

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one.)

of Wheatfield

FILED  
STATE RECORDS

DEC 14 2016

DEPARTMENT OF STATE

Local Law No. 5 of the year 2016

A local law Conservation/Cluster Subdivision Law  
(Insert Title)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Wheatfield

as follows:

SEE ATTACHED SHEETS.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

## Article VI. Conservation/Cluster Subdivisions

### §200-45. Intent and Purpose

These provisions are intended to:

- A. Guide the future growth and development of the community consistent with the Town of Wheatfield's adopted comprehensive plan.
- B. Guide the detailed analysis of a development parcel so as to locate and coordinate appropriate areas for development and conservation and encourage compatibility with surrounding land uses.
- C. Preserve the rural character of the Town of Wheatfield through the permanent preservation of meaningful open space and sensitive natural resources.
- D. Preserve scenic views by minimizing views of new development from existing roads.
- E. Preserve prime agricultural land.
- F. Provide commonly-owned open space areas for passive and/or active recreational use by all residents of the development and, where specified, the larger community.
- G. Provide for a diversity of lot sizes, housing choices and building densities, to accommodate a variety of age and income groups.
- H. Provide buffering between residential development and non-residential uses.
- I. Protect and restore environmentally sensitive areas and biological diversity, minimize disturbance to existing vegetation and maintain environmental and wildlife corridors. Green spaces need to be continuous and relatable.
- J. Preserve significant archaeological sites, historic buildings and their settings.
- K. Include the protection of wetlands, floodplains, mature woodlands, hedgerows, large trees, upland habitats, prime farmland, rare plant communities, endangered and threatened species, natural meadows, historic landmarks, and geological formations.
- L. Promote the ecological, social, recreational, and economic value of undeveloped lands.
- M. The above will be accomplished through the allowance of smaller lot sizes for single-family homes thus providing the opportunity for preserving more of the Town's important features.

§200-46. Definitions:

- A. "Conservation/Cluster development": a subdivision plat or plats, approved; pursuant to this article, in which the applicable zoning ordinance is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands and the intent and purpose of this Chapter.
- B. "Common open space": undeveloped land within a conservation subdivision that has been designated, dedicated, reserved, or restricted in perpetuity from further development.
- C. "Conservation easement": the grant of a property right or interest from the property owner to a unit of government or nonprofit conservation organization, stipulating that the described land shall remain in its natural, scenic, open or wooded state, precluding future or additional development.
- D. "Development envelopes": areas within which grading, lawns, pools, fences, pavement and buildings would be located (allowed).
- E. "Gross acreage": the total area of a parcel to be considered.
- F. "Homeowners association": a community association incorporated, combining individual home ownership with shared use or ownership of common property or facilities.
- G. "Non-profit conservation organization": any charitable corporation, charitable association or charitable trust (such as a land trust), the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.
- H. "Parent parcel": the existing parcel of record, as identified by individual tax parcel numbers, as of the effective date of this ordinance.
- I. "Subdivider": any person, corporation, partnership, association, individual, firm, trust or agent dividing or proposing to divide land resulting in a conservation subdivision.
- J. Significant (large) Trees: minimum 6 inch caliper trees or important species.

§200-47. Authorization and approval; pre-emption.

Pursuant to the provisions of Town Law §278, the Town Board of the Town of Wheatfield does hereby authorize and in some cases may require the use of Conservation/Cluster Subdivisions simultaneously with the approval of a subdivision plat or plats. The proposed use of these Conservation/Cluster Subdivision regulations shall not be considered an allowed use in any zoning district, unless shown to meet the Intent of this law, specifically authorized and then approved by the Wheatfield Town Board.

Approval of Conservation/cluster subdivision shall be subject to the conditions set forth in this article and in Town Law §278 and the subdivision approval process set forth in the Code of the Town of Wheatfield. In accordance with the Town of Wheatfield's Subdivision chapter, Chapter 169, the Planning Board of the Town of Wheatfield is a recommending board and it will also provide its review and recommendation on conservation/cluster subdivisions.

A. Pre-emption: In addition to provisions of Town Law §278, the provisions set forth in this article shall be followed in reviewing applications for Conservation/Cluster subdivisions. Whenever the provisions of this article are more restrictive than or contain additional requirements to §278, the provisions of this article shall prevail.

#### §200-47.1. Application and Process requirements

As stated above, Conservation/Cluster subdivisions shall follow the procedures and requirements of Town Law §278 and the subdivision approval process set forth in the Code of the Town of Wheatfield. The process will be supplemented with the following requirements:

A. A sketch plan must be submitted that includes the information detailed in this chapter. The sketch plan shall be placed on the Planning Board agenda and the Planning Board will generate information as described below for use by the Town Board in making a decision on whether to allow the use of the Conservation/ Cluster Subdivision law or not.

B. The Planning Board may refer an application to other departments, boards and committees in the Town of Wheatfield for their opinion.

