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TOWN OF MONTAGUE LAND USE LAW

Local Law No. 2 of 1987, adopted on June 9, 1987,
As revised by Local Law No.1 of 1996 on March 12, 1996,
Local Law No.2 of 2001, adopted on October 9, 2001 and
Local Law No. 1 of 2005, adopted on July 12, 2005.

ARTICLE A. INTRODUCTION

Section 1. Enacting Clause

Pursuant to the authority conferred by Article 16 of the Town Law and Articles 2 and 3 of Municipal Home Rule Law of the State of New York, the Town Board of the Town of Montague hereby adopts and enacts the following law.

Section 2. Title

This law shall be known as "The Town of Montague Land Use Law."

Section 3. Purpose

The purpose of this land use law are to provide for orderly growth in accordance with a comprehensive plan; to secure safety from fire, flood and other dangers; to provide adequate light and air, to make provision for, so far as conditions may permit, the accommodation of solar energy stems and equipment and access to sunlight necessary therefore; to prevent the overcrowding of land; to avoid undue concentration of population; and to promote the health, safety, and general welfare of the public. This land use law has been made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the Town of Montague.

Section 4. Applicability

This law, and any amendment thereto, shall apply on its effective date to all uses which have not been substantially commenced, and structures which have not been substantially constructed, regardless of the status of permits or certificates of occupancy issued pursuant to the New York State Uniform Fire Prevention and Building Code.

Section 5. Rural Development Code

This law shall replace and supersede The Town of Montague Land Use Law, Local Law No. 2 of 1987, as subsequently amended.

ARTICLE B. DEFINITIONS

Section 1. General

Except where specifically defined herein, all words used in this law carry their customary meanings. Words in the present tense include the future, words in the singular include the plural and the plural the singular, and the word "shall" is intended to be mandatory.

Section 2. Specific Definitions

Accessory Structure: A structure incidental and subordinate to the principal structure and located on the same lot with such principal structure and not designed or intended for human habitation. Where an accessory structure is attached to the principal structure in a substantial manner, as by a wall or roof, such accessory structure shall be considered part of the main structure.

Accessory Use: A use incidental and subordinate to the principal use and located on the same lot with such principal use.

Agricultural Use: The use of land for agricultural purposes, including farming, dairy, pasturage agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of normal agricultural activities.

Agricultural Structure: A structure used for agricultural purposes.

Alteration: The increase in ground coverage or height of a structure.

Board of Appeals: A board appointed by the Town Board pursuant to Section 267 of the Town Law to hear and decide appeals of this law.

Building: Shelter having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals, or property.

Campground: Land on which two or more campsites are located, established, or maintained for occupancy by camping units of the general public as temporary living quarters for recreation, education or vacation purposes. A "camping unit" shall be considered any tent, lean-to, cabin or similar structure, or recreational camping vehicle, excluding mobile homes, established or maintained and operated in a campground as temporary living quarters for recreation, education or vacation purposes.

Certificate of Compliance: A certification by the enforcement officer that a lot, structure, or use of land has been developed in conformity with an approved land use permit and/or complies with the provisions of this law, and may be occupied and used for the purposes specified in such land use permit and/or certificate of compliance.

Commercial Use: Retail and wholesales, offices, personal and consumer services, manufacturing, hotels, motels, boarding houses, restaurants, and bed and breakfast inns.

Commercial Logging: An area of land used for the purpose of cutting trees and removing timber for sale as a commercial operation.

Conservation Practice: The protection or management of open land in a natural state. The definition includes management practices such as supplementary channel maintenance, erosion control, etc.

Dwelling: A building or portion thereof, including mobile homes, which is used exclusively for residential purposes, including one-family and multi-family dwellings, but not including hotels, motels, boarding houses, bed and breakfast inns, or recreational camping vehicles.

Dwelling, Multi-Family: A building or a portion thereof used for occupancy by two or more families living independently of each other and containing two or more dwelling units consisting of self-contained living, sleeping, cooking and sanitary facilities within the unit, each for use by one family.

