

**TOWN OF NORTH HARMONY  
SUBDIVISION OF LAND**

**ARTICLE I - GENERAL PROVISIONS AND POLICIES REQUIREMENTS**

**Section 101 Title**

This Law shall be known and may be cited as the “Subdivision Law of the Town of North Harmony.”

**Section 102 Legislative Authority**

Pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, Section 10 et seq., and Sections 271, 276, 277 and 278 of Article 16 of the New York State Town Law, the Town Board shall review, approve, approve with conditions or disapprove plats within the Town of North Harmony. Final plat approval of residential subdivisions involving more than five (5) residential units shall be deemed a satisfaction of the Town Board’s authority and obligation for Special Use Permits/Site Plan Reviews under Article XI of the Town of North Harmony Zoning Law. Such plat approval shall not require the issuance of a separate Special Use Permit or Site Plan Review approval.

**Section 103 Policy**

It is declared to be the policy of the Town of North Harmony to consider land subdivision plats to be part of a plan for the orderly, economic, environmentally sound, and efficient growth and development of the Town consistent with its community character and the continuing needs of its people for quality residential building sites. This Law shall supplement and facilitate the Town of North Harmony Comprehensive Plan and Zoning Law. The following objectives shall guide the Town Board’s decisions as related to the public health, safety and welfare:

- A. Land to be subdivided and developed shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood, or other menace, and without resulting in significant damage to the natural resources of the area in which it is located.
- B. Proper provision shall be made for water supply, drainage, sewage and other needed improvements and utilities.
- C. All development shall be designed to facilitate adequate fire and emergency protection and provide access for fire-fighting and related equipment.
- D. Proposed roads shall compose a convenient system and shall be of such width, grade and location as to accommodate present and prospective traffic.
- E. Proper provision shall be made for permanent protection of natural drainage and significant historical and environmental features where appropriate.
- F. All reviews of applications specified in this Local Law shall be coordinated, to the extent practicable, with involved agencies and boards at the Town, County and State levels to ensure consistent, well-designed subdivisions and decision making that will benefit the Town of North Harmony.
- G. Proper provision shall be made for leaving undeveloped natural areas and corridors to mitigate the adverse environmental impacts of subdivision and to sustain a diversity of native vegetation and wildlife, to protect water resources, agricultural land, and scenic viewsheds, and to implement the

Town's policies of protection of its environmental and cultural resources pursuant to the Zoning Law.

- H. This Local Law shall be carried out so it does not unreasonably restrict or regulate farm structures or farming practices on farm operations in a New York State Agricultural District, in contravention of the purposes of Article 25-AA of the New York State Agriculture and Markets Law.
- I. Where a subdivision is designed to be rural in nature, roadways shall be designed in a manner which, together with the design of the lots, encourages rural, as opposed to suburban, quality and image and shall be, wherever appropriate, private, so that maintenance of such roadways shall not be a cost to the Town. The construction of such private roadways need not meet Town highway specifications for a public road but shall be sufficient to service all lots on such roadway with all manner of traffic. Approval of any plan proposing such private roadway shall further be conditioned on appropriate safeguards to protect the interest of the residents of the proposed subdivision, notification to prospective owners of the status of the roadway and assurances that the roads remain private. Safeguards shall include common use and maintenance agreements or homeowners' association agreements as appropriate.

#### **Section 104    Jurisdiction**

- A. Regardless whether or not any formal conveyance by metes and bounds shall be made, when any subdivision of land is proposed and before any offer is made to sell any part or all of a subdivision and before any permit for the erection of any structure in such subdivision shall be issued or any grading, clearing, construction or other improvements shall be undertaken, the subdivider or his authorized agent shall first obtain the appropriate approval of the proposed subdivision in accordance with the requirements of this Law.
- B. It shall further be the obligation of each prospective purchaser or developer of a lot that forms any part of a subdivision to ensure that appropriate subdivision approval has been obtained. In the absence of such subdivision approval, a prospective purchaser shall not commence the erection of any structure on such lot, nor commence any grading, clearing, construction or other improvements.
- C. The Chautauqua County Clerk's Office shall not record a plat of any subdivision within the Town unless the plat has been approved in accordance with the provisions of this Law and contains all of the appropriate signatures.
- D. The regulations of this Law shall not apply to subdivisions of two (2) to four (4) lots created on a cumulative basis following the date of the enactment of these regulations, provided no new road improvements; the extension of any road, water or sewer line; or, the installation of drainage improvements through one or more lots to serve one or more other lots are required in connection with such subdivisions. Property owners proposing such subdivisions shall, however, submit prepared plans to the Town Board, or its designee, for the purpose of determining that the proposed lots conform with the Town of North Harmony Zoning Law and these exemption criteria. Such plans shall be reviewed by the Town Board, or its designee, and if determined to be exempt, signed with the following statement; "These plans are acknowledged to be exempt from the provisions of the Town of North Harmony Subdivision Regulations and no subdivision approval is required or given.

**Section 105     Waivers and Modifications**

The Town Board may waive, when reasonable, any requirements or improvements for the approval, approval with conditions, or disapproval of subdivisions submitted for approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirement or improvement when, in the Town Board’s opinion, unreasonable restriction will result from strict compliance, the requirements are clearly not applicable, or an alternative standard will achieve improved protection of health and safety compared to the standards herein.

- A. Applications for waivers or modifications of standards or procedures shall ordinarily be submitted in writing by the subdivider. The application shall state fully the grounds on which it is made.
- B. Any resolution by the Town Board authorizing a waiver or modification of these regulations shall include the basis for its finding that unreasonable hardship will result from strict compliance with this Law and that the waiver or modification is justified by the benefits accruing to the community.
- C. In authorizing a waiver or modification, the Town Board shall attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objectives of these regulations. No waiver shall be granted which would substantially compromise the purposes of these regulations.

**Section 106     Appeals**

Any person or persons, or any officer, department, board of the Town, jointly or severally aggrieved by any final determination of the Town Board regarding subdivision plat decisions may apply to the New York Supreme Court for relief by a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York and New York State Town Law.

**Section 107     Inconsistencies with Other Laws**

To the extent that any provisions of this Local Law are inconsistent with the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, Sections 271 and 276, 277 and 278, the Town Board of the Town of North Harmony hereby declares its intent to supersede those sections of the Town Law, pursuant to its home rule powers under Municipal Home Rule Law, Article 2, Section 10 et seq., of the Consolidated Laws of the State of New York.

**Section 108     Self-imposed Restrictions**

Nothing in this Local Law shall prohibit the subdivider/applicant from imposing greater restrictions, not in violation of this Local Law, on any development than those required by the Town’s subdivision and zoning regulations. Such restrictions, if any, shall be indicated on the preliminary and final subdivision plats.

**Section 109     Separability and Effective Date**

- A. If any clause, sentence, paragraph, section or other part of these regulations should be decided by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of these regulations as a whole, or any part thereof, other than the part so held to be invalid.

- B. This local law shall take effect immediately upon filing with the Secretary of State of the State of New York, in accordance with the Municipal Home Rule Law of the State of New York.

## **ARTICLE II - DEFINITIONS AND WORD USAGE**

### **Section 201 Word Usage and Definitions**

A. Unless expressly stated, words in the singular include the plural, and all words in the plural include the singular. The word "persons" includes a corporation, unincorporated association; "building" includes "structure" and shall be construed as if followed by the words "or parts thereof." The word "road" includes "street," "highway" and "lane"; the word "watercourse" includes "drainage," "ditch" and "stream"; and the word "Lot" includes the words "plot", "parcel", "tract", or "site." All Words used in the present tense include the future tense and the word "He" shall include the Feminine gender "she" as well.

B. For the purpose of this Chapter, certain words used herein are defined as follows:

**CLERK OF THE PLANNING BOARD** – That person who shall be designated to perform the duties of the Clerk of the Planning Board for all purposes of this local law.

**CLUSTER DEVELOPMENT** – A subdivision design that incorporates modifications to minimum lot size and setback requirements in order to provide open space within the development and/or more efficient or appropriate use of land, provided that the number of lots or dwelling units does not exceed that which would be permitted in a subdivision design which meets all of the lot size and setback requirements of zoning.

**CODE ENFORCEMENT OFFICER** – The Building Inspector of the Town of North Harmony or other such person who may be appointed by the Town Board to enforce these subdivision regulations.

**COMMON DRIVEWAY** – A driveway serving no more than four (4) lots, owned in common or created by reciprocal easements.

**COMPREHENSIVE PLAN** – A plan, prepared by the Town Board pursuant to Section 272-a of Article 16 of Town Law, (or a Plan prepared by the Town Planning Board pursuant to previous Sections of Town Law) which indicates the general locations recommended for various functional classes of public works, places and structures and for the general physical development of the Town and includes any unit or part of such plan separately prepared and any amendment to such plan or parts therein.

**CONDITIONAL APPROVAL** – Approval of a final plat subject to conditions set forth in a resolution conditionally approving such a plat by the Town Board. Such conditional approval does not qualify a final plat for recording, nor authorize issuance of any building permits, prior to the signing of the plat by a duly authorized officer of the Town Board and recording of the plat in the Office of the Chautauqua County Clerk.

**CURB** – A vertical edge along a street.

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

**DRIVEWAY** – A private way providing vehicular access from a public or private road to a residence or to a commercial establishment.

**EASEMENT** – The authorization by a property owner for the use by another, and for a specified purpose, of any designated part of said property.

**ENGINEER OR LICENSED PROFESSIONAL ENGINEER** – A person licensed as a professional engineer by the State of New York.

**ENVIRONMENTAL IMPACT STATEMENT** – A written document, prepared in accordance with State Environmental Quality Review Act (SEQR) regulations, which documents the potential environmental impacts of a proposed action and alternative action.

**FINAL PLAT** – A drawing, in final form, showing a proposed subdivision containing all information or detail required by law and by these regulations as specified by Article V, Section 503 herein, to be submitted to the Town Board for approval. The aforementioned drawing, which, if approved, may be duly filed or recorded by the applicant in the Office of the Chautauqua County Clerk.

**FINAL PLAT APPROVAL** – The signing of a plat in final form by the Town Supervisor or designated Deputy Town Supervisor pursuant to a Town Board resolution granting final approval of the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the Office of the Chautauqua County Clerk.

**HIGHWAY SUPERINTENDENT** – The Highway Superintendent of the Town of North Harmony.

**LOT** – A parcel of land whose boundaries have been established by a legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for the purpose of use or transfer of title.

**LOT LINE ADJUSTMENT** – A modification of lot boundaries in which a portion of one or more lots is added to an adjoining lot or lots without increasing the total number of buildable lots.

**OFFICIAL MAP** - The map established by the Town Board pursuant to Section 270 of the Town Law, showing existing and proposed roads, highways, parks and drainage areas.

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

**PLANNING BOARD** – The Planning Board of the Town of North Harmony.

**PRELIMINARY PLAT** – A drawing or drawings clearly marked “preliminary plat” showing the salient features of a proposed subdivision, **as specified in Article V, Section 502** of these regulations, submitted to the Town Board for the purposes of consideration prior to submission of the plat in final form and of sufficient detail to apprise the Town Board of the layout of the proposed subdivision.

**RESUBDIVISION** – A change in the map of an approved or filed subdivision plat if such change affects any road layout shown on such map or area reserved thereon for public use, or any change of lot lines, except a “Lot Line Adjustment.”

**ROAD / STREET** - A public or private way for pedestrian and vehicular traffic, including avenue, lane, highway or other way, excluding driveway, service drive or common driveway.

