

## **ARTICLE V: PROTECTIVE ZONING BY-LAWS**

### **SECTION 1: PURPOSE**

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- A. The purpose and intent of these By-Laws shall be to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Rowe, and to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- B. Any use that is not permitted by these By-Laws is prohibited.
- C. The Planning Board may establish fees for any permits, public hearings, reviews or any other actions that may be required by these By-Laws. Payment of any applicable fees is a condition to the validity of any filing and must be paid within thirty (30) days of such filing

### **SECTION 2: GENERAL REGULATIONS**

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#### **A. Storage of Motor Vehicles**

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No parcel of land shall be used for the parking or keeping for a period of more than thirty (30) days a total of more than two (2) motor vehicles which are unregistered, incomplete or inoperable if they are visible from any public or private way or from any other parcel of land owned by another in the Town. The term "Motor Vehicle" does not include operable farm equipment. For the purpose of this section "Parcel of Land" as used in the first instance shall mean all land in the Town owned by an individual, individuals or corporation.

No area shall be occupied or used by a camping trailer or mobile home for a total time in excess of thirty (30) days during any one calendar year except that camping trailers owned by the occupants of the premises and their immediate family may be stored in the rear or side of the yard when not in use.

#### **B. Mobile Homes, Trailers and Camping Vehicles**

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An individual trailer, mobile home, or camping vehicle may not be used as a dwelling, except as provided below.

1. An individual trailer or mobile home may be occupied as an accessory to a dwelling without a special permit, for up to but not exceeding fourteen (14) days per year;
2. An individual trailer or mobile home may be occupied for up to but not exceeding eighteen (18) months during the reconstruction of a dwelling on the same property which was destroyed by fire or other catastrophe, providing such reconstruction building permit is issued and valid;
3. The Building Inspector may allow temporary use, not to exceed one year, of a camping vehicle as an on-premises field office or residence during the construction period of a project (including a single-family residence) with Board of Health approval. An extension of the one-year limitation may be allowed by Special Permit.
4. An individual trailer, mobile home, or camping vehicle may be used as provided under Subsection E below; providing that 1) adequate and lawful means are provided for health and safety, including written permission by the Board of Health, and 2) during periods exceeding fourteen (14) days when such trailer or mobile home is not occupied, it shall either be removed from the premises or stored with no occupants or other use, indoors or outdoors in the rear yard of a dwelling at least twenty (20) feet from the rear and side lot lines.
5. A commercial campground of fifty (50) acres or more for cabins, cottages, tents, camper units or trailers may be allowed by Special Permit, provided that it is under single ownership and is used for seasonal or part-time occupancy only. Under the provisions of this section, the sites, facilities or buildings may be used or occupied for a maximum of 180 days during any 12-month period for recreational purposes and shall not be subject to the lot area and yard requirements which pertain to other residential use; however, such development shall not exceed a density of one camping unit per acre. Except for residence of the property owner, supervisory or maintenance personnel, no part of the premises shall be occupied on a permanent basis. Any such use of land for purposes of commercial recreation shall be subject to the granting of an appropriate permit by the Board of Health, under the provisions of Sections 32 A-D, Chapter 140 of the Massachusetts General Laws and subject to approval by the Massachusetts Department of Public Health under the Environmental Code for Developed Type Camp Grounds. These approvals shall be obtained prior to the public hearing before the Planning Board. A site plan showing all camping and tenting areas, trailer or building sites, water supply and sanitary facilities shall be filed with the Planning Board and it must be displayed at the public hearing.
6. A non-conforming mobile home existing as of the date of adoption of these By-Laws may be replaced by Special Permit issued by the Planning Board if it determines, in addition to other Special Permit criteria, that the replacement will not be substantially more detrimental to the neighborhood than the original structure.

### **C. Occupation of a Dwelling**

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No dwelling in the Town of Rowe other than a permitted Bed & Breakfast or Lodging House shall be occupied by more than one family; one family being defined as one or more persons related

by birth, marriage or adoption including minors under the legal guardianship or control of one or more adults or up to four (4) individuals not legally related or a combination of these living together on a premises as a single housekeeping unit. Renting of a dwelling to one Family by the owner of the dwelling on a monthly or yearly basis, when the owner and his/her Family are not occupying the premises does not require a Special Permit. However, the owner must have the premises inspected and approved by the Fire Chief or Building Inspector on an annual basis to ensure that safe egress and operational fire/smoke detection equipment exists to protect public safety.

## **D. Cutting Operations**

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Every owner, lessee, tenant or occupant of lands or any rights or interests therein, who cuts or permits the cutting of brush, wood or timber on lands which border upon a road shall dispose of the slash caused by such cutting in such a manner that the same will not remain on the ground within seventy-five (75) feet of the centerline of the road.

## **E. Earth Removal Operations**

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**(1) Permit Required:**

No soil, loam, sand, gravel, stone or other earth materials shall be removed from any premises within the Town unless such removal will constitute an exempt operation as hereinafter provided or is done pursuant to a special permit therefor issued by the Planning Board.

**(2) Exceptions:**

The removal of earth material in any of the following operations shall be an exempt operation:

- (a) The removal of less than ten (10) cubic yards of material in the aggregate in any one premises.
- (b) The transfer of less than fifty (50) cubic yards of material from one part of a premises to another part of the same premises.
- (c) The removal of material from land in use by the Town or other governmental agency.
- (d) The removal of material necessarily excavated in connection with the lawful construction or repair of a building or structure, or of a street, driveway, sidewalk or path incidental to any such building or structure, provided that the quantity of material removed does not exceed that actually displaced by the portion of the building, structure, driveway, sidewalk or path below finished grade.

## **F. Commercial Prospecting**

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No commercial prospecting for minerals, other underground deposits or other natural resources shall be permitted on any land in the Town of Rowe unless a special permit has been issued therefor in accordance with Section 6 of this Article.

## **G. Sewage Systems**

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All sewage and disposal systems shall be installed under the rules and regulations of the Board of Health of the Town of Rowe and in accordance with the State Sanitary Code.

## **H. Scenic Roads**

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### 1. Purpose

The purpose of this bylaw is to maintain the rural, natural, historic and scenic character of the Town's roadways. By vote of the Town Meeting all Town roads have been declared Scenic Roads under Section 15c of Chapter 40 of the General Laws. The bylaw ensures that trees and stone walls within the rights-of-way or layout of all scenic town roads will not be altered without the required public hearing(s), nor without following the other procedures set forth in this bylaw.

### 2. DEFINITIONS

In the absence of contrary meaning established through legislative or judicial action pursuant to M.G.L. Chapter 40, Section 15C, the following terms contained in that statute shall be defined as follows:

- a.) Cutting or Removal of Trees -- Shall mean the removal of one or more trees, the trimming of major branches, or the cutting of roots sufficient in the tree warden's written opinion to cause eventual destruction of a tree.
- b.) Repair, Maintenance, Reconstruction or Paving Work -- Shall mean any work done within the right-of-way by any person or agency, public or private. Within this definition is any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing ones is included, insofar as it takes place within the right-of-way. Construction, maintenance or alteration of water, sewer, electric, telephone, cable TV, or other utilities within the right-of-way is also included.
- c.) Roads -- Shall mean a right-of-way of any way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. When the boundary of the right-of-way is an issue so that a

dispute arises as to whether or not certain trees or stonewalls or portions thereof are within or without the way, the trees and stonewalls shall be presumed to be within the way until the contrary is shown.

d.) Tearing Down or Destruction of Stone Walls -- Shall mean the destruction of more than ten (10) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement at the same location with the same materials is permitted without Planning Board approval if the Town Highway Department is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall that does not involving tearing down or destroying the wall is not covered by this bylaw.

e.) Trees -- Shall include any living tree whose trunk has a diameter of four inches or more as measured four feet above the ground. All Trees within the public way are defined as public shade trees. No person, including the Tree Warden, may cut, trim or remove any tree, greater than four inches in diameter, without a public hearing. Nothing in this definition shall be construed to permit a person, to trim, cut down, or remove a public shade tree more than one and one-half inches in diameter one foot from the ground without permission of the Tree Warden.