Dwelling, One-family: A detached building designed to be used as living quarters by one family.

Enforcement Officer: Any person appointed by the Town Board to enforce the provisions of this law.

Essential Facilities: The operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers; electrical or gas transmission facilities and substations; water treatment, storage and transmission facilities; pumping stations; and similar facilities.

Essential Services: Erection, construction, alteration, operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electric or gas substations, water treatment or storage facilities, pumping stations, hydroelectric power plants and similar facilities.

The definition of essential services shall not include minor and major wind power generating facilities.

Excavation, Major: Any area of land used for the purpose of extracting stone, sand, gravel or soil for sale, as a commercial operation.

Frontage: The length of the front lot line measured at the road line.

Height: The vertical distance of building measured from the mean of the highest and lowest exposed part of the foundation to the highest point of the roof.

Home Business: An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and conforms to the regulations of Article F. Section 13 of this law.

Junk: Any scrap, waste, reclaimable material, or debris, whether or not stored, for sale or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed, or other use or disposition, including tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, machinery, brush, wood and lumber.

Junkyard, Class A: Any junkyard as defined by the County of Lewis Junkyard Law, otherwise known as Lewis County local Law No. 3 of 1992, as amended.

Junkyard, Class B: Any area, lot, land parcel, building, or structure, or part thereof, used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk, which does not constitute a Class A junkyard.

Land Use Permit: A permit issued by the enforcement officer certifying that all plans for the use and

development of land comply with the regulations of this law, and granting permission to commence development activities in conformity with the conditions the approved permit.

Lot: A designated parcel or tract of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed or built upon as a unit.

Lot Area: The total horizontal area included within the lot lines of a lot. No part of the area within a public right-of-way shall be included in the computation of lot area.

Lot Line: A line of record bounding a lot which divides one lot from another lot or from a public or private road.

Mobile Home: A structure, transportable in one or more sections, which is at least 8 feet in width and 32 feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home shall be construed to remain a mobile home, subject to all regulations applying thereto, whether or not wheels, axles, hitch, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. This definition shall not be construed to include factory manufactured homes known as "modular homes" bearing an insignia issued by the State Fire Prevention and Building Code Council as required in 9 NYCRR 1212. This definition shall not be construed to include recreational camping vehicles.

Mobile Home Park: Land on which are located, or which is maintained for use by two or more mobile homes.

Motel/Hotel: A building or group of buildings, whether detached or in connected units, containing transient and/or permanent lodging facilities for the general public and which may contain accessory facilities such as restaurants, meeting rooms, retail business activities and related activities primarily to accommodate the occupants, but open to the general public, including buildings designed as auto cabins, auto courts, motor lodges, tourist courts and similar terms. This term shall also include bed & breakfast inns.

Nonconformity: A lot, structure, or use of land which lawfully existed prior to enactment of this law, or conformed to the regulations of the district in which it was located prior to the amendment of this law; which does not conform to the regulations of the district in which it is located following the enactment or amendment of this law.

Nonresidential Use: A use which does not contain a dwelling unit.

Personal and Consumer Services: Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel.

Plat: A map of a subdivided tract of land showing the boundaries and location of individual properties and roads.

Principal Structure: A structure through which the principal use of the lot on which it is located is conducted.

Principal Use: The primary or predominant use of any lot.

Public Utility: A closely regulated enterprise with a franchise for providing to the public a utility

service deemed necessary for the public health, safety, and welfare.

Recreation Facility: A place designed and equipped for the conduct of sports and leisure-time activities, which involves the erection or movement of buildings or structures, or involves excavation, extensive grading, or changes to the contours of the land.

Recreation, Passive: Hunting, fishing, hiking and other similar activities not requiring structures or special supervision.

Recreational Camping Vehicle: Any enclosed motor vehicle or trailer used or designed to be used for recreational travel and temporary living and/or sleeping purposes including motor homes, truck campers, camping trailers, campers, travel trailers, pop-up trailers, tent trailers, and over-night trailers.

