential enterprise.
2. That the variance will not increase flood levels in the regulatory floodway, threaten the health, safety, and welfare of the public or other property owners.
3. The structure is located in a regulated flood hazard area, does not conform to the bylaws pertaining thereto, and will be maintained at the risk of the owner.
4. The variance is in accordance with the Act and the criteria for granting variances found in CFR Section 60.6 of the National Flood Insurance Program;

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

#### D. Notifications - Flood Hazard District

1. For approved actions taken regarding structures in the Flood Hazard District, the Secretary of the Board of Adjustment shall notify the applicant and include on the permit a notation that:
  - a. the structure is located below the base flood elevation, will result in increased premium rates for flood insurance, and increases the risk of life and property; and,
  - b. the structure is located in a regulated flood hazard area, does not conform to the bylaws pertaining thereto, and will be maintained at the risk of the owner.
2. A copy of the permit shall be affixed to the copy of the deed of the concerned property on file in the municipal clerk's office.

#### E. Waivers

As an alternative to some variances, the Board of Adjustment may grant a waiver of setbacks, lot frontage and building heights specified in Article V. Such waivers must be in conformance with the municipal plan [§4414(7) (a)] and state planning goals [§4302], and may:

1. allow mitigation through design, screening or other remedy;
2. allow waivers for structures providing for disability accessibility, fire safety and other legal requirements; or
3. provide for energy conservation and renewable energy structures, and

The waiver, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations.

The process of applying for and/or appealing a waiver is the same as for a variance. A waiver may be granted subject to conditions.

## **Section 1105 – Violations and Enforcement**

### A. Violations

The commencement or continuation of any land development **or** subdivision that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [ §§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute, in the name of the Town of Tinmouth, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

### B. Notice of Violation

No action may be brought under this section unless the alleged offender has had at least seven (7) days' warning notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the municipality under Section 1107. The notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven-day notice period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

### C. Limitations on Enforcement

An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section 1107.

## **Section 1106 – Public Hearings**

### A. Public Notice

In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Article IV), appeals of decisions of the Zoning Administrator, variances, and waivers (Sections 1003, 1004) and final subdivision review (Tinmouth Subdivision Regulations). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:

1. publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality;
2. posting of the same information in three (3) or more public places within the municipality, including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
3. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and
4. for hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

Public notice of all other types of development review hearings, including site plan review (Article VIII), shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:

1. posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality; and
2. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.

The applicant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners as required above, as determined from the current municipal grand list. The applicant may be required to demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

No defect in the form or substance of any required public notice under this section shall invalidate the action of the Appropriate Municipal Panel(s) where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Board of Adjustment or the Environmental Court, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.

#### B. Hearings

In accordance with the Act [§4464], all meetings and hearings of the Appropriate Municipal Panel (Board of Adjustment and Planning Commission), except for deliberative sessions, shall be open to the public. For the conduct of any hearing, and the taking of any action, a quorum shall be not less than the majority of members of the Appropriate Municipal Panel. The Appropriate Municipal Panel, in conjunction with any hearing under this bylaw, may:

1. examine or caused to be examined any property, maps, books, or records bearing upon the matters concerned in that proceeding;
2. require the attendance of any person having knowledge of the premises;
3. take testimony and require proof material for its information; and
4. administer oaths or take acknowledgement in respect of those matters.

In any public hearing there shall be an opportunity for each person wishing to achieve status as an interested person to demonstrate that the criteria set forth under Section 1003B are met. The Appropriate Municipal Panel(s) shall keep a record of the name, address, and participation of each of these persons.

In accordance with the Act [§§4464(b), 4468], the Appropriate Municipal Panel(s) may recess a hearing on any application or appeal pending the submission of additional information, provided that the next hearing date and place is announced at the hearing.

#### C. Decisions

Any action or decision of an Appropriate Municipal Panel shall be taken by the concurrence of a majority of the members of the Panel. In accordance with the Act [§4464(b)], the Appropriate Municipal Panel shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46<sup>th</sup> day. In addition:

1. All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the

decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 1103A. The minutes of a meeting may suffice, provided that the factual basis and conclusions relating to the review standards are provided in accordance with these requirements.

2. In rendering a decision in favor of the applicant, the Appropriate Municipal Panel may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. This may include, as a condition of approval:
  - a. the submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Tinmouth Selectboard, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
  - b. a requirement that no zoning permit be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.
3. All decisions of an Appropriate Municipal Panel shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Clerk as part of the public record of the municipality.