**ROAD, DEAD-END OR CUL-DE-SAC** – A road or a portion of a road with only one vehicular traffic outlet.

**ROAD, MAJOR (ARTERIAL)** – A road, normally a State or County Highway, which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

**ROAD, MINOR (LOCAL)** - A road used primarily to provide access to abutting properties.

**ROAD, MARGINAL ACCESS** – A minor road which is parallel to and adjacent to an arterial road and which provides access to abutting properties and protection from through traffic.

**ROAD PAVEMENT** – The wearing or exposed surface of the roadway used by vehicular traffic.

**ROAD – PRIVATE** – A privately owned road held in common ownership by a homeowners association and approved pursuant to **Article IV, Section 405 of this local law**.

**ROAD WIDTH** – The width of the right-of-way, measured at right angles to the center line of the road.

**SERVICE DRIVES** – Minor ways that are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a road.

**SIDEWALK** – A paved path provided for pedestrian use and usually located along the side of a road.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR)** – Refers to the New York State law (Environmental Conservation Law, Section 8-0113) and regulations (6 NYCRR Part 617) which require public agencies to consider the potential environmental impacts of an action before approving or undertaking such action.

**SUBDIVIDER** – Any person, firm, corporation, partnership or association, who shall lay out any subdivision or part thereof as defined herein, either for oneself or others.

**SUBDIVISION** – The division of any parcel of land into two (2) or more lots, plots, sites or other division of land for the purpose, whether immediate or future, of sale, transfer of ownership or development, including resubdivision. Does not include a “Lot Line Adjustment.”

**SUBDIVISION, MINOR – A subdivision of land into:**

- A. Not more than four (4) lots (including the parent parcel) from any one parcel of land, following the date of the enactment of these regulations, located in the portion of the Town of North Harmony between the shoreline of Chautauqua Lake and State Route 394’s lakeside boundary, that will require or involve the creation of any new roads; the extension of a road, water or sewer line; or, the installation of drainage improvements through one or more lots to serve one or more other lots; or
- B. Five (5) or more lots (including the parent parcel) from any one parcel of land, following the date of the enactment of these regulations, located in the portion of the Town of North Harmony above Chautauqua Lake and upland from State Route 394’s boundary. In addition, said subdivision shall not involve the creation of any new roads; the extension of any road, water or sewer line; or, the installation of drainage improvements through one or more lots to serve one or more other lots, in order to qualify as a minor subdivision.

**SUBDIVISION, MAJOR – A subdivision of land into:**

- A. Five (5) or more lots (including the parent parcel) from any one parcel of land, following the date of the enactment of these regulations, located in the portion of the Town of North Harmony between the shoreline of Chautauqua Lake and State Route 394's lakeside boundary.
- B. Five (5) or more lots (including the parent parcel) from any one parcel of land, following the date of the enactment of these regulations, located in the portion of the Town of North Harmony above Chautauqua Lake and upland from State Route 394's boundary. In addition, said subdivision shall involve either the creation of any new roads; the extension of any road, water or sewer line; or, the installation of drainage improvements through one or more lots to serve one or more other lots, in order to qualify as a major subdivision.

**SURVEYOR** – A person licensed as a land surveyor by the State of New York.

**TERRACE** – The area between the curb and sidewalk or, if no sidewalk exists, the area between the curb and the public right-of-way.

**UNDEVELOPED PLAT** - A plat existing at the time of the enactment of these regulations that has been filed in the Office of the Chautauqua County Clerk, where twenty percent or more of the lots within the plat are unimproved.

**TOWN BOARD** – The legislative (Town Council) body of the Town of North Harmony.

**TOWN CLERK** – The duly elected Town Clerk of the Town of North Harmony.

**TOWN SUPERVISOR** – The duly elected Town Supervisor of the Town of North Harmony.

**TOWN ENGINEER** – The engineer designated to act on behalf of the Town by the Town Board.

**TOWN REPRESENTATIVE** – The Town of North Harmony Highway Superintendent or Fire Department Chief representing services provided to or within the Town of North Harmony's boundaries.

**TRAVELLED WAY** – That portion of a road, which, because of its grading, base, drainage, and surface, is passable in all seasons by motor vehicles, including fire trucks and ambulances. As used in this local law, travelled way shall refer to the average width of the road.

## **ARTICLE III - SUBDIVISION SUBMISSION & REVIEW REQUIREMENTS**

### **Section 301 Sketch Plan Approval**

- A. **Purpose** - The purpose of the sketch plan phase is to provide the subdivider with an opportunity to consult **early** and **informally** in the subdivision process with the Planning Board in order to save time and money and to improve the opportunity for more desirable development.
- B. **Requirements** - A sketch plan review, as described below with respect to major subdivisions, may be employed for minor subdivision at the option of the subdivider. The sketch plan should show the location of the subdivision, all existing structures, wooded areas, significant physical features, existing utilities and community resources and the proposed pattern of lots, roads, drainage, open space and water and sewer services. The sketch plan shall comply with Article IV, Section 401, of these regulations.
- C. **Preapplication Conference**  
The subdivider may meet with the Planning Board, or its designee, **prior** to preparing the sketch plan to discuss procedural matters as well as pertinent development requirements and potential concerns, including but not limited to the design of roads, reservations of land, local development policies, drainage and erosion control, slope stabilization measures, water retention facilities, sewerage, water supply and fire protection.
- D. **Applicant Responsibilities.**  
Before filing an application and before preparing a preliminary plat, the applicant should:
- (1) Obtain such forms, applications, policies, procedures, and guidelines as may be prescribed by the Town Board to implement the provisions of this Local Law from the Town Clerk and Code Enforcement Officer.
  - (2) Appear before the Planning Board to discuss the applicant's intentions and to determine the Town Board's and/or Planning Board's requirements. The applicant should present:
    - (a) A vicinity map at a scale of one inch equals 2,000 feet indicating the relationship of the proposed subdivision to existing community facilities which serve it;
    - (b) A map of the property identifying the features outlined in Article IV, Section 401 of this Local Law;
    - (c) A sketch plan showing the proposed conceptual layout of roads, lots, open space, and other natural and cultural features if any; and
    - (d) A completed SEQR environmental assessment form (EAF).
  - (3) Determine the requirements of the Chautauqua County Department of Health, if any, and any other local, state and federal agencies.
  - (4) Pay all fees and escrow deposits as may be required under fee schedules established by the Town Board.
- E. **Submission of Sketch Plan.**  
At least 14 days prior to the regular meeting of the Planning Board, the applicant shall submit three copies of a sketch plan of the proposed subdivision to the Code Enforcement Officer for purposes of classification and preliminary discussion. Prior to attending the sketch plan meeting, the applicant should become familiar with the Town's Comprehensive Plan, Zoning Law and this chapter in order to have a general understanding of the subdivision process.

**F. Classification and Designation.**

The Planning Board shall classify the application as a minor subdivision or major subdivision as part of sketch plan review. The Planning Board may require, when it deems necessary for protection of the public health, safety and welfare, that a minor subdivision comply with all or some of the requirements specified for major subdivisions. If the sketch plan is classified by the Planning Board as a minor subdivision, the applicant shall then comply with the procedure outlined in Section 303 of this Article. If it is classified by the Planning Board as a major subdivision, the applicant shall then comply with the procedures outlined in this Article and Article **IV**, Sections 402 and 403.

**G. Study of Sketch Plan.**

The Planning Board shall discuss the sketch plan concept with the applicant and determine whether the sketch plan meets the objectives of this Local Law. Upon completion of sketch plan review, the Planning Board shall make specific recommendations for modification or redesign of the sketch plan to be incorporated by the applicant in the next submission to the Planning Board. In its review, the Planning Board may schedule a field visit to the site. To facilitate the inspection of the site, the applicant shall have the corners of the property, proposed lot corners, and the center line of any proposed roadway marked by temporary stakes. The applicant may be requested to accompany the Planning Board during its site visit. Sketch plan endorsement does not allow the filing of a plat with the County Clerk or authorize the sale or lease of, or any offer to sell or lease, any lots in such subdivision or any part thereof.

**I. Lot Line Adjustment.**

If the Planning Board determines that the Sketch Plan is a Lot Line Adjustment, it shall refer the Sketch Plan to the Town Board for review. The Town Board shall review the Sketch Plan. If upon review the Town Board determines by resolution that the proposed Lot Line Adjustment doesn't constitute a Subdivision or resubdivision as defined in this local law, it shall authorize the Town Supervisor to make a notation to that effect upon the Sketch Plan and to sign such plan which may then be filed by the applicant in the Office of the Chautauqua County Clerk.

**H.** To the extent that the requirements of this Section 301 may be inconsistent with Town Law § 276, the Town Board hereby declares its intention to supersede § 276 pursuant to § 10 of the Municipal Home Rule Law.

**Section 302 State Environmental Quality Review Classification.**

The Town Board shall initiate the New York State Environmental Quality Review Act (SEQR) process, as defined in Article 8 of the Environmental Conservation Law and Part 617 of the New York Codes, Rules and Regulations, upon completion of the sketch plan stage of the application process. The Town Board shall review the short or full environmental assessment form, or, as applicable, the draft environmental impact statement submitted by the applicant with the plat application materials, and shall make a preliminary determination as to the type of action that is being proposed (Type I, Type II or unlisted action, as defined by SEQR). Once the Town Board has made a SEQR classification, and a determination of significance, the applicant shall be informed by the Board as to whether the application will be subject to additional environmental review as specified in the SEQR regulations, including, without limitation, scoping and preparation of an environmental impact statement. All requirements of SEQR shall be completed prior to any action on the preliminary or final plat by the Town Board.

### Section 303 Minor Subdivision Approval

A. **Purpose** – The purpose of the minor subdivision category is to assist with planning for subdivisions of a minor nature (as defined in Article II, Section 201 of these regulations), in such a manner as to provide for orderly and harmonious growth of the Town of North Harmony.

B. **Requirements** –

- (1) Applicants for approval of minor subdivision plats shall meet with the Code Enforcement Officer to determine whether the approval process authorized by this section can and should be utilized. The Code Enforcement Officer may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, the requirements for a sketch plan as listed in Article IV, Section 401 of these regulations. In addition the applicant shall provide a copy of a tax map showing the land proposed to be subdivided and all lots previously subdivided from that tract of land and two (2) copies of surveys of the minor subdivision prepared by a surveyor licensed by the State of New York. Applicants for approval of minor subdivisions are not required to submit a preliminary plat.
- (2) Seven (7) copies of the minor subdivision proposal and supplementary materials specified herein shall be submitted to the Town Board at least 14 days prior to the meeting at which it is to be considered.
- (3) The Town Board may require a series of submittals conforming to those for major subdivisions, **but may waive data requirements for good cause.**
- (4) Subsequent to the adoption of these regulations, for parcels located between the shoreline of Chautauqua Lake and State Route 394's lakeside boundary, not more than three (3) additional new lots may be created out of an existing parcel (i.e., a parcel in existence on the date that these subdivision regulations were adopted) without triggering a major subdivision approval process, regardless of the timeframe within which said lots are proposed to be created.
- (5) Subsequent to the adoption of these regulations, for parcels located in the portion of the Town of North Harmony above Chautauqua Lake and upland from State Route 394's boundary, not more than four (4) additional new lots may be created out of an existing parcel (i.e., a parcel in existence on the date that these subdivision regulations were adopted) using the exemption process, regardless of the timeframe within which said lots are proposed to be created.
- (6) In cases where the proposed minor subdivision will not pose any danger of health and safety or peril from fire, flood, erosion or other menace and where the application of these regulations will serve no substantial public interest, the Town Board may waive any or all other requirements of these regulations for any minor subdivisions, including, but not limited to, the requirement of a public hearing.