Residential Use: A use containing a dwelling unit.

Retail Sales and Service: A commercial facility engaged in selling goods or merchandise to the general public for personal or household consumption; or providing retail services or entertainment to the general public such as eating and drinking establishments, *finance*, real estate and insurance, personal services, amusement and recreational services, health, educational and social services.

Road: A thoroughfare dedicated and accepted by a municipality for public use or legally existing on any map of a subdivision filed in the manner provided by law.

Road, Private: A private way which affords the principal means of access to abutting property.

Road line: The right-of-way line of a road as dedicated by a deed or record. Where the width of the road is not established, the road line shall be considered to be 25 feet from the center line of the road pavement.

Setback: The distance between a lot line, road line or the mean high water line of a body of water and a building, structure or use..

Site: Any area of land to be used, developed, or built upon as a unit.

Solid Waste: Refuse, garbage and other discarded items of appliances or objects not intended for salvage or resale, e.g., but not necessarily limited to kitchen wastes or broken furniture, refrigerators and stoves.

Special Use Permit: A permit for special uses which must be approved by the Town Board, granting permission to the enforcement officer to issue a land use permit.

Special Use: A use of land which requires a review and approval of the Town Board prior to the issuance of a special use permit by the Town Board or a land use permit by the enforcement officer.

Structure: Anything constructed or erected, the use of which requires location on the ground, or attachment to something located on the ground.

Use: The purpose or activity for which land structures are designed, arranged, or intended, or for which land or structures are occupied or maintained.

Variance: Any departure from the strict letter of this law granted by the board of appeals to a particular piece of property.

Wind Power Generating Facility, Major: Wind generating facility, which generates original power on site to be transferred to a transmission system for distribution to customers. The definition of the wind power generating facility shall not include minor wind power generating facilities.

Wind Power Generating Facility, Minor: Wind generating facility, which generates original power on site that are erected and used primarily for private use.

Wind Test Tower: A structure that is erected for the purpose of measuring wind speed and strength.

ARTICLE C. LAND USE MAP

Section 1. Districts

For the purpose of this law, the Town of Montague is hereby divided into the following districts:

- RR - Rural Residential
- F - Forest

Said districts are shown, defined and bounded on the map accompanying this law entitled "Land Use Map", dated June 9, 1987 and filed in the office of the town clerk, which map and all explanatory matter thereon is by this reference incorporated into this law.

Section 2. Special Areas

"Special Area" are designed on the Land Use Map pursuant to the provisions of the Tug Hill Reserve Act, Chapter 486 of the New York State Laws of 1992. All governmental agencies, boards, commissions, and authorities, prior to final action on a proposed development or review of a proposed development within a designated special area which would directly affect the special area and would change the basic nature of Tug Hill, shall consult with the Town Board about said development.

ARTICLE D. DISTRICT LOT SIZE AND SETBACKS

All lots, principal and accessory structures and uses, and special uses shall conform to the following Standards in all land use districts:

Lot frontage	300 feet minimum
Lot area if not fronting on a public road	25 acres minimum, with a deeded 15 foot right-of-way or privately owned and maintained road.
Setback of structures from centerline of public road.	70 feet, minimum.
Setback of structures from lot lines.	25 feet, minimum.
Setback of wastewater and sewage sources from lot lines	50 feet, minimum.
Setback of principal or accessory uses from streams, ponds or wetlands.	100 feet minimum.

**Minor Wind Power Generating Facilities and Wind Test Towers.
Allowed in Rural Residential and Forest Areas:**

Setback from road centerline.	50 feet plus the height of the structure, minimum.
Setback from side and rear lots.	10 feet plus the height of the structure, minimum.

**Major Wind Power Generating Facilities.
Allowed in Rural Residential and Forest Areas by Special Use Permit:**

Setback from road centerline.	100 feet plus the height of the structure, minimum.
Setbacks from side and rear lots.	300 feet minimum.