### **Section 1107- Recording Requirements**

Within 30 days of the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the permit or violation to the Municipal Clerk for recording in the land records of the municipality generally as provided in 24 V.S.A. §1154(c), and file a copy in the Municipal Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant may be charged for the cost of the recording fees.

The Zoning Administrator shall maintain a record of:

- 1) all variance actions, including justification for their issuance;
- 2) all permits issued for development in areas of special flood hazard;
- 3) the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
- 4) the elevation, in relation to mean sea level, to which buildings have been flood proofed; and,
- 5) all flood proofing certifications required under this regulation.

A copy of any permit and/or variance shall be affixed to the copy of the deed of the concerned property on file in the Municipal Clerk's office.

## **ARTICLE XII: Amendments**

Any provision of this Regulation, as well as the boundaries of the various zoning districts established herein, may be amended or repealed subject to Sections 4441 and 4402 of the Act, and to the provisions summarized below.

### **Section 1201 - Drafting**

1. An amendment may be prepared by the Planning Commission or by any other person or body.
2. A proposed amendment prepared by someone other than the planning commission shall be submitted in writing along with any supporting documents to the planning commission. The planning commission may then proceed as if the amendment or repeal had been prepared by them. However, if the proposed amendment or repeal of a bylaw is supported by a petition signed by not less than five (5) percent of the voters of the municipality, the commission shall correct any technical deficiency and shall, without otherwise changing the amendment or repeal, promptly proceed as if it had been prepared by the Commission.

### **Section 1202 – Planning Commission Report**

When considering an amendment the Planning Commission may prepare a written report on the proposal. If the proposal would alter the zoning designation of any land area, the report should cover the issues which are detailed in Sections 4441 and 4442 of Chapter 117 of Title 24 of the Vermont Statutes Annotated. The report must include a brief explanation of the proposed bylaw, amendment or repeal, a statement of its purpose as required for public notice, and findings regarding how the proposal:

1. conforms with or furthers the goals contained in the municipal plan, including the effect on the availability of safe and affordable housing,
2. is compatible with proposed future land uses and densities of development as set forth in the municipal plan, and
3. carries out, as applicable, any specific proposals for planned community facilities."

### **Section 1203 – Planning Commission Hearing**

1. The Planning Commission shall hold at least one (1) public hearing within the town after public notice.
2. At least fifteen (15) days prior to the first hearing, a copy of the proposed amendment and written report shall be delivered with proof of receipt, or mailed by certified mail, return receipt requested, to:
  - a. the chair of the planning commission of each abutting municipality, or in the absence of any planning commission in a municipality, to the clerk of that abutting municipality;
  - b. the executive director of the Rutland Regional Planning Commission; and
  - c. the Department of Housing and Community Affairs within the Agency of Commerce and Community Development.

Any of the foregoing, or their representatives, may submit comments on the proposed amendment to the Planning Commission, or may appear and be heard in any proceeding with respect to the adoption of the proposed amendment.

### **Section 1204 – Submission to Selectboard**

After public hearing, the Planning Commission may make revisions to a proposed bylaw or amendment and to their written report, for submission to the Selectboard. The Planning Commission may warn another hearing on the proposed revisions but is not required to do so. When the Planning Commission transmits the proposal and report to the Selectboard, it must simultaneously file copies with the municipal clerk for public review.

However, if requested by the Selectboard or if a proposed amendment was supported by a petition, the Planning Commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the Selectboard together with any recommendation or option it considers appropriate.

Simultaneously with the submission, the Planning Commission shall file with the Clerk of the municipality a copy of the proposed amendment for public review.

**Section 1205 – Legislative Hearing**

Not less than fifteen (15) or more than one hundred twenty (120) days after a proposed amendment is submitted to the Selectboard they shall hold the first of one or more public hearings, after public notice, on the proposed amendment and shall make copies of the proposal and any written report of the Planning Commission available to the public upon request. Failure to hold a hearing within the one hundred twenty (120) days shall not invalidate the adoption of the amendment.

**Section 1206 – Changes**

The Selectboard may make minor changes to the proposed amendment, but shall not do so less than fourteen (14) days prior to the final public hearing. If at any time the Selectboard makes substantial changes in the concept, meaning or extent of the proposed amendment it shall warn a new public hearing or hearings

When any part of the proposal is changed, the Selectboard, at least fourteen (14) days prior to the hearing, shall file a copy of the changed proposal with the Clerk of the municipality and with the Planning Commission. The Planning Commission is then required to amend its report to reflect the changes made by the Selectboard and submit the report as amended to the Selectboard prior to the public hearing.