C. **Procedures-**

- (1) The Town Board shall approve, conditionally approve or disapprove minor subdivision final plats in accordance with the provisions of this section.
- (2) The Town Board shall approve, deny or conditionally approve the proposed minor subdivision final plat within sixty-two (62) days following the receipt of a complete and satisfactory application for approval of a final plat for a minor subdivision. The time period within which the Town Board is required to act may be extended by mutual agreement of the applicant and the Town Board. The applicant shall be notified in writing and all decisions of the Town Board shall be filed in the Office of the Town Clerk within five (5) days. If the Town Board fails to act within

the sixty-two (62) day period, the subdivision shall be deemed to be approved and the Town Clerk may issue a certificate of approval.

- (3) If the subdivision is disapproved, the Town Board shall furnish the applicant with a written statement specifying the reasons for disapproval.
- (4) If the subdivision is conditionally approved, the Town Supervisor or Deputy Town Supervisor, may be authorized to sign the plat upon the completion of the requirements specified in the approved resolution.
- (5) The construction of any improvements or the provision of guarantees for such improvements shall be in accord with the procedures and requirements specified herein for major subdivisions.
- (6) This Section 303 supersedes Section 276 of the Town Law.

### **Section 304 Preliminary Plat Approval for Major Subdivisions**

A. **Purpose** – To provide the Town Board adequate data to review the main aspects of a proposed subdivision plat and arrive at a preliminary decision before detailed plans are constructed by the developer.

B. **Requirements** –

- (1) A preliminary plat shall be prepared and submitted to the Town Board, appropriate Town Representatives and the Code Enforcement Officer, for all proposed major subdivisions and may be submitted for minor subdivisions. The preliminary plat shall be clearly marked “preliminary plat” and shall satisfy the requirements for preliminary layouts as described in Article IV, Section 402 of these regulations. Preliminary plats should comply with the recommendations made by the Planning Board on the sketch plan.
- (2) Seven (7) copies of the preliminary plat and supplementary materials specified herein shall be submitted to the Town Board at least 14 days prior to the meeting at which it is to be considered.
- (3) The preliminary plat shall be accompanied by a fee to cover administrative and inspection costs in accordance with the fee schedule adopted by the Town Board.
- (4) One (1) copy of the preliminary plat shall be returned to the applicant with the notification of decision and one (1) copy shall be retained by the Town Board. The other copies shall be used for necessary coordination with other agencies or consultants.

C. **Procedures** –

- (1) The Town Board shall study the preliminary plat taking into consideration the topography of the area, the requirements of the community and the best use of the land proposed to be subdivided. Particular attention shall be given to the arrangement, location and width of roads, their relation to the topography of the land, water and sewer services, drainage, lot sizes and arrangements, the future development of adjoining lands as yet unsubdivided and the requirements of the Town’s zoning regulations and Comprehensive Plan. In the review of the preliminary plat, the Town Board shall consult with the Town Highway Superintendent or other appropriate Town Representatives if such consultation is needed, as well as with such other officials or agencies as may be appropriate. The Highway Superintendent, or other appropriate officials consulted with shall report to the Town Board concerning the adequacy of the engineering features shown on the preliminary plat. Reimbursable costs incurred by the Town Board for consultation fees, particularly for Town and engineering consultants, shall be charged to the applicant. Such reimbursable costs shall be paid by the applicant and deposited into an

escrow account prior to process of the application and shall be in addition to the required application fees.

- (2) Within sixty-two (62) days following the receipt of a complete and satisfactory preliminary plat and supporting documentation, including a completed Environmental Assessment Form, or notice of completion of a draft Environmental Impact Statement, the Town Board shall, pursuant to Town Law, conduct a public hearing on the proposed subdivision. The notice of hearing shall be advertised at least once in a newspaper of general circulation in the Town, *and on the Town's website*, not less than five (5) days before such hearing.
- (3) Within sixty-two (62) days following the public hearing, the Town Board shall approve, with or without modification, or disapprove such preliminary plat. The grounds for a modification or disapproval, if any, shall be stated upon the records of the Town Board. Notwithstanding the foregoing provisions, the time within which the Town Board must take action on such plat may be extended by mutual consent of the subdivider and the Town Board. When approving a preliminary plat, the Town Board shall state in writing any modification it deems necessary prior to submission of the plat in final form.
- (4) Within five (5) days of the decision on the preliminary plat, the Town Board shall file its decision in the Office of the Town Clerk. In addition, the subdivider shall be provided with written notification of the action by the Town Board within five (5) days of the decision. In the event the Town Board fails to take action on a preliminary plat within the timeframe prescribed herein, such plat shall be deemed to have been granted preliminary approval. The certificate of the Town Clerk as to the date of submission and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval.

### **Section 305 Final Plat Approval for a Major Subdivision**

A. **Purpose** – To provide the Town Board an opportunity to review a final plat and by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.

B. **Requirements** –

- (1) Within six (6) months of receiving approval from the Town Board on a preliminary plat, with or without modification, the applicant may submit a final plat for approval by the Town Board. The final plat shall be accompanied by the remainder of the subdivision fees as specified by the fee schedule adopted by the Town Board. Final plats may require further review under the State Environmental Quality Review Act (SEQR).
- (2) If more than six (6) months have elapsed between the time of the Town Board's decision on the preliminary plat and the submission of the final plat, the Town Board may require a resubmission of the preliminary plat prior to accepting the proposed final plat, if it determines that conditions affecting the plat have changed significantly in the interim. If the Town Board determines that the preliminary plat shall be resubmitted, the Town Board shall conduct another public hearing on the proposed subdivision.
- (3) Two reproducible mylar tracings, or acceptable equivalent, plus six (6) copies of the tracing, and other exhibits required for approval, as specified herein and as described in the Town's Highway Design Specifications, shall be submitted with the application for final plat approval. When submitting a final plat for Town Board approval, the subdivider shall also file formal offers of dedication to the Town or other appropriate public agencies of all roads, parks and playgrounds and other permanent facilities as shown in the final plat. The approval of the plat does not

constitute acceptance by the Town of the dedication of such facilities. Evidence of all necessary easements or easement documents, if appropriate, as well as any other legal documents requested by the Town Board, shall be submitted with the final plat.

- (4) The subdivider may choose to develop the subdivision in stages. If such staging is proposed the developer shall submit the final plat for a portion of the area encompassed by the preliminary plat, provided that the proposed development stages were indicated on the preliminary plat approved by the Town Board. A section shall include at least twenty-five (25) percent of the total number of lots contained in the approved plat. No more than two (2) individual sections of a subdivision shall be in process or under construction at the same time.
- (5) The final plat shall conform substantially to the preliminary plat approved by the Town Board. It shall incorporate any modifications or other features that may have been recommended by the Town Board at the preliminary plat stage. All such compliances shall be clearly indicated by the subdivider on the submission.

**C. Procedures –**

- (1) Within sixty-two (62) days of the receipt of a complete and satisfactory final plat which the Town Board deems to be in substantial agreement with the preliminary plat approved pursuant to this section, the Town Board shall by resolution conditionally approved, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.
- (2) When a final plat is submitted which the Town Board deems not to be in substantial agreement with the preliminary plat approved pursuant to this section, the following shall apply:
  - (a) The Town Board shall hold a public hearing on such final plat not later than sixty-two (62) days after the receipt of the final plat. The hearing shall be advertised at least once in a newspaper of a general circulation in the Town, *and on the Town's website*, at least five (5) days before such hearing.
  - (b) The Town Board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within sixty-two (62) days after the date of the public hearing. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Town Board.
- (3) Written notice of the action by the Town Board shall be mailed to the applicant and filed in the Office of the Town Clerk within five (5) days of the date of the action by the Town Board. The action of the Town Board shall be recorded in the Board's minutes. In the case of the disapproval of a proposed final plat, the Town Board minutes shall specify the reasons for disapproval. Notwithstanding the foregoing provisions of this Local Law, the time within which the Town Board must take action on such plat may be extended by mutual consent of the subdivider and the Town Board. In the event the Town Board fails to take action on a final plat within the time prescribed herein, the plat shall be considered to be approved. A certificate of the Town Clerk as to the date of submission and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval.
- (4) No construction of any sort, site improvements or a building permit for any structure within the proposed subdivision shall be issued by the Code Enforcement Officer until the record sheet of the final plat has been approved by the Town Board and the subdivision is filed in the Office of the Chautauqua County Clerk and cabinet, section and map numbers have been assigned by the County Clerk. If a permit is desired for the occupancy of a building in the subdivision prior to the completion of all of the improvements shown on the approved construction sheet of the

subdivision plat, the Town Highway Superintendent, and the County Health Department as appropriate, shall determine that the roads and utilities serving the building are sufficiently completed to adequately serve the proposed occupancy.

- (5) Every final plat submitted to the Town Board for its approval shall carry the following endorsement:

Approved by Resolution of the Town Board of the Town of North Harmony, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ Town Supervisor or Deputy Town Supervisor

- (6) If the Town Board conditionally approves the final plat, the Town Board may authorize the Town Supervisor or Deputy Town Supervisor, to sign the plat upon the completion of the requirements specified in the approval resolution. Within five (5) days of granting conditional approval, the final plat shall be certified by the Town Supervisor or Deputy Town Supervisor of the Town Board, as conditionally approved. A copy of such action shall be filed in the Office of the Town Clerk and a certified copy mailed to the subdivider, including a certified statement listing those requirements, which, upon completion, would constitute approval of the final plat. Upon completion of the requirements, the plat shall be signed by the Town Supervisor or Deputy Town Supervisor of the Town Board. Conditional approval of the final plat shall expire within one-hundred-eighty (180) days following the date of the resolution granting conditional approval unless all such requirements have been certified as completed. Notwithstanding the foregoing provisions of this Chapter, the Town Board may extend the time within which a conditionally approved plat must be submitted for final approval. If the Town Board determines that such an extension is warranted, it may extend the date for no more than two periods of ninety (90) days each.
- (7) No changes, erasures, modifications, or revisions shall be made to any final plat following approval and endorsement by the Town Board on the plat.
- (8) An approved plat shall be filed in the Office of the County Clerk within sixty-two (62) days following the date the plat is signed by the Town Supervisor or Deputy Town Supervisor of the Town Board, or designee, or the certificate of the Town Clerk as to the date of the submission of the final plat and failure of the Town Board to take action thereon within the time prescribed is issued. If the plat is not filed within this time period, the approval shall become null and void. In the event the owner shall file only a section of such approved plat in the Office of the County Clerk, the entire approved plat shall be filed with the Town Clerk within thirty (30) days of the filing of such section. Any section of the approved plat, which is filed in the Office of the County Clerk, shall encompass at least twenty-five (25) percent of the total number of lots contained in the approved plat. The approval of the remaining sections of the plat approval shall expire unless said sections are filed before the expiration of the exemption period to which the plat is entitled under provisions of Town Law.

### **Section 306 Resubdivision and Lot Line Adjustments**

For a resubdivision, the same procedure shall apply as for a subdivision. A "Lot Line Adjustment" is not a subdivision or resubdivision for purposes of this law. Notification of the purpose for the division shall be shown on the plat and in the deeds recorded to reflect said adjustments.