### 3. PROCEDURES

#### a.) Filing

Any person or organization or agency seeking the consent of the Planning Board under M.G.L. Chapter 40, Section 15C regarding road repair, maintenance, reconstruction, or paving work that may involve the cutting or removal of trees or the tearing down of stone walls, or portions thereof, shall file a request with the Planning Board and submit the following information:

i. Filling out an application identifying the location of the proposed action so that readers may locate it with reasonable specificity on the ground without the need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls, and a statement of purpose, or purposes for the proposed action.

ii. Submit one copy with necessary background information to the Planning Board and one application form to the Town Clerk. This application is then time-stamped by the office of the Town Clerk.

#### b.) Notice

The Planning Board shall, as required by statute, give notice of its public hearing to discuss the alterations that the applicant wants to have done. Notice will be posted in two or more public places in the town and upon the tree(s) at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing. The notice will contain the time, date, place and purpose of the hearing.

#### c.) Timing of the Hearing

The Planning Board shall hold a public hearing within 90 days of receipt of a properly filed request. A public hearing regarding the cutting or removal of trees along scenic roads shall be consolidated into a single public hearing before the Tree Warden and the Planning Board, and notice of such consolidated public hearing shall be given by the Tree Warden as provided for in M.G.L. Chapter 87.

d.) Decision

The Planning Board gives written notice of its decision to deny, grant or grant with conditions consent to the applicant with copy filed with the Town Clerk. If a consolidated meeting has been held involving the Tree Warden then the Tree Warden issues the written permit. His jurisdiction involves public shade trees.

#### 4. CONSIDERATIONS

In acting on applications concerning scenic roads, the Planning Board shall take into consideration the following: preservation of natural resources and historic resources, scenic and aesthetic characteristics, environmental values, public safety, local residential traffic patterns and overall traffic volume and congestion, compensatory actions proposed, such as tree and wall replacement, functional importance and urgency of repair, maintenance, reconstruction, or paving; additional evidence contributed by abutters, Town agencies, and other interested parties; existence or absence of reasonable alternatives; and other planning information.

#### 5. ENFORCEMENT

a.) Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the layout of any scenic road will require an immediate filing as detailed above and the applicant shall be required to restore the features if required by the Planning Board.

b.) Any violation of this bylaw, M.G.L. Chapter 40, Section 15C, or a Planning Board decision issued under this Bylaw or M.G.L. Chapter 40, Section 15C, shall be punishable by a fine not to exceed three hundred dollars per violation; any such violation may also be enforced through non-criminal disposition in accordance with this bylaw and general bylaws Article I, Sections 3a and 3b.

### **I. Principal Uses Per Lot**

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No more than one principal use shall be allowed on any building lot.

## SECTION 3: USE REGULATIONS

### A. DISTRICT USES

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- (1) The whole of the Town of Rowe is zoned Residential-Agricultural.
- (2) The use of land, buildings, and structures shall be regulated as set forth in Section 2B of this Article, Table of Use Regulations, and as provided elsewhere in this By-Law.
- (3) A use listed in Section 2B is permitted as a right where it is denoted by the word "Yes." If designated in the Table by the letters "SP," the use may be permitted as a special exception only if the Planning Board so determines and grants a special permit therefor as provided in Section 4, subject to such restrictions as said Board may establish.
- (4) No building, structure or land in any district may be used, erected or designed to be used, in whole or in part, for any use not denoted in Section 2B by the word "Yes," or by the letters "SP" if the Planning Board so determines and grants a special permit therefor, except for nonconforming uses which may be continued under the provisions for Section 6 of Chapter 40A of the General Laws, subject to the restrictions of Section 9 of these By-Laws.
- (5) Where an activity might be classified under more than one of the following uses, the more restrictive classification shall determine permissibility.

### B. Table of Use Regulations

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Zone		R-A
I.	Residential Uses	
	a. Detached, Single Family Dwelling	Yes
	b. Two-Family or Semi-Detached Dwelling	SP
	c. Multi-Family	No
	d. Family Childcare Home or Large Family Childcare Home	SP
II.	Municipal Uses	SP
III.	Religious Uses	
	a. Religious Uses exempted from zoning regulation by Chapter 40A, Section 3 of the General Laws.	Yes
	b. Other Religious Uses not exempted from zoning regulation by Chapter 40A, Section 3 of the General Laws.	SP

Zone		R-A
IV.	Educational Uses	
	a.	Educational Uses exempted from zoning regulation by Chapter 40A, Section 3 of the General Laws.
	b.	Other Educational Uses not exempted from zoning regulation by Chapter 40A, Section 3 of the General Laws.
V.	Recreational Uses	
VI.	Agricultural Uses	
	a.	Agricultural Uses exempted from zoning regulation by Chapter 40A, Section 3 of the General Laws.
	b.	Other Agricultural Uses not exempted from zoning regulation by Chapter 40A, Section 3 of the General Laws.
VII.	Commercial Uses	
	a.	Professional Office conducted by Resident of Premises in Room or Rooms of Dwelling or Accessory Building with no more than two (2) employees
	b.	A Customary "Home Occupation" conducted by a Resident of Premises in Room or Rooms of Dwelling or Accessory Building with no more than (2) employees
	c.	Scientific Research or Development as described in M.G.L. Chapter 40A, Section 9
	d.	Restaurants, Inns, Hotels, or Motels
	e.	Print Shop
	f.	Retail Stores
	g.	General Contractors
	h.	Business or Professional Offices
	i.	Wireless Communication Facilities
	j.	Kennels
	k.	Bed & Breakfast or Lodging House
	m.	Commercial Prospecting
VIII.	Industrial Uses	
	a.	Sawmills

Zone			R-A
	b.	Utilities	
	i)	Portable electrical generating equipment up to 10 kilowatt (kW) capacity	Yes
	ii)	Electrical generating equipment between 10 kW and 250 kW capacity	SP
	iii)	Solar (photovoltaic) equipment	SP
	iiii)	Wind energy conversion systems	SP
	v)	Electrical generating equipment (other than photovoltaic) in excess of 250 kW capacity	No
	vi)	Accessory Buildings, Structures and Uses	SP
	vii)	Transmission Lines, Substations and Switchyards	SP

### C. Signs

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Signs visible from a public way shall be limited to two (2) in number. No signs shall flash or display movement or utilize neon or colored lighting. No individual sign shall be more than six (6) square feet without a special permit.

### D. Outdoor Lighting

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#### 1. OBJECTIVES

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Purpose and Intent. The purpose of this by-law is to create standards for outdoor lighting so that its use does not unreasonably interfere with the reasonable use and enjoyment of property within Rowe. It is the intent of this section to encourage, through the regulation of the types, construction, installation and uses of outdoor electrically powered illuminating devices, lighting practices and systems which will (i) reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of Rowe, (ii) conserve energy and decrease lighting cost without decreasing nighttime safety, security, and productivity, and (iii) preserve the night sky as a natural resource to enhance nighttime enjoyment of property within Rowe.

## 2. Applicability, Terminology

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A. The requirements of this section shall not apply to the following:

- i. Municipal Lights. Municipal street lighting, lights that control traffic or other lighting for public safety on Town streets and ways.
- ii. Other Light Sources. All outdoor light fixtures using an incandescent lamp or lamps of 150 watts or less. All outdoor light fixtures using any non incandescent lamp or lamps of 50 total watts or less.
- iii. Temporary decorative lighting which may include colored lamps, such as holiday lighting.
- iv. Houses of Worship.

B. Prohibited Light Sources. The following light sources are prohibited:

- i. Neon Lights.
- ii. Mercury Vapor and Quartz Lamps
- iii. Searchlights. The operation of searchlights is prohibited except by emergency personnel.