1. Additional setbacks may be required by the Planning Board in order to provide for the public safety, health and welfare. The Planning Board may waive setbacks setback requirements from adjacent property lines if such adjacent properties are also participating in the siting of the wind power project.
2. Setbacks from any existing residential structure is 1500 feet minimum, unless the owner of said residential structure agrees to a lesser setback of 300 feet plus the height of the structure.
3. Landscaping and screening: Appropriate landscaping is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures from adjacent residences.
4. All electrical generating equipment, electrical storage equipment, transformers and related equipment shall be enclosed in a secure structure. A fence shall secure all such structures.

ARTICLE E. ADMINISTRATION AND ENFORCEMENT

Section 1. Land Use Permits Required

No land-use activity as listed below shall be carried out until a land use permit has been issued by the enforcement officer stating that the proposal building, structure, use of land, or development activity complies with the requirements of this law:

1. Erection of a new building or structure, or the re-erection or movement of a building or structure.
2. Placement of a mobile home as a structure;
3. Cement foundation work for a mobile home;

4. Change of the exterior structural dimensions or height of a building or structure of greater than 144 square feet of ground coverage;
5. Change in use of land, buildings or structures through the establishment of a new use, or through the expansion or enlargement of an existing use;
6. The resumption of any use which has been discontinued for a period of 12 months or longer;
7. Change in the contours of the land that could result in changes to storm water drainage pattern.
8. Excavation preparatory to the construction of a cellar for a building or structure.
9. Construction of a septic system, wastewater source, or outhouse for a new use.
10. Accessory buildings which are over 144 square feet of ground coverage or more, or are over 25 feet in height.
11. Minor Wind Power Generating Facilities and Wind Test Towers.

Section 2. Land Use Permit Exceptions

A land use permit shall not be required for the following:

1. Accessory structures less than 144 square feet of ground coverage, unless over 15 feet in height (all accessory structures shall comply with the provisions of this law);
2. Alterations less than 144 square feet of ground coverage;
3. Steps, entryways, or small porches and decks whether attached or detached or are open or enclosed, that are 80 square feet or less and comply with all setback requirements of this law;
4. Lawn gazebos less than 144 square feet of ground coverage;
5. Signs, fences or walls complying with Article F, Section 2 of this law;
6. Interior structural alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure (e.g., roofing, window replacement, siding replacement, foundation wall replacement or repair, etc.);
7. Minor accessory structures such as posts, sidewalks, driveways, flagpoles, playground equipment, wishing wells, outdoor fireplaces, home fuel tanks, outdoor wood furnaces, satellite dishes, doghouses, etc.;
8. The process of grading a lot preparatory to the construction of a building which will have an approved land use permit;
9. Bridges, docks or walkways across any pond, stream or water body;
10. Agricultural uses, commercial logging, conservation practices, and passive recreation uses;

11. Replacement or improvement of a septic system, wastewater source or outhouse for a preexisting use. Facilities for new uses require permits as indicated in Article E, Section 1, Subsection 9;

12. Wells

Section 3. Temporary Land Use Permits

1. Temporary land use permits may be issued by the enforcement officer for a period of six months. Such permits are conditioned upon agreement by the owner or operator to remove any nonconforming structure or equipment upon expiration of the temporary permit. Such permit may be renewed one time for a period of six months.

2. Temporary permits may be issued in the following circumstances:

- a. For one interim dwelling or recreational camping vehicle on an individual lot during the construction of a one-family dwelling on such lot.
- b. For one emergency dwelling or recreational camping vehicle on an individual lot, when the need for such dwelling resulted from the loss by flood, fire, or other disaster of an existing dwelling within the Town of Montague.
- c. For temporary uses and structures incidental to a construction project.

3. All interim or emergency dwellings or recreational camping vehicles shall meet the provisions of the NYS Sanitary Code.

Section 4. Allowed Uses Requiring a Land Use Permit

The following uses shall require a land use permit issued by the enforcement officer.