**Section 1207 – Adoption**

A bylaw, amendment or repeal shall be adopted by a majority of the Selectboard at a meeting that is held after the last public hearing, and shall be effective 21 days after adoption.

The town, by action of the Selectboard or by vote of the town at a special or regular meeting duly warned on the issue, may elect to require that bylaw amendments or repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town. .

**Section 1208 – Timing**

If the proposed amendment is not approved or rejected within one (1) year of the date of the final hearing of the Planning Commission, it shall be considered disapproved unless five (5) percent of the voters of the municipality petition for a meeting of the town to consider the amendment, and the petition is filed within sixty (60) days of the end of that year. In that case a meeting of the town shall be duly warned for the purpose of acting upon the amendment by Australian ballot.

**Section 1209 – Distribution**

Copies of bylaws, amendments and repeals, as adopted, shall be sent to the regional planning Commission and to the Vermont department of Housing and Community affairs.

## Article XIII: Definitions

### Section 1301 - Definitions

Except where specifically defined herein, all words used in these Regulations shall carry their customary meanings. Words used in the present tense include the future, and singular includes the plural; the word "lot" includes "plot"; the word "building" includes "structure"; the word "shall" is mandatory; "occupied" or "used" shall be considered as though followed by "or intended, arranged, or designed to be used or occupied"; "person" includes individual, partnership, association, corporation, company or organization.

Doubt as to the precise meaning of any word used in these Regulations shall be clarified by the Planning Commission.

**Access:** Frontage on a town highway (25' minimum) or a deeded 25 foot minimum right-of-way to a town highway.

**Accessory Apartment:** An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- The property has sufficient wastewater capacity.
- The unit does not exceed 50 percent of the total habitable floor area of the single-family dwelling.
- Applicable setback, coverage, and parking requirements specified in the bylaws are met. 24 V.S.A. § 4412(1)(E).

**Accessory Use or Structure:** A use or building customarily incidental and subordinate to the principal use or building and located on the same lot. Accessory uses or structures are subject to the same requirements as principal structures.

**Agricultural or Forest Use:** Land which is used for raising livestock, or agricultural or forest products, including farm structures and the storage of agricultural equipment; and, as an accessory use, the sale of agricultural products raised on the premises.

**Alteration:** Structural change, rearrangement, change of location, or addition to a building, other than repairs and modification in building equipment.

**Appropriate Municipal Panel:** The Selectboard or Planning Commission when performing development review functions, or the zoning Board of Adjustment or a Development Review Board.

**Bed and Breakfast:** An owner-operated lodging facility located within a residential dwelling with up to ten rooms designed for two persons each, or twenty guests.

**Building:** Any structure enclosed by exterior walls and covered by a roof constructed or used for residence, business, other public or private purposes.

**Building Height:** The vertical distance from the average finished grade surrounding the buildings to the highest point of the roof.

**Community Center:** Includes public or private meeting hall, place of assembly, museum, art gallery, library, place of further education, not operated primarily for profit.

**Conditional Use:** A use or occupancy of a structure, or a use of land, permitted only upon issuance of a conditional use permit and subject to the limitations and conditions therein.

**Contractor:** General contractors and builders engaged in the construction of buildings, either residences or commercial structures, or part thereof.

**Contractor's storage yard:** An unenclosed portion of the lot or parcel upon which a contractor maintains its principal office. Designation of the area as a contractor's storage yard would allow the area to be used to store and maintain construction equipment and other materials customarily used in the trade carried on by the contractor, including up to six trucks. Operations using and storing fewer than three trucks do not require a permit.

**Convenience Store:** A small retail establishment, whose structure is limited in area to 2,000 square feet, focused primarily on the sale of food and incidental home-care products. A fueling station may be included. A canopy may be included, but shall not extend more than 6 feet in any direction from a pump.

**Day care facility:** Any place operated, whether for compensation or not, whose primary function is protection, care and supervision of children under sixteen years of age outside their homes for periods of less than twenty-four hours a day by a person other than a child's own parent, guardian or relative, but not including a kindergarten approved by the state board of education. See Section 918 for details.