C. State Building Code

This bylaw shall be administered in conformance with the State Board of Building Regulations and Standards (the Massachusetts State Building Code) 780 CMR 1.00 *et seq.*

D. Lighting Plan

Wherever outside lighting is proposed, other than those specified in Section 3.D.2.A of this Article, every application for a building permit, a special permit, a special permit with site plan review, a variance, or an electrical permit, shall be accompanied by a lighting plan which shall show:

- i. the location and type of any outdoor lighting luminaires, including the height of the luminaire;
- ii. the luminaire manufacturer's specification data, including lumen output and photometric data showing cutoff angles;

- iii. the type of lamp such as: metal halide, compact fluorescent, high pressure sodium with color temperature (Kelvin) and CRI indicated;
  - iv. a photometric plan showing the intensity of illumination at ground level, expressed in foot candles; and
  - v. that light trespass onto any street or abutting lot will not occur. This may be demonstrated by manufacturer's data, cross section drawings, or other means.
- E. When an existing outdoor lighting installation is being modified, extended, expanded, or added to, the entire outdoor lighting installation on the lot shall be subject to the requirements of this section.
- F. Control Of Glare And Light Trespass
- i. Definitions
  - ii. GLARE: Light emitted from a luminaire with an intensity great enough to produce annoyance, discomfort, or a reduction in the viewer's ability to see.
  - iii. LIGHT TRESPASS: The shining of direct light produced by a luminaire beyond the boundaries of the lot or parcel on which it is located.
  - iv. All outdoor light fixtures subject to this by-law shall be shielded so that the fixture allows no up-light.
  - v. All outdoor light fixtures using a metal halide lamp or lamps shall be shielded and filtered. Filtering using quartz glass does not meet this requirement.
  - vi. Any luminaire with a lamp or lamps rated at a total of more than 2000 lumens shall be of fully shielded design and shall not emit any direct light above a horizontal plane passing through the lowest part of the light emitting luminaire.
  - vii. All luminaires, regardless of lumen rating, shall be equipped with whatever additional shielding, lenses, or cutoff devices are required to eliminate light trespass onto any street or abutting lot or parcel and to eliminate glare perceptible to persons on any street or abutting lot or parcel.
  - viii. Paragraph 11.7.e, above, shall not apply to any luminaire intended solely to illuminate any freestanding sign or the walls of any building but such luminaire shall be shielded so that its direct light is confined to the surface of such sign or building.
  - ix. All lamps subject to this by-law shall have a minimum color temperature of 2000 degrees K and a maximum color temperature of 3700 degrees K.

G. Lamps

Lamp types shall be selected within the allowable color temperature range of 2000 to 3700 degrees Kelvin, for optimum color rendering as measured by their color rendering index (CRI), as listed by the lamp manufacturer.

#### H. Hours Of Operation

Outdoor lighting shall not be illuminated between 11 p.m. and 6 a.m. with the following exceptions:

- i. if the use is being operated, such as a business open to customers, or where employees are working or where an institution or place of public assembly is conducting an activity, normal illumination shall be allowed during the activity and for not more than one half hour after the activity ceases;
- ii. low level lighting sufficient for the security of persons or property on the lot may be in operation between 11:00 p.m. and 6:00 a.m., provided the average illumination on the ground or on any vertical surface is not greater than 0.5 foot candles.

#### I. Special Permits

The Planning Board, acting as the special permit granting authority, may grant a special permit modifying the requirements of this Section, provided it determines that such modification is consistent with the objectives set forth in paragraph 11.A, in the following cases:

- i. where an applicant can demonstrate by means of a history of vandalism or other objective means, that an extraordinary need for security exists;
- ii. where an applicant can show that conditions hazardous to the public, such as steep embankments or stairs, may exist in traveled ways or areas;
- iii. where a minor change is proposed to an existing non-conforming lighting installation, such that it would be unreasonable to require replacement of the entire installation;
- iv. where it can be demonstrated that for reasons of the geometry of a lot, building, or structure, complete shielding of direct light is technically unfeasible.

## **E. Wireless Communication Facilities**

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### **1. Purpose**

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Installation of wireless communication facilities require a special permit from the Planning Board. Special permits granted under this section shall be valid for a period of not more than 15 years. The purpose of this By-Law is intended to accomplish the following: to minimize the adverse impacts of towers, to avoid damage to adjacent properties, to lessen impacts to adjacent properties, to maximize the usage of towers, to minimize the number constructed, and to minimize the visual and environmental impacts of wireless communication facilities in the Town of Rowe.

**A.** All new wireless communication facility installations must use monopole towers. Personal wireless service equipment may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower or water tower, provided that the installation of the new facility does not increase the height or footprint of the existing structure except as provided in Section 11. Such installations shall not require a Special Permit but shall require site plan approval by the town.

**B.** If feasible, personal wireless service equipment shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

**C.** If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

**D.** The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a building permit and/or Special Permit.

**E.** The applicant shall provide documentation of the need for wireless coverage that will be provided by the proposed facility.

## **2. Definitions**

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

**RESIDENCE** – means any dwelling for habitation, either seasonally or permanently by one of more persons.

**SITE** – The parcel of land where the wireless communications facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements.

**TOTAL HEIGHT** – The height of the tower and the furthest vertical extension of any part of the wireless communication facility.

## **3. Pre-Filing & Submittal Requirements**

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### **A. Special Permit Granting Authority (SPGA).**

The Special Permit Granting Authority (SPGA) for personal wireless service facilities shall be the Planning Board.

### **B. Pre-Application Conference**

Prior to the submission of an application for a Special Permit under this regulation, the applicant is strongly encouraged to meet with the SPGA at a public meeting to discuss the proposed personal wireless service facility in general terms and to clarify the filing requirements. The SPGA shall meet with an applicant under this regulation within forty-five (45) days following a written request submitted to the SPGA and the Town Clerk. If the SPGA fails to meet with an applicant who has requested such a meeting within forty-five (45) days of said request and said meeting has not been postponed due to mutual agreement, the applicant may proceed with a Special Permit application under this regulation without need for a pre-application conference.

### **C. Pre-Application Filing Requirements**

The purpose of the conference is to inform the SPGA as to the preliminary nature of the proposed personal wireless service facility. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the SPGA of the location of the proposed facility, as well as its scale and overall design.

## **4. Application Filing Requirements**

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The following shall be included with an application for a Special Permit for all personal wireless service facilities:

### **A. General Filing Requirements**

1. Name, address and telephone number of applicant and any co-applicants as well as any agents for the applicant or co-applicants.
2. Co-applicants may include the landowner of the subject property, licensed carriers and tenants for the personal wireless service facility.
3. A licensed carrier shall either be an applicant or a co-applicant.
4. Original signatures for the applicant and all co-applicants applying for the Special Permit. If the applicant or co-applicant will be represented by an agent, original signature authorizing the agent to represent the applicant and/or co-applicant. Photo reproductions of signatures will not be accepted.

### **B. Location Filing Requirements**

1. Identify the subject property by including the Town as well as the name of the locality, name of the nearest road or roads, and street address, if any.
2. Tax map and parcel number of subject property.
3. Zoning district designation for the subject parcel (Submit copy of Town zoning map with parcel identified).
4. A line map to scale showing the lot lines of the subject property and all properties within 300 feet and the location of all buildings, including accessory structures, on all properties shown.
5. A town-wide map showing the other existing personal wireless service facilities in the Town and outside the Town within one mile of its corporate limits.
6. The proposed locations of all existing and future personal wireless service facilities in the Town on a Town-wide map for this carrier.

### **C. Siting Filing Requirements**

The applicant shall provide the following:

1. Name of project, boundaries, locus map(s) showing site's location in Town, date, north arrow and scale of plan;
2. Name(s) and addresses of the owner(s) of the land, the developer (if applicable), and/or their designee;
3. Name, title, and address of person(s) who prepared the plan;
4. Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;
5. All existing lot lines, easements and rights of way;
6. Location of all proposed new lot lines.