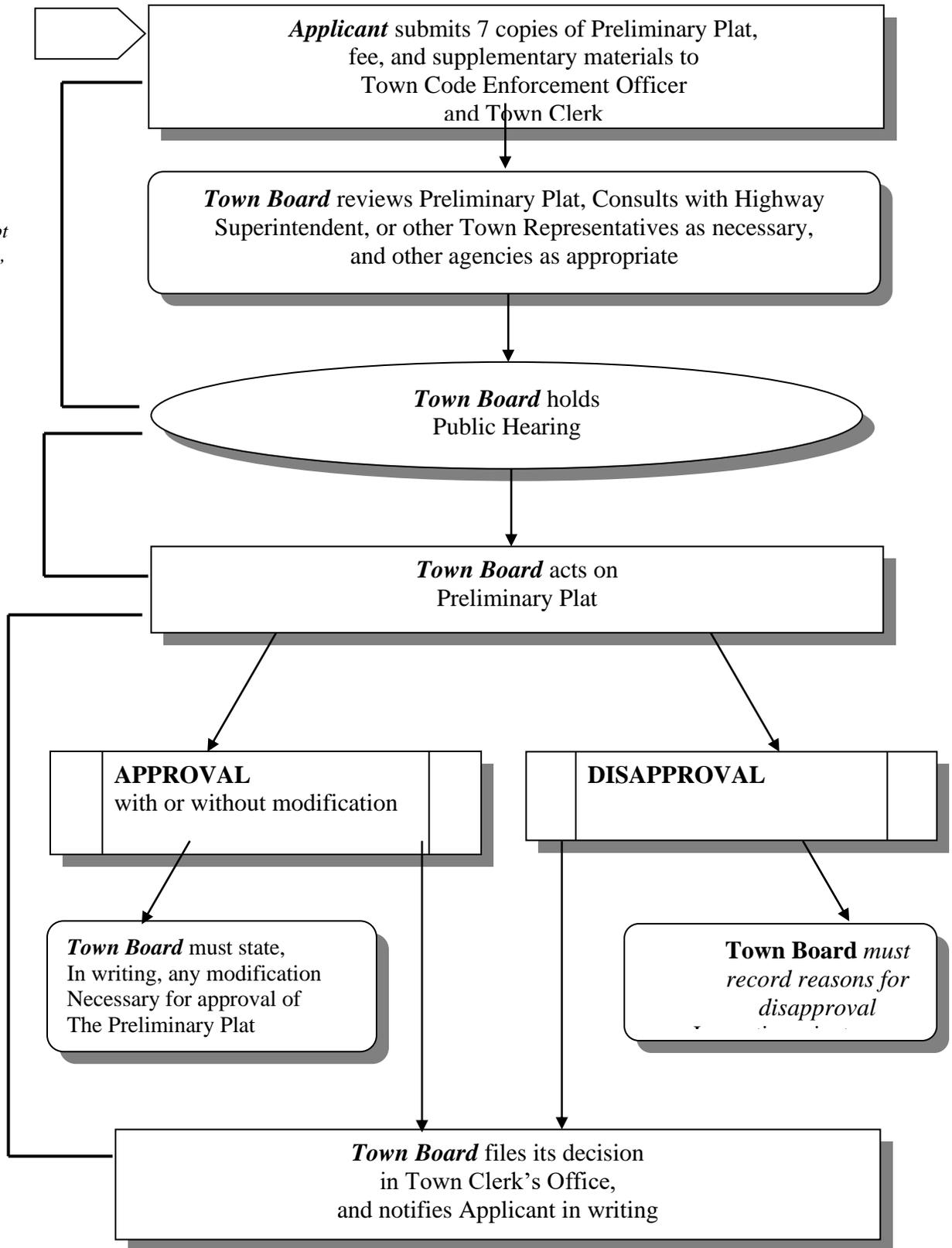
# PRELIMINARY PLAT REVIEW PROCEDURES

**TIME FRAME**  
 At least 14 days prior to the meeting at which it is to be considered

Within 62 days of receipt of complete application, including EAF

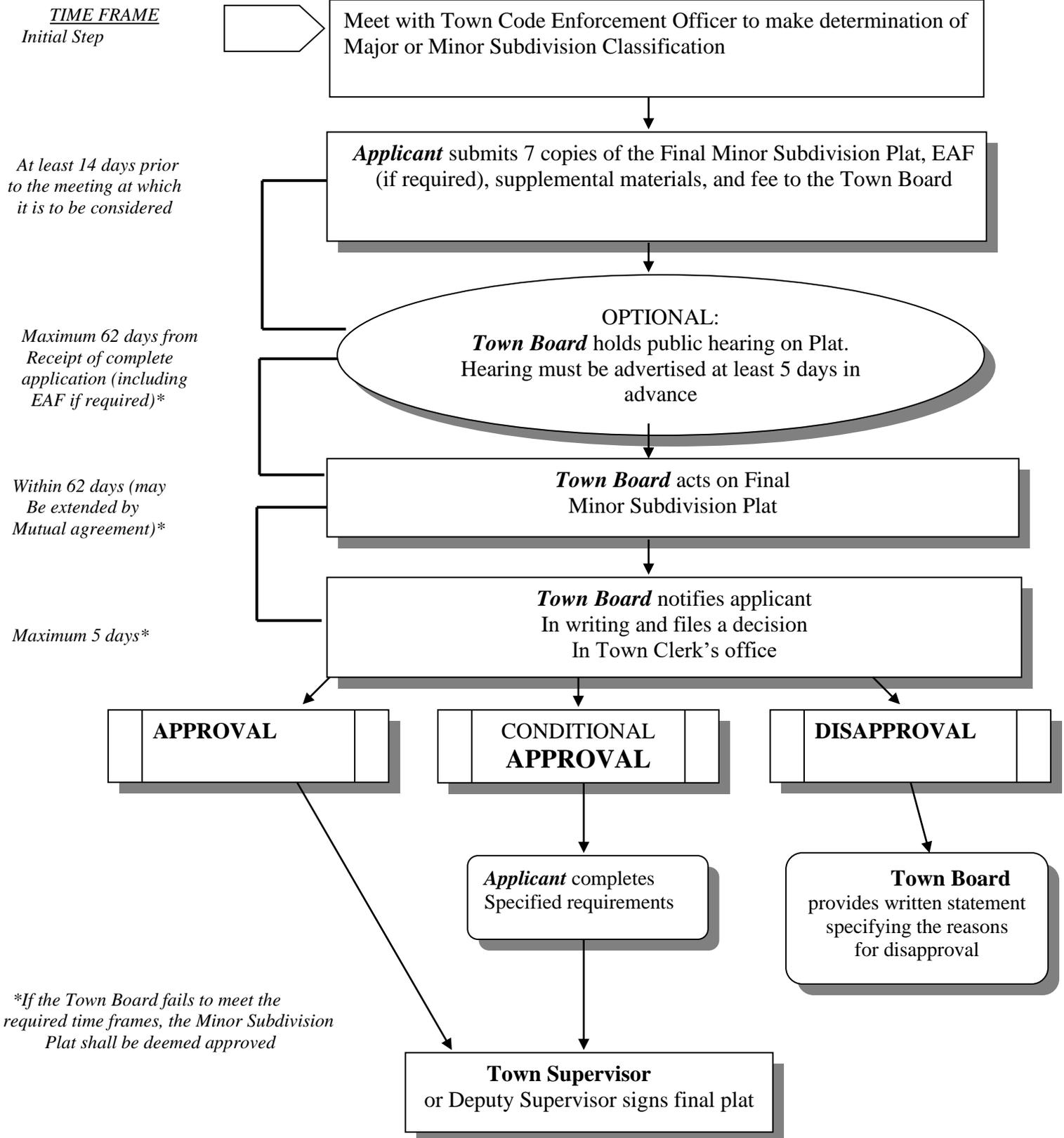
Maximum 62 days (may be extended by mutual consent)\*

Maximum 5 days\*

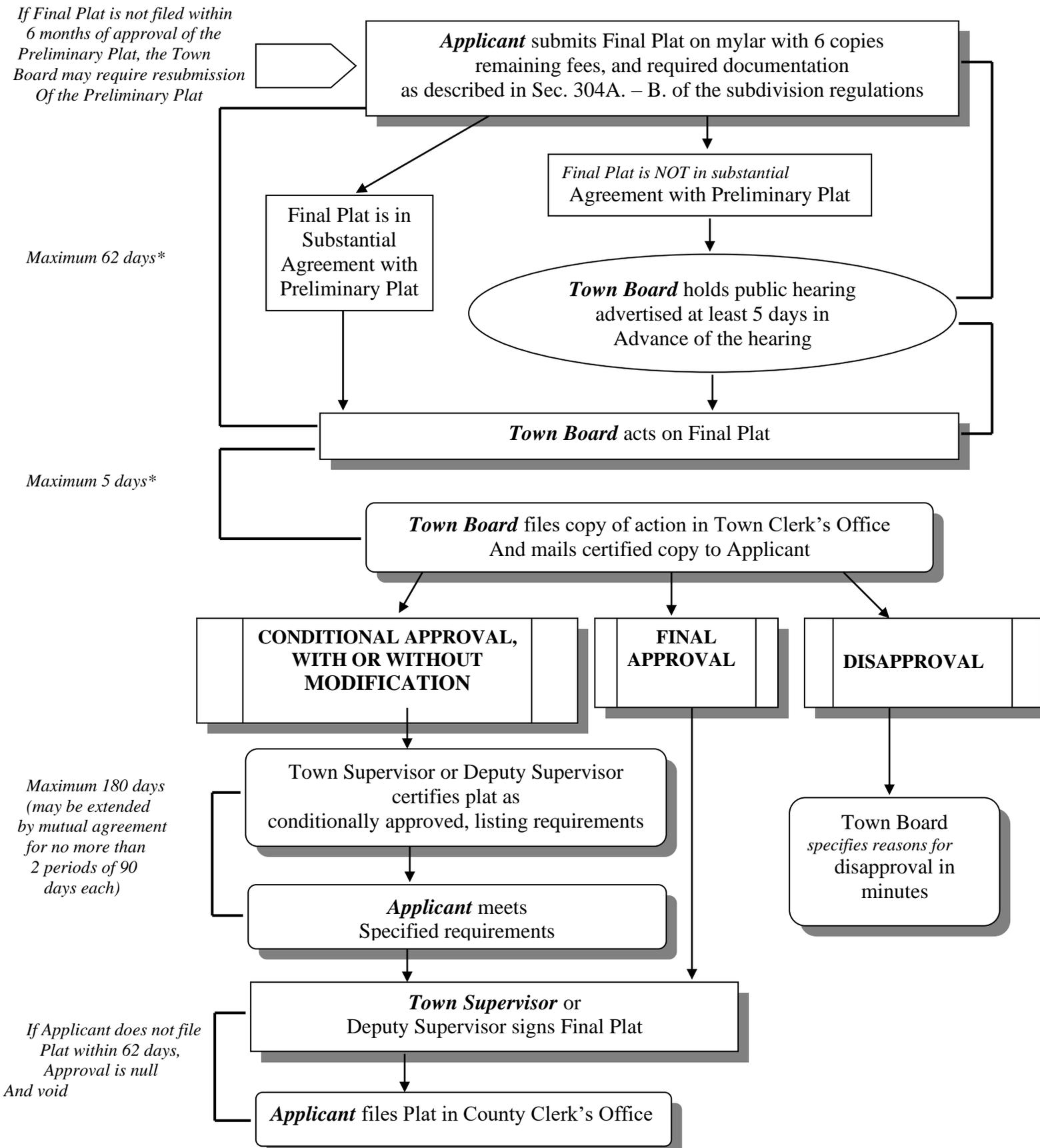


*\*If the Town Board fails to meet the required time frames, the Preliminary Plat shall be deemed approved.*

# MINOR SUBDIVISION REVIEW PROCEDURES



# MAJOR SUBDIVISION FINAL PLAT REVIEW PROCEDURES



- If Town Board fails to act within the required time frames, the application shall be deemed approved

## **ARTICLE IV - SPECIFICATIONS FOR LAYOUTS AND PLATS**

### **Section 401 Specifications for Sketch Plans**

A sketch plan shall be drawn on paper or other suitable material at a scale of not more than two hundred (200) feet to one (1) inch. Sketch plan shall include the following information:

- A. Name of proposal, including name and address of the subdivision and a written, clear statement of the subdivider's intent and letter of disclosure.
- B. North point, graphic scale, date, and general location map.
- C. If the subdivider intends to develop the tract in stages, the entire tract shall be depicted on the sketch plan with anticipated stages and timing of development indicated. All other lands contiguous to the proposal owned by the subdivider shall be shown on the map with the approximate acreage.
- D. Names of owners of adjacent lands or names of adjacent subdivisions.
- E. A location map showing the boundaries of the tract in relation to adjoining roads and the locations of the nearest utility services.
- F. General topography and drainage patterns of the parcel to be subdivided and parcels within two hundred (200) feet of the tract to be subdivided. All pertinent topographic features within the site and adjoining tracts, including existing buildings, watercourses, water bodies, wetlands and wooded areas, should be shown. Features to be retained as well as those to be removed should be indicated.
- G. A statement as to the proposed source of water supply and method of sewage disposal. (If the subdivision is not to be served by a public sewer system the subdivider is encouraged to contact the Chautauqua County Health Department for assistance in conducting on-site percolation tests in order to get a general idea of potential subsurface problems).
- H. The approximate lines of proposed roads and lots as well as lands identified for recreation areas or other permanent open spaces.
- I. A general statement as to how storm water drainage is to be accommodated.
- J. An indication of existing zoning of the tract (both on and adjacent to the site) and any other legal restrictions of use.
- K. A statement as the consistency of the proposal to the Town Comprehensive Plan.
- L. The general soil conditions of the entire site proposed for subdivision and its location with respect to a floodway or the boundaries of any areas of special flood hazard (one hundred year floodplain).

