

# **Town of Fayette**

**Subdivision of Land Regulations**

**Adopted September 11, 2008**



## **SUBDIVISION OF LAND**

### **ARTICLE 1 General Regulations**

#### **Section 100 Title; compliance required.**

These rules and regulations shall be known and may be cited as the "Town of Fayette Subdivision Regulations." Subdivisions within the Town of Fayette shall be designed and submitted for approval in compliance with the standards and procedures set forth herein.

#### **Section 102 Purpose.**

These regulations are adopted for the following purposes:

- A. To protect and provide for the public health, safety and general welfare.
- B. To guide the future growth and development in accordance with established standards and sound planning principles.
- C. To secure safety from fire, flood and other danger and to prevent overcrowding of the land and undue congestion of population.
- D. To protect the character and the social and economic stability and to encourage orderly and beneficial development.
- E. To protect and conserve the value of land, buildings and improvements and to minimize conflicts among the uses of land and buildings.
- F. To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation and other public requirements and facilities.
- G. To provide the most beneficial relationship between land and buildings and the circulation of traffic, having particular regard to the avoidance of congestion in streets, highways and pedestrian traffic.
- H. To establish design standards and procedures for subdivisions and resubdivisions and to ensure proper legal descriptions and monumenting of subdivided land.
- I. To ensure that public facilities are available and will have a sufficient capacity to serve the proposed subdivision.

- J. To preserve the natural beauty and topography of the Town of Fayette and to ensure appropriate development with regard especially to environmentally sensitive areas.
- K. To provide for open spaces by means of design layout of the land, including clustering to provide minimum width and area of lots, while preserving land density as established in the Town of Fayette Land Use Ordinance.

**Section 103 Town Planning Board authority.**

- A. Approval of plats - By the authority of the resolution of the Town Board of the Town of Fayette adopted on September 12, 1977, pursuant to the provisions of §§ 276, 277, 278 and 279 of Town Law of the State of New York, the Town Planning Board of the Town of Fayette shall be authorized and empowered to review and approve plats, lots, blocks or sites within the Town of Fayette, including entirely or partially undeveloped plats already filed in the office of the Seneca County Clerk.
- B. Authority to approve cluster development - The Planning Board of the Town of Fayette is further authorized to approve cluster development simultaneously with the approval of a plat or plats and to modify area requirements specified in the Land Use Ordinance in accord with § 278 of the Town Law of the State of New York.
- C. Authority to require a reservation land or a fee for recreational use in a major subdivision - the Town Planning Board of the Town of Fayette is further authorized simultaneously with the approval of a plat or plats to require the subdivider to pay a fee for recreational development or reserve open space for parks, playgrounds or other recreational purposes in lieu of a monetary payment in accord with the provisions of Subsection D of Section 400 of these regulations.

**Section 106 Severability**

If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in all controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The Fayette Town Board hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application.

**Section 107 Interpretation; conflict with other provisions**

- A. Interpretation - In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.

B. Conflict with public and private provisions

- (1) Public provisions – These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.
- (2) Private provisions - These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive or higher standards than the requirements of these regulations or the determinations of the Town Planning Board of the Town of Fayette in approving a subdivision or in enforcing these regulations and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder.

**Section 108 Construal of provisions**

These regulations shall not be construed as abating any action now pending under or by virtue of prior existing subdivision regulations or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue or as affecting the liability of any person, firm or corporation or as waiving any right of the municipality under any section or provision existing at the time of adoption of these regulations or as vacating or annulling any rights obtained by any person, firm or corporation by lawful action of the municipality except as shall be expressly provided for in these regulations.

**Section 110 Enactment**

In order that land may be subdivided in accordance with the foregoing purposes and policies, these subdivision regulations are hereby enacted.

**Section 112 Enforcement; violations; penalties for offenses**

A. General enforcement

- (1) It shall be the duty of the Land Use Officer to enforce these regulations and to bring to the attention of the Town Supervisor any violations or lack of compliance herewith.

- (2) Once a subdivision has been proposed, no lot within such proposed subdivision shall be transferred or sold before the final subdivision plat has been duly filed in the office of the Seneca County Clerk.
  - (3) The subdivisions of any lot or any parcel of land by the use of metes and bounds descriptions for the purpose of sale, transfer or lease with the intent of evading these regulations shall not be permitted.
  - (4) The subdivision of a conforming lot for purposes of construction or development that would result in the formation of one or more nonconforming lots shall not be permitted.
- B. Violations - Any person, firm, company or corporation who fails to comply with or violates any of these regulations shall be guilty of an offense and subject to the penalties of that offense or offenses.
- C. Penalties - Any person, firm, company or corporation which neglects or refuses to do any act required by these regulations shall be guilty of an offense and shall be subject to a fine not to exceed one hundred dollars (\$100.00) for each violation and, if an individual person, shall be subject to imprisonment not to exceed fifteen (15) days. Each week that such violations, disobedience, omission, neglect or refusal continues or arises shall be deemed a separate offense.
- D. Civil enforcement - Appropriate actions and proceeding may be taken by law or in equity proceedings to prevent any violation of these regulations, to prevent unlawful constructions, to recover damages, to restrain, correct or abate a violation, to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described above. Consequently, the Town Board may institute any appropriate action or proceeding to prevent and to restrain, correct or abate such violation or to prevent any illegal act, conduct, business or use in and about such premises.

## **ARTICLE 2**

### **Terminology**

#### **Section 200 Word usage; definitions**

A. Word usage

Words in the singular include the plural, and words in the plural include the singular. The word "person" includes a "corporation", "unincorporated association" and a "partnership" as well as an "individual." The word "lot" includes "parcel" or "plot." The word "building" includes "structure" and shall be construed as if followed by the words "or part thereof." The word "street" includes "road," "highway" and "lane," while "watercourse" includes "drain," "ditch" "stream" and "creek." The word "may" is permissive; the work "shall" is mandatory.

B. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of these regulations, have the meanings indicated:

**ALLEY** - A strip of land over which there is a right-of-way, municipally or privately owned, serving as a secondary means of access to two (2) or more nonresidential properties.

**APPLICANT** - The owner of land proposed to be subdivided or developed or his agent. Written proof of agency shall be required from the legal owner of the land proposed to be subdivided.

**ARCHITECT** - A person licensed as an architect by the State of New York.

**BLOCK** - A tract of land bounded by streets or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways or boundary lines of other municipalities.

**BOARD OF HEALTH** - The Seneca County Department of Health

**BOND** - Any form of security, including a cash deposit, surety bond, collateral, property or letter of credit, in an amount and form satisfactory to the Town Attorney. All forms of security shall be approved by the Town Board wherever a "bond" is required by these regulations.

**BUILDING PERMIT** - An authorization issued by the Seneca County Code Enforcement Officer to commence work on a structure in accordance with approved plats and specifications and in compliance with the New York State Fire Prevention and Building Code.

**CERTIFICATE OF COMPLETION** - A document which certifies that all site improvements have been completed in compliance with plans approved by the Town Planning Board.

**CERTIFICATE OF OCCUPANCY** - A document which certifies that structure is habitable.

**CLUSTER DEVELOPMENT** - A subdivision plat or plats approved pursuant to §278 of the Town Law of New York State whereby the Town Planning Board is authorized to modify certain provisions of the Town of Fayette Land Use Ordinance to provide an alternative method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open land.

**COLLECTOR STREET** - A dedicated street used to carry traffic from minor streets to primary or major thoroughfares, including the principal entrance street of a development and street for circulation within a development.

**CONDITIONAL APPROVAL OF A FINAL PLAT** - The approval by the Town Planning Board of a final plat subject to conditions set forth in a resolution. Such conditional approval does not qualify a final plat for recording in the office of the Seneca County Clerk nor does it provide authorization for the issuance of building permits.

**CONSTRUCTION DETAIL** - The maps or drawings accompanying a subdivision plat or site plan and showing the specific location and design of improvements to be installed in the subdivision pursuant to the requirement of these regulations and in conformance with the Design and Construction Standards for Land Development of the Town of Fayette.

**CONTRACTOR** - An agent acting for the developer to construct the required improvements of the project. The "contractor" is responsible to perform the work in conformance with these requirements subject to the approval of Town officials.

**CROSSWALK** - See "pedestrian access walkway."

**CUL-DE-SAC** - A minor street with one (1) end open for vehicular traffic and pedestrian access and the other end terminating in a vehicular turnaround.

**DBH (diameter at breast height)** - The diameter of a tree measured at a point 4-1/2 feet above the ground.

**DEDICATION** - The deliberate unconditional appropriation of real property by its owner for any general and public uses, in accordance with the laws of the State of New York.

**DEVELOPER** - An individual, partnership, company or corporation or its agent holding title to a parcel of land to be developed or subdivided.

**DOUBLE-FRONTAGE LOT** - A lot having at least two (2) sides fronting on separate streets which do not intersect while adjoining the lot.

**DRAINAGE DISTRICT** - A special district established or extended pursuant to the Town Law of New York State for the purpose of constructing or maintaining stormwater drainage facilities.

**DRAINAGE EASEMENT** - The lands or easements required for the installation of stormwater sewers, drainage ditches, drainage swales or the unobstructed area required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

**DRIVEWAY** - An access point serving no more than two (2) lots and providing ingress or egress to a road or street. Mutually owned "driveways" must have reciprocal easements and a common maintenance agreement.



**DULY DESIGNATED OFFICER** - The person or public official authorized to sign subdivision plats or site plans pursuant to these regulations. In the absence of any designated official, the duly designated officer shall be assumed to be the Town Planning Board Chairperson.

**EASEMENT** - Authorization granted by a property owner for the use by another of any designated part of his property for a specified purpose not inconsistent with the general property rights of the owner.

**ENGINEER** - A person licensed as professional engineer (P.E.) by the State of New York.

**ENVIRONMENTALLY SENSITIVE AREA** - Land or land features critical to the maintenance of ecosystems.

**ENVIRONMENTAL REVIEW** - See "State Environmental Quality Review (SEQR)."

**FINAL SUBDIVISION PLAT** - A plat of a major subdivision prepared in accordance with Article III of these regulations, showing the subdivision in its most detailed form and including the modifications, if any, required by the Town Planning Board at the time of approval of the preliminary plat if such preliminary plat is approved.

**FINAL PLAT APPROVAL** – The signing of a plat in final form by the duly authorized officer of the Town Planning Board pursuant to a Town Planning Board resolution granting final approval to the plat and 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 Seneca County Clerk.