7. A one-inch-equals-40 feet vicinity plan showing the following:
- a. Property lines for the subject property.
  - b. Property lines of all properties adjacent to the subject property within 300 feet.
  - c. Tree cover on the subject property and adjacent properties within 300 feet, by dominant species and average height, as measured by or available from a verifiable source.
  - d. Outline of all existing buildings, including purpose (e.g. residential buildings, garages, accessory structures, etc.) on subject property and all adjacent properties within 300 feet.
  - e. Proposed location of antenna, mount and equipment shelter(s).
  - f. Proposed security barrier, indicating type and extent as well as point of controlled entry.
  - g. Location of all roads, public and private, on the subject property and on all adjacent properties within 300 feet including driveways proposed to serve the personal wireless service facility.
  - h. Distances, at grade, from the proposed personal wireless service facility to each building on the vicinity plan.
  - i. Contours at each two feet AMSL for the subject property and adjacent properties within 300 feet.
  - j. All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
  - k. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the personal wireless service facility.
  - l. Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" sub-section below.
  - m. Sight lines and photographs as described below:
    - n. Sight line representation. A sight line representation shall be drawn from any public road within 300 feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point (visible point) of the personal wireless service facility. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building within 300 feet there shall be at least two sight lines from the closest habitable structures or public roads, if any.

o. Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within 300 feet.

p. Proposed (after condition). Each of the existing condition photographs shall have the proposed personal wireless service facility superimposed on it to show what will be seen from public roads if the proposed personal wireless service facility is built.

q. Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed personal wireless service facility plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:

i. Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.

ii. Security barrier. If the security barrier will block views of the personal wireless service facility, the barrier drawing shall be cut away to show the view behind the barrier.

iii. Any and all structures on the subject property.

iv. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.

v. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.

#### **D. Design Filing Requirements**

1. Equipment brochures for the proposed personal wireless service facility such as manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
2. Materials of the proposed personal wireless service facility specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
3. Colors of the proposed personal wireless service facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
4. Dimensions of the personal wireless service facility specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
5. Appearance shown by at least two photographic superimpositions of the personal wireless service facility within the subject property. The photographic superimpositions

shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.

6. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.
7. The applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The applicant shall set a six (6) foot diameter red balloon at the location and height of the proposed tower(s) for two (2) weeks prior to the public hearing. The date, time and location of such test shall be agreed upon by the applicant the Planning Board and advertised in a newspaper of general circulation in the Town at least 14 days, but not more than 21 days prior to the test.
8. If lighting of the site is proposed, the applicant shall submit a manufacturer's computer-generated point-to-point printout, indicating the horizontal foot-candle levels at grade, within the property to be developed and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaires proposed.

#### **E. Noise Filing Requirements**

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed personal wireless service facilities, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following:

- I. Existing, or ambient: the measurements of existing noise.
- II. Existing plus proposed personal wireless service facilities: maximum estimate of noise from the proposed personal wireless service facility plus the existing noise environment.

Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards of this Bylaw.

#### **F. Radiofrequency Radiation (RFR) Filing Requirements**

The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed personal wireless service facility, for the following situations:

1. Existing, or ambient: the measurements of existing RFR.
2. Existing plus proposed personal wireless service facilities: maximum estimate of RFR from the proposed personal wireless service facility plus the existing RFR environment.
3. Certification, signed by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Radiation Standards sub-section of this Bylaw.

#### **G. Federal Environmental Filing Requirements**

1. The National Environmental Policy Act (NEPA) applies to all applications for personal wireless service facilities. NEPA is administered by the FCC via procedures adopted as

Subpart 1, Section 1.1301 et seq. (47 CRF Ch. I). The FCC requires that an environmental assessment (EA) be filed with the FCC prior to beginning operations for any personal wireless service facility proposed in or involving any of the following:

- a. Wilderness areas.
- b. Wildlife preserves.
- c. Endangered species habitat.
- d. Historical site.
- e. Indian religious site.
- f. Flood plain.
- g. Wetlands.
- h. High intensity white lights in residential neighborhoods.
- i. Excessive radiofrequency radiation exposure.
- j. At the time of application filing, an EA that meets FCC requirements shall be submitted to the Town for each personal wireless service facility site that requires such an EA to be submitted to the FCC.
- k. The applicant shall list location, type and amount (including trace elements) of any materials proposed for use within the personal wireless service facility that are considered hazardous by the federal, state or local government.

#### **H. Waivers**

The Special Permit Granting Authority may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed personal wireless service facility.

#### **5. Co-location**

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**A.** Licensed carriers shall share personal wireless service facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless service facilities that are stand-alone facilities. All applicants for a Special Permit for a personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:

1. A survey of all existing structures that may be feasible sites for co-locating personal wireless service facilities;
2. Contact with all the other licensed carriers for commercial mobile radio services operating in the County; and
3. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

**B.** In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Town. The Town may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a Special Permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

**C.** If the applicant does intend to co-locate or to permit co-location, the Town shall request drawings and studies which show the ultimate appearance and operation of the personal wireless service facility at full build-out.

**D.** If the SPGA approves co-location for a personal wireless service facility site, the Special Permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the Special Permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved Special Permit shall require a new Special Permit.

Estimates of RFR emissions will be required for all facilities, including proposed and future facilities.

## **6. Modifications**

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Modification of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a Special Permit when the following events apply:

- a. The applicant and/or co-applicant wants to alter the terms of the Special Permit by changing the personal wireless service facility in one or more of the following ways:
  1. Change in the number of facilities permitted on the site;
  2. Change in technology used for the personal wireless service facility.
- b. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

## **7. Monitoring and Maintenance**

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- A. After the personal wireless service facility is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of issuance of the Special Permit, existing measurements of RFR from the personal wireless service facility. Such measurements shall be signed and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Standards section of this Bylaw.
- B. After the personal wireless service facility is operational, the applicant shall submit, within 90 days of the issuance of the Special Permit, and at annual intervals from the date of issuance of the Special Permit, existing measurements of noise from the personal wireless service facility. Such measurements shall be signed by an acoustical

engineer, stating that noise measurements are accurate and meet the Noise Standards sub-section of this Bylaw.

- C. The applicant and co-applicant shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

## **8. Lighting and Signage**

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A. Personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and foot-candle measurements at the property line shall be 0.0 initial foot-candles when measured at grade.

B. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Town's sign regulations.

C. All ground mounted personal wireless service facilities shall be surrounded by a security barrier.

## **9. Approval Criteria**

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- A. The following shall be considered prior to the approval/denial of an application and may be used as a basis to impose reasonable conditions on the applicant.
  - 1. Siting: Before any new wireless communication facility is approved, the applicant must demonstrate that it is not feasible to locate their antenna and facilities on an existing tower or structure. Before a new wireless communication facility is proposed in the Residential-Agricultural district, the applicant must demonstrate that it is not feasible to locate their antenna and facilities in other districts (if any) or on municipal property. Such demonstration studies shall include a summary of propagation studies and a plan for any network of facilities.
  - 2. Co-location: Any new wireless communication facility must be designed to the maximum extent that is practical and technologically feasible, for co-location of other telecommunications antennas, including offering space to all other providers at market rates.

3. Aesthetics: Telecommunications facilities must be designed, located and buffered to the maximum extent that is practical and technologically feasible.

4. Radio Frequency Effect: All telecommunications facilities shall be operated only at Federal Communications Commission designated frequencies and power levels. The applicant shall provide certifications to support that the maximum allowable frequencies and power levels will not be exceeded. Certifications shall include technical specifications, an explanation of those specifications, and, if necessary, field verification.

The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed personal wireless service facility, for the following situations:

5. Existing, or ambient: the measurements of existing RFR.

Existing plus proposed personal wireless service facilities: maximum estimate of RFR from the proposed personal wireless service facility plus the existing RFR environment.

Certification, signed by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Radiation Standards sub-section of this Bylaw.

6. Location and Design Requirements:

- i. The setback distance from property lines shall be a minimum distance at least equal to the height of the wireless communication facility, plus fifty (50) feet.
- ii. Distance from all buildings shall be at least 500 feet.
- iii. Access shall be provided by a roadway to the site that respects the natural terrain and minimizes erosion and construction on unstable soils and steep slopes and is approved by the Planning Board and the Fire Chief to assure emergency access at all times.
- iv. The wireless communication facility shall be designed to accommodate the maximum number of uses technologically practical.
- v. Height of the wireless communication facility shall not exceed the lesser of twenty (20) feet over the remaining tree canopy or one hundred twenty (120) feet.
- vi. Existing on-site vegetation shall be preserved to the maximum extent possible.
- vii. Facilities shall not be located within 100 feet of the crest or ridgeline or 500 feet of a summit of a hill and shall be located in such a way as to minimize the visual impact of the facility viewed from offsite.
- viii. All facilities shall be painted, or otherwise colored, so that they will blend in with the surrounding landscape or the structure on which they are located, including using a different color scheme below or above the tree or building line, as appropriate.