### **Section 402 Specifications for Preliminary Plats**

The preliminary plat shall be drawn on one (1) or more sheets of tracing material and shall be clearly marked as "Preliminary Plat." The preliminary plat shall be drawn at a scale of not more than two hundred (200) feet to the inch. If more than one (1) sheet is required to show an entire tract, an index map shall be provided. Proof of ownership shall be submitted at this time. When the subdivider is someone other than the owner, an affidavit by the owner of the land consenting to the application shall be filed. The plat shall include the following information:

- A. Items A through E of Section 401.

- B. Existing roads immediately adjoining and within the tract to be subdivided and the distance to the nearest major road intersection.
- C. A topographic map showing the entire site and all lands within one hundred (100) feet of the property at a five (5) foot interval. When additional information is needed to review the subdivision, the Town Board may require a topographic map showing all lands within two hundred (200) feet of the property boundary.
- D. Existing drains, water lines, and sanitary sewers within the tract to be subdivided and adjacent thereto. Such facilities should be identified by location, size, type and approximate elevations and gradients, using mean sea level as datum plan. Existing as well as proposed easements for such facilities should also be shown.
- E. The proposed source of water supply and method of sewage disposal. A conceptual layout of each system should be delineated, including the location of hydrants and the sizing of lines to be installed. Where water mains are not looped, hydrants shall be provided. If waste disposal is to be provided on-site, the subdivider shall provide the results of percolation tests in the approximate locations where proposed disposal systems are to be located.
- F. A tracing overlay showing all soils and their classification. Areas with moderate to high susceptibility to erosion, if any, shall be highlighted. The subdivider shall also include information about existing on-site vegetation.
- G. A separate drainage report, including calculations for runoff and pipe and channel sizing, which clearly describes how runoff will be handled during grading and development. The use of erosion and sedimentation prevention measures should be described. The report shall provide sufficient details to comply with the requirements for stormwater management plans administered by the New York State Department of Environmental Conservation and shall include the preliminary design of bridges and culverts must conform to the requirements of the appropriate jurisdiction (Town Highway Superintendent, State Department of Transportation, or County Department of Public Works).
- H. The appropriate lines and gradients of proposed roads and the names of proposed roads.
- I. A preliminary grading plan of the site at a contour interval of two (2) feet, showing the locations the approximate sizes of cuts and fills and cross sections for any final grading steeper than three horizontal to one vertical (3 to 1), or where the cut or fill will be more than five (5) feet.
- J. The approximate lines of proposed lots, the acreage or square footage contained in each lot, and individual lot numbering. If a proposed lot contains one (1) or more existing buildings, the proposed yard dimensions for such buildings shall be noted.
- K. The locations and dimensions of areas proposed for permanent open space.
- L. The location of any municipal boundary lines and zoning district lines within the tract.
- M. Any non-conforming lots, showing the required and actual areas, yards and setbacks.
- N. Copies of any deed restrictions or covenants as they may apply to any or all parts of the subdivision.
- O. Location, type and ownership of any natural gas wells within the site.
- P. The location and type of any known potentially hazardous materials on or adjacent to the site.

- Q. The location and quality of water bodies directly affected by and adjacent to the site.
- R. A list of any Federal, State or County permits that may be required.
- S. Facilities for fire protection.
- T. Facilities for vehicular and pedestrian traffic, circulation and parking.

**Section 403 Specifications for Final Subdivision Plats**

The final plat shall be drawn in ink on mylar or material equally acceptable for filing by the Chautauqua County Clerk. Said plat shall contain sufficient survey data to readily determine the location, bearing and length of all lines shown thereon and to permit the reproduction of such lines upon the ground. The final plat submission shall be composed of three parts, namely, construction sheet, record sheet and drainage report, as described in the subsections that follow. Two mylar copies shall be submitted to the Town Board. One approved copy will be retained by the Town; the other will be filed with the County Clerk.

**A. Final Plat Construction Sheet**

The construction sheet shall not be larger than thirty-four (34) by forty-four (44) inches in size, nor smaller than eighteen (18) by twenty-four (24) inches. It shall be drawn at a scale of fifty (50) feet to one (1) inch and shall contain the information listed below. Where more than one (1) sheet is required to depict the entire subdivision, a key sheet shall be provided. All data shown on the construction sheet shall be in accordance with the requirements of the Town and/or appropriate Town Superintendents and the Town's construction specifications and shall include:

- (1) Items A through C of Section 401.
- (2) The lines of existing and proposed roads immediately adjoining and within the subdivision.
- (3) The names of existing and proposed roads.
- (4) Typical cross sections of proposed roads.
- (5) Profiles of proposed roads at suitable vertical scale showing finished grades in relation to the existing ground elevation.
- (6) The layout of proposed lots, including lot numbers.
- (7) Provisions for water supply and sewage disposal, and evidence that such provisions have received approval of the Chautauqua County Department of Health.
- (8) The location and size of existing and proposed storm water pipes, sanitary sewer lines and watermains on the property or into which any connection is proposed.
- (9) Locations of survey monuments. Prior to the acceptance of the dedication of new roads, a certificate by a licensed land surveyor must be filed certifying that the above monuments have been placed where indicated on the map, at the appropriate stage of construction as determined by the Town Highway Superintendent.
- (10) A planting plan for street trees where required indicating the location, varieties, and minimum size of trees to be planted and of existing trees to be preserved as street trees.
- (11) Brief specifications, or reference to Town standards, for all facilities to be constructed or installed within the subdivision.

- (12) Specifications for all bridges and culverts, and approvals from the appropriate jurisdiction (e.g., NYS Department of Transportation, County Department of Public Works, Town of North Harmony, etc.) if needed.
- (13) Certification by a licensed professional engineer or a licensed land surveyor as evidence of professional responsibility for the preparation of the construction sheet.

**B. Final Plat Record Map**

Unless the Chautauqua County Clerk specifies otherwise, the record sheet shall be no larger than twenty-four (24) by thirty-six (36) inches in size, shall be drawn on mylar or linen at a scale not greater than fifty (50) feet to one (1) inch and shall show the information listed below. Where more than one (1) sheet is required to show the entire subdivision, an index map drawn to scale showing all sections shall be provided. The final plat record map shall include:

- (1) Items (A) and (B) of Section 401.
- (2) The boundaries of the subdivision and information to show the location of the subdivision in relation to surrounding properties and roads, including the names of owners of adjacent lands or the names of adjacent subdivisions. Whenever practicable, the subdivision boundary shall be referenced from two (2) directions to establish U.S. Coast and Geodetic Survey monuments or New York State Plane Coordinate monuments. In the event that such monuments have been obliterated or are otherwise unavailable, the subdivision boundary shall be referenced to the nearest highway intersections or previously established monuments of subdivisions or public lands. Any combination of types of reference points may be accepted that would fulfill the requirements of exact measurements from the subdivision boundary to reference points previously established for or by a public agency.
- (3) The lines of existing and proposed roads within the subdivision and their interconnection with existing or proposed roads .
- (4) The lines and dimensions of proposed lots, which shall be numbered. If a proposed lot contains one (1) or more existing buildings, the yard dimensions for such buildings shall be indicated. Existing buildings outside the limits of the plat but within seventy-five (75) feet of any proposed road or thirty (30) feet of any proposed lot line shall also be shown.
- (5) The lines and purposes of existing and proposed easements immediately adjoining and within the subdivision.
- (6) The lines, dimensions and area in square feet, of all property proposed to be reserved by deed restriction or covenant for the common use of property owners of the subdivision or for any other reason.
- (7) The location of monuments to be placed within the subdivision.
- (8) The locations of existing and proposed water supply lines, storm sewers, and sanitary sewers within the subdivision.
- (9) The locations of any municipal boundary lines within the subdivision.
- (10) The seal and certification by a licensed land surveyor as evidence of professional responsibility for the preparation of the record map and a place for the cabinet, section, and map numbers (or liber and page numbers) when filed.

- (11) Offers of dedication to the Town of any open space, recreation, road or other improvements and those facilities to be retained by the subdivider, including the method of maintenance and improvement thereof. Such offers shall be received and approved by the Town Attorney as to their legal sufficiency.

**C. Subdivision Drainage Plan and Erosion Control Plan**

This plan shall be on a separate sheet of the same size and scale as the record map and shall contain the following information:

- (1) Plans, profiles and typical and special cross sections of proposed stormwater drainage facilities.
- (2) Supporting final design data and copies of computations used as the basis for the design capacities and performance of the drainage facilities.
- (3) Subdivision grading plan developed to suitable contour interval, with grading details to indicate proposed road grades and building site grades and elevations through the subdivision. The contour interval of the grading plan shall either be one (1), two (2) or five (5) feet (vertical). The interval selected shall result in a horizontal distance between contour lines of not more than 100 feet. All grades shall be referenced to United States Coast and Geodetic Survey datum.
- (4) A stormwater management plan shall be prepared in conformance with the DEC publication ("Reducing Impacts of Stormwater Runoff from New Development," including all subsequent amendments and other provisions of the NYS Department of Environmental Conservation. Such plan shall be available on-site at all times during construction.)
- (5) If the subdivision is within or adjacent to the boundary of a one-hundred-year floodplain, the subdivision drainage plan shall contain a detailed analysis of the area with respect to floodplain management and land use.
- (6) Location of all buildings proposed, if known.
- (7) Number of each lot.
- (8) Location and means of controlling erosion within the project limits.
- (9) Slope stabilization details.
- (10) Stormwater detention basins.

## **ARTICLE V - DESIGN STANDARDS**

### **Section 501 General**

The Town Board, in considering an application for the subdivision of land, shall be guided by the policies specified in Article I, Section 103 and the following considerations and standards. In addition, all designs and improvements shall be in accordance with the Town's Highway Design Specifications.