**FLAG LOT** - An approved lot generally in the shape of a flag and flag pole which is comprised of the "flag pole" portion, a strip of land that abuts the public street, has less than the minimum required roadway frontage for lots in the land use district in which it is located, and which provides access to the interior portion of the lot referred to as the "flag" which meets or exceeds the minimum lot size and area requirements for lots in such land use district. The "flag pole" access portion of such lots shall not be considered buildable and shall not be used in calculating the lot size and area for purposes of satisfying the minimum lot and area requirements of the district in which the lot is located.

**FLOOD HAZARD AREA** - The land in the floodplain within the community subject to a one-percent or greater chance of flooding in any given year.

**FLOOD LIMITS** - The land/water boundary of a natural watercourse flowing at its one-hundred-year frequency as defined by a responsible agency, such as the United States Army Corps of Engineers or the Federal Emergency Management Agency.

**FLOODWAY** - The channel and those parts of the adjoining floodplain which are required to carry and discharge floodwaters without unduly raising upstream water levels.

**GRADING PLAN** - A plat showing all present and proposed grades for stormwater drainage and final site design.

**IMPROVEMENTS** - Those physical additions and changes to the land that may be necessary to produce functional lots, including but not limited to grading, paving, curbing, fire hydrants, watermains, sanitary sewers and drains, sidewalks, pedestrian access walkways and required plantings which may or may not be offered for dedication.

**INDIVIDUAL SEWERAGE SYSTEM** - A single system of piping, tanks or other facilities serving only a single lot and disposing of sewage or other liquid wastes into the soil of the lot.

**INSPECTOR** - An agent of the Town of Fayette empowered to inspect the progress of the project and compliance of the construction with the approved plats and specifications.

**LAND USE LOCAL LAW** - The officially adopted Land Use Local Law of the Town of Fayette as amended.

**LAND USE MAPS** - The officially adopted maps of the Town of Fayette which shows the boundaries of the land use districts.

**LETTER OF CREDIT** - A letter taken out by the owner from a bank which guarantees the Town that a specific amount of money will be kept available for the completion of construction of facilities to be dedicated. This security can be irrevocable and drawn on only by the Town and guarantees that certain or all improvements will be made in accordance with the approved plats.

**LOCAL STREET** - A dedicated minor street which has the dual purpose of providing limited access for traffic and access to individual properties. "Local streets" are not conducive to through traffic.

**LOT** - Land identified by legal description or tax map parcel identification number which is filed or proposed to be filed in the Seneca County Clerk's office. A "lot" is considered to be a unit of transfer or a unit for development.

**MAJOR STREET** - A street designed for carrying heavy volumes of through traffic.

**MARGINAL ACCESS ROAD** - See "parallel access road."

**MINOR LOT ADJUSTMENT** - A category of property subdivision where no new lot is created and only a transfer of property of less than one-quarter (1/4) acre in size or strip of property less than 20 feet wide, to the adjacent land owner as long as the transferring lot is not, and will not, become non-conforming under current lot size requirements of the Town's Land Use Ordinance and the New York State Uniform Fire Prevention and Building Code. Minor lot adjustments do not require action on the part of the Town Planning Board although the Town Planning Board must be informed in writing by the party making such adjustments.

Such adjustment does not become official until the party making such adjustment receives written acknowledgement from the chairman of the Town Planning

MINOR STREET - A street designed for a limited volume of traffic and intended to serve primarily as an access to abutting properties.

MONUMENT - A permanent reference marker set at points as may be required in this Article.

MULTIPLE DWELLING - A dwelling consisting of three (3) or more separate living units.

OFFICIAL SUBMISSION DATE – The date on which a complete subdivision application is considered submitted to the clerk of the Town Planning Board. A subdivision application shall not be considered complete until a negative declaration or a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a plat shall begin upon the filing of such negative declaration or such notice of completion provided that all other required application documentation and information has been submitted to the clerk of the Town Planning Board prior to the filing of such negative declaration or such notice of completion.

OWNER -Any person, group of persons, firm or firms, corporation or corporations or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided or developed under these regulations.

PARALLEL ACCESS ROAD - A local street which is parallel and adjacent to a primary or major thoroughfare.

PARCEL - An area of land defined by a tax map parcel identification number or by metes and bounds.

PARENT PARCEL - A parcel of land as it existed on the effective date of these regulations.

PEDESTRIAN ACCESS WALKWAY - A right-of-way, municipally or privately owned, at least twelve (12) feet in width, which cuts across a block to furnish access for pedestrians to adjacent streets or properties.

PERMANENT HIGHWAY EASEMENT - A strip of land adjacent to an existing street right-of-way line used for any public purpose. The front lot line shall be considered to be coincident with the "permanent highway easement" boundary. Front setbacks and other necessary lot measurements shall be measured from the "permanent highway easement" line. Where there is no requirement for a "permanent highway easement," the front line shall be considered to be coincident with the existing right-of-way, with front setbacks and any other necessary lot measurements being measured from the existing right-of-way line.

PIN - A metal reference marker set at points as may be required in these regulations.

## TOWN PLANNING BOARD – The Town of Fayette Planning Board

**PREAPPLICATION CONFERENCE** - An informal meeting between the Town and a subdivider or developer to reach an understanding of the general design and layout of the subdivision or site. Matters to be discussed include Town policies and procedures on the subdivision of land, a timetable for review, general agreement concerning the project design and on the statement of intent of the proposed subdivision.

**PRELIMINARY PLAT** - A tentative subdivision plat clearly marked "Preliminary Subdivision Plat," prepared in accordance with Article 3 of these regulations. This plat shows in greater detail than the sketch plat features of the land, street and lot layout within and adjacent to the proposed subdivision and includes preliminary design data of the Town of Fayette for related improvements.

**PRIMARY OR MAJOR THOROUGHFARE** - A dedicated major road intended as a route for traffic between other major roads, communities, shopping centers or other such major attractors. "Major thoroughfares" can usually serve to collect traffic from minor roads.

**PRIVATE DRIVE** - An undedicated access point serving three (3) or four (4) lots and providing ingress or egress to a road or street. "Private drives" must have reciprocal easements and a common maintenance agreement.

**PRIVATE ROAD** - An undedicated thoroughfare used as ingress or egress for five (5) to ten (10) lots. Private roads must have reciprocal easements and a common maintenance agreement.

**RECORD SHEET** - A map or plat which provides information concerning the actual location of improvements as built.

**RESUBDIVISION** - Revision of all or part of an existing filed plat including consolidation of lots or alteration of approved lot boundaries. If the proposed "resubdivision" consists solely of the simple alteration of lot lines, then normal subdivision procedures may be waived at the discretion of the Town Planning Board. If normal subdivision procedures are not waived by the Town Planning Board, the resubdivision shall be deemed to be a major or minor subdivision at the discretion of the Town Planning Board in which case the appropriate major or minor subdivision procedures set forth in these regulations shall apply.

**REVERSE-FRONTAGE LOT** - A lot with the rear lot line abutting an existing or proposed street.

### **RIGHT-OF-WAY:**

- (1) **PRIVATE RIGHT-OF-WAY** - Existing land owned by a nonpublic agency or organization and occupied or intended to be occupied by transmission mains, gas pipelines, rails or other special use.

- (2) PUBLIC RIGHT-OF-WAY - Existing land owned by public agencies for use as a street or other public purpose.

ROAD -See "street."

SERVICE DRIVE - See "alley."

SETBACK: The horizontal distance between the street line, rear or side lines of the lot and the front, rear or side lines of the building. For the purpose of measuring setbacks, the building shall include an enclosed porch, but shall not include any open porch, patio, deck or steps that are no higher than four (4) feet above ground level. All measurements shall be made at right angles to or radially from the lot lines to the building lines. Setbacks from street lines to building lines are defined as "front setbacks". Setbacks from side lot lines are "side setbacks". Setbacks from rear lot lines are "rear setbacks".

SIGNIFICANCE DETERMINATION - A decision made by the Lead Agency at one (1) or more points in the State Environmental Quality Review process. The decision establishes the degree to which the proposed project is likely to affect the environment.

SKETCH PLAN - A drawing prepared in accordance with Article III of these regulations showing in general form the manner in which a tract of land is to be subdivided or developed.

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) - A formal review, pursuant to Part 617 of the New York Codes, Rules and Regulations, which encourages productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological system, natural, human and community resources important to the people of the Town of Fayette.

STREET - A general term used to describe a right-of-way, publicly or privately owned, serving as a means of vehicular and pedestrian travel, furnishing space for public utilities, shade trees and other improvements. The "street" provides a principal means of access to abutting property. Types of "streets" are defined in this Article and are classified by function as follows: alley, collector street, cul-de-sac, driveway, local street, major street, marginal access road, minor street, parallel access road, primary or major thoroughfare, private drive, private road and service drive.

SUBDIVIDER - Any person, firm, company, corporation, partnership or other organization or their agent proposing a subdivision as defined herein.

SUBDIVISION - The division of any parent parcel of land into two (2) or more lots with or without streets for the purpose of sale, lease, license, improvements or any other reason.

**SUBDIVISION, MAJOR** - The subdivision of a parent parcel of land into five (5) or more lots. The remaining portion of the original or parent parcel shall be considered as a lot and includes of one of the five lots comprising the subdivision.

**SUBDIVISION, MINOR** - The subdivision of a parent parcel of land into less than five (5) lots. No more than five (5) lots shall be created either concurrently or sequentially from a parent parcel within a ten (10) year period of the date the minor subdivision is approved. Should more than the five (5) lots be applied for within ten (10) years of the date that the minor subdivision was approved, the subdivision will become a major subdivision and the applicant shall be required to submit all the information and documentation required for a major subdivision for the previously subdivided lots as well as for the lots under consideration in the new application.

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

**TOWN BOARD** - The municipal governing board of the Town of Fayette.

**TOWN ENGINEER** - The duly designated Engineer for the Town of Fayette.

**WETLANDS** - Freshwater wetlands, including lands and submerged lands commonly called "marshes," "swamps," "sloughs," "bogs" and "flats," supporting aquatic and semi-aquatic types of vegetation identified in Article 24 of the New York State Environmental Conservation Law.