7. Removal of Tower

The applicant shall agree to remove any telecommunications facility including the foundation thereof that ceases to be used for its intended purpose for 12 consecutive months.

8. Abandonment or Discontinuation of Use

a. At such time that a licensed carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.

b. Upon abandonment or discontinuation of use, the carrier shall physically remove the personal wireless service facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

i. Removal of antennas, mount, foundation, equipment shelters and security barriers from the subject property.

ii. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

iii. Restoring the location of the personal wireless service facility to its pre-existing condition, except that any landscaping and grading shall remain in the after-condition. The Planning Board shall require the applicant to post a bond or other form of financial security for an amount up to \$50,000.00 prior to issuance of a Building Permit to cover costs for the removal of the personal wireless service facility in the event that the applicant fails to remove the facility and restore the location to its pre-existing condition within a reasonable time.

#### 9. Maintenance of Telecommunications Facility

All telecommunications facilities shall be maintained in good order and repair. Any paint and finish must be maintained and repaired when the blemishes are visible from the property line.

### **10. Fees and Costs**

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A. Applicant shall pay a permit application fee of \$5,000.00 at the time of submittal.

B. The Planning Board reserves the right to engage independent consultant(s) to assist with its review of the submittal, with the fee to be borne by the applicant in accordance with MGL Chapter 44, Section 53G, these By-Laws, and the Planning Board's rules and regulations .

### **11. Modifications**

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Any extension, addition of cells, or construction of new or replacement towers or transmitters or accessory buildings beyond those identified or shown in the site plan submitted shall require

an amendment to the Special Permit, following the procedures and fees in effect as of the date of the application for such modification.

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this Bylaw may be reconstructed, altered, extended or replaced on the same site by Special Permit, provided that the Planning Board (SPGA) finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than twenty (20) feet.

## **12. Monitoring and Maintenance**

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**A.** After the personal wireless service facility is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of issuance of the Special Permit, existing measurements of RFR from the personal wireless service facility. Such measurements shall be signed and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Standards section of this Bylaw.

**B.** After the personal wireless service facility is operational, the applicant shall submit, within 90 days of the issuance of the Special Permit, and at annual intervals from the date of issuance of the Special Permit, existing measurements of noise from the personal wireless service facility. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards sub-section of this Bylaw.

**C.** The applicant and co-applicant shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

## **13. Exemptions**

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The Planning Board may exempt amateur radio towers in accordance with terms of any amateur radio service license issued by the Federal Communications Commission provided that the tower meets the height limits expressed above and is not used or licensed for any commercial purposes.

## **14. Indemnification**

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Any building permit or special permit issued pursuant to this By-Law shall require the holder of such building permit or special permit to indemnify and hold harmless the Town of Rowe and its boards, commissioners, committees, officers, employees, agents and representatives from and against all claims, causes of action, suits, damages, costs and liability of any kind which arise out of the construction, location, operation or use of the subject wireless telecommunications facility in the Town of Rowe.

## **15. Waivers**

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The Planning Board may, but is not required to, waive any individual pre-filing or submittal requirement in Section 2.

## **16. Term of Special Permit**

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A Special Permit issued for any personal wireless service facility over fifty (50) feet in height shall be valid for fifteen (15) years. At the end of that time period, the personal wireless service facility shall be removed by the carrier or a new Special Permit shall be required.

## **F. Electrical Generation**

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### **1. Photovoltaic Systems**

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A. Installation of photovoltaic equipment shall be permitted subject to the issuance of a Special Permit. No special permit shall be granted unless the Planning Board finds in writing that:

- (i) The specific site is an appropriate location for such use;
- (ii) the use is not expected to adversely affect the neighborhood; and
- (iii) no nuisance is expected to be created by the use.

B. The construction and operation of photovoltaic systems shall be consistent with all applicable local, state and federal requirements.

C. Issuance of a special permit shall neither grant nor imply the existence of any right to solar access, nor shall it constitute any easement over nor restrict the use of any other property.

## **2. Wind Systems**

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### **A. Purpose**

The purposes of this section are: to promote the effective and efficient use of the Town's wind energy resource by providing standards for small wind energy conversion systems (WECS) designed for on-site home, farm, and small commercial use, and that are primarily used to replace or reduce on-site consumption of utility power; to minimize visual and environmental impacts; to preserve and enhance existing rural and scenic character and amenity and the value of property; and to protect the public health, safety, and community welfare.

### **B. Definitions**

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

**RESIDENCE** – means any dwelling for habitation, either seasonally or permanently by one or more persons.

**SITE** – The parcel of land where the WECS is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements.

**SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”)** – A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 10 kW, is not more than 80 feet in Total Height, and which is primarily intended to reduce on-Site consumption of utility power.

**TOTAL HEIGHT** – The height of the tower and the furthest vertical extension of any part, including the blades, of the WECS.

**WIND ENERGY CONVERSION SYSTEM (“WECS”)** – A machine that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”).

**WIND ENERGY FACILITY** – Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related access roads and accessory structures.

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

### **C. Permits required**

1. Special Permit and Site Plan Review shall be required in order to construct, modify, or operate a wind energy facility. No wind measurement tower shall be constructed in the Town except in conjunction with and as part of an application for a WECS under this section.

2. No WECS other than a Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Rowe.

3. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (Not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon (1) receipt of proof of the ability of the successor to meet all requirements of this Bylaw and (2) written acceptance of the transferee of the obligations of the transferor under this Bylaw. No transfer shall eliminate the liability of an applicant nor of any other party under this Bylaw.

4. Notwithstanding the requirements of this Section, replacement in kind or modification of a Small WECS may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the Small WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the Small WECS.

#### **D. Applications.**

1. In addition to Special Permit and Site Plan criteria, applications for Small WECS Wind Energy permits shall also include:

a. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.

b. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

c. Address of each proposed tower Site.

d. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.

e. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.

f. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.

g. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.

h. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's component and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

## E. Development Standards

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

1. A Small WECS shall be located on a lot minimum of four acres in size.
2. Only one Small WECS per legal lot shall be allowed.
3. Small WECS shall be used primarily to reduce the on-site consumption of electricity.
4. Tower Total Heights shall not exceed: 80 feet.
5. The maximum turbine power output is limited to 10 kilowatts.
6. The Small WECS's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The Small WECS shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). Facilities shall not exceed the ridgeline level, where the ridgeline is defined as the average height of the summer-time vegetation of the parcel.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. The Small WECS shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - a. Tower-climbing apparatus located no closer than 12 feet from the ground.

b. A locked anti-climb device installed on the tower.

c. A locked, protective fence at least six feet in height that encloses the tower.

13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

16. All Small WECS tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electrical Code.

17.. All Small WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

#### **F. Standards**

A Small WECS shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed 45 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

#### **G. Abandonment of Use**

1. A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit.

2. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

## H. Invalidation of Ban on Large-Scale Wind Energy Facilities

1. If a court of competent jurisdiction orders that the prohibition on any Wind Energy Facility in the Town of Rowe is invalid, no Wind Energy Facility shall be allowed except upon the issuance, following Site Plan Review, of a renewable, two-year Wind Energy Special Permit issued by the Planning Board after a public hearing, which Permit shall require a Decommissioning Plan and removal bond for both above- and below-ground components of the Facility, a Public Improvement Bond to protect public roads, and shall comply with the following minimum setbacks, noise guidelines, and impact limitations:

### a. Setbacks

Setbacks shall be measured from the outermost edge of the closest of the circular path of the wind turbine rotor blade. The Planning Board may increase the following minimum setbacks on a case-by-case basis, in order to protect public health and safety.