- A. Purpose. The proposed subdivision shall conform to the design and improvement standards of this article of the subdivision regulations, which are intended to result in a well-planned community without adding unnecessarily to development costs.
- B. Cluster Development. Pursuant to NYS Town Law Section 278, and the Town of North Harmony Zoning Law, the Town Board may modify lot size and setback requirements of the zoning law in order to approve a cluster development, if the Town Board finds that a cluster development would provide the most appropriate use of land, would facilitate the adequate and economical provisions of roads and utilities, would preserve the natural scenic qualities of open lands, and/or would protect adjoining neighborhoods from the potential impact of new development. A cluster development shall not contain a greater number of dwelling units or building lots than would, in the Town Board's judgment, be permitted if the site were subdivided into lots containing the minimum lot size and density requirements of the zoning law pertaining to the district or districts in which such site is located, and conforming to all other applicable requirements.
- C. Replatting and lot line adjustments. If an applicant proposes a lot line adjustment or replatting of all or part of land covered by an existing plat which has been laid out prior to the required subdivision process, approval and filing shall comply with the requirements and application process set forth in this chapter, except that the applicant may request and the Town Board may grant waivers from the informational and procedural requirements in this Article, provided that such waivers do not violate the provisions of §§ 276 and 277 of the Town Law.
- D. Insofar as possible, all existing features of the landscape such as large trees, groves of mature trees, rock outcrops, water features such as streams, ponds and wetlands, historic resources, prime agricultural soils and other significant assets that would add to the value of the site should be preserved through sensitive design of the subdivision.
- E. Agriculture. If required, the Town Board shall evaluate and consider the agricultural data statement on its review of the possible impacts of any proposed subdivision upon the functioning of farm operations within any designated New York State agricultural districts.
- F. Watercourses. Where a watercourse separates a proposed road from abutting property, provision shall be made for access to all lots by culverts or other permanent drainage structures. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way, not less than 30 feet in width. All structures and right-of-ways shall be of design and specifications approved by the Town Highway Superintendent.

### **Section 502 Lots**

#### **A. Lot Size and Arrangement**

- (1) The dimensions and arrangements of lots shall be such that there will be no foreseeable difficulties, for reasons of topography, soils or other natural conditions, including the presence of wetlands or floodplain areas, in providing access to buildings on such lots or in securing building permits in compliance with existing zoning regulations as well as other Town requirements.

- (2) The lot size, width, depth, shape, orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
- (3) Subdivision lots should be laid out as much as possible so that side or rear lot lines follow the centerlines of streams or drainage ways that may be within the subdivision.
- (4) Except as may be authorized by the Town Board under the cluster development provisions of Section 501 (B), all lots shown on the subdivision plat shall conform to the minimum requirements of the Town's zoning laws as to area and dimensions for the zone in which the subdivision is located.
- (5) Notwithstanding any provision of law to the contrary, and except as may be authorized by the Town Board under the cluster development provision, where a plat contains one or more lots which do not comply with the Town's zoning laws, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 267-b of Town Law, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application, the Zoning Board of Appeals shall request the Town Board to provide a written recommendation concerning the proposed variance.
- (6) Corner lots shall have extra width sufficient to comply with required front and side yard building setback requirements for the zoning district in which the lot is located consistent with the Town's Zoning Laws.
- (7) Driveway Design. Driveways shall be designed and built to afford suitable access to the building site in accordance with the Town Zoning Law and the Driveway Specifications of the New York State Uniform Fire Prevention and Building Code.
- (8) Driveways and common drives. The Town Board shall assure that driveways are suitably laid out to provide safe access to improved roads, taking into consideration the rural character of the Town and the expressed policies of minimizing environmental disruption. Where common drives are used, the Town Board shall assure that there are no more than four lots accessing from the common drive and that safe access is feasible over the improved common travelway. If such access is acceptable, and legally binding recorded common drive maintenance agreements or homeowners' agreements are required as conditions of subdivision approval, the Town Board may approve a subdivision in which lots served by a common drive have road frontage that is not physically suitable for the placement of a driveway. When a common driveway has been approved, the Town Board shall require that a statement be placed on the final plat Mylar, to be filed in the Chautauqua County Clerk's office, stating that a common driveway has been approved for the subdivision conditioned upon the recording of the approved common drive maintenance agreement in the Chautauqua County Clerk's office.

#### B. Access

- (1) The subdividing of land shall provide each lot with satisfactory access for routine purposes and emergency vehicle access from public roadways. This access may be provided directly from a public roadway or by suitably improved and maintained private road built to Town specifications.

- (2) Where several adjoining lots abut an existing State highway, the Town Board may require that such lots be served by a common drive in order to limit possible traffic hazards on such roadway.

C. Flag Lots

Flag lots. Flag lots (also referred to as "rear lots") are allowed only by express waiver of the Town Board granted in its sole discretion. Such lots may be approved only where they will not endanger public health and safety, will not increase the otherwise allowable density of development, will provide an alternative to the development of new Town roads, will not conflict with existing residential uses, and will advance the purposes of this Law and the Town Zoning Law, including compliance with the following:

- (1) Each flag lot shall have a minimum frontage of 25 feet on an improved road to provide for an accessway as required by this chapter. No portion of a flag lot shall be less than 50 feet in lot width.
- (2) Except for Subsection **C(1)** above, flag lots must meet all other requirements for a lot in the applicable zoning district. For purposes of determining front yard setbacks, the front yard shall be the yard area lying between the principal structure and the road from which access is obtained.
- (3) The accessway shall be owned in fee simple by the owner of the flag lot.

**Section 503 Roads**

A. Design and Layout of Roads

- (1) General objectives. Roads shall be of sufficient width, suitably located, and adequately constructed to accommodate the prospective traffic and normal road maintenance equipment. The arrangement of roads shall be coordinated such that they compose a convenient roadway system, cause no undue hardship to adjoining properties, and render no property inaccessible from an existing road or from a proposed road in a subdivision for which a completion bond or similar performance guaranty has been posted.
- (2) Relation to topography. Roads shall be related to and conform as much as possible to the original topography of the site being subdivided. A combination of steep grades and sharp curves shall be avoided.
- (3) Arrangement of roads. To the extent practicable, the arrangement of roads in the subdivision shall provide for the continuation of principal roads of adjoining subdivisions, and for proper projection of principal roads into adjoining properties which are not yet subdivided, by use of temporary stub or cul-de-sac roads, in order to make possible necessary fire protection, movement of traffic and the construction or extension of needed utilities and services. Any temporary stub or cul-de-sac road, or other intended through road, shall be constructed wholly to the property line and shall be provided with a temporary turnaround. A note on the subdivision plat shall specify that the land included within the turnaround which is outside the normal road right-of-way shall revert to abutting property owners upon continuation of the temporary stub road/cul-de-sac and shall be regraded and seeded.
- (4) Feeder/service road. In order to maintain the flow and circulation of traffic along primary roadways, provide improved access to commercial, industrial and residential developments located on or adjacent to roadways, prevent a proliferation of turning movements and

segregate local traffic from higher-speed through traffic, the Town Board, where appropriate, may require the construction of a feeder road parallel to an existing or proposed road.

- (a.) The Town Board, where appropriate, shall:
  - (1.) Approve the number, spacing and location of any entrance(s) and exit(s) from the property under review;
  - (2.) Require the interconnection of parking areas and land uses via access drives within and between adjacent lots; and/or
  - (3.) Require that land uses adjacent to or integrated in a shopping center or cluster of commercial or other facilities shall use common access drives with other establishments in that center or cluster. Such drives shall be located behind the principal structures in the development to the extent feasible.

(b.) The Town Board may grant conditional approval which would allow direct access to the road until such time as the access drive is improved and available, at which time the direct access to the road would be eliminated.

(c.) The Town Board shall require written covenants and/or deed restrictions, satisfactory to the attorney for the Town Board, binding the owner and assignees to permit and maintain such internal access and circulation and inter-use of parking facilities. These covenants and/or deed restrictions shall run with the land and shall be recorded in the Chautauqua County Clerk's office.

- (5) Intersections of all U.S., New York State, and county roads by other roads shall be at least 800 feet apart, if possible. Cross (four-cornered) road intersections shall be maintained between offset intersections. Within 40 feet of all intersections, roads shall be approximately at right angles, and grades shall be limited to 1 1/2%. All road intersection corners shall be rounded by curves of at least 20 feet in radius at the property line.
- (6) Visibility at intersections. No fences, walls, hedges or other landscaping shall be permitted to obstruct visibility at intersections. The following minimum requirements also apply:
  - (a.) Minimum sight distance, measured 12 feet before the intersected road edge of pavement at a height of 44 inches, shall be maintained as follows:

<b>Speed Limit (mph)</b>	<b>Minimum Sight Distance (feet)</b>
35 or less	250
40	325
45	400
50	475
55	550

- (7) Private roads shall have a right-of-way of at least forty (40) feet in width and an improved surface width of not less than eighteen (18) feet. All private roads shall be constructed in accordance with the design standard provisions of section 503 (E).
- (8) In order to facilitate drainage, no road grade shall be less than one and one half percent (1.5%).
- (9) All roads, except private roads, which shall meet the requirements listed in section 503 (E), shall meet all requirements specified in the Town Highway Design Specifications approved by the Town Board.

**B. Cul-de-sac and dead-end roads**

- (1) If possible all cul-de-sac roads should drain toward their entrance.
- (2) Unless there is the expectation of extending the road through to the adjoining property, a cul-de-sac road should never be brought to the property boundary line, but should be placed so that lots can back onto the property line of the subdivision.
- (3) No cul-de-sac shall exceed fifteen-hundred (1500) feet in length.
- (4) All cul-de-sac roads shall have a turnaround at the end of the road with a right-of-way diameter of not less than fifty (50) feet; and a pavement radius of 30 to 40 feet shall be provided. The cul-de-sac shall otherwise be governed by all stated requirements of the Town's Highway Specifications.
- (5) If a dead-end road is of a temporary nature, a similar turnaround shall be provided and provisions made for the future extension of the road through to the adjacent property and reversion of the excess right-of-way to the adjoining properties.

**C. Where subdivision abuts or contains an existing road of inadequate right-of-way width, additional right-of-way width shall be required.**

**D. Driveway Culverts**

The installation of driveway culverts requires approval and a permit for culvert location, size and material from the State, County or Town Department having jurisdiction over a given road. New driveway culvert installation shall be the responsibility of the developer/landowner following the receipt of a permit.

The Town reserves the right to remove and/or install driveway or roadway culverts along any existing road to properly transmit surface drainage as determined by the Town Highway Superintendent.

**E. Special Provisions for Private Road Subdivisions in Rural Areas**

It is the policy of the Town to discourage the construction of new Town roads in rural parts of the Town, except where new through roads may be needed. Therefore, in appropriate circumstances, properly constructed private roads shall be encouraged. Such roads may be unpaved and may be narrower than the Town Road Specifications require for roads accepted by the Town.

(1) Applicability

A Private Road Subdivision (PRS) shall be allowed in any Subdivision of land in the A and AR Districts, provided that total development on the road is limited to no more than ten lots.

(2) Required Finding

In order to allow a PRS, the Town Board must make the following findings:

- (a) The proposed alignment of the road is suitable for a cul-de-sac and is not an appropriate location for a through Town road.
- (b) The proposed PRS will benefit the Town by limiting development in a rural area and/or by preserving open space of conservation value as set forth in the zoning law.
- (c) The PRS complies with the Procedures and Standards set forth in Subsection 3 below.