### **ARTICLE 3 Procedures**

#### **Section 300 General provisions.**

- A. General description. The following is a list of key considerations governing the subdivision of land:
- (1) Subdivision - Subdivisions proposed for the Town of Fayette will be considered either as major or minor subdivisions.
  - (2) Resubdivisions - Any change to an existing plat is considered a resubdivision and thus requires approval of the Town Planning Board and may be deemed by the Town Planning Board to be a major or minor subdivision.
  - (3) Surety - The Town Planning Board may require that appropriate surety be posted to assure the project is constructed as designed or to assure that conditions of approval are met.

- (4) Clustering - The Town Planning Board will consider any proposal for a clustered project, but that Board reserves the right to require clustering to protect environmentally sensitive areas or to preserve open space.
  - (5) SEQR - All proposals require appropriate environmental reviews in accordance with the State Environmental Quality Review procedures.
- B. General procedure. - Minor subdivisions of land are considered to be less complex projects and require a one-step process for approval. Major subdivisions are considered complex divisions of land and require a three-step process for approval. Minor lot adjustments do not require the approval of the Town Planning Board, but the property owners party to the minor lot adjustment are required to notify the Town Planning Board in writing of such minor lot adjustment.

**Section 301 Subdivision applications.**

- A. Applications - All related application forms are available from the Town Clerk.
- B. Preapplication conferences - Preapplication conferences with the Chairperson of the Town Planning Board and other appropriate Town officials are encouraged and serve the following functions:
  - (1) To review application requirements.
  - (2) To identify any Environmental Overlay Protection Districts (EPOD) on the property or any potential area of environmental concern.
  - (3) To discuss preliminary design of the project.
  - (4) To set a probable timetable for review.
  - (5) To review Town policies concerning development.
- C. Fees - All applications for subdivision approval shall be accompanied by a fee established by resolution of the Town Board and may be amended from time to time by resolution of the Town Board. The application fee shall be used to cover part of the cost of the subdivision review process, including administrative costs such as public hearing notices, inspections, communications, etc.
- D. Public hearing - All subdivision proposals require a public hearing before action is taken by the Town Planning Board. Notice of public hearings will be sent by the clerk of the Town Planning Board to all owners of property located within five hundred (500) feet of the parcel proposed for subdivision.

- E. Environmental review - The Town Planning Board will consider the probable environmental impacts of the proposed subdivision. In most cases, the Town Planning Board will serve as the lead agency for the purpose of making a determination of environmental significance pursuant to SEQR.
- F. Review by other governmental agencies - All subdivisions are referred to all involved and interested local, state and federal agencies. Every subdivision plat must undergo review by the Engineer for the Town who will ascertain that civil engineering standards are met. All comments received from reviewing agencies shall become a part of the permanent public record of the project.

**Section 303 Minor subdivision review.**

- A. Review of the minor subdivision plat is a two-step process conducted in parallel and consisting of an environmental review and a review of the minor subdivision plat conducted by the Town Planning Board.
  - (1) Environmental review - The environmental review is conducted to determine if the project, as proposed, would result in any significant adverse environmental impact and to identify design modifications that would mitigate potential adverse environmental impacts identified. Unless overriding circumstances exist, the Town Planning Board shall serve as the Lead Agency for conducting the environmental review on all subdivision proposals.
  - (2) The Town Planning Board will review the minor subdivision plat taking into account staff reports and the comments of the Town Engineer and involved and interested agencies to which the plat was referred. The Board then may refer the subdivider to appropriate officials or agencies to resolve any issues of design or legal requirements of the respective agencies.
- B. Requirements
  - (1) Five (5) copies of the minor subdivision plat, a completed application form and the fee shall be submitted to the clerk of the Town Planning Board at least two (2) weeks prior to a regularly scheduled Town Planning Board meeting. Accompanying the minor subdivision plat shall be all documents showing construction details of proposed improvements, any supporting materials or engineering reports and a completed environmental assessment form or, if required, a draft environmental impact statement. If a portion or portions of the parcel being subdivided are being acquired by an adjoining property owner and such portion or portions being acquired do not conform to the minimum dimensional requirements of the land use district in which the parcel or parcels are located, such nonconforming parcel or parcels shall be assembled and combined with the



adjoining property owner's lot to make a single lot and shall be shown on the minor subdivision plat as a single lot.

- (2) Applicants may be required to submit additional copies of the application to the clerk of the Town Planning Board if the Chairperson of the Town Planning Board determines that other officials, agencies or consultants need to be informed about the project.
- (3) The minor subdivision plat shall comply with the requirements set forth in the Design and Construction Standards for Land Development of the Town of Fayette. This document is available from the Town Clerk of the Town of Fayette.

C. Submission of application - Upon the receipt of an application for a minor subdivision review, the clerk of the Town Planning Board shall review the application to determine if all the required documentation and information has been submitted in accordance with the requirements of these regulations. If the application is deficient, the clerk of the Town Planning Board shall return the application to the applicant and inform the applicant in writing of the deficiencies. If the application is not deficient, the clerk of the Town Planning Board shall place the matter on the agenda of the next duly called Town Planning Board meeting for discussion purposes and shall distribute the application to involved and interested agencies, the Town Engineer and Town Land Use Officer for review and comment. If required pursuant to Section 239-n of the General Municipal Law of New York State, the clerk of the Town Planning Board shall also refer a copy of the application to the Seneca County Planning Board.

A minor subdivision plat application shall not be deemed complete until a negative declaration of environmental significance or a notice of completion of a draft environmental impact statement has been filed in accordance with the provisions of SEQR. The time periods specified for the review of a minor subdivision plat shall begin upon the filing of such negative declaration of environmental significance or such notice of completion.

D. Procedures when Town Planning Board serves as Lead Agency for environmental review

- (1) Public Hearing
  - (a) If the Town Planning Board determines that the preparation of an environmental impact statement on the minor subdivision plat is not required, the public hearing shall be held within sixty-two (62) days following the date on which the clerk of the Planning Board receives a complete minor subdivision application.
  - (b) If the Town Planning Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is to be held, the public hearing on the minor subdivision plat and the draft environmental impact statement shall be held jointly within sixty-two (62) days following the date on which the notice of

completion of the draft environmental impact statement is filed. If no public hearing is to be held on the draft environmental impact statement, the public hearing on the minor subdivision plat shall be held within sixty-two (62) days following the date on which the notice of completion of the draft environmental impact statement is filed.

- (c) Public Hearing Notice - The notice of the public hearing shall be advertised at least once in the official Town newspaper at least five (5) days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen (14) days before such a hearing held jointly therewith. All owners of property located within five hundred (500) feet of the parcel proposed for subdivision shall be sent a copy of the public hearing notice by the clerk of the Town Planning Board. The hearing on the minor subdivision plat shall be closed upon motion of the Town Planning Board within one hundred twenty (120) days after it has been opened.

- (2) Action on minor subdivision plat – The Town Planning Board shall make its decision on the minor subdivision as follows:

- (a) If the Town Planning Board determined that the preparation of an environmental impact statement on the minor subdivision plat is not required, the Town Planning Board after making a finding of fact on the proposed subdivision shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the minor subdivision plat within forty-five (45) days after the close of the public hearing.
- (b) If the Town Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five (45) days following the close of such public hearing. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five (45) days following the close of the public hearing on the minor subdivision plat. Within thirty (30) days of the filing of the final environmental impact statement, the Town Planning Board shall issue findings on such environmental impact statement and the proposed subdivision, and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the plat.
- (c) If the matter was referred to the Seneca County Planning Board in accord with Section 239-n of the General Municipal Law of New York State, the Town Planning Board shall not act within the first thirty (30) days following such referral unless the County Planning Board renders a written recommendation within said thirty (30) day period. If the County Planning Board fails to make its recommendation within such thirty (30) day period,

the Planning Board may take action on the minor subdivision plat absent a recommendation of the County Planning Board.

E. Procedures when Town Planning Board does not serve as Lead Agency for environmental review

- (1) Public Hearing - The Town Planning Board shall, with the agreement of the Lead Agency, hold the public hearing on the minor subdivision plat jointly with the Lead Agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the Town Planning Board shall hold the public hearing on the minor subdivision plat within sixty-two (62) days after receipt of a complete minor subdivision plat by the clerk of the Planning Board.
- (2) Public hearing notice - The public hearing shall be advertised at least once in a Town's official newspaper at least five (5) days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen (14) days before a hearing held jointly therewith. Owners of property within five hundred (500) feet of the land proposed for subdivision shall be sent a copy of the public hearing notice by the clerk of the Town Planning Board. The public hearing on the final minor subdivision plat shall be closed upon motion of the Town Planning Board within one hundred twenty (120) days after it has been opened.
- (3) Action on minor subdivision plat – The Town Planning Board shall make its decision on the minor subdivision plat as follows
  - (a) If the preparation of an environmental impact statement on the minor subdivision plat is not required, the Town Planning Board after making a finding of fact on the proposed subdivision shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the minor subdivision plat within sixty-two (62) days after the close of the public hearing.
  - (b) If the preparation of an environmental impact statement is required, the Town Planning Board shall make its own findings of fact and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the minor subdivision plat within sixty-two (62) days after the close of the public hearing or within thirty days (30) of the adoption of SEQR findings by the Lead Agency, whichever period is longer.
  - (c) If the matter was referred to the Seneca County Planning Board in accord with Section 239-n of the General Municipal Law of New York State, the Town Planning Board shall not act within the first thirty (30) days following such referral unless the County Planning Board renders a written

recommendation within said thirty (30) day period. If the County Planning Board fails to make its recommendation within such thirty (30) day period, the Planning Board may take action on the minor subdivision plat absent a recommendation of the County Planning Board.