- i. *Participating Property Line*: 1.1 times the total height of the Wind Turbine from the nearest property line of a participating property owner.
- ii. *Non-participating Property Line*: Five (5) times the rotor diameter but not less than 1,300 feet from the nearest property line of a non-participating property, unless the owner of the non-participating property grants an easement for a lesser setback. The easement must be recorded with the County Register of Deeds and may not provide for a setback that is less than 1.1 times the total height of the Wind Turbine.
- iii. *Public Roads and Highways*: 1,300 feet or three (3) times the total height of the Wind Turbine, whichever is greater.
- iv. *Above Ground Power/Telephone Lines*: 1,300 feet or three (3) times the total height of the Wind Turbine, whichever is greater, from the nearest above-ground public electric power line or telephone line.
- v. *Residences & Other Buildings*: 2,640 feet from the nearest residence, business, school, daycare facility, church, hospital and other sensitive receptors.
- vi. *Wetlands*: 1,000 feet from all sinkholes and wetlands.
- vii. *Parks & Public Property*: 2,640 feet from any town, county or state park, property, recreational or rest area.

### b. Noise and impact limitations

i. No WECS shall be located so as to cause an exceedance of the pre-construction/operation background sound levels by more than 5 dBA or dBC. The background sound levels shall be the L90 dB sound descriptor (both A and C weighting) measured during a pre-construction noise study during the quietest time of evening or night. Measurements shall be for ten (10) minutes or more. L90 results are valid when L10 results are no more than 15 dB above L90 for the same time period. Noise sensitive sites are to be selected based on wind farm's predicted sound

emissions (in dBA, dBC and 1/3-octaves to blade passage frequency), which are to be provided by developer.

- ii. A 5 dB penalty is applied for pure tones or when the sound emissions fluctuate in amplitude or frequency over time in reasonable synchronicity with the blade revolution.
- iii. Noise from a WECS shall not exceed 40 dBA or dBC within 100 feet of any occupied structure.
- iv. A WECS that emits sound (or causes structural or human body vibration) with strong low frequency content where the time-average C-weighted sound level exceeds the A-weighted sound level by at least 20 dB when measured inside a structure and adversely affects the subjective habitability or use of any existing dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor shall be deemed unsafe and must be shut down immediately.
- v. No shadow flicker shall be permitted on any off-site residence.
- vi. Any work associated with the construction of a large Wind Energy Facility shall not negatively affect groundwater quality or quantity of residential wells within two (2) miles of the facility boundary.

## SECTION 4: DIMENSIONAL REGULATIONS

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### A. Dimensional Schedule

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Except where otherwise provided in these By-Laws, all buildings or other structures must conform to the following. For the purposes of this dimensional schedule, calculation of lot area shall not include ownership of land in an abutting way.

	Minimum Lot Area in sq. ft.	Minimum Lot Frontage in feet	Front (in feet)	Yard * Setbacks			Maximum Height in feet	Maximum Lot Coverage
				Side (in Feet)	Rear (in feet)			
Residential-Agricultural (RA)	174,240	400	60	30	40	35**	30%	

\*Principal and accessory uses subject to setback requirements.

\*\* Except as otherwise provided in these By-Laws

### B. Variances

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Under the provisions of Section 10 of Chapter 40A, General Laws, dimensional variances may be granted by the Board of Appeals in accordance with Section 9 of these By-Laws.

## **SECTION 5: NON-CONFORMING USES AND STRUCTURES**

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Any lawful building or structure, or use of a building, structure or land, existing at the time of adoption of this Bylaw or any amendment thereto which does not conform to the regulations herein shall be treated as provided for in M.G.L. Chapter 40A, Section 6.

## **SECTION 6: SPECIAL PERMIT AND SITE PLAN REVIEW**

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### **A. Special Permits**

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1. Purpose. Special Permits are intended to provide an opportunity for detailed review of certain uses and structures which may have a substantial impact upon traffic, municipal services, environmental resources, and the community character of the Town among other considerations. The Special Permit review process is intended to ensure a harmonious relationship between proposed development and its surroundings, and to ensure that proposals are consistent with the purpose and intent of this By-Law.

- (a) Procedure for Issuing Special Permits. Special Permits shall be granted, denied, or issued with conditions by the Planning Board in accordance with the provisions of Chapter 40A of the General Laws.
- (b) Special Permit Granting Authority (SPGA) Regulations.

- i. General

Pursuant to Section 9 of Chapter 40A of the General Laws, the Planning Board may adopt rules relative to the issuance of Special Permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws and provisions of this By-Law. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

2) Impact Statement. The Special Permit application must be accompanied by an impact statement. The Impact Statement shall detail the probable effects of the development, or other uses allowed by Special Permit, on the following aspects of concern to the Town:

- A. impact on public schools;
- B. impact on vehicular traffic;
- C. changes in the number of legal residences;
- D. provision of housing for Town residents and for persons of low and moderate income;
- E. impact on municipal services;
- F. Load on utilities or future demand for them;
- G. public safety;
- H. changes in tax revenue and/or property value;
- I. changes in surface drainage;
- J. consumption of groundwater;
- K. refuse disposal;
- L. pollution of water and air;
- M. land erosion or loss of tree cover;
- N. disturbance of other aspects of the natural ecology;
- O. blocking of views;
- P. harmony with the character of the neighborhood; and
- Q. preservation of historic and other cultural resources

3. Waivers. Upon written request from the applicant prior to the filing of an application, the Planning Board may waive the submission of such materials, plans, studies, and analyses or parts thereof, as may not be needed for, or germane to, consideration of the application if the potential impact of the development is minimal in the opinion of the Planning Board.

4. Review Process. The Planning Board will review the Impact Statement giving weight to the factors outlined above as they affect the future of the Town and of the neighborhood adjacent to the site. It may ask for further information where necessary to review the application adequately, and may make recommendations for modifications to the development as is appropriate to protect the Town.

5. Public Hearing. After the opportunity for review has taken place, the Planning Board shall hold a hearing under this section in conformity with the provisions of Chapter 40A Section 9 of the General Laws. The decision of the board or any extension, modification or renewal thereof, shall be filed with the Town Clerk within 90 days following the closing of the public hearing.

6. Criteria. In acting upon Special Permits, the Planning Board shall find whether the proposal's benefits outweigh the cost to the community. The Board shall consider, but need not be limited to, the following:

- (a) Town capacity to service the premises, considering existing roads, town equipment, and other municipal services.

- (b) Impact on adjoining premises from sound, light, odor, noise, and other disturbances is avoided or minimized.
- (c) Topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.
- (d) The proposal's potential to cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or adverse effects upon the natural environment in the area where the use is located.
- (e) Adequacy of sight distance and traffic safety throughout the project.
- (f) The proposal's compatibility with the neighborhood character.
- (g) Potential adverse effects upon historic and other cultural resources.
- (h) Employment and fiscal consequences.
- (i) Whether the activity, traffic, site plan, and building design will influence positively the Town's community character.

7. Procedures, Lapse of permits. Special Permits shall only be issued after a public hearing which must be held within sixty-five (65) days after the effective date of filing of a special permit application or any extension thereof. A special permit application shall be filed with the Planning Board at one of its regular meetings, or shall be sent by registered mail to the Planning Board, postage prepaid. If so mailed, the date of receipt by the Planning Board shall be the date of submission of the application. The applicant is also responsible for transmitting a copy of the application to the Town Clerk forthwith. If substantial use or construction has not commenced without good cause within a period of two (2) years from the date of the granting of a special permit, the special permit shall lapse. This time limit excludes time required to pursue or await the determination of an appeal under G.L. c40A, s17. In addition, however, if substantial construction is timely begun, construction shall thereafter take place in accordance with the deadlines set forth in the Special Permit and shall be completed not later than two years from the date of granting of a special permit or the rights under the Special Permit shall lapse as to any construction or use that has not been so completed. A new special permit shall be required for further construction.

## B. Site Plan Review

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- 1) Purpose. Site Plan Review is intended to allow the Planning Board to discuss with landowners at a preliminary stage in the development process how proposed changes in use and/or parcelization might be designed so as to achieve a harmonious relationship between the proposed changes and their surroundings.
- 2) Applicability.
  - (a) A Standard Site Plan Review shall be required
    - (i) for any creation of lots, whether a subdivision or not, that results in the creation of fewer than four (4) lots,
    - (ii) for any residential use requiring a special permit
  - (b) An Expanded Site Plan Review shall be required:
    - (i) for any creation of lots, whether a subdivision or not, that results in the creation of four (4) or more lots; or
    - (ii) for any other use requiring a special permit
- 3) Waivers. Upon written request from the applicant prior to the filing of an application, the Planning Board may waive the submission of such materials, plans, studies, and analyses or parts thereof, as may not be needed for, or germane to, consideration of the application if the potential impact of the development is minimal in the opinion of the Planning Board.
- 4) Procedures. At a regularly scheduled meeting of the Planning Board, the landowner or his or her designee will present documentation of the location of the parcel(s) in question, will describe the nature of the changes in use and/or parcelization that are being considered, and will present a site plan as required in Section 4B.4. When applicable, an application for a building permit will be complete only when the application is accompanied by an approved Site Plan.
5. Required Contents of a Standard Site Plan.