(3) PRS Procedures and Standards

- (a) The applicant shall submit to the Town Board a professional engineer's drawing showing the location, dimensions, and grade of the road, as well as the specifications setting forth the proposed composition of the road.
- (b) Written comment from the Town Highway Superintendent, appropriate Town Representatives and approval by the engineer retained by the Town shall be secured before Town Board approval of any private road.
- (c) The private road may never be offered for dedication to the Town unless it conforms to Town Highway specifications in effect on the date of the offer of dedication. However, the Town Board shall be under no obligation to accept such an offer of dedication, even if the road conforms to the Town Highway specifications. In the event such dedication becomes necessary to ensure public safety, the costs of bringing the road up to Town Highway specifications shall be borne by the required homeowners' association (HOA).
- (d) The lots in the Subdivision may never be subdivided beyond the number of lots permitted in Subsection A, regardless of whether the private road remains a private road. This restriction on Subdivision shall be implemented by a recorded deed restriction or conservation easement enforceable by the Town.
- (e) The Subdivision Plat shall show the road clearly labeled PRIVATE ROAD.
- (f) Design Standards. The following are minimum standards for construction of private roads:
  - (1) All construction shall be in accordance with this local law and shall be under the immediate inspection, supervision, and approval of the Town Board.
  - (2) The right-of-way for a private road shall be not less than forty feet wide with a traveled way not less than eighteen feet wide.
  - (3) Whenever possible and as far as practicable, roads shall follow natural contours.
  - (4) Minimum curve radius shall be sixty feet; minimum tangent distance between reverse curves shall be thirty feet.
  - (5) Grade shall not exceed fifteen percent (15%) nor be less than 1.5%. Grade shall not be greater than two (2%) within thirty feet of an intersection.
  - (6) The subgrade and foundation course shall be constructed as required by Town Highway specifications.
  - (7) The wearing surface shall consist of at least two inches of crushed stone or gravel.

#### **Section 504 Storm and Surface Drainage**

A. All storm sewers and drainage facilities such as gutters, catch basins, bridges, culverts and swales shall be designed for the development and be subject to the approval of the Town. Such facilities shall be capable of handling upland flows that may be generated from future land development.

B. Stormwater control measures, both temporary and permanent, shall be designed in accordance with the requirements of the Town of North Harmony's Zoning Law (Stormwater and Erosion Control Supplemental Regulation\_Section 641) and presented for approval to the Town Board prior to any site development or soil disturbance.

#### **Section 505 Water Supply/Sewage Disposal Systems**

A. To the extent authorized by the Public Health Law and the Chautauqua County Health Department, the Town Board may, in accordance with Article **VIII** of this chapter, waive this requirement for proposed lots in excess of five acres. Instead, the Town Board may accept a note on the plat advising of applicable Health Department permit requirements which must be met prior to the issuance of a building permit by the Town of North Harmony; the note shall also include verification by the applicant's engineer that there is sufficient area on each lot where on-site water supply and sewage disposal facilities can be located.

B. If public sewer line/water supply is within one-hundred (100) feet of the property line for a property for a single or two-family home, or within 500 feet of the lot line for a 3-family or more residential dwelling, or for commercial/industrial uses, sanitary sewers/water lines and appurtenances shall be designed to adequately serve all units with connections to the public system. The design and installation of said sewers and/or water lines shall be subject to the approval of the Chautauqua County Health Department.

C. Where public water supply and/or sewage disposal facilities are not available, the Town Board shall ascertain as a part of subdivision plat review and approval that each prospective lot and dwelling unit may be adequately served by acceptable privately owned water supply and sewage disposal facilities and ensure that all such on-site water supply and sewage disposal facilities shall be designed and installed in accordance with the requirements of the Chautauqua County Health Department.

D. Any lot not so approved shall be prominently marked on the Plat *NOT APPROVED FOR HABITABLE BUILDING PURPOSES.* No such lot shall be built upon with a habitable structure unless the owner subsequently obtains Subdivision approval for such lot as a building lot from both the Town Board and the Chautauqua County Health Department.

E. Once the individual disposal systems are installed they shall be inspected by a licensed professional and certified to the Town Building Department as to their installation relative to the approved plans. The Town assumes no liability for the performance of individual disposal systems.

#### **Section 506 Monuments**

Permanent reference monuments shall be set at final grade at all corners and angle points of the boundaries of any major subdivision plan and at all road intersections and such intermediate points as may be required.

These markers shall be set by a licensed land surveyor and certified to the Town as true and accurate before a Certificate of Occupancy is issued.

#### **Section 507 Road Signs**

The Town Board shall require that permanent road signs, of the same specifications as those of the Town Highway Department, shall be erected at each intersection. The placement of all road signs shall be in accordance with specifications provided by the Town Highway Department.

**Section 508 Electric, Telephone, Cable TV or Other Buried Cable Utility**

In every development, provisions shall be made for service from the private and public utility supply systems where such supply systems are feasibly available. Utility services for any minor subdivision proposed shall be consistent with the service methods that exist within 500 feet of proposed development area. Applicants shall discuss the service method to be used for every development with the Town Board.

**Section 509 Prevention of Landlocked Parcels**

No division of land shall result in any parcel not having at least one (1) access point to at least one (1) road that can be improved to meet Town standards. Where the remainder of a parcel is located so that access to a public road would be gained by a road extending from the main portion of the parcel, there shall be enough land remaining to provide for the extension of a public (or private) road from this parcel to an existing road.

**Section 510 Provisions for Future Resubdivision**

If a tract is subdivided into lots which are more than twice the size of the minimum lot size required in the zone district in which the subdivision is located, the Town Board may require that roads and lots are laid out so as to permit future resubdivision in accordance with the requirements contained in these regulations and the Town's zoning laws.

**Section 511 Non-Residential Subdivisions**

Standards for the design and construction of non-residential subdivisions shall be governed by sound engineering and planning practice. Utilities shall be sized commensurate with the anticipated demand based upon the full development of the subdivision.

**Section 512 Utility and Drainage Easements**

Where topography or other conditions make inclusion of utilities or drainage facilities within road rights-of-way impractical, perpetual unobstructed easements at least 20 feet in width for such utilities shall be provided across property outside the road lines and with satisfactory access to the road. Ownership of these easements shall be indicated on all reservations and on the final subdivision plat.

**Section 513 Erosion and Sediment Control**

A. General

It is the Town's intent to control soil movement by employing effective erosion and sediment control measures before, during and after site disturbance. Erosion and sediment control measures, both temporary and permanent, shall be designed in accordance with the requirements of the Town of North Harmony's Zoning Law (Stormwater and Erosion Control Supplemental Regulation\_Section 641).

**ARTICLE VI – REQUIRED IMPROVEMENTS**

**Section 601 Required Improvements.** In making determinations regarding the necessity and extent of the provision and installation of required subdivision improvements, the Town Board shall take into consideration the prospective character, density and uses within the proposed subdivision, whether residential, commercial or industrial uses, or a combination thereof.

The Town Board shall require the provision and installation of the following improvements in accordance with New York State Town Law, unless it shall specifically waive in writing any such improvements as the Town Board considers are not requisite to the interest of public health, safety and general welfare, as provided in Article VIII, Section 801, of this chapter. (The Town Board's authority to waive certain public improvements does not include the option to waive any of the highway specifications for public roads.)

- A. All of the required improvements shall be made by the applicant without reimbursement by the Town. Unless alternatively provided for in accord with the provisions of Town Law, said improvements shall include the following:
  - (1) Roads and common driveways;
  - (2) Road signs;
  - (3) Road lighting;
  - (4) Road trees and treatment of buffer areas and other required landscaping;
  - (5) Monuments or other acceptable markers;
  - (6) Storm drainage;
  - (7) Sanitary sewers or an approved alternate system;
  - (8) Water supply and fire-protection facilities;
  - (9) Electrical, gas, telephone, television cable and utility lines;
  - (10) Driveway aprons;
  - (11) Seeding and other means of erosion control for all lands within the subdivision tract, including all lots, common areas and rights-of-way;
- B. Standards for installation. All improvements required by the Town Board shall be installed in accordance with standards, specifications and procedures acceptable to the appropriate Town departments and as provided in this chapter.
- C. Modification of the design of improvements shown on the approved plat. If at any time before or during construction of the required improvements shown on the approved plat it is demonstrated to the Code Enforcement Officer (CEO) or Town Highway Superintendent that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the CEO or Highway Superintendent may, upon concurrence of the Town Supervisor or Deputy Town Supervisor of the Town Board, authorize minor modifications which are within the spirit and intent of the Town Board's approval and do not extend to constitute the waiver or substantial alteration of the function of any of the improvements required by the Town Board. The CEO or Highway Superintendent shall issue any such authorization under this provision in writing and shall transmit a copy of such authorization to the Town Board for consideration at its next regular meeting.
- D. Grading and improvements. Roads shall be graded and improved in accordance with Article V, Section 503, of this chapter for private roads and specifications in the Town's Highway Design for public roads. Grading and improvements of all roads shall be approved by the Town Highway Superintendent in accordance with the aforementioned specifications. The inspection and certification of all roads shall be performed by the Town Highway Superintendent to verify that the road construction complies with the approved plans and specifications.
- E. Inspection of improvements.
  - (1) Prior to final plat approval, the applicant shall pay to the Town Clerk, for purposes of establishing an escrow account, the inspection fee required by the Town Board for the inspection of required improvements and utilities. At least five days prior to the commencement of the required improvements or utilities, the applicant shall notify the Town Highway Superintendent, and CEO, in writing of the time when the applicant proposes to

commence construction of such improvements so that the Town may cause such inspection to be made to assure that all Town specifications and requirements shall be met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities as required by the Town Board. The inspection fee shall provide reimbursement to the Town for actual direct cost incurred for such inspection services, and any unexpended portion of the inspection fee shall be returned upon completion of the project and dedication of the required improvements and utilities to the Town (if applicable).

(2) In order to facilitate inspection of required improvements during construction, the applicant shall notify the Town Highway Superintendent at least three working days before reaching each of the following stages of construction:

- (a) Rough grading complete;
- (b) Drainage and other underground facilities installed, but prior to backfilling;
- (c) After gravel base is spread and compacted;
- (d) When each pavement course is being applied; and
- (e) After completion of all improvements.

(3) The applicant shall not proceed to work on any stage subsequent to the first stage until the work of the previous stage has been inspected and approved by the CEO or a representative who may be duly authorized by the Town Board. In the case of any other improvements, the CEO shall inspect the work at such progressive stages as specified. The Town Highway Superintendent and CEO shall certify in writing to the Town Board that the work was inspected and was found to be in accordance with the approved plans and specifications.

F. Proper installation of improvements. If the CEO or a representative who may be duly authorized by the Town Board shall find, upon inspection of the improvements performed before the expiration date of the performance guaranty, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the applicant, he/she shall so report to the Town Board. The Town Board shall then notify the applicant and, if necessary, the bonding company and take all necessary steps to preserve the Town's rights under the performance guaranty.

No plat shall be approved by the Town Board, nor shall any building permit or certificate of occupancy

be issued by the CEO, as long as the applicant is in performance default on any previously approved plat within the Town of North Harmony.

## **ARTICLE VII – PERFORMANCE GUARANTIES for MAJOR SUBDIVISIONS**

### **Section 701 Private Road Subdivision Provision**

A. Where a subdivision includes roads which have not been dedicated to the Town of North Harmony or for which the Town has not agreed to accept an offer of cession upon the road's completion, the Town Board shall condition the final approval upon:

(1) The applicant forming a homeowners' association which shall own any private road pursuant to a declaration of covenants and restrictions approved by the Town Board and recorded in the County Clerk's office, and either complying with New York State's Department of Law, Real Estate Finance Bureau, Cooperative Policy Statement No. 7 or having an offering statement for the sale of the subdivision lots approved by the Department of Law of the State of New York, pursuant to General Business Law § 352-e;

(2) Alternatively the applicant shall create legally enforceable ownership and/or easements for the use, maintenance and the payment of maintenance costs of roads established as a common right and obligation for and of all lot owners established by virtue of a filed Declaration of Restrictive Covenants effective against all lots sold. If applicable compliance shall be required with either NYS Department of Law Cooperative Policy Statement No. 7, NYS General Business Law § 352-e or any other NYS statute or regulation whatsoever.