- F. Grounds for Decision and Notification of Applicant – The Town Planning Board shall make findings of fact based upon information generated during the public hearing and the comments made by the involved and interested agencies, staff reports and the comments of the Town Engineer. The resolution shall contain the findings of fact on the proposed subdivision and the grounds for modification, if any, or the grounds for disapproval. In the case of a conditionally approved plat, the resolution shall include a statement of the requirements which, when completed, will authorize the signing thereof. A copy of such resolution shall be mailed to the applicant within five (5) business days following the adoption of such resolution.
- G. Approval, certification and filing of minor subdivision plats in the office of the Town Clerk
- (1) Certification and filing of plat - Within five (5) business days following the adoption of the resolution granting conditional or final approval of the minor subdivision plat, such plat shall be certified by the clerk of the Town Planning Board as having been granted conditional or final approval and such certified plat along with a copy of such resolution shall be filed in the Office of the Town Clerk. In the case of a conditionally approved minor subdivision plat, such resolution shall include a statement of the requirements which, when completed, will authorize the signing thereof. Upon completion of such requirements, the plat shall be signed by the Chairperson of the Town Planning Board and filed in the office of the Town Clerk. In the case of a plat that is disapproved, a copy of the Town Planning Board resolution disapproving such plat shall be filed in the office of the Town Clerk within five (5) days of its adoption.
  - (2) Default approval of final minor subdivision plat - In the event the Town Planning Board fails to take action on a minor subdivision plat within the time prescribed therefore after completion of all requirements under SEQR, or within such extended period as may have been established by the mutual consent of the applicant and the Town Planning Board, the minor subdivision plat shall be deemed approved. The certificate of the Town Clerk as to the date of submission of the minor subdivision plat and the failure of the Town Planning Board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of the approval of the minor subdivision plat as required in this Article.
  - (3) Duration of conditional plat approval - Conditional approval of a minor subdivision plat shall expire within one hundred eighty days (180) after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Town Planning Board may extend by not more than two (2) additional periods of ninety days (90) each, the time in which a conditionally

approved minor subdivision plat must be submitted for signature if, in the Town Planning Board's opinion, such extension is warranted by the particular circumstances.

- H. Filing of minor subdivision plat with County Clerk; expiration of approval - The owner shall file in the office of the Seneca County Clerk such approved minor subdivision plat within sixty-two (62) days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the Chairperson of the Town Planning Board constituting final approval by the Town Planning Board of a plat as herein provided; or the approval by the Town Planning Board of the development of a plat or plats already filed in the office of the Seneca County Clerk if such plats are entirely or partially undeveloped; or the certificate of the Town Clerk as to the date of the submission of the final plat and the failure of the Town Planning Board to take action within the time herein provided.
- I. Issuance of permits restricted - No site improvements within the minor subdivision shall be installed until the minor subdivision plat has received final approval by the Town Planning Board and surety has been posted pursuant to Article 4 of these regulations. No building permits shall be issued within the proposed minor subdivision until the conditions of the approval have been satisfied and the plat has been filed in the Seneca County Clerk's office and notification of the filing has been received by the Town of Fayette.

### **Section 305 Major subdivision review.**

Major subdivision review and approval is a three-step process consisting of an informal sketch plat review, a preliminary plat review and approval, and final plat review and approval as follows:

- A. Sketch plat review
  - (1) Purpose - The purpose of the sketch plat review is to provide the subdivider with an opportunity to consult early and informally with the Town Planning Board in order to save time and money and to come to agreement as to the most desirable design given the site constraints and the development requirements of the Town.
  - (2) Sketch Plat Requirements
    - (a) Nine (9) copies of a proposed sketch plat, a completed application form and payment of the fee shall be submitted to the clerk of the Town Planning Board at least two (2) weeks prior to a regularly scheduled meeting of the Town Planning Board.
    - (b) Additional copies may be required to be submitted by the Chairperson of the Town Planning Board, who may determine that other officials, agencies or consultants need to be informed about the project.

- (c) The sketch plat shall comply with the Design and Construction Standards for Land Development of the Town of Fayette.
- (3) Sketch Plat Review Procedures
- (a) Application - Upon the receipt of an application for a sketch plat review, the clerk of the Town Planning Board shall review the application and sketch plat submitted to determine if the application contains all the required documentation and information in accordance with the standards of these regulations. If the application is deficient, the clerk of the Town Planning Board shall return the application and plat to the applicant and inform the applicant in writing of the deficiencies. If the application is not deficient, the clerk of the Town Planning Board shall place the matter on the agenda of the next duly called Town Planning Board meeting for discussion purposes. The clerk of the Town Planning Board will also distribute the sketch plat to the involved and interested agencies and to the Town Engineer and Town Land Use Officer for review and comment.
  - (b) The Town Planning Board will review the sketch plat and the comments from the agencies to which the plat was referred and the Town Engineer and Town Land Use Officer. The Board then may refer the subdivider to appropriate officials or agencies to resolve any issues of design or legal requirements of the respective agencies.
- (4) Action on sketch plat - The Town Planning Board shall review the sketch plat of a proposed subdivision in relation to existing and potential development of the adjacent area, compliance with land use regulations, environmentally sensitive areas and general development patterns of the Town. A decision will be made as to the desirability of the proposed development and the appropriateness of the proposed design.
- (5) Town Planning Board Suggestions and Recommendations - Not later than forty-five (45) days following the receipt of a complete sketch plat, as certified by the clerk of the Town Planning Board, the Town Planning Board shall convey a written report in the form of Town Planning Board meeting minutes to the subdivider in which the Town Planning Board will provide comments concerning the design of the proposed subdivision, suggestions and recommendations, if any, for improving the subdivision and coordinating the design of the subdivision with adjacent developments or for complying with the requirements of other involved and interested public agencies, if any.

**Section 306 Preliminary major subdivision plat review.**

- A. Purpose - This step provides detailed information about the site so the Town Planning Board can make decisions about the design of the project. Some important considerations include, but are not limited to:
- (1) Site improvements and lot design.
  - (2) Easement requirements
  - (3) Environmental review
  - (4) Underground utilities and drainage design
  - (5) Environmental Protection Overlay Districts, if any, on the subject property
  - (6) Phasing of the project if the project is to be developed in phases.
- B. Review of the preliminary plat is a two-step process conducted in parallel and consisting of an environmental review and a review of the preliminary plat conducted by the Town Planning Board.
- (1) Environmental review - The environmental review is conducted to determine if the project, as proposed, would result in any significant adverse environmental impact and to identify design modifications that would mitigate potential adverse environmental impacts identified. Unless overriding circumstances exist, the Town Planning Board shall serve as the Lead Agency for conducting the environmental review on all subdivision proposals.
  - (2) The Town Planning Board will review the preliminary subdivision plat taking into account staff reports and the comments of the Town Engineer and involved and interested agencies to which the plat was referred. The Board then may refer the subdivider to appropriate officials or agencies to resolve any issues of design or legal requirements of the respective agencies.
- C. Requirements
- (1) Nine (9) copies of the preliminary plat and construction detail of proposed improvements, a completed application form, and a fee shall be submitted to the clerk to the Town Planning Board at least two (2) weeks prior to a regularly scheduled Town Planning Board meeting. Accompanying the preliminary plat shall be all documents showing construction details of proposed improvements, any supporting materials or engineering reports and a completed environmental assessment form or, if required, a draft environmental impact statement. Submission of the preliminary plat must occur within six (6) months of the

completion of the Town Planning Board's review of the sketch plat. The Town Planning Board may, by resolution, authorize an extension beyond the six-month limit.

- (2) Applicants may be required to submit additional copies of the application to the clerk of the Town Planning Board if the Chairperson of the Town Planning Board determines that other officials, agencies or consultants need to be informed about the project.
- (3) The preliminary subdivision plat shall be clearly labeled "Preliminary Subdivision Plat" and shall satisfy the requirements for such plats as described in the Design and Construction Standards for Land Development of the Town of Fayette.

D. Preliminary Plat Review Procedures

- (1) Submission of application - Upon receipt of an application for a preliminary subdivision plat review, the clerk of the Town Planning Board shall review the application submitted to determine whether contains all the required documentation and information in accordance with the standards of these regulations. If the application is deficient, the clerk of the Town Planning Board shall return the application to the applicant and inform the applicant in writing of the deficiencies. If the application is not deficient, the clerk of Town Planning Board shall place the matter on the agenda of the next duly called Town Planning Board meeting for discussion purposes and shall distribute copies the application to involved and interested agencies and to the Town Engineer and Town Land Use Officer for review and comment. If required pursuant to Section 239-n of the General Municipal Law of the State of New York, the clerk of the Town Planning Board shall also refer a copy of the application to the Seneca County Planning Board.

A preliminary subdivision plat application shall not be deemed complete until a negative declaration of environmental significance or a notice of completion of a draft environmental impact statement has been filed in accordance with the provisions of SEQR. The time periods specified for the review of a preliminary subdivision plat shall begin upon the filing of such negative declaration of environmental significance or such notice of completion.

E. Procedures when Town Planning Board serves as Lead Agency for environmental review.

- (1) Public hearing
  - (a) If the Town Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within sixty-two (62) days following the date on which the clerk of the Planning Board receives a complete preliminary subdivision application.



- (b) If the Town Planning Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is to be held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within sixty-two (62) days following the date on which the notice of completion of the draft environmental impact statement is filed. If no public hearing is to be held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within sixty-two (62) days following the date on which the notice of completion of the draft environmental impact statement is filed.
  - (c) Public hearing notice - The hearing on the preliminary plat shall be advertised at least once in the Town's official newspaper at least five (5) days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen days (14) before a hearing held jointly therewith. All owners of property located within five hundred (500) feet of the parcel proposed for subdivision shall be sent a copy of the public hearing notice by the clerk of the Town Planning Board. The hearing on the preliminary plat shall be closed upon motion of the Town Planning Board within one hundred twenty days (120) after it has been opened.
- (2) Action on preliminary plats - The Town Planning Board shall approve, with or without modification, or disapprove such preliminary plat as follows:
- (a) If the Town Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required the Town Planning Board after making a finding of fact shall by resolution approve, with or without modification, or disapprove the preliminary plat within sixty-two (62) days after the close of the public hearing.
  - (b) If the Town Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five (45) days following the close of such public hearing in accordance with the provisions of the SEQR regulations. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days (45) following the close of the public hearing on the preliminary plat. Within thirty (30) days of the filing of such final environmental impact statement, the Town Planning Board shall issue findings on the final environmental impact statement and shall by resolution approve, with or without modification, or disapprove the preliminary subdivision plat.
  - (c) If the matter was referred to the Seneca County Planning Board in accord with Section 239-n of the General Municipal Law of New York State, the Town Planning Board shall not act within the first thirty (30) days following

such referral unless the County Planning Board renders a written recommendation within said thirty (30) day period. If the County Planning Board fails to make its recommendation within such thirty (30) day period, the Planning Board may take action on the preliminary plat absent a recommendation of the County Planning Board.

F. Procedures when Town Planning Board does not serve as Lead Agency for environmental review.

(1) Public hearing

The Town Planning Board shall, with the agreement of the Lead Agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no public hearing is held on the draft environmental impact statement, the Town Planning Board shall hold the public hearing on the preliminary plat within sixty-two (62) days after the receipt of a complete preliminary plat by the clerk of the Town Planning Board.