A standard site plan shall contain the following:

  - (a) Name of project, boundaries, locus map(s) showing site's location in Town, date, north arrow and scale of plan;
  - (b) Name(s) and addresses of the owner(s) of the land, the developer (if applicable), and/or their designee;

- (c) Name, title, and address of person(s) who prepared the plan;
- (d) Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;
- (e) All existing lot lines, easements and rights of way;
- (f) Location of all proposed new lot lines.

6. Required Contents of an Expanded site Plan.

In addition to the contents of a standard site plan, an expanded site plan shall contain the following:

- (a) Location and use of buildings and structures within 300 feet of the site;
- (b) Location and use of all existing and proposed buildings and structures, including approximate height and floor area;
- (c) Location of wetlands on site and within 300 feet of the property line;
- (d) Location of proposed water supply well or hook-up to the public water supply;
- (e) Location and date of all registered "perc" tests or proposed sewer hook-up;
- (f) Existing and proposed topography at a two-foot contour interval;
- (g) Location of proposed public and private ways on the site;
- (h) Location and size of proposed parking and loading areas;
- (i) Size and location of existing and proposed sign(s);
- (j) Surface drainage strategy that prevents pollution and increased drainage off-site;
- (k) Existing vegetation that will be left undisturbed and proposed planting areas; and
- (l) Other proposed methods to screen development.

7. The Planning Board's action shall consist of either:

- (a) Approval of the site plan based upon the determination that the proposed project is in compliance and consistent with the criteria set forth in these By-Laws;
- (b) Approval of the site plan subject to conditions, modifications, and restrictions as the Planning Board may deem necessary; or
- (c) Denial of the site plan.

8. The Planning Board's approval of a site plan does not constitute or imply approval of the proposed project.

## **SECTION 7: BUILDING PERMIT REQUIREMENTS**

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### **A. General Requirements**

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- 1) Permit granting authority. No construction, building, exterior or structural alteration to existing construction or building shall be started or made until a permit has been issued therefor by the Town Building Inspector who is hereby authorized to grant such permits consistent with the State Building Code. The Town Building Inspector shall also serve as the Town Zoning Enforcement Officer.
- 2) Buildable lot inquiry form. Applicants wishing to qualify for a building permit must submit to Zoning Enforcement Officer a completed Buildable Lot Inquiry Form, a copy of which accompanies this By-Law for reference. The Zoning Enforcement Officer shall review the information provided and approve or disapprove the conformity of any parcel as a buildable lot. The Planning Board shall have the authority to revise the Buildable Lot Inquiry Form and may impose a reasonable filing fee.
- 3) Cooperation with the Planning Board. The Town Building Inspector and Zoning Enforcement Officer shall work in conjunction with the Planning Board in all matters concerning these Zoning By-Laws and their interpretation. When issuing a permit for new construction or for alterations to an existing structure that would result in a change of use or an increase in footprint, size, or square footage, the Town Building Inspector shall provide the Planning Board with a copy of the building permit as well as the permit application and the completed Buildable Lot Inquiry Form. .

### **B. Time Limit for Building Permits**

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- 1) After the issuance of a building permit, construction or operations must begin within six (6) months of the date of such permit being granted. If construction or operations have not begun within the time period required, or if construction is not continuing towards completion in as continuous and expeditious manner as reasonable, after the required time period, the construction or operations must conform to any amendment of the By-Law in effect at such time.

### **C. Phasing of Growth**

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#### **1. Purpose**

The purposes of this section are: to manage orderly residential growth in the Town of Rowe for a period of five years [e.g. while the Town develops a Master Plan], consistent with the rate of growth over the 10 years prior to the adoption of this provision; to phase growth so

that it will not unduly strain the community's ability to provide basic public facilities and services; to provide the town, its boards and its agencies with information, time and capacity to incorporate such growth into a Master Plan and the regulations of the community; and to preserve and enhance existing community character and the value of property.

## **2. Regulations**

(a) No building permit for a residential unit or units shall be issued unless in accordance with the Regulations of Section 7 of this By-Law.

(b) The Regulations of this section shall apply to all definitive subdivision plans, divisions of land not requiring subdivision approval, and Special Permits which would result in the creation of a new dwelling unit or units. Dwelling units shall be considered as part of a single development for purposes of Phased Growth if located either on a single parcel or contiguous parcels of land which are in the same ownership at the time an application is submitted.

(c) Issuance of Residential Building Permits.

- i. A town-wide total of not more than four (4) new dwelling units shall be authorized by the Town within any one calendar year.
- ii. Not more than one dwelling shall be authorized for any one applicant or single development.

(d) Order of Processing Applications for Building Permits. The Building Inspector shall process applications for residential building permits in a chronological order determined by the date upon which the Building Inspector receives a completed application. The Building Inspector will not record an application as complete and received without verification that the applicant has complied with required development-related reviews and approvals by the Conservation Commission, the Zoning Board of Appeals, the Planning Board, and the Superintendent of the Department of Public Works, and others as required by the General Laws of the Commonwealth of Massachusetts and the By-Laws of the Town of Rowe. As each complete application is received, the Building Inspector shall assign it a number in a chronological order along with previously received completed applications. The Building Inspector shall then grant Building Permits in accordance with the provisions of Section 7.

(e) Beginning January 1 of each year, the Building Inspector shall hold over from the previous year, and place at the head of the chronological order, only those completed applications which were received previously but for which no building permit was issued.

(f) No change may be made to an existing building permit without approval of the Building Inspector as required by the State Building Code.

## **D. Administration**

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### **1. Rules and Regulations.**

The Planning Board may adopt rules and regulations relative to the administration of this Section. The Planning Board may from time to time amend the rules and regulations. Copies of the rules and regulations shall be on file and available for review at the office of the Town Clerk.

## **SECTION 8: DWELLING UNIT PER LOT**

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Except as provided under Section 2 (B) of this Article , no more than one (1) dwelling unit shall be constructed on any building lot and no existing structure shall be converted for use as a dwelling unit unless a building lot is created in accordance with Section 7 of this Article.

## **SECTION 9: LOT CLASSIFICATION**

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No dwelling unit hereinafter placed in any district shall be located on a lot having less than the minimum requirements set forth below. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

### **(A) Class A Lot:**

A Class A Lot shall conform to the dimensional requirements set forth in Section 4. In the case of a Class A Lot fronting on two or more public roads, the minimum frontage is required on each such public road.

#### **(i) A Class A Lot has none of the following qualities in the area of proposed usage:**

- (a) Bedrock, ledge, hardpan or other impermeable or poorly permeable subsurface layer within six (6) feet of the existing surface grade.**
- (b) Seasonal surface water present during the year for a period of 30 days or more, within 100 feet of an area of proposed usage.**
- (c) Ground water within six (6) feet of existing surface grade during any period when percolation tests are permitted.**

#### **(ii) The Soils Map designations of "slight limitation" and "moderate limitation" may be used for reference location of Class A Lots.**

### **(B) Class B Lot:**

(i) A Class B Lot is any lot which has in the area of proposed usage one or more of the qualities listed in the definition of a Class A Lot. A Class B Lot shall conform to the dimensional requirements set forth in Section 4. In the case of a Class B Lot fronting on two or more public roads, the minimum frontage is required on each such public road. An in-ground sewage system shall not be permitted in a Class B Lot.

(ii) The Soils Map designation of "severe limitation" may be used for reference location of Class B Lots.

(iii) The classification of all lots on which an approved in-ground sewage system exists at the time of the adoption of this By-Law are to be designated as Class A. All other lots are designated as Class B. The classification of any lot designated as Class B may be changed by the Planning Board to Class A upon presentation to that Board of a certificate from the Board of Health that said lot has an area of proposed usage suitable for the installation of an approved in-ground sewage system.