1. One-family dwelling
2. Multi-family dwelling
3. Accessory structure
4. Agricultural structure

Section 5. Application Procedure for Land Use Permits

1. Appliances for land use permits shall be submitted to the enforcement officer or town clerk and shall include three copies of a layout or plot plan showing the actual dimensions of the lot to be used; the size and location on the lot of existing and proposed structures and accessory structures; the setbacks of structures from all lot lines, road center lines, mean high water lines of streams, ponds and wetlands, and any other features of the lot; and such other information as may be necessary to provide for the enforcement of this law. This information, and other relevant application data, shall be provided on forms issued by the town clerk.
2. When establishing measurements to meet the required setbacks, the measurements shall be taken from the lot line, road center line, or nearest mean high water line to the furthestmost protruding part of the use or structure. This shall include such projecting facilities as porches, carports, attached garages, etc.
3. The enforcement officer shall take action to approve or disapprove the application within 15 days of the receipt of a completed application by the enforcement officer and the payment of all fees.
4. A land use permit shall expire one year from the date of issue if construction is not substantially started or the use has not commenced. Such permit may be renewed upon payment of all fees.
5. The enforcement officer shall return one copy of the application to the applicant, if all requirements of this law are met, and issue the permit. The permit shall be posted in plain view of the road at the site.

Section 6. Permit Fees

A fee as determined by Town Board resolution shall be paid for each application for a land use permit or special use permit approval. No permit shall be issued until full payment has been received by the town clerk. All fees are nonrefundable.

The Town Board and zoning board of appeals may retain consulting services from engineers, architects, landscape architects, lawyers, planners or other professional services during the course of rezoning, site plan reviews, special use permit reviews, and appeals conducted pursuant to this law. The applicant shall pay any actual costs attributable to a consultant's review of an application.

Section 7. Certificate of Compliance

No use or structure requiring a land use permit shall be occupied, used, or changed in use until a certificate of compliance has been issued by the enforcement officer stating the use or structure complies with the provisions of this law. All certificates of compliance shall be applied for coincidentally with the application for a land use permit and shall be issued after the use has been approved as complying with the provisions of this law. One copy is to be filed with the town clerk and one copy returned to the applicant within seven days of final approval.

Section 8. Enforcement Officer

This law shall be enforced by the enforcement officer, who shall be appointed by the Town Board. The duties of the enforcement officer shall be to:

1. Approve and disapprove land use permits and certificates of compliance;
2. Scale and interpret district boundaries on the Land Use Map;
3. Refer appropriate matters to the board of appeals and Town Board.
4. Revoke land use permits or certificates of compliance where there is false, misleading or insufficient information or where the applicant has varied from the terms of the application;
5. Investigate violations, issue stop work orders and appearance tickets, and refer violations to the town justice or the Town Board;
6. Report regularly to the Town Board the number and the nature of land use permits and certificates of compliance issued.

Section 9. Board of Appeals

1. A board of appeals may be appointed by the Town Board pursuant to Town Law Section 267, or through intermunicipal agreement pursuant to General Municipal Law Article 5-G and Town Law Section 284. The board shall prescribe rules for the conduct of its affairs. The board of appeals shall have all the power and duties prescribed by Town Law Section 267 and by this law.
2. The powers of the Board of Appeals are a follows;
 - A. Interpretation-Upon appeal from a decision by the enforcement officer, to decide any question involving the interpretation of any provision of this law, including exact location of a district boundary and determination of the presence of any alleged nuisance, adversely affecting adjacent properties.
 - B. Variances- To vary or adapt the specifications of any requirements of this law.
3. All applications for appeals shall be made and reviewed in compliance with the administrative regulations established by the board of appeals pursuant to Town Law Section 267.

Section 10. Filing of Records

1. A copy of all zoning permits, temporary zoning permits, certificates of compliance, notices of violation, and stop work orders shall be filed in the office of the town clerk by Friday proceeding the scheduled monthly meeting of the Town Board.

2. A copy of all decisions of the zoning board of appeals shall be filed in the office of the town clerk within five business days of the decision.
3. A copy of all special use permits issued by the Town Board shall be filed in the office of the town clerk within five business days of the decision.
4. All such records shall be available for the inspection of the public.