**Dwelling Unit:** Building or part thereof used as, living quarters for one family. The terms "dwelling", "one-family dwelling" or "two-family "dwelling" shall not include a motel, hotel, boarding house or tourist home, but shall include mobile-home and modular (prefabricated) housing.

**Dwelling, One Family:** Building used as living quarters by one family.

**Dwelling, Two family:** Building used as living quarters by two families living independently of each other, i.e. 2 baths, 2 kitchens, 2 entrances, etc.

**Educational Camp:** The use of a site for provision of indoor or outdoor activities, including accommodations, arts and crafts, recreation, educational activities, and incidental food services.

**Family:** Two or more persons living together as a single housekeeping unit.

**Highway:** A public way; a main direct road or street.

**Home Occupation:** Any use customarily conducted within a dwelling or a building accessory thereto by the residents thereof which is clearly secondary to the dwelling used for living purposes and does not change the residential character thereof. See Section 913 for details.

**Hunting Camp:** There shall be no public utility hook-up. Occupancy shall be limited to 45 days in any calendar year. Lot size shall be 25 acres minimum. Size of building is limited to 600 sq. ft. and shall be 1 story only.

**Junk Yard:** A junkyard shall consist of four or more junk motor vehicles visible from the road or not screened from adjoining property. Junk motor vehicle means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle, other than an on-premise utility vehicle. Agricultural vehicles and equipment are excluded from this definition..

**Lot: Also a parcel.** Land occupied or to be occupied by a building and its accessory buildings together with the required open spaces, having not less than the minimum area, width and depth required for a lot in the District in which the land is located.

**Lot Width:** Lot width shall be measured at the front yard setback. (See Article V and **Setbacks**)

**Mobile Home:** A structure or type of manufactured home that is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation, includes plumbing, heating, cooling and electrical systems, and is:

- transportable in one or more sections; and
- at least eight feet wide or 40 feet long or when erected has at least 320 square feet or if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or
- any structure that meets all the requirements of this subdivision except for size and for which the manufacturer voluntarily files a certification required by the U. S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U. S. Code. 10 V. S. A. §6201(1).

**Mobile Home Park:** Any parcel of land under a single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, more than two mobile homes. Nothing herein shall be construed

to apply to premises used solely for storage or display of mobile homes. Mobile Home Park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes. 10 V. S. A. § 6201(2).

**Modular (or Prefabricated) Housing:** A dwelling unit constructed on-site and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

**Nonconformity:** Nonconforming use, structure, lot, or parcel that was in conformance with all applicable laws, ordinances and regulations prior to the enactment of bylaws, or were improperly authorized as a result of error by the administrative officer. **Dimensional nonconformity.** A nonconformity that does not conform to dimensional requirements such as setbacks, lot size, height restriction, frontage, or building area limitations.

**Parcel:** See **Lot**.

**Planned Residential Development:** An area of land controlled by a legal or beneficial owner, to be developed as a single entity for a number of residences. A planned residential development permits flexibility in building siting, lot coverage, mixtures of housing types and land uses, usable open spaces, and the preservation of significant natural features.

**Recreation, commercial:** Land use or structure intended for entertaining activities such as hiking trails, cycling paths, swimming pools, and tennis courts, but excluding any uses involving motorized vehicles or firearms.

**Recreation, public:** Recreational activities on publicly-owned lands. May include any types of activities listed under “recreation, commercial”.

**Restaurant:** An establishment whose principal business is the selling of food and beverages primarily to persons seated within or adjacent to the building. Typical uses include cafes and coffee shops.

**Road Frontage:** Lot lines which abut a public road.

**Road Line:** Right-of-way line of a road as dedicated by deed or record. Where the width of the road is not established, the road line shall be considered to be 25 feet from the center line of the road.

**Sand and Gravel Pits:** A type of open pit mine, or strip mine, from which the mineral removed is restricted to sand and gravel.

**Setback:** See **Yard**.

**Site Plan:** A plan, drawn to scale, showing uses and structures proposed for a parcel of land as required by these regulations. It includes lot lines, streets, building sites, open space, buildings, major landscape features, and proposed utility lines, if any.

**Small Industry:** The manufacture, 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. The total gross floor area of operation does not exceed 10,000 square feet. The number of employees does not exceed 10 full time equivalents.

**Small Professional Office:** An office or office structure, not greater than 3,000 square feet in total area, whose use is limited to work that causes no noise, odor, air, water, or soil pollution.