(3) In the event the Department of Law grants an exemption to an approved offering statement, the applicant shall impose a road maintenance obligation on the subdivision lots for the repair, upkeep, maintenance and snowplowing of the road, the form of which road maintenance agreement shall be approved by the Town Board and duly recorded in the office of the Chautauqua County Clerk; and

(4) That a note be placed on the face of the final plat to be recorded in the Chautauqua County Clerk's office to the effect that the road in the subdivision is a private road, not qualifying for, nor intended for, dedication to the Town of North Harmony, and there is no obligation on the part of the Town of North Harmony to accept such road, in any event and under any circumstances, even if the rural lane is upgraded to Town road specifications; and in the event that the Town Board waives the requirement that a bond or security be posted with the Town, that a notation be recited on the face of such final plat indicating that no bond or other security is posted with the Town of North Harmony to insure completion of such road.

- B. All homeowners' associations owning and/or maintaining a private road must have the power to assess the subdivision lot owners for their share of the maintenance cost of the rural lane. All road maintenance obligation agreements and declarations of covenants and restrictions shall contain a provision granting the Town of North Harmony with the authority to enforce their terms of those documents, including, without limitation, the provisions relating to the construction, maintenance and repair of the private road. All road maintenance obligation agreements and declarations of covenants and restrictions shall also grant the Town of North Harmony the authority to charge the common lot owners or the HOA for the reasonable costs actually incurred in enforcing the terms of those documents, including any repair, maintenance, or construction costs and attorneys' fees, which charge shall become a lien on the property of the common lot owners or the HOA, and enforceable in the same manner as a property tax lien. The Town Attorney shall review and approve all road maintenance obligation agreements and the bylaws of such homeowners' association and any restrictions and covenants to be adopted by the homeowners' association in connection with the subdivision to assure that such provisions are in furtherance of the provisions of this section and other applicable sections of this chapter.

## **Section 702 Performance Guaranties for Required Improvements.**

A performance bond, letter of credit, or equivalent security shall be delivered to the Town Board to guarantee thereby to the Town that the applicant shall faithfully cause to be constructed and completed within a reasonable time the required improvements and, where applicable, to convey any required lands and improvements to the Town free and clear of all encumbrances.

- A. Procedure. Before the Town Board grants final approval of the final subdivision plat, the applicant shall provide to the Town Board a detailed engineer's cost estimate for all required improvements for review and concurrence by the Town Engineer; final approval of the final subdivision plat shall subsequently follow the procedure set forth herein.

(1) Applicant provides a performance guaranty:

(a) If any amount is set by the Town Board, the applicant shall either file with the Town Clerk a certified check to cover the full cost of completing the required improvements and, if applicable, a letter of credit covering those full costs, a performance or restoration bond covering those full costs, or other security to the Town Board (collectively, the "performance guaranty"). Any such performance guaranty shall comply with the requirements of § 277 of the New York State Town Law and, further, shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of one year or such other period as the Town Board may determine appropriate, but not exceeding three years, shall be set forth in the performance guaranty as the period within which the required improvements must be completed. The term of the performance guaranty shall extend for at least one year after the date that the required improvements were completed to the satisfaction of the Town Engineer.

(b) The applicant shall additionally file a copy of the performance guaranty with the Town Board.

(c) If the Town Board shall decide at any time during the term of the performance guaranty that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance guaranty, that required improvements have been installed in sufficient amount to warrant reduction in the amount of said performance guaranty, or that the character and extent of such development requires additional improvements previously waived for a period stated at the time of fixing the original terms of such performance guaranty, the Town Board may modify its requirements for any or all such improvements, and the face value of such performance guaranty shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the Town Board and any security deposited with the performance guaranty may be reduced or increased proportionately.

(2) Applicant completes all required improvements:

(a) The applicant shall complete all required improvements to the satisfaction of the CEO and/or Highway Superintendent, who shall file with the Town Board a letter specifying the satisfactory completion of all improvements required by the Town Board. For any required improvements not so completed, the applicant shall file with the Town Clerk a performance guaranty covering the costs of such improvements, in addition to the cost of satisfactorily installing any improvements not approved by the Town Representative. Any such performance guaranty shall be satisfactory to the Town Board and Town Board Attorney as to form, sufficiency, manner of execution and surety. The applicant shall additionally file a copy of said performance guaranty with the Town Board.

(b) The applicant shall file with the Town Board a maintenance bond in an amount of 15% of the cost estimate for installation of required improvements and which shall be adequate to assure the satisfactory condition and operation of the initial public improvements for a period of two years following their completion and acceptance. Such maintenance bond shall be satisfactory to the Town Board Attorney as to form, manner of execution and surety and in an amount satisfactory to the Town Engineer. The applicant shall additionally file a copy of said performance guaranty with the Town's Code Enforcement Officer.

B. As-built drawing required. No required improvements shall be considered to be completed until the installation of the improvements has been approved by the Town and a map certified by the applicant's engineer and satisfactory to the Town Board has been submitted indicating the specific

location of all underground utilities as actually installed. The performance guaranty provided by applicant pursuant to Subsection **A(1)** above shall not be released until the required as-built drawing is submitted and deemed satisfactory by the Town Board.

**Section 703 General Liability Insurance.**

- A. Filing requirement. The applicant shall file with the Town Attorney a general liability insurance policy at the same time that the performance guaranty is filed. The general liability insurance policy shall be in force during the term of the performance guaranty and shall be extended in conformance with any extension of the performance guaranty. The applicant shall additionally file a copy of said certified check or other performance guaranty with the Town Board.
- B. Limits of coverage. The policy shall name the Town as an additional insured and shall cover all operations in the development involving existence and maintenance of property and buildings and contracting operations of every nature involving all public improvements. This additional insured coverage shall be primary over the Town's insurance. Said policy shall have limits of liability for bodily injury and/or property damage as specified by the Town Board, upon recommendation of the Town Engineer and/or Town Board Attorney.

**Section 704 Public Franchise Utilities.**

- A. Service connections. When public franchise utilities are to be installed, the applicant shall submit to the Town Board written assurances from each public utility company that such company will make the necessary service installations within a time limit and according to specifications satisfactory to the Town Board.
- B. Easements or other releases. The final plat shall include statements by the owner granting all necessary easements or other releases where required for the installation of public franchise utilities.

**ARTICLE VIII – WAIVERS, MODIFICATIONS, REVIEW**

**Section 801 Waivers.**

- A. This chapter grants the Town Board with specific waiver authority in specified circumstances, to be exercised in the Town Board's sole discretion. The Town Board has also been granted authority, as specified in § 277 of New York State Town Law, to waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event any such requirements or improvements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision. However, the Town Board's authority to waive specific requirements or improvements does not include the ability to waive the initial public hearing of a proposed subdivision as set forth in this chapter and New York State Town Law.
- B. All prior surveys or plats of subdivided lands, not approved by the Town or Chautauqua County, filed prior to the effective date of this law, shall be grandfathered in with no requirement of compliance with this law for future sales of lots shown on said surveys/plats. No changes or amendments to said surveys or plats for the sale of lots or the development of roads shown thereon shall be allowed. If applicable, compliance shall be required with either NYS Department of Law Cooperative Policy Statement No. 7, NYS General Business Law § 352-e or any other NYS statute or regulation whatsoever.

**Section 802 Review of Town Board Decisions.**

Any person or persons, or any officer, department, or board of the Town, jointly or severally aggrieved by any final determination of the Town Board regarding subdivision plat decisions may apply to the New York Supreme Court for relief by a proceeding under Article 78 of the Civil Practice Law and Rules of New York State and New York State Town Law.

**ARTICLE IX Amendments**

**Section 901 Procedures**

- A. This chapter may be amended by local law by the North Harmony Town Board after public hearing. Notice of the time, place and purpose of such hearing shall be given by publication in the official Town newspaper at least five days prior to the date on which it is to be held, or as authorized by the Municipal Home Rule Law or Article 16 of the New York State Town Law. A copy of the proposed amendment shall be placed on file in the office of the Town Clerk, where it shall be available for public inspection during normal working hours for a period of at least five days before such hearing. The Town Board shall not be required to take action on any amendment unless it has been properly introduced by a member of the Town Board pursuant to the Municipal Home Rule Law or Article 16 of the New York State Town Law.
- B. Amendments to this chapter shall apply to all subdivision applications, with the exception of any subdivision that has received preliminary plat approval and any minor subdivision which has received final approval.
- C. All subdivision plats which have been granted final plat approval, or the first section of the approved final plat, and which have been filed in the office of the Chautauqua County Clerk shall be exempt, for a period of three years after filing, from any amendments to this chapter. Additional provisions for the exemption of lots shown on approved subdivision plats are specified in § 265-a of New York State Town Law.

**ARTICLE X - ADMINISTRATION AND ENFORCEMENT**

**Section 1001 Administration**

- A. These regulations shall be administered by the Town Board and shall be subject to the conditions and requirements stated herein.
- B. The Town Board may, if it finds that strict compliance with these regulations may be unreasonable and not in the public interest, waive or modify the requirements so that substantial justice may be done and the public interest secured. Such modifications or waivers shall not, however, have the effect of nullifying the intent and purpose of the Town’s Comprehensive Plan or any local legislative requirements.
- C. Whenever the requirements of these regulations are at variance with the requirements of any other legally adopted rules, regulations, laws or resolutions, the most restrictive or those imposing the higher standards shall govern, excepting those provisions of these regulations that may be waived or modified by the Town Board.

**Section 1002 Fees and Reimbursable Costs**

- A. All fees applicable under these regulations are detailed in a separate fee schedule established by the Town Board and are adopted herein by reference. All fees shall be paid at appropriate times, and no building permits shall be issued until all owed fees are paid. Reasonable costs incurred by the Town

Board or its agents in connection with the review of a proposed subdivision shall be charged to and paid by the applicant.

- B. Final plat approval shall not be given until all applicable fees and expenses have been paid in full.

**Section 1003 Enforcement and Penalties**

- A. The Code Enforcement Officer is hereby authorized to enforce the provisions of these regulations or any determination made by the Town Board in the administration of these regulations.
- B. No land shall be subdivided in violation of this Chapter. Any subdivision attempted in violation hereof shall be invalid.
- C. No permit shall be issued for development upon any lot, tract, parcel or site created in violation of this Chapter. The assignment of a tax number or other mode of separate identification of a unit of land by the Assessor for the purpose of tax administration shall not be deemed to create or legitimize subdivision otherwise invalid hereunder.
- D. A violation of these regulations is an offense punishable by a fine not exceeding two-hundred-fifty dollars (\$250) for any offense, recoverable with costs, and/or imprisonment not exceeding thirty (30) days. Each day that a violation continues shall constitute a separate offense and shall be punished as herein provided.
- E. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or if any building, structure or land is used in violation of the Chapter or of any regulation made under the authority conferred hereby, the Town of North Harmony or other proper local authority of the Town may institute any appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or out of such premises.
- F. Violations and Penalties
  - (1) Any person who shall lay out, construct or open any road, sanitary sewer, storm sewer, water main or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings located or abutting thereon, or who sells, transfers, rents, leases, conveys by other means, or agrees or enters into an agreement to do the same with any land in a subdivision, unless and until a final plan has been prepared, approved and recorded in full compliance with the provisions of this Law, shall be deemed to have committed a violation of this Law and shall be liable for such violation.
  - (2) Any person found in violation of this Law shall be subject to a fine not exceeding three hundred fifty dollars (\$350) per lot, parcel or dwelling. All fines collected for such violations shall be paid over to the Town of North Harmony.
  - (3) Each day that a violation continues shall be a separate violation, but nothing herein shall require the Town to post separate notice each day that a violation continues.
  - (4) The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

- (5) The Town shall be authorized to initiate and maintain a civil action to obtain a writ of injunction against subdividers who attempt the improper sale, lease, or conveyance of land, or to set aside and invalidate any conveyance of land made prior to Town approval. It shall take other action as necessary to prevent or remedy any violation.