Section 11. Violations and Penalties

1. Whenever a violation of this law occurs any person may file a complaint in regard thereto. All such complaints shall be in writing and shall be filed with the enforcement officer who shall properly record and immediately investigate such complaint. If the complaint is found to be valid, the enforcement officer shall issue a stop work order requiring all work to cease until the violation is corrected. If the violation is not corrected within the specified time the enforcement officer shall take action to compel compliance.
2. Pursuant to Criminal Procedure Law Section 150.20 (3), the enforcement officer is hereby authorized to issue an appearance ticket to any person causing a violation of this law, and shall cause such person to appear before the town justice.
3. Pursuant to Municipal Home Rule Law Section 10 and Town Law Section 268, any person, firm, or corporation who commits an offense against, disobeys, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this law shall, upon conviction, be deemed guilty of a violation and subject to fine and/or imprisonment. Any violation of this law is an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$750 nor more than \$1000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation. Nonexclusive jurisdiction be and the same hereby is v ested in the appropriate justice court or courts located within the County of Lewis.
4. The Town Board may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this law.

ARTICLE F. GENERAL REGULATIONS

Section 1. Principal Uses and Structures per Lot

There shall be no more than one dwelling on a single lot except in the following circumstances:

1. The placement of a single temporary residence complying with the provisions of Article E, Section 3 of this law, or
2. Upon approval of a special use permit. Such permit may be issued where it can be demonstrated that any future subdivision of the lot, which would result in the dwelling being located on separate parcels of land, can be accomplished in such a way that the resulting dwellings will have setbacks in accordance this law, the resulting parcels will have lot area and road frontages in accordance with this law, and all sewage and wastewater systems will be in accordance with the NYS Sanitary Code.

Section 2. Line of Sight for Traffic Safety

No accessory structure, sign, fence, or wall shall be erected, or trees, bushes or hedges planted in such a manner as to confuse or obstruct the views of any traffic sign, signal, or device, or obstruct the visibility of vehicles entering or existing highways.

Section 3. Parking for Public and Commercial Facilities

All uses shall provide adequate off-road parking for all vehicles parked during typical peak use periods.

Section 4. Basic Performance Standards

No use in any district shall cause unreasonable nuisance adversely affecting adjacent property. This means objectionable noise, smoke, dust, air or water pollution, or any other nuisance must be restrained within property lines.

Section 5. Height of Structures

1. A proposed structure in any district shall not exceed 40 feet in height unless such a structure is for agricultural purposes or wind generation. (silos or wind power generating facilities).
2. Chimneys, communication transmission towers, television and radio masts and antennae, water tanks and spires shall not impair solar access to buildings or solar energy systems equipment. All transmission and reception towers, masts, or antennae shall be set back from all property lines a distance at least equal to the height of the structure.

Section 6. Solid Waste Disposal

No junkyard items or solid waste is permitted to be stored unenclosed in any district except where specifically authorized by this law. Solid waste or junkyard items shall either be disposed of on site by burial or be transported to a solid waste facility for receiving such junkyard items and solid waste within 10 days. In no such case shall junkyard items or solid waste be incinerated without the approval of the Town Board.

Section 7. Mobile Homes

1. Mobile homes shall be used only as a dwelling, except upon issuance of a temporary land use permit as provided for in Article E, Section 3 of this law.

2. All mobile homes shall be in compliance with standards equal to or more stringent than the U.S. Department of Housing and Urban Development (HUD) Manufactured Mobile Home Construction and Safety Standards, 24 CFR Part 3280 (1976). The applicant is responsible for providing adequate evidence that these standards have been complied with. The presence of a permanent certification label affixed to the mobile home by the manufacturer shall be presumptive evidence that the construction of a mobile home is in compliance with such standards. In all other respects, mobile homes shall be subject to all applicable portions of this law pertaining to single-family dwellings.