(2) Public hearing; notice - The hearing on the preliminary plat shall be advertised at least once in Town's official newspaper at least five (5) days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen (14) days before a hearing held jointly therewith. All owners of property within five hundred (500) feet of the land proposed for subdivision will be sent a copy of the public hearing notice by the clerk of the Town Planning Board. The hearing on the preliminary plat shall be closed upon motion of the Town Planning Board within one hundred twenty (120) days after it has been opened.

(3) Action on preliminary plats - The Town Planning Board shall by resolution approve, with or without modification, or disapprove the preliminary plat as follows:

(a) If the preparation of an environmental impact statement on the preliminary subdivision plat is not required, the Town Planning Board after making a finding of fact on the proposed subdivision shall by resolution approve, with or without modification, or disapprove the preliminary subdivision plat within sixty-two (62) days after the close of the public hearing.

(b) If an environmental impact statement is required, the Town Planning Board shall make its own findings and shall by resolution approve, with or without modification, or disapprove the minor subdivision plat within sixty-two (62) days after the close of the public hearing on such preliminary plat or within thirty (30) days of the adoption of findings by the Lead Agency, whichever period is longer.

- (c) If the matter was referred to the Seneca County Planning Board in accord with Section 239-n of the General Municipal Law of New York State, the Town Planning Board shall not act within the first thirty (30) days following such referral unless the County Planning Board renders a written recommendation within said thirty (30) day period. If the County Planning Board fails to make its recommendation within such thirty (30) day period, the Planning Board may take action on the minor subdivision plat absent a recommendation of the County Planning Board.
- G. Grounds for decision and applicant notification – The Town Planning Board shall make findings of fact based on information generated during the public hearing and the comments made by involved and interested agencies and staff reports and the comments of the Town Engineer. The resolution shall contain the findings of fact on the proposed subdivision and the grounds for modification, if any, or the grounds for disapproval. Such resolution shall also specify any modifications the Planning Board deems necessary for submission of the subdivision plat in final form. A copy of such resolution shall be mailed to the applicant within five (5) business days following its adoption.
- H. Approval, certification and filing of preliminary plat in office of Town Clerk – Within five (5) business days following the adoption of the resolution stating the Town Planning Board’s decision, a copy of such resolution and, if approved, a copy of the preliminary plat certified by the clerk of the Town Planning Board as having been granted preliminary approval shall be filed in the office of the Town Clerk.
- I. Default approval of preliminary plats - In the event a Town Planning Board fails to take action on a preliminary plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the Town Planning Board, such preliminary plat shall be deemed approved. The certificate of the Town Clerk as to the date of submission of the preliminary plat and the failure of the Town Planning Board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.
- J. Revocation of approval of preliminary plat – Within six (6) months of the approval of the preliminary plat, the owner must submit the plat in final form. If the final plat is not submitted within six (6) months, approval of the preliminary plat may be revoked by the Town Planning Board. The Town Planning Board may, by resolution, authorize an extension beyond the six-month limit.

**Section 308 Final major subdivision plat review.**

- A. Purpose - This step provides for a refinement of information submitted in the preliminary plat review procedure, submission of additional information about site design and improvements. This information permits the Town Planning Board and the Engineer for the Town to make

decisions concerning the appropriateness of the proposed major subdivision. Some important considerations include but are not limited to:

- (1) Conditions of the preliminary plat approval.
- (2) Environmental Overlay Protection Districts and mitigating measures identified during the environmental review.
- (3) Offers of dedication.
- (4) Requirements of involved agencies.
- (5) Requirements to create or extend special districts.
- (6) Drainage considerations.
- (7) Monumentation of the proposed subdivision.
- (8) Water metering during construction.
- (9) Phasing of the proposed project if the project is to be phased.
- (10) Surety.

B. Requirements.

- (1) Nine (9) copies of the final plat and construction detail of proposed improvements must be submitted within six (6) months of the date of the resolution approving the preliminary plat. Accompanying each of these copies of the final plat and construction detail must be a final drainage report and applications for the creation or extension of proposed special districts. A completed application and a fee also must be submitted, together with these to the clerk of the Town Planning Board at least two (2) weeks prior to a regularly scheduled Town Planning Board meeting.
- (2) Applicants may be required to submit additional copies of the application to the clerk of the Town Planning Board if the Chairperson of the Town Planning Board determines that other officials, agencies or consultants need to be informed about the project.
- (3) The final plat shall conform substantially to the preliminary plat as approved by the Town Planning Board. It shall incorporate any modifications or other features stipulated by the Town Planning Board at the preliminary plat stage, and all such compliances shall be clearly indicated by the subdivider on the appropriate submission.

- (4) The final plat shall be clearly labeled "Final Subdivision Plat" and shall satisfy the requirement for such plats as described in the Design and Construction Standards for Land Development of the Town of Fayette.
- (5) If the subdivider wishes to develop the subdivision in stages, a final subdivision plat covering a portion of the area encompassed by the preliminary plat must be submitted, provided that the proposed development stages were generally indicated on the preliminary plat approved by the Town Planning Board. However, no more than two (2) individual phases shall be in process or under construction at any time.

C. Procedures

- (1) Submission of application - Upon receipt of an application for a final plat review, the clerk of the Town Planning Board shall review the application submitted to determine whether contains all the required documentation and information in accordance with the standards of these regulations. If the application is deficient, the clerk of the Town Planning Board shall return the application to the applicant and inform the applicant in writing of the deficiencies. If the application is not deficient, the clerk shall place the matter on the agenda for the next duly called Town Planning Board meeting. If required pursuant to Section 239-n of the General Municipal Law of the State of New York, the clerk shall also provide the Seneca County Planning Board with a copy of the final plat application.
- (2) The clerk of the Town Planning Board at the time shall also process any requests for formation or extension of special districts.

D. Approval of final plats in substantial agreement with approved preliminary plats

- (1) When a final plat is submitted which the Town Planning Board deems to be in substantial agreement with a preliminary plat approved pursuant to this Article, the Town Planning 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 of following the receipt of a complete application by the clerk of the Town Planning Board.
- (2) If the matter has been referred to the County Planning Board in accord with Section 239-n of the General Municipal Law of the State of New York, the Town Planning Board shall not act within the first thirty (30) days following such referral unless the County Planning Board renders a written recommendation within said thirty (30) day period. If the County Planning Board fails to act on the referral and to make its recommendation within such thirty (30) day period, the Town Planning Board may take action on the final plat absent a recommendation of the County Planning Board.

E. Approval of final plats not in substantial agreement with approved preliminary plats

When a final plat is submitted which the Town Planning Board deems not to be in substantial agreement with a preliminary plat approved pursuant to this Article the following shall apply.

(1) Procedures when the Town Planning Board serves as Lead Agency for the environmental review.

(a) Public Hearing

[1] If the Town Planning Board determines that the preparation of an environmental impact statement on the final plat is not required, a public hearing shall be held within sixty-two (62) days of the date of the receipt of a complete final subdivision plat application by the clerk of the Town Planning Board. A final subdivision plat application shall not be considered complete until a Negative Declaration of Environmental Significance has been filed in accord with SEQR regulations.

[2] If the Town Planning Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is to be held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within sixty-two (62) days following the date on which the notice of completion of the draft environmental impact statement is filed. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within sixty-two (62) days following the date on which the notice of completion of the draft environmental impact statement is filed.

[3] Public Hearing Notice - The notice of the public hearing shall be advertised at least once in the official Town newspaper at least five (5) days before such hearing if no hearing is held on the draft environmental impact statement, or fourteen (14) days before such a hearing held jointly therewith. All owners of property located within five hundred (500) feet of the land proposed for subdivision will be sent a copy of the public hearing notice by the clerk of the Town Planning Board. The hearing on the final subdivision plat shall be closed upon motion of the Town Planning Board within one hundred twenty (120) days after it has been opened.

(b) Action on final subdivision plat – The Town Planning Board shall make its decision on the final subdivision plat as follows:

[1] If the Town Planning Board determines that the preparation of an environmental impact statement on the final subdivision plat is not required, the Town Planning Board after making a finding of fact shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the final plat within sixty-two (62) days after the close of the public hearing.

[2] If the Town Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five (45) days following the close of such public hearing in accordance with the provisions of the SEQR regulations. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five (45) days following the close of the public hearing on the final plat. Within thirty (30) days of the filing of the final environmental impact statement, the Town Planning Board shall issue findings on such environmental impact statement and shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the final plat.

[3] If the matter was referred to the Seneca County Planning Board in accord with Section 239-n of the General Municipal Law of New York State, the Town Planning Board shall not act within the first thirty (30) days following such referral unless the County Planning Board renders a written recommendation with said thirty (30) day period. If the County Planning Board fails to make its recommendation within such thirty (30) day period, the Planning Board may take action on the preliminary major subdivision plat absent a recommendation of the County Planning Board.

(2) Procedures when the Town Planning Board does not serve as Lead Agency for the environmental review.

(a) Public Hearing - The Town Planning Board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement or if no hearing is held on the draft environmental impact statement, the Town Planning Board shall hold the public hearing on the

final plat within sixty-two (62) days after the receipt of a complete final plat by the clerk of the Town Planning Board. If the preparation of an environmental impact statement is not required, a final subdivision plat shall not be considered complete until the Negative Declaration of Environmental Significance has been filed in accord with SEQR regulations. If the preparation of environmental impact statement is required, a final subdivision plat shall not be considered complete until the notice of completion of the environmental impact statement has been filed in accord with SEQR regulations.

(b) Public Hearing Notice - The notice of the public hearing shall be advertised at least once in the official Town newspaper at least five (5) days before such hearing if held independently of the hearing on the draft environmental impact statement, or fourteen (14) days before a hearing held jointly therewith. All owners of property within five hundred (500) feet of the land proposed for subdivision will be sent a copy of the public hearing notice by the clerk of the Town Planning Board. The hearing on the final plat shall be closed upon motion of the Town Planning Board within one hundred twenty (120) days after is has been opened.

(c) Action on final subdivision plat – The Town Planning Board shall make its decision on the final subdivision plat as follows:

[1] If the preparation of an environmental impact statement on the final subdivision plat is not required, the Town Planning Board after making findings of fact shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the final subdivision plat within sixty-two (62) days after the close of the public hearing on the final plat.