C. The Planning Board in reviewing this application can make a preliminary determination on the allowed number of lots, and suggest revisions to the proposed Conservation/ Cluster plan to best meet the Intent and Purpose of this Chapter.

D. Once the applicant has responded to these preliminary comments, the Planning Board can schedule a public information meeting to receive public input.

E. With the information obtained in these reviews and public input, the Planning Board can make a recommendation to the Town Board on the utilization of the proposed Conservation/ Cluster design and the number of lots to be allowed. In this recommendation to the Town Board, the Planning Board can include input received from other departments, boards and committees of the Town.

F. The Town Board, upon receipt of this recommendation and accompanying materials, will make a decision on authorizing the use of the Conservation/ Cluster design and the number of lots to be allowed. If authorized, this law allows that, at any time prior to approval of the conservation/cluster subdivision, the Town Board may choose not to accept the plat as proposed and not allow the use of the Conservation/Cluster subdivision law.

G. If the Town Board authorizes the use of Conservation/ Cluster design, the Town Board can begin the SEQR coordinated review process (the coordinated review process would not formally begin until a complete Preliminary application is received) and refer the subdivision back to the Planning Board.

H. Once a completed preliminary plat and required application materials are submitted to the Town, the Planning Board shall complete their review and recommendation of the preliminary plat. The process will then proceed in accordance with the requirements of this Chapter and the Town's subdivision law (Required public hearing, etc.).

#### §200-47.2. Regulations.

A. Conditions. Conservation/Cluster subdivisions are not a use allowed by right. It may be allowed at the discretion of the Town Board, upon recommendation by the Planning Board. The procedure set forth herein and the authorization of Conservation/Cluster subdivision may be followed and allowed at the discretion of the Town Board, if and in the Town Board's judgment, its application would benefit the Town, meet the Town's goals and the objectives and the purpose and intent of this article. In some cases, for regular proposed subdivisions, the Town Board may require the use of a Conservation/Cluster design (to help protect/preserve important Town lands or to meet other Town objectives).

B. A base map (resource inventory or environmental suitability inventory map) and two plans as outlined below are required at the time of submission of the sketch or concept plan. The two plans that shall be submitted will include one layout designating the layout of a standard subdivision in accordance with the underlying zoning district and the second layout showing the proposed Conservation/Cluster subdivision. The base map shall illustrate all of the important features identified in the Town's Greenspace Master Plan and any other unique attributes of the site.

- 1) The Base map (resource inventory) shall include the following items:
  - a) Property boundaries
  - b) All streams, creeks, wetlands and other hydrological features
  - c) Topographic contours
  - d) General vegetation characteristics, specifically noting any significant trees and types
  - e) General soils information
  - f) Existing roads, driveways and structures
  - g) Existing surrounding trails and greenspace features (within 500 feet)

- h) Identification of any features located on or adjacent to the property that are shown in the Greenspace Master Plan, including wildlife corridors
  - i) Specific plans and actions denoted in the Greenspace Master Plan concerning this site
  - j) Any agricultural lands on or adjacent to the site
  - k) Other features as requested by the Planning Board
- 2) Each lot in the standard subdivision layout shall meet the minimum lot size and lot width requirements of the Zoning Law of the Town of Wheatfield for the underlying zoning district.
  - 3) The standard subdivision layout shall be utilized to determine the maximum density for the cluster development and shall be consistent with federal, state and Town laws, including, but not limited to, laws regulating:
    - a) Floodways, floodplains
    - b) Wetlands
    - c) Subdivision regulations
    - d) Zoning
  - 4) The Proposed Conservation/ Cluster plan should be designed in accordance with the Intent and Purpose section of this law, the specific requirements of this chapter and the design guidelines package for conservation subdivisions that will be provided by the Town.

C. Maintenance/open space: the Town Board, as a condition of plat approval, shall establish such conditions on the ownership, use and maintenance of such open lands shown on the plat as it deems necessary to assure and preserve the natural and scenic qualities of such open lands (for example: dedication to the Town, restrictive covenants, homeowners' association, non-profit conservation organization, etc.).

D. Additional requirements: In addition to the above, Conservation/Cluster subdivisions shall meet the following criteria, which shall not be waived by the Planning board or Town Board:

- 1) The plat showing such Conservation/ Cluster subdivision shall depict the proposed lots, the development envelopes within which such structures may be located, building footprints, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, driveways and any other features required by the Planning Board (these illustrations are especially necessary for *cul-de-sac* lots or other odd-shaped lots).

2) The application shall also include the types of homes to be constructed on these sites, including renderings and typical building layouts.

3) A Conservation/Cluster subdivision shall not set aside less than 40% of the total area of the development for common usage/open space in accordance with the provisions of this article. This 40% requirement shall not include those lands determined to be unusable in the standard layout (for example wetlands, floodways, etc.) and will not include stormwater ponds. These unusable lands can be included in the "conserved areas, they just do not count towards the 40% requirement. These lands to be set aside shall also be located on the property proposed for Conservation/Cluster subdivisions.

