LOCAL LAW # 4 of 2006

TOWN OF WINDHAM

SITE PLAN REVIEW LAW

Supersedes Local Law # 3 of 2002
Supersedes Local Law # 2 of 1989

Adopted by Town Board: July 13, 2006

Filed with State: July 17, 2006
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ARTICLE I
Introductory Provisions

Section 1.010 – Enactment: The Town Board of the Town of Windham, New York does hereby ordain and enact the Town of Windham Site Plan Review Law pursuant to the authority and provisions of Section 10 of the Municipal Home Rule Law and Section 274-a of the Town Law.

Section 1.020 – Short Title: This local law shall be known as the “Site Plan Review Law”. The Town of Windham is hereinafter referred to as the “Town”

Section 1.030 – Intent and Purpose: Through site plan review, it is the intent of this local law to promote the health, safety and general welfare of the Town. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its inhabitants.

It is further the intent of this local law to ensure the optimum overall conservation, protection, preservation, development and use of the natural and man-related resources of the Town, by regulating land improvements within the Town through review and approval of site plans. It is not the intent of this local law to prohibit per se any land improvements but to allow all land improvements which will meet the standards set forth in this local law.

SECTION 1.040 – Authorization of Planning Board to Review Site Plan:

The Planning Board is hereby authorized to review and approve or disapprove site plans for land development within the Town as hereinafter designated pursuant to and in accordance with the standards and procedures set forth in this local law.

ARTICLE II
Application and Definitions

SECTION 2.010 – Applicability of Review Requirements: All land improvements occurring after the adopted date of this local law within the Town shall require site plan review and approval before being undertaken, except the following:

1. The Town will not review construction, alteration or replacement of one family dwellings and/or ordinary accessory structures and related land use activities on a parcel of two (2) acres or greater.

2. The Town will not review construction or alteration of agricultural use buildings on a working farm.

3. The Town will not review minor landscaping or grading which involves less than two (2) acres.

4. The Town will not review ordinary repair or maintenance or interior alterations to existing structures.
5. The Town will not review exterior alterations of residential structures or additions to existing residential structures, which would increase the square footage of the existing structure by less than fifty (50%) percent of the size of the structure on March 1, 2002.

6. The Town will not review non-structural, agricultural or grading uses not involving “clear-cutting” timber.

7. The Town will not review “clear cutting” any area less than one-half (1/2) acre.

8. Garage, lawn and porch sales not exceeding two (2) days. If sales, including one-day sales, take place more often than three (3) times in any calendar year, site plan approval will be required.

9. The Town will not review the sale of agricultural produce and temporary structures related to the sale of agricultural produce.

Any persons uncertain of the applicability of this local law to a given land uses activity may apply in writing to the Town board for a written jurisdictional determination.

SECTION 2.020 – Relationship of this Law to other Laws and Regulations:

This local law in no way affects the provisions or requirements of other federal, state, local laws, or application regulations. This local law shall be considered the initial review procedure relative to other laws and/or regulations, however, where it is determined to be a conflict with any other such law or regulation, the more restrictive shall apply. This includes, but not limited to subdivision regulations, sanitary codes, refuse disposal and junkyard ordinances.

SECTIONS 2.030 – Definitions:

“Environmental Assessment Form – (EAF)” – a form used by the Planning Board for the State Environmental Quality Review process, to assist in determining the environmental significance or non-significance of an action or project.

“Environmental Impact Statement (EIS)” – a written document required for each Type or Unlisted Action if the Lead Agency determines may have a significant effect on the environment.

“Family” – a person or persons related to each other by blood, marriage or adoption living together as a single housekeeping unit.

“Improvement” – any construction or other activity which changes the appearance or occupancy (as defined in the New York State Building Code) of land or a structure or the intensity of use of land or structure. “Improvement” shall explicitly include, but not be limited to, the following: new structures, expansions to existing structures, changes in or expansions of existing roads, driveways and excavations for the purpose of extracting soil or mineral deposits. “Improvement” shall also include the installation or operation of outdoor lighting installed at a height of more than twelve (12) feet above ground level and having more than five hundred (500) watts.

“Site” – any defined area for which an approval is being sought.
"Garage, Lawn and Porch Sale" – the display for sale of wares outside of a structure having fixed walls.

"Clear Cutting" – where substantially all trees are to be removed from a site.

"Working Days" – all weekdays, not including Saturday, Sunday or any Holiday recognized by New York State.

"Lead Agency" – is the Agency or body principally responsible for carrying out, funding or approving an action, as set forth in Parts 616.6 and 617.7 of the SEQRA Law.

"One Family Dwelling" – a complete self-contained residential unit for permanent habitation by one family only, and containing one or more rooms and facilities for living including cooking, sleeping, and sanitary needs.

"State Environmental Quality Review Act (SEQRA)" – a process to help government and the public protect and improve the environment. SEQRA requires that environmental factors be considered along with social and economic considerations in government decision making.

"Structure" – any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, signs, tanks and any fixtures, additions and alterations thereto.