[2] If an environmental impact statement is required, the Town Planning Board shall make its own findings and shall by resolution conditionally approve, with or without modification, disapprove or grant final approval and authorize the signing of the final subdivision plat within sixty-two (62) days after the close of the public hearing on such final plat or within thirty (30) days of the adoption of the findings by the Lead Agency, whichever period is longer.

[3] If the matter was referred to the Seneca County Planning Board in accord with Section 239-n of the General Municipal Law of New York State, the Town Planning Board shall not act within the first thirty (30) days following such referral unless the County Planning Board renders a written recommendation with said thirty (30) day period. If the County Planning Board fails to make its recommendation within such thirty (30) day period, the Town



Planning Board may take action on the final subdivision plat absent a recommendation of the County Planning Board.

- (3) Grounds for Decision and Notification of Applicant – The Town Planning Board shall make findings of fact based on information generated during the public hearing and the comments made by involved and interested agencies and staff reports and the comments of the Town Engineer. The resolution shall contain the findings of fact on the proposed subdivision and the grounds for modification, if any, or the grounds for disapproval. In the case of a conditionally approved plat, the resolution shall include a statement of the requirements which, when completed, will authorize the signing thereof. A copy of such resolution shall be mailed to the applicant within five (5) business days following its adoption.
- (4) Approval, certification and filing of final plats in the office of the Town Clerk
  - (a) Certification of final plat - Within five (5) business days following the adoption of the resolution granting conditional or final approval of a final plat, such plat shall be certified by the clerk of the Town Planning Board as having been granted conditional or final approval and such certified plat along with a copy of such resolution shall be filed in the office of the Town Clerk. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which when completed will authorize the signing thereof. Upon completion of such requirements the plat shall be signed by the Chairperson of the Town Planning Board and a copy of such signed plat shall be filed in the office of the Town Clerk. In the case of a plat that is disapproved, a copy of the Town Board resolution disapproving such plat shall be filed in the office of the Town Clerk within five (5) days of its adoption.
  - (b) Approval of plat in phases - In granting conditional or final approval of a plat in final form, the Town Planning Board may permit the plat to be subdivided and developed in two or more phases and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said phases may be signed by the Chairperson of the Town Planning Board. Conditional or final approval of the phases of a final plat may be granted concurrently with conditional or final approval of the entire plat subject to any requirements imposed by the Town Planning Board.
  - (c) Duration of conditional approval of final plat - Conditional approval of the final plat shall expire within one hundred eighty days (180) after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Town Planning Board may extend by not more than two additional periods of ninety days (90) each, the time in which a conditionally approved plat must be submitted for signature

if, in the Town Planning Board's opinion, such extension is warranted by the particular circumstances.

- (d) Default approval of final plats - In the event a Town Planning Board fails to take action on a preliminary or final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the Town Planning Board, such preliminary or final plat shall be deemed approved. The certificate of the Town clerk as to the date of submission of the preliminary or final plat and the failure of the Town Planning Board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

F. Filing of final plat; expiration of approval

The owner shall file in the office of the Seneca County Clerk such approved final plat or a section of such plat within sixty-two (62) days from the date of final approval or such approval shall expire. The following shall constitute final approval: the signature of the duly authorized officer of the Town Planning Board constituting final approval by the Town Planning Board of a plat as herein provided; or the approval by the Town Planning Board of the development of a plat or plats already filed in the office of the Seneca County Clerk if such plats are entirely or partially undeveloped; or the certificate of the Town Clerk as to the date of the submission of the final plat and the failure of the Town Planning Board to take action within the time herein provided. 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 within thirty (30) days of the filing of such section with the Town clerk in each Town in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent (10%) of the total number of lots contained in the approved plat and the approval of the remaining phases of the approved plat shall expire unless said phases are filed before the expiration of the exemption period to which such plat is entitled under the provisions of Subdivision 2 of Section 265-a of Town Law of New York State.

G. Issuance of permits; restricted.

- (1) No building permit shall be issued within the proposed subdivision until the conditions of the approval have been satisfied and the final plat has been signed by the Chairperson of the Town Planning Board and filed in the office of the Seneca County Clerk. Notification of such filing also must be received by the Town prior to the issuance of a building permit. When a certificate of occupancy is requested for a new building in a subdivision prior to the completion of all improvements shown on the approved final subdivision plat, the utilities and street serving the building shall be completed to a degree satisfactory to the Town Engineer. The decision of the Town Engineer shall be based upon the following considerations:

- (a) Adequate vehicular access for the prospective occupant and emergency vehicles.
  - (b) Services adequate or completed, including water systems and an approved means to dispose of sanitary wastes.
  - (c) Structure completed to the satisfaction of the Building Inspector who shall utilize standards set forth in the New York Fire Prevention and Building Code.
- (2) Where such certificate of occupancy has been issued, the streets and utilities proposed for dedication shall be maintained in a suitable condition by the subdivider at his expense and liability until such time as it is accepted by the Town.

**Section 310 Special districts.**

A. Purpose.

The purpose shall be to provide certain utilities and services on an equitable basis and also to assure a means of ongoing maintenance of those utilities and services. To achieve this purpose the Town of Fayette will create or extend special districts in conformance to the provisions of New York State Town Law and as set forth in the rules of the Town governing special districts.

B. Requirements

- (1) Requirements to create or extend special districts are set forth in Article 12 et al. of New York State Town Law and the rules of the Town of Fayette governing special districts.
- (2) Application to create or extend a district must be accompanied by the required fee, a metes and bounds description of the district and a description of any easements or other information required to form the type of district requested. One (1) copy of any application and accompanying materials to be presented to a state agency, whenever necessary, is required as part of the process of obtaining final plat approval.

C. Procedure - Application for the formation of a district is processed as follows:

- (1) Applications for state approval are submitted to the Town Supervisor, who reviews and signs them and returns them to the developer for submission to the appropriate state agencies.
- (2) The clerk to the Town Planning Board refers the Town application and accompanying documents to the Town Supervisor for processing.

- (3) The Town Supervisor is responsible for taking the following actions:
- (a) That the documents are forwarded to the Engineer for the Town who prepares the maps and plan for the creation or extension of the district.
  - (b) That the Attorney for the Town receives and reviews all documents to assure that all provisions of Article 12 of the New York State Town Law and all other legal requirements are met. If all matters are in compliance, the Attorney for the Town prepares:
    - [1] The petition for creation of the district.
    - [2] The notice for public hearing.
    - [3] The resolution creating or extending the district.
  - (4) Public hearing - Upon the receipt of a completed application for the district and recommendation of the Attorney for the Town, the Town Board shall schedule and hold a public hearing on the proposed district or extension of a district. The purpose of the public hearing is to permit free and open discussion of the proposed district. Notice of the public hearing shall be published in accordance with the provisions of New York State law. If the Town Board determines that the proposal meets all state and local requirements, the district shall be created or extended by resolution of the Town Board.
  - (5) Notification - Notification of the decision shall be the responsibility of the Town Clerk and shall be performed in accordance with all provisions of state law. Final documentation concerning the creation or extension of the district shall become a part of the permanent public record of the subdivision and distributed by the Town Clerk accordingly.

## **ARTICLE 4**

### **Required Subdivision Improvements**

#### **Section 400 Specific Required Improvements**

Purpose - Before the approval by the Town Planning Board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the Seneca County Clerk if the plat is entirely or partially undeveloped, the Town Planning Board shall require that the land shown on the plat to be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, erosion, drainage or other menace to neighboring properties or the public health,

safety and welfare. Accordingly, the following improvements are necessary to assure that all lots in subdivisions are adequately and properly served with utilities, sanitation facilities which provide a healthy and safe environment and other safeguards which assure property is properly identified, accessible to pedestrians and to vehicles and safeguarded. Improvements are required to preserve, to the greatest extent possible, the natural features of the land to make the subdivision an attractive and desirable place to live. All improvements shall be constructed or installed in conformance to specifications set forth in the Design and Construction Standards for Land Development in the Town of Fayette.

- A. Preservation of natural features - Wherever practical, natural features of the property being subdivided shall be preserved.
  - (1) To the fullest extent practicable, all existing trees shall be preserved by the subdivider. The subdivision should be designed with consideration being given to the preservation of natural features. Precautions shall be taken during the process of grading the lots and roads. Where any land other than that included in public rights-of-way is to be dedicated to the public use, the developer shall not remove any trees larger than six (6) inches DBH from the site without written Town Planning Board approval.
  - (2) Where a subdivision is traversed by natural surface water, the boundaries and alignment of the body of water shall be preserved unless the Town Planning Board finds that a change would be ecologically sound and would enhance the development and beauty of the project. All proposed changes in the boundaries of bodies of water shall be designed and approved in accordance with Article 15 of the New York State Environmental Conservation Law.
  - (3) Every effort should be taken by the subdivider in designing a project to preserve unique physical features, such as historic landmarks and sites, rock outcroppings, hilltop lookout, desirable natural contours and similar natural features.
  
- B. Utilities - These improvements are required to assure that the property is adequately served by water, sewer and drainage systems and by electric power and other fuel-distribution systems. To assure that these systems are properly installed and easily repaired, inspection of the installation of these improvements is required.
  - (1) Water distribution - A system of transmitting potable water to the subdivision and appurtenances in adequate amount for the normal use of each lot in the proposed subdivision shall be required. Two (2) systems of water distribution are possible.
    - (a) Public water supply systems. - Public water supply from the Town of Fayette shall be provided wherever existing mains are reasonably accessible in the opinion of the Town Planning Board. The system must be approved by the New York State Department of Health and must conform to Design and Construction Standards for Land Development of the Town of Fayette.

- (b) Individual water systems (wells). A well is a deep hole or shaft dug or drilled in the ground to obtain potable water and bring it to the surface for an individual lot. Only those developments which cannot be served by extension of public water systems may be designed with individual water systems.

(2) Sanitary sewer systems

- (a) Sanitary sewage is the combination of human and household waste with water. These sewer systems are used to dispose of sanitary sewage from individual lots in a subdivision. Two (2) types of sanitary sewer systems are permitted: public sanitary sewer systems and individual sewage disposal systems. All public and selected individual sanitary sewer systems must be approved by the New York State Department of Environmental Conservation and/or the New York State Department of Health, whichever is applicable.
- (b) Public sanitary sewers shall be provided whenever existing sanitary sewers are reasonably accessible in the opinion of the Town Planning Board. These systems must conform to the Design and Construction Standards of Land Development of the Town of Fayette.