4) The above required 40% of land is to meet the conservation/cluster development requirements and not intended to meet the ten-percent dedication requirements for parks, open space and natural features in §169-23 of the Town's Subdivision Regulations. As described in this section, the Town may still require a payment in lieu of dedication of lands.

Minimum lot size and Lot Width requirements:

Conservation/ Cluster Subdivision; Minimum Standards Suggestions

A-R District

Minimum Lot Size: 22,500 sf (existing is 37,500 sf)

Minimum Lot Width: 75 feet (existing is 125 feet)

R-R District

Minimum Lot Size: 12,000 sf (existing is 20,000 sf)

Minimum Lot Width: 75 feet (existing is 100 feet)

R-1 District

Minimum Lot Size: 10,000 sf (existing is 16,000 sf)

Minimum Lot Width: 75 feet (existing is 80 feet)

A-R District

Minimum Lot Size: 22,500 sf (existing is 37,500 sf)

Minimum Lot Width: 75 feet (existing is 125 feet)

R-2 and R-3 Districts

Minimum Lot Size: same as R-1

Minimum Lot Width: same as R-1

## RNB and RW Districts

Minimum Lot Size: same as R-R

Minimum Lot Width: same as R-R

- 5) The distance between structures shall not be less than 20 feet (this distance is measured from the greater projection of the house including all overhangs).
- 6) No structure in a Conservation/Cluster subdivision shall be closer to a pre-existing street than a structure in a standard subdivision.
- 7) For lots proposed on new roads, the minimum front yard setback can be reduced to 25 feet (or 30 feet from the back of curb for private roads); the side yard minimum shall remain 10 feet and the rear yard can be reduced to 30 feet. Houses should face onto new roads.
- 8) All Conservation/Cluster development proposals must include the type of development being proposed; such as Condominiums, townhouses, etc. All Condominium developments shall include only private roadways and infrastructure (water, sewer, etc.).

### §200-47.3. Open space.

A. In reviewing proposed Conservation/Cluster subdivisions, the Planning Board and Town Board shall evaluate subdivision layout with respect to the base map which could include scenic views, natural landscape features, topography of the site, woodlands, wetlands, other features of the site and other adjacent areas and shall require development in a fashion and manner which it finds will enhance and preserve such features, including, but not limited to:

- 1) Lands adjacent to public parks and other publicly accessible open space.
- 2) Lands adjacent to other dedicated open space areas on adjacent parcels.
- 3) Buffer lands between adjacent active agricultural uses, industrial uses, commercial uses and residential development.
- 4) Trailways which meet Town of Wheatfield green space/open space plan.
- 5) Lands adjacent to important streams, rivers and creeks.

B. The Planning Board and Town Board may suggest additional amenities regarding open space. The Town's Comprehensive and Greenspace Master Plans shall be referred to and included in their analysis.

§200-47.4. Common open space and facilities.

A. The common open spaces shall be clearly depicted upon the subdivision plan. The developer shall illustrate on the subdivision plan all improvements and modifications to the common space, such as trails, landscaping, recreational facilities, etc.

B. At the Town's option, open space may be accepted by dedication and operated or preserved by the Town as a public recreation facility.

C. If open space is not dedicated to the Town, it shall be protected by formal arrangements, such as homeowners' associations and conservation easements, which are satisfactory to the Town Board and Town Attorney and sufficient to assure its maintenance and preservation.

1) Final approval of subdivision plat shall be conditioned on proper recording and filing of the legal entity controlling common areas.

2) All improvements or modifications to the common open spaces required to enhance, preserve and make accessible shall be a condition of approval and shall be completed prior to issuance of any building permits in the development.

3) Where necessary, the Town Board shall require the posting of a bond to assure open space completion and maintenance until the homeowners' association is sufficiently funded to assure such maintenance.

§200-47.5. Further restrictions.

A. The provision of this section shall not be deemed to authorize a change in the permissible use of such lands as provided elsewhere in the Zoning Law of the Town of Wheatfield applicable to such lands.

B. Nothing herein shall supersede any requirements of the subdivision regulations in effect, which may impose additional requirements upon the developer for approval of the proposed subdivision.

C. Further subdivision of an approved Conservation/Cluster subdivision shall not be allowed. This shall be indicated on the final subdivision plat and recorded with Niagara County.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2016 of the ~~(County)(City)(Town)(Village)~~ of Wheatfield was duly passed by the Town Board on December 5 2016, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local *(Elective Chief Executive Officer\*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

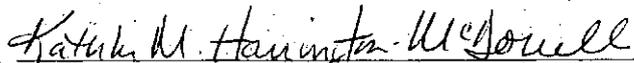
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

  
KATHLEEN M. HARRINGTON-McDONELL, Town Clerk

(Seal)

Date: December 5, 2016