"Structure Accessory" – any structure designed to accommodate an accessory use but detached from the principal structure, such as a free standing garage for vehicles accessory to the principal use, a storage shed, garden house or similar facility, but excluding uninhabitable manufactured housing, or mobile homes, unregistered tractor trailers, or freight containers, maintained for any purpose.

"Working Farm" – any farm that has annual gross receipts of at least then thousand dollars ($10,000.00) derived from agricultural pursuits.

"Type I Action" – an action that is likely to have a significant effect on the environment as listed in Part 617.4 of the SEQRA Law, (requires Long Form EAF).

"Type II Action" – an action or classes of actions, which have been determined not to have a significant effect on the environment as listed in Part 617.5 of the SEQRA Law.

"Unlisted Action" – an action that may have a significant effect on the environment as explained in Part 617.2 of SEQRA Law, (requires EAF).

Any term used in this local law which is not defined hereinabove shall carry its customary meaning unless the context otherwise dictates.
ARTICLE III
Site Plan Review

Section 3.010 – Procedures – Generally: Prior to undertaking any improvement activity, except for uses specifically excepted in Section 2.010 of this local law, a site plan approval by the Planning Board is required. Applicants for site plan approval should follow the recommended procedures related to the sketch plan conference as hereinafter set forth. Applicants must comply with all other procedures and requirements of this law.

Section 3.020 – Sketch Plan: A sketch plan conference between the Planning Board and the applicant, prior to the preparation and submission of a formal site plan, shall be held at the discretion of the Planning Board. The intent of such a conference is to enable the applicant to inform the of his proposal prior to the preparation of a detailed site plan; and for the to review the basic site design concept, and to determine the type of action (Type I, Type II, Unlisted), advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant shall provide item 1 as follows, and items 2, 3 and 4 may be required with the application if determined necessary at the sketch plan conference.

1. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations.

2. An area map showing the parcel under consideration for site plan review, and all properties, subdivisions, streets, rights-of-way, easements and other pertinent features within 200 feet of the boundaries of the parcel; and other special districts.

3. A map or site topography at contour intervals of between two (2) feet to twenty (20) feet at the discretion of the Planning Board. If general site grades exceed five (5) percent or portions of the site have susceptibility to erosion, flooding or ponding, a soils overlay and a topographic map showing contour intervals of not more than two (2) feet of elevation should also be provided.

4. A completed EAF (long or short) form.

SECTION 3.030 – Application Requirements: An application for site plan approval shall be made in writing to the chairman of the Planning Board at least one week prior to the scheduled meeting and shall be accompanied by information contained on the following check list. When the sketch plan conference is held, the accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said sketch plan conference.

Site Plan Checklist: (All may not be required)
1. Title of drawing including name and address of applicant and person responsible for preparation, identification of New York State licensed architect, landscape architect or Engineer where appropriate on such drawing.
2. North arrow, scale at 1" = 200" or some agreed upon scale as specified by the Town of Windham.
3. Boundaries of the property plotted to scale.
4. Existing buildings.
5. Grading and drainage plan, showing existing and proposed contours, rock outcrops, depth to bedrock, soil characteristics, and watercourses.
6. Location, design, type of construction, and exterior dimensions of all buildings.
7. Location, design and type of construction of all parking and truck loading areas, showing access and egress.
8. Provision for pedestrian access.
9. Location of outdoor storage, if any.
10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences.
11. Description of the method of sewage disposal, location, design and construction materials of such facilities.
12. Description of the method of securing potable water, and location, design and construction materials of such facilities.
13. Location of fire and other emergency zones, including the location of fire hydrants.
14. Location, design and construction materials of all energy distribution facilities, including electrical, gas and alternate energy.
15. Location, size, and design and type of construction of all proposed signs.
16. Location and proposed development of all buffer areas, including existing vegetative cover.
17. Location and design of outdoor lighting facilities.
18. Identification of the location and amount of building area proposed for retail stores or similar commercial activity.
19. General landscaping plan and planting schedule.
20. An estimated project construction schedule.
21. Record of application for and status of all necessary permits from other governmental bodies.
22. Identification of any permits from other governmental bodies required for the project’s executions.
23. Other elements integral to the proposed development as may be considered necessary in the particular case by the Planning Board.
24. Location of wells, septic systems and leach fields on adjoining property within 200 feet of site.
25. Location of existing well or wells on the site.
26. Relationship of the site to any special districts.

SECTION 3.040 – Required Fee: An application for site plan review shall be accompanied by a filing fee of twenty-five dollars ($25.00) per unit residential, or five dollars ($5.00) per one hundred square feet (100 sq. ft) commercial, filed at the Town Clerk’s Office.

- a fee of twenty-five ($25.00) Dollars shall accompany an application for a driveway
a fee of Five ($5.00) Dollars shall accompany an application for garage sales, lawn sales and porch sales.