(3) Drainage systems - These are a combination of natural watercourses and man-made facilities intended to convey stormwater runoff and shall conform to the Design and Construction Standards for Land Development of the Town of Fayette.

- (a) Adequate and comprehensive drainage systems shall be provided in accordance with the natural direction of runoff for the total upland watershed area affecting the subdivision. Such drainage systems shall have sufficient capacity to accommodate the potential future runoff based upon the probable land use and ultimate development of the total watershed area upland of the subdivision.
- (b) In general, the preservation of natural watercourses is preferable to the construction of drainage channels, and, wherever practicable, such natural watercourses should be preserved and utilized.

(4) Easements - Utility and drainage easements are required for all proposed subdivisions.

- (a) Utility easements - An easement shall be provided for all utility lines wherever those utility lines do not fall within a dedicated right-of-way. All utility easements shall be plotted on both the preliminary and final subdivision plat. The developer must identify all easements in deeds for each lot affected. Utility easements shall have a minimum width of ten (10) feet. All utility lines which are primarily intended to provide service to the

lots within the subdivision shall be installed underground at a depth and at such locations as will minimize risk of interruption of services.

(b) Drainage easements - Drainage easements shall be provided for all natural and man-made drainage-ways which do not fall within a dedicated right-of-way. All drainage easements shall be plotted on the preliminary and final plats. The Town shall be provided with a metes and bounds description of all proposed easements prior to final plat approval. These descriptions will be used by the Engineer for the Town and the Attorney for the Town in creating or extending special districts.

(c) The Town Planning Board reserves the right to require additional easements when the purposes of the easements are found to be in the public interest.

(5) Inspection - The installation of improvements shall be subject to inspection at all stages by representatives of the Town of Fayette. For this purpose, free access shall be afforded and requested information shall be promptly submitted. The cost of such inspections shall be approved by the Engineer for the Town and included in the value of the surety for the project.

C. Site surface improvements - These improvements are required to assure the ecology of the subdivision is not disturbed adversely; that the subdivision presents an attractive appearance; that it is properly paved and monumented; and that all improvements are recorded on the final plat for approval by the Town of Fayette.

(1) Erosion control - Erosion and sedimentation control shall conform to the *NY Standards and Specifications for Erosion and Sediment Control* promulgated by the New York State Department of Environmental Conservation.

(a) During the development process, the developer shall expose the smallest practical area of land at any one (1) time. Proper erosion control measures shall be in place prior to any area being disturbed.

[1] Topsoil moved during the course of construction should be stored in such a manner as to allow for minimum volume to be stacked or stored at any one (1) time. The stacking or storage period should be kept as short as possible.

[2] Removal, storage and redistribution of topsoil should be consistent with the phasing of construction for the purpose of reducing the need for the storage of large volumes of soil over a lengthy period. Soil shall be redistributed so as to cover all areas of the subdivision adequately and shall be stabilized by seeding or planting. Topsoil which is stored shall be stabilized by seeding.

- [3] Removal of topsoil from the site must be approved by the Town Planning Board.
- (b) Temporary vegetation and/or mulching should be provided to prevent potential erosion problems during construction.
  - (c) Upon completion of the project, the subdivider shall not leave any hills or mounds of dirt around the tract. All surfaces should be restored within six (6) months of the time of the completion of the section of the subdivision.
  - (d) Upon completion of the project, the subdivider shall not leave any surface depressions which will collect pools of water except as may be required for retention of stormwater runoff.
- (2) Landscaping - Landscaping is the improvement of land by contouring and decorative planting which includes vegetative ground cover.
- (a) All lots which are disturbed during the course of construction and which are not covered by structures or paving shall be properly landscaped by the developer.
  - (b) Individual homeowners, by written agreement with the developer, subdivider or builder, may landscape their yards independently.
  - (c) Additional landscaping may be required by the Town Planning Board to screen or buffer the subdivision from a visually noncompatible use.
- (3) Street signs - Permanent street signs of the same type and design in general use throughout the Town, showing the names of intersecting streets, shall be erected at each intersection. Signs at private road intersections shall contain the designation "drive."
- (4) Monuments - Permanent reference monuments shall be set at critical corners and angle points of the boundaries within the subdivision. Generally, critical corners and angle points shall be deemed to mean boundary corners and angle points in the boundaries of the parcel being subdivided and in street right-of-way boundaries at all street intersections. Variations to this general rule shall be permitted with Town Planning Board approval. Requests for deviations shall be made prior to preliminary plat approval. Agreements on monumentation shall be incorporated into the subdivision plan of the final plat.
- (5) Roads and streets - All dedicated streets and roads shall be constructed in conformance to specifications set forth in the Design and Construction Standards for Land Development of the Town of Fayette. Such roads and streets shall be coordinated so as to compose a convenient system conforming to the Town's



official map and properly related to the proposals contained in the Towns' Comprehensive Plan.

- (6) Sidewalks - The policy of the Town of Fayette is to encourage the building of sidewalks wherever needed. The need for sidewalks in major subdivisions shall be determined by the Town Planning Board. Location of sidewalks generally shall be within the road right-of-way and any pedestrian access easements.

D. Reservation of parkland on major subdivision plats containing residential units

- (1) Before the Town Planning Board may approve a major subdivision plat containing residential units, such major subdivision plat shall also show, when required by such Board, a park or parks suitably located for playground or other recreational purposes.
- (2) Land for park, playground or other recreational purposes may not be required until the Town Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular subdivision plat will contribute. However, in no case, shall the amount of land be more than ten (10) percent of the total area of the major subdivision.
- (3) In the event the Town Planning Board makes a finding pursuant to paragraph (2) above that the proposed major subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the Town Planning Board may require a sum of money in lieu thereof, in an amount to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the major subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Town Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property. Recreation fees shall be expended at the discretion of the Town Board.

- E. Character of the development- In making such determination regarding streets, highways, parks and required improvements, the Town Planning Board shall take into consideration the prospective character of the development, whether dense residence, open residence or business.

- F. Compliance with Land Use Regulations; Application for area variance – The lots shown on a plat shall at least comply with the requirements of the Town’s land use regulations, subject, however, to the provisions of Article 5 of these regulations. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the regulations, application may be made to the Board of Appeals for an area variance pursuant to Section 267-b of the New York State Town Law without the necessity of a decision or determination of the Land Use Officer. In reviewing such application the Board of Appeals shall request the Town Planning Board to provide a written recommendation concerning the proposed variance.
- G. Completion of improvements; waiver, certificate of approval
- (1) Completion of improvements - The developer shall complete all improvements in accordance with the approved final subdivision plats. The quality of the improvements must be in accordance with final subdivision plats. Their quality also must be acceptable to the Town Planning Board, the Engineer for the Town, the Town Highway Superintendent or any other agency having jurisdiction.
  - (2) Waiver of requirements – The Town Planning Board may waive, when reasonable, any requirements or improvements for the approval, approval with modification 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.
- H. Installation of fire alarm devices - The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant only with the approval of:
- (1) the County Legislative, if the installation is to be made in an area included in a central fire alarm system established pursuant to Paragraph (h) of Subdivision 1 of Section 225 of New York State County Law, or
  - (2) the Town Board in any other case unless the installation is to be made in a Fire District in a Town in which no central fire alarm system has been established pursuant to Subdivision 11-c of Section 64 of the New York State Town Law, in which case only the approval of the Board of Fire Commissioners of such Fire District shall be necessary. Required installations of fire alarm signal devices including necessary connecting facilities shall be made in accordance with standards, specifications and procedures acceptable to the appropriate board.
- I. Flood hazard prevention - Flood hazard prevention shall conform to the provisions of Local Law 3 of 2008 of the Town of Fayette.

J. Performance bond or other security

- (1) Purpose – The purpose shall be to assure compliance with the proper installation of facilities and utilities being offered for dedication and to protect future property owners.
- (2) Administration - Provisions of this section shall be administered as provided for in § 277 of the Town Law of the New York State statutes.
- (3) Furnishing of performance bond or other security - As an alternative to the installation of infrastructure and improvements required in this Article and prior to Town Planning Board approval, a performance bond or other security sufficient to cover the full cost of the installation of such infrastructure and improvements, as estimated by the Town Planning Board or a Town department designated by the Town Planning Board to make such estimate, where such departmental estimate is deemed acceptable by the Town Planning Board, shall be furnished to the Town by the owner. Surety may be waived in instances where the subdivider installs all improvements prior to the final plat being signed by the duly authorized Town officials.
- (4) Security where plat approved in phases - In the event that the owner shall be authorized to file the approved plat in phases, as provided in Subdivision 7 of Section 276 of the New York State Town Law, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the Seneca County Clerk or the furnishing of security covering the costs of the installation of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the Seneca County Clerk and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.
- (5) Form of security - Any such security must be provided pursuant to a written security agreement with the Town, approved by the Town Board and also approved by the Town Attorney as to form, sufficiency and manner of execution, and shall be limited to:
  - (a) a performance bond issued by a bonding or surety company;
  - (b) the deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in New York State;
  - (c) an irrevocable letter of credit from a bank located and authorized to do business in this state;
  - (d) obligations of the United States of America; or

- (e) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the Town, such security shall be held in a Town account at a bank or trust company.
- (6) Term of security agreement - Any such performance bond or security agreement shall run for a term to be fixed by the Town Planning Board, but in no case for a term longer than three years, provided, however, that the term of such performance bond or security agreement may be extended by the Town Planning Board with consent of the parties thereto. If the Town Planning Board shall decide at anytime during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the Town Planning Board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the Town Board, the Town Planning Board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the Town Planning Board.
- (7) Inspections - All improvements covered under a performance surety must be inspected during construction. Cost of the required inspections may be estimated by the Town Engineer and shall be borne by the developer and will be included in the initial value of the surety.
  - (a) The inspection procedure is designed to determine compliance with the approved plats.
  - (b) For inspection purposes, the contractor will notify the Town when construction will be undertaken on proposed improvements. Reasonable notice is required. Normally, twenty-four (24) hour advance notice is considered to be reasonable.
  - (c) Inspections are the responsibility of the Engineer for the Town or a designee of the Town Board. Subcontracting of inspections on behalf of the Engineer for the Town may be done only with the prior approval of the Town Board. Should the inspector find improvements are not being installed in compliance with approved plats; the Town Board shall immediately be notified. The Town will take all necessary and proper steps to rectify the situation.