**Structure:** Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something located on the ground, except a wall or fence.

**Trailer:** Any vehicles used as sleeping or camping or living quarters mounted on wheels or a camper body usually mounted on a truck; any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, or boats or as an office.

**Wetlands:** Those areas designated as such on the Fragile Areas Map of the duly adopted Town Plan of Tinmouth, or which the Vermont Agency of Natural Resources has designated

**Wind Energy Conversion System (WECS):** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics and which is intended to primarily reduce on-site consumption of utility power.

**Windmill:** See Wind Energy Conversion System

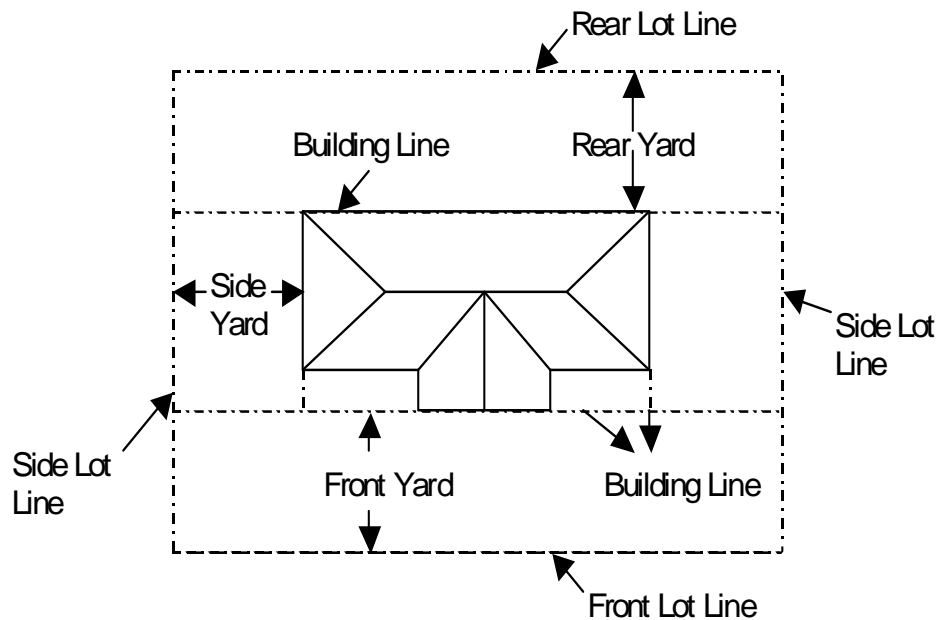
**Wind Tower Height:** The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

**Yard (Setback):** An open space at grade between a building and adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of the rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

**Front Yard:** The yard between the front lot line and front line of a principal building extended to the sidelines of the lot. Any yard adjoining a street or road is a front yard.

**Rear Yard:** The yard between the rear lot line and the rear line of a principal building extended to the sidelines of the lot.

**Side Yard:** The yard between the side lot line and the side yard line of the principal building extended to the front and rear yards.



**Zoning Administrator:** The Town's Zoning Administrator or the person appointed to administer the zoning regulations.

## Section 1302 -- Telecommunications Terms

**Adequate Capacity:** Capacity for wireless telephony is considered to be "adequate" if the grade of service ("GOS") is p.05 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erlang B

calculations. As call blocking may occur in either the land line or radio portions of a wireless network, Adequate Capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the personal wireless services facility in question, Adequate Capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the coverage area.

**Adequate Coverage:** Coverage for wireless telephony is "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that most of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

**Affiliate:** When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest. When used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

**Alternative Design Tower Structure:** Artificial trees, clock towers, bell steeples, light poles, silos and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also Stealth Facility).

**Antenna:** A device for transmitting and/or receiving electromagnetic waves, which is attached to a tower or other structure.

**Antenna Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

**Antenna Support Structure:** Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

**Applicant:** A person who applies for a telecommunications facility siting. An applicant can be the telecommunications service provider with the owner's written permission (or other legally designated representative) or the owner of the property.

**Available Space:** The space on a tower or structure to which antennas of a telecommunications provider are both structurally able and electromagnetically able to be attached.

**Base Station:** The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

**Bulletin 65:** Published by the Federal Communications Commission (FCC) Office of Engineering and Technology specifying radiofrequency radiation levels and methods to determine compliance.

**Cell Site:** A tract or parcel of land that contains a cellular communication antenna, its support structure, accessory building(s), and parking, and may include others uses associated with and ancillary to cellular communications transmission.