## **SECTION 10: ADMINISTRATION**

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### **A. Planning Board Associate Member**

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Pursuant to MGL Chapter 40A Section 9, the Town of Rowe Planning Board shall have one associate member to be chosen by Town election. Unfilled vacancies shall be appointed by the Selectmen.

### **B. Zoning Board of Appeals**

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There shall be a Zoning Board of Appeals consisting of five members and two associate members appointed by the Selectmen. Each member shall serve a three year term and the date of expiration of each term shall be staggered so that the term of two members expires the first year, the term of two members expires the succeeding year and the term of the remaining member on the third year and so on. The Zoning Board of Appeals shall elect a chairman from within its own membership and a clerk each year. A member from the Board can only be removed for cause by the appointing authority and only after written charges have been made and a public hearing has been held. Vacancies in the Board shall be filled in the same manner as appointments. This Zoning Board of Appeals shall act in all matters authorized by this By-Law and Chapter 40A of the General Laws including the allowance of dimensional variances, and hearing of denials of building permits, but excluding the granting of special permits which shall be under the jurisdiction of the Planning Board. All applications for variances or appeals shall be transmitted to the Planning Board, Board of Health and Conservation Commission for comment. Such commentary or recommendation must be considered by the Zoning Board of Appeals in its deliberations and must be addressed in its rulings.

## **C. Rules for Hiring Outside Consultants**

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**Purpose.** As provided by G.L. Ch. 44 §53G, the Rowe Planning Board and the Zoning Board of Appeals may impose reasonable fees for the employment of outside consultants, engaged by the Planning Board or the Zoning Board of Appeals, for specific expert services. Such services shall be deemed necessary by the Planning Board or Zoning Board of Appeals to come to a final decision on an application submitted to the Planning Board or the Zoning Board of Appeals pursuant to the requirements of: the Town of Rowe Zoning Bylaws, Town of Rowe Subdivision Regulations, or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Planning Board and the Zoning Board of Appeals may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

**Special Account.** Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account(s) for this purpose. Expenditures from this special account may be made at the direction of the Planning Board or Zoning Board of Appeals, respectively, without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

**Consultant Services.** In hiring outside consultants, the Planning Board or Zoning Board of Appeals may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Planning Board or Zoning Board of Appeals and to ensure compliance with all relevant laws, ordinances, by-laws and regulations. Specific consultant services may include but are not limited to analysis of applications, title searches, mapping of lot and/or municipal boundaries and/or rights-of-way, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Planning Board or Zoning Board of Appeals. The consultant shall be chosen by, and report only to, the Planning Board and/or its administrator or the Zoning Board of Appeals and/or its administrator.

**Notice.** The Planning Board or Zoning Board of Appeals shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

**Payment of Fee.** The fee must be received prior to the initiation of consulting services. The Planning Board or Zoning Board of Appeals may request additional consultant fees if necessary review requires a larger expenditure than originally

anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Planning Board or Zoning Board of Appeals within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Planning Board to deny the permit application, or for the Zoning Board of Appeals to deny the appeal. An appeal of the choice of consultant(s) stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review identified as necessary by the Planning Board. The Planning Board or Zoning Board of Appeals shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g. the questions it needs answered.

**Appeals.** The applicant may appeal the selection of the outside consultant to the Board of Selectmen, who may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Board of Selectmen and a copy received by the Planning Board or Zoning Board of Appeals, so as to be received within ten (10) days of the date consultant fees were requested by the Planning Board or Zoning Board of Appeals. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

**Return of Unspent Fees.** When the Planning Board's or the Zoning Board of Appeals' review of a project is completed and a decision has been rendered, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Planning Board or the Zoning Board of Appeals with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.

## **D. Notice of Public Hearings.**

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The Planning Board and the Zoning Board of Appeals shall provide notice of public hearings as required by Section 11 of Chapter 40A (the Zoning Act) of the General Laws.

## **E. Amendment of Zoning By-Laws**

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No change or amendment of this By-Law shall be adopted except under the provisions of M.G.L. Chapter 40A, Section 5.

## **F. Severability**

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The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.

## **SECTION 11: DEFINITIONS**

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Commonwealth of Massachusetts (M.G.L.) definitions apply where not specifically defined here or elsewhere in these Bylaws.

ACCESSORY STRUCTURE OR USE	A subsidiary structure not attached to any principal building, or a use customarily incidental to, and located on the same lot with the principal building or use.
AREA OF PROPOSED USAGE	The location of an in-ground sewage system, the area of such location to be not less than twice the area required for the initial installation of that system.
BED & BREAKFAST OR LODGING HOUSE	A dwelling, similar in character, both interior and exterior, to a single family dwelling, in which overnight lodging is offered in six (6) or fewer guest rooms to not more than twelve (12) guests per night. A breakfast meal may be provided only to overnight guests. Off-street parking must be provided
DWELLING	A building or portion of a building used for the residence of one or more families.
DWELLING UNIT	A building or portion of a building providing separate and complete living facilities for one family.
FAMILY	One or more persons related by birth, marriage or adoption including minors under the legal guardianship or control of one or more adults or up to four (4) individuals not legally related or a combination of these living together on a premises as a single housekeeping unit.
HOTEL OR INN	A structure used or designed for overnight lodging for transient guests, which may also provide a restaurant to lodgers and the public. Guest(s) may not stay at an Inn or Hotel for more than 90 days in any six-month period.
KENNEL	A structure or parcel of land used for the harboring and/or care of more than four (4) dogs that are more than six (6) months old, whether commercially operated or not.
LOT	Shall mean an area of land in one ownership with legally definable boundaries, used, or available for use, as the site of one or more buildings. (See Section 7: Lot Classification)
LOT COVERAGE	The area of a lot occupied by structures, walkways, drives, parking or other impervious surfaces.

LOT FRONTAGE	The portion of a lot coinciding with a street line, providing both rights of access and actual vehicular access across the lot line to a potential building site. The street upon which the lot has frontage must be determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Rowe Subdivision Regulations. The portion of a lot coinciding with a discontinued road or a road appearing only on paper does not constitute "frontage." Similarly, the portion of a lot coinciding with a road deemed by the Planning Board, in consultation with the Superintendent of the Department of Public Works, to be impassable for all or part of the year does not provide "frontage." In determining whether or not a road is passable, the Planning Board and the Superintendent of the Department of Public Works shall consider such factors as: the condition of the road bed and the surface of the road, whether the road contains obstructions, whether the road is navigable by ordinary passenger vehicles, whether the road is navigable by emergency vehicles and other appropriate factors.
MOBILE HOME	A dwelling unit built on a chassis and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or permanent foundation for permanent living quarters.
MOTEL	Attached, semi-detached, or detached dwelling units having separate outside entrances and parking space convenient to each unit, and providing lodging for transient clientele.
OFFICE, BUSINESS	The workplace of computer software, insurance, or other business professionals, which may include space for appropriate support staff (e.g. administrative assistants, etc.)
OFFICE, PROFESSIONAL	The workplace of physicians, lawyers, engineers, or other licensed professionals which may include space for appropriate support staff (e.g. nurses, administrative assistants, etc.)
PRINCIPAL USE	The primary purpose for which land or a structure is designed, arranged, maintained or occupied.
RECREATIONAL USES	Includes motorized vehicle sports such as go-cart tracks, dirt-bike trails and all-terrain vehicle trails; skeet, trap, pistol, rifle or black powder ranges; miniature golf, paintball or archery ranges; boat, canoe or kayak launches or access for tubing or other water sports; riding arenas or public stables, carnival games, or similar activities.
SOILS MAP	The map on file with the Town Clerk entitled "Soils Limitation for Septic Tank Sewage Disposal" prepared for the Town of Rowe based on U.S. Department of Agriculture Soil Conservation Service Survey.
STRUCTURE HEIGHT	The vertical distance measured from the average elevation of the proposed finished grade of the structure to the highest point of the structure.
SUBDIVISION	Shall mean the division of a tract of land into two or more lots, and shall include resubdivision, and, when appropriate to the context, shall relate to the premises of subdivision or the land or territory subdivided.