- (8) Process for release of surety
- (a) The process for release of surety will be initiated when a request is made by the contractor for partial or total release and is submitted to the Town for approval. The request will be submitted by the Town to the Engineer for the Town who shall compare the request with the inspection record. The Engineer's determination will be forwarded to the Town Board with a recommendation for action. At that time, the Town Board will decide, by resolution, whether to honor the request and will determine the dollar value of the release. The Town Supervisor will be instructed to issue the release in the amount determined by the Town Board.
- (b) Upon completion of improvements, the Town Board may honor a request for final release of funds.
- [1] This process begins when the developer submits a request for release to the Town. Inspection by Town officials of the improvements is required to assure improvements have been properly accomplished. A report of this inspection is submitted to the Town Board.
- [2] The Town Board will decide whether to accept dedication. If a road is offered for dedication, the Highway Superintendent will decide whether to accept dedication. Upon acceptance of dedication, the Town Board will require a retainage fee. The Town Board will then release the developer from the former surety.
- [3] In cases of unusually large developments or in cases where several contractors are involved in the construction of the project or other extraordinary circumstances, phased releases may be requested by the developer. The Town Board has the right to specify the manner of issuing the releases and to whom the releases are issued.
- (c) All releases under surety are subject to retainage - Each time release occurs under a surety, ten percent (10%) of the amount of the release is retained in the letter of credit until the facilities are dedicated. Upon dedication, the entire amount of the letter of credit will be released upon the filing of a suitable form of performance surety in the amount of ten percent (10%) of the actual construction costs incurred. The surety shall be held for a period of one (1) year following dedication to assure correction of any work that may be found to be defective.
- (9) Default of security agreement - In the event that any required improvements have not been installed as provided in this section within the term of such security agreement, the Town Board may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable

thereunder; and upon the receipt of the proceeds thereof, the Town shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

K. Provision of improvements by Town.

- (1) Adoption of resolution - Notwithstanding the foregoing provisions of this Section with respect to plats approved by the Town Planning Board, the Town Board may adopt a resolution that sidewalks and/or water mains and/or sanitary sewers and/or storm drains required by the Town Planning Board pursuant to this section be constructed or installed at the expense of the Town as authorized by Articles 3-A and 12-C of the New York State Town Law or at the expense of an existing improvement district in which the plat is located. Such improvements may also be acquired without consideration by the Town Board on behalf of the Town or an improvement district as authorized by Articles 3-A, 12, 12-A or 12-C of the New York State Town Law.
- (2) Establishment of improvement district - If an improvement district has not been created for the area in which the plat is located, the Town Board may establish or extend an improvement district as provided for in New York State Town Law or in any applicable special law for the purpose of constructing or installing or acquiring without consideration such improvements shown on the map of any plat as the Town Board may determine.
  - (a) Execution of contracts - The Town Board resolution shall require that the owner or owners of real property execute such contracts with the Town as the Town Board may deem necessary for the purpose of ensuring that the expense of such construction or installation, including the cost of issuing obligations to raise moneys to pay the expense thereof and interest on such obligations, shall not be an undue burden upon the property deemed benefited by the agreements or of such improvement district or extension thereof as the case may be and may require a security agreement, including the filing of a surety bond, letter of credit or the deposit of cash or securities reasonably acceptable to the Town Board as to assure the performance of such contracts.
  - (b) Any such surety agreement shall be executed in accordance with this Section, and may contain such other provisions as the Town Board may reasonably determine to be necessary to ensure the performance of such contracts.

## **ARTICLE 5**

### **Clustered Projects**

#### **Section 500 Purposes.**

The Town Board of the Town of Fayette finds that the topography and environmental sensitivities of certain parcels in the Town do not lend themselves to the conventional development as designated by current land use regulations. Therefore, the purpose of this Article is to enable and encourage flexibility of design in housing and the development of land in such manner as to permit the most appropriate use of land, to preserve the natural, scenic and ecological qualities of environmentally sensitive areas and to provide larger areas of open space, both for recreation and for environmental conservation purposes pursuant to the provisions of Section 278 of the New York State Town Law.

#### **Section 502 Objectives.**

Among the objectives that should be achieved through use of clustered housing are the following:

- A. The creative use of land so as to establish a more desirable living environment than would be possible through the strict application of certain Town land use standards.
- B. The preservation of surface water, wetlands, steep slopes, hilltops, ridgelines, major stands of trees, outstanding natural topography and glaciated features. Other areas to be preserved include areas of scenic and ecological values, including open spaces and other environmentally sensitive areas.
- C. To prevent soil erosion, minimize negative environmental impacts and control development in flood hazard areas.
- D. To encourage innovation through flexibility in design and layout of residential housing consistent with the intent of these regulations by permitting housing units to be clustered without increasing overall site density.
- E. To permit housing developments that reflect the legislative intent of § 278 of the Town Law of the State of New York.
- F. To create a housing development that is in harmony with the character of the area and the environmental sensitivities of the sites.

#### **Section 504 Statutory authority.**

In accord with Section 278 of the New York State, the Town Board authorizes the Town Planning Board to approve cluster development simultaneously with the approval of a plat or plats in the Agricultural/Rural Residential district of the Town of Fayette and to grant variations to the dimensional standards (area) of the Town land use regulations concurrent with the approval of plats for cluster development subject to the

conditions set forth in Section 278 of the New York State Law. The Town Planning Board is also authorized, at its discretion, to require the owner to submit an application for cluster development subject to criteria established by ordinance by the Town Board whether or not the owner makes application for a cluster development project.

A. Conditions

- (1) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the Town Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the land use regulations applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the Town Planning Board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts.
- (2) Project density shall be based only upon the amount of usable land which is available for development. In computing the usable or developable land, any land situated in a flood hazard area, having slopes in excess of twenty percent (20%), officially designated freshwater wetlands, lands occupied by public utilities, structures, drainage control areas or rights-of-way or otherwise unsuitable for development shall not be considered part of the gross area.
- (3) The Town Planning Board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The Town Board may require that such conditions shall be approved by the Town Board before the plat may be approved for filing.
- (4) The plat showing the cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets driveways and any other features required by the Town Planning Board. The dwelling units permitted may, at the discretion of the Town Planning Board, may be in detached, semi-attached, attached or multi-story structures.

**Section 506 Maintenance of open lands.**

- A. Intent - Because open spaces are an inherent part of clustered developments, the Town must take special measures for the protection and regulation of these areas and to provide for a system of their permanent maintenance.
- B. Submission requirements - At the sketch plat stage, the developer shall submit a detailed proposal for maintenance of common lands and/or open spaces. The Town Planning Board



may approve or approve with conditions any plans for maintenance of common areas and/or open spaces. Any conditions imposed for maintenance of open space and/or common lands shall become part of the conditions for final plat approval.

- C. Dedication of lands - If the open spaces are to be offered for dedication to the Town, the Town Planning Board shall refer such offers and related details to the Town Board for the necessary action prior to final plat approval.
- D. Property owners' association - If open spaces are not to be dedicated to the Town, the applicant must create a property owners' association and receive approval of the Office of the New York State Attorney General pursuant to State Law.

### **Section 508 Alternative means of maintenance of open lands.**

The following methods will be considered alternate means to maintain open spaces:

- A. In the case of single ownership of the clustered development by a sole owner, partnership, corporation or other legal means, deed restrictions protecting open spaces from further development may be submitted to the Town Attorney for review and to the Town Planning Board for acceptance.
- B. Any alternative methods for protection and preservation of open lands and common areas shall be submitted at sketch plat stage to the Town Planning Board for review and approval. All alternate proposals shall be submitted to the Town Attorney for review and comment. The Town Planning Board may require any additional information it deems necessary to conduct an adequate review of the alternate proposals.

### **Section 510 Review procedure.**

The review and approval process and information requirements for a clustered project shall be conducted pursuant to major subdivision process procedures.

- A. Notice and public hearing.  
  
The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to the requirements for major subdivision approval as set forth in Article III of these regulations.
- B. The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the Town Planning Board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the Town Planning Board, in detached, semi-detached, attached, or multi-story structures.

- C. Filing of plat - On the filing of the plat in the office of the Seneca County Clerk, a copy shall be filed with the Town Clerk, who shall make appropriate notations and references thereto on the Town land use maps required to be maintained pursuant to section 264 of the New York State Town Law.
- D. Effect - The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the land use ordinance or local law applicable to such lands.

## **Article 6**

### **Building on and not on Mapped Streets**

#### **Section 600 Permits for buildings in bed of mapped streets.**

For the purpose of preserving the integrity of the official Town map or plans no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the Board of Appeals shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and the Board of Appeals may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the Town of Fayette. Before taking any action authorized in this Section, the Board of Appeals shall conduct a public hearing at which parties in interest and others shall have an opportunity to be heard. Notice of the time and place of such public hearing shall be published in the Town's official newspaper at least ten (10) days prior to the date of the hearing. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon land use regulations.

#### **Section 602 Permits for buildings not on improved mapped streets.**

- A. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is
  - (1) an existing state, county or town highway, or
  - (2) a street shown upon a plat approved by the Town Planning Board as provided in Articles 3 and 4 of these regulations, as in effect at the time such plat was approved; or
  - (3) a street on a plat duly filed and recorded in the office of the Seneca County Clerk prior to the appointment of the Town Planning Board and the grant to such board of the power to approve plats.

- B. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the Town Board or the Town Planning Board, if empowered by the Town Board in accordance with standards and specifications approved by the Town Board, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway. Alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the Town by the owner. Such performance bond shall be issued by a bonding or surety company approved by the Town Board or by the owner with security acceptable to the Town Board, and shall also be approved by such Town Board as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with Article 4 of these regulations.
- C. The applicant for such a permit may appeal from the decision of the Town Land Use Officer to the Board or Appeals for:
- (1) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or,
  - (2) an area variance pursuant to section 267-b of the Town Law of the State of New York, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on land use regulations.
- The Board of Appeals may, in passing on such appeal, make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review by certiorari order issued out of a special term of the Supreme Court in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon land use regulations.
- D. The Town Board may, by resolution, establish an open development area or areas within the Town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the Town Planning Board. The Town Board, before establishing any such open development area or areas, shall refer the matter to the Town Planning Board for its advice and shall allow the Town Planning Board a reasonable time to report.
- E. For the purposes of this Section the word "access" shall mean that the plot on which such structure is proposed to be erected directly abuts on such street or highway and has sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen (15) feet shall presumptively be sufficient for that purpose.