**Cellular Service:** A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular phones.

**Cellular Telecommunications:** A commercial Low Power Mobile Radio Service bandwidth licensed by the FCC to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.

**Cellular Telecommunications Facility:** Consists of the equipment and structures at a particular site involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

**Channel:** The segment of the radiation spectrum to or from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

**Collocation:** Locating wireless communications equipment from more than one provider on a single site.

**Common Carrier:** An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated rates.

**Communication Equipment Shelter:** A structure located at a base station designed principally to enclose equipment used in connection with telecommunications transmissions.

**Communication Tower:** A guyed, monopole, or self-supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

**Communications Facility:** A land facility supporting antennas and/or microwave dishes that sends and/or receives radio frequency signals. Communications facilities may include structures, towers or accessory buildings.

**dBm:** Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

**Directional Antenna:** An antenna or array of antennas designed to concentrate a radio signal in a particular area.

**Dish Antenna:** A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

**Facility Site:** A property, or any part thereof, which is owned or leased by one or more telecommunications facility(s) and where required landscaping is located.

**FCC:** Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

**Frequency:** The number of cycles completed each second by an electromagnetic wave measured in hertz (Hz).

**GHz:** Gigahertz. One billion hertz

**Hertz:** (Hz) One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

**Location:** References to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be referenced to true North.

**MHz:** Megahertz, or one million hertz.

**Micro-Cell:** A low power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

**Microwave Antenna:** A dish-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.

**Monitoring:** The measurement, by the use of instruments in the field, of radiofrequency exposure from telecommunications facilities, towers, antennas or repeaters.

**Monopole:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below grade foundations.

**Omnidirectional Antenna:** An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it is designed.

**Personal Communications Services or PCS:** Digital wireless telephone technology using higher frequency spectrum than cellular.

**Personal Wireless Services:** Commercial mobile services, unlicensed wireless exchange access services. These services include: cellular services, personal communications services, specialized mobile radio services, and paging services.

**Preexisting Towers and Antennas:** Any tower or antenna for which a permit has been issued prior to the effective date of these regulations.

**Radiated-Signal Propagation Studies or Coverage Plots:** Computer generated estimates of the signal emanating, and prediction of coverage, from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tools for determining a need and whether the telecommunications equipment will provide adequate coverage for that site.

**Repeater:** A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

**Roof and/or Building Mount Facility:** A facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or a building face.

**Self-Supporting Tower:** A communications tower that is constructed without guy wires.

**Spectrum:** Relating to any transmissions or reception of electromagnetic waves.

**Stealth Facility:** Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings. (See also Alternative Design Tower Structure.)

**Structurally Able:** The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

**System:** The communications transmission system operated by a telecommunications service provider in the municipality or region.

**Telecommunications Facility:** All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves which carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or another owner or entity.

**Telecommunications Provider:** An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

**Temporary Wireless Communication Facility:** Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction, or for a special event or conference.

**Tower:** A vertical structure for antenna(s) that provide telecommunications services.

**View Corridor:** A three dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

**Whip Antenna:** A vertical antenna that normally transmits signals in 360 degrees. Whip antennas are typically cylindrical in shape, narrow (less than 6 inches in diameter) and long (often measure 18 inches in height or more).

## Section 1303 - Flood Hazard Regulation Terms

**Area of special flood hazard:** The land in the flood plain within a community subject to a one percent or greater chance of flooding in a given year. The area includes all A zone designations on the Flood Insurance Rate Map. It does not include zones B and C.

**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year.

**Basement:** Any area of the building having its floor sub grade (below ground level) on any or all sides.

**Flood Hazard Area:** See "Area of Special Flood Hazard."

**Flood Hazard Boundary Map (FHBM).** An official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) and/or related erosion areas having special hazards have been designated as Zones A, M, and/or E.

**Flood Insurance Rate Map (FIRM):** An official map of a community, on which the Administrator has delineated the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study:** An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Plain:** The area generally encompassed by the 100 year flood boundaries including the floodway and floodway fringe. See "Area of Special Flood Hazard."

**Flood proofed or flood proofing:** Any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**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 one foot.

**Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of the National Flood Insurance Program Regulations.

**Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

**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.

**Structure:** An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, billboard, sign, wall or fence, except a wall or fence on an operating farm.

**Substantial Improvement:** For purposes of the flood insurance Regulations. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Sites.