- a fee of Twenty-five ($25.00) Dollars shall accompany an application to clear cut a lot
- a fee of One Hundred ($100.00) Dollars shall accompany an application for non-structural improvements such as, but not limited to, driving ranges and ski trails, and also for telecommunications towers.

SECTION 3.045 – Acceptance of Final Application: No application shall be accepted as final and the application shall be held in abeyance until:

1. SEQRA is completed.
2. The County has been heard from or thirty (30) days have elapsed from the date of referral, if a 239m review is required.
3. Approval for an allotment/connection is obtained from the Town Board, if the site is located within the sewer district and requires sewerage or additional capacity.
4. All appropriate mapping and conceptual plans/designs are in acceptable form and available for review at the Town Hall.
5. All items as required in Section 3.030 and Section 3.040 have been met.

SECTION 3.050 – Reimbursable Costs: Cost incurred by the Planning Board for consultation fees and other expenses in connection with the review of a proposed site plan will be charges to the applicant. The applicant will be notified prior to the board incurring any reimbursable costs.

ARTICLE IV
Review Standards

SECTION 4.010 – General Standards and Considerations: The Planning Board’s review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
2. Adequacy and arrangement of the vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
5. Adequacy of stormwater and drainage facilities.
6. Adequacy of water supply and sewage disposal facilities.
7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant’s and adjoining lands, including the maximum retention of existing vegetation.
8. Adequacy of fire lands and other emergency zones and the provision of fire hydrants.
9. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
10. Overall impact on the neighborhood including compatibility of design considerations.
11. Overall compatibility with natural resource characteristics of site.
ARTICLE V
Public Hearing and Planning Board Decision

SECTION 5.010 – Public Hearing: The Planning Board may conduct a public hearing on the site plan if considered desirable by a majority of its members. Such hearing shall be held within sixty-two (62) days of acceptance of a final application for site plan review and shall be advertised in the Town’s Official newspaper of general circulation in the Town at least five (5) days before the public hearing and the applicant must be mailed a notice of the hearing ten (10) days in advance. In accordance with current tax records all known property owners with property abutting and within 500 feet of the site, shall be notified by the applicant by mail (certified return receipt requested) within two (2) working days after the hearing date is set, however, for ordinary residential structures subject to site plan review and garage sales and driveways, the Planning Board may limit the notifications to the abutting property owners, with “abutting” including lands directly across the street from the site for which an approval is being sought. The applicant shall submit a copy of such notice and a certified copy of the list of property owners who have been sent such notice to the Planning Board at the public hearing.

SECTION 5.020 – Planning Board Decision: Within sixty-two (62) days of acceptance of the final application for site plan approval or if a public hearing is held within sixty-two (62) days of the close of the public hearing, the Planning Board shall render a decision. In its decision the Planning Board may approve, approve with modifications or disapprove the site plan. The time period in which the Planning Board must render its decision, can be extended by mutual consent of the applicant and the Planning Board.

1. Approval: Upon approval of the site plan, and payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall file it and a written statement of approval within the Town Clerk within five (5) days. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested. Such approval shall be valid for one year from approval date.

2. Approval with Modifications: The Planning Board may conditionally approve the final site plan. A copy of written statement containing the modifications required by the conditional approval will be mailed to the applicant by certified mail, return receipt requested. After adequate demonstration to the Planning Board that all conditions have been met, and payment by the applicant of all fees and reimbursement costs due the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall file it and a written statement of approval with the Town Clerk within five (5) days. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested. Such approval with modifications shall be valid for one year from approval date.

3. Disapproval: Upon disapproval of the site plan the decision of the Planning Board shall be filed with the Town Clerk within five (5) days and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Planning Board’s reasons for disapproval.
4. No approved site may be altered without permission of the Planning Board. Once a site plan is filed with the Town Clerk it may not be altered without returning to the Planning Board for review.

ARTICLE VI
Is Hereby Repealed

ARTICLE VII
Miscellaneous Provisions

SECTION 7.010 – Enforcement Officer: The Town Board shall appoint an enforcement officer to carry out the duties by this local law or by any additional regulations adopted to section 7.020 thereof. If appointed, the enforcement officer shall be responsible for the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate.

SECTION 7.020 – Further Regulations by Planning Board: The Planning Board may, after a public hearing, adopt such further rules and regulations as it deems reasonably necessary to carry out the provisions of this local law. The adoption of such further rules and regulations shall be subject to Town Board approval.

SECTION 7.030 – Integration of Procedures: Whenever the circumstances of proposed development require compliance with Site Plan Review Law and with any other local law, ordinance or requirement of the Town, the planning Board shall attempt to integrate, as appropriate, Site Plan Review as required by this local law with the procedural and submission requirements for such other compliance.

SECTION 7.040 – Enforcement: Any person, corporation, partnership, or local law, or any conditions imposed by a permit pursuant hereto shall be guilty of an offense and subject to a fine of not more than Two Hundred Fifty ($250.00) Dollars or by penalty of Two Hundred Fifty ($250.00) Dollars to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.

Section 7.050 – Effective Date: This local law shall become effective upon filing with Secretary of State.