3. All mobile homes, other than temporary mobile homes approved pursuant to Article E, Section 3 of this law, shall be provided with the following:

- A. Anchoring;
- B. Concrete block or vinyl skirting;
- C. concrete pad 6 inches thick or greater;
- D. factory manufactured roof pitch of 3/12 (about 14 degrees) or more, with shingle, shingle like, or metal roof;
- E. exterior walls of traditional site-built appearance made of clapboards, shingles and shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles, and shakes; masonry; wood board-and-batten; or "Texture III" exterior plywood; but not including artificial masonry, or fake board-and-batten made from metal.

Section 8. Recreational Camping Vehicles

1. A recreational camping vehicle may be used as an interim or emergency dwelling upon approval of a temporary permit as provided for in Article E., Section 3 of this law.

2. A recreational camping vehicle may be used for overnight accommodation only in the following circumstances.

- A. When placed or occupied in an approved campground meeting the standards of

this law.

B. When placed or occupied on private land with the consent of the owner, for a period not to exceed 14 consecutive days, providing all health standards are met.

3. A single unoccupied recreational camping vehicle may be stored on the site of an existing dwelling subject to the following conditions:

A. It shall not cause a nuisance to neighboring properties.

B. It shall not detract from the property or create an unhealthy or unsafe condition through the allowance of weeds or grass to grow up tall around it.

C. Any overnight occupancy shall be in compliance with subsection 2b above.

Section 9. Water Related Areas

The following regulations apply to all land within 100 feet of streams, ponds and wetlands.

1. The dumping of waste materials, junk, refuse or anything that would adversely alter the quality of the water, or the character of the area is prohibited.
2. The construction of any principal or accessory use is prohibited.
3. Any alteration of the water body, such as impoundment, diversion or excavation requires the approval of a special use permit.
4. The alternation of any existing building requires the approval of a special use permit.

Section 10. Wetlands

Activity within 100 feet of areas shown of DEC maps as official freshwater wetlands shall be subject to the provisions of Article 24 of NYS Environmental Conservation Law, as amended.

Section 11. Sewage and Waste Disposal Standards

On-site sewage disposal systems shall comply with the specifications and standards set forth in 10 NYCRR Part 75, Appendix 75-A, entitled "Wastewater Treatment Standards--Individual Household Systems." Table 2 of this appendix is hereby modified for the purposes of this law to read that the minimum separation distances of all wastewater source components from property lines shall be 50 feet, minimum.

Section 12. Mobile Home Parks and Campgrounds

The Town Board shall place such appropriate conditions upon the approval of special use permits for mobile home parks or campgrounds as to ensure that site design, access roads, internal roads, entrances, park and recreation areas, landscaping and screening, and water and sewage disposal facilities are healthy, safe, and convenient to the residents of the mobile home park or campground as well as the residents of the surrounding area, and are compatible with the character of the neighborhood. All mobile home parks and campgrounds shall comply with the provisions of the Town of Montague Home Park and Campground Law, Local Law No. 2 of 1996, as revised.

Section 13. Home Business

Home business shall not cause noise or other disturbance which is a nuisance to neighboring properties, or detract from the property's primary use as a dwelling.

Section 14. Junkyards

1. All Class A junkyards shall comply with the provisions of the County of Lewis Junkyard Law, otherwise known as Lewis County Local Law No. 3 of 1992, as amended. A Lewis County Junkyard License shall be required, issued by the County of Lewis. Nothing in this law shall be constructed as so to preempt the enforcement of the County of Lewis Junkyard by the County of Lewis in the Town of Montague.
2. All Class B junkyards shall be in compliance with the standards of Section 136 of the General Municipal Law, insofar as the standards of such law are applicable.

Section 15. Unapproved Lots

No land use permit or certificate of compliance shall be issued for any use or structure on any lot which has been filed in the office of the county clerk after the effective date of the Town of Montague Subdivision Control Law, unless such lot is included in a plat which has been approved by the Town Board and filed with the office of the county clerk, or was exempt from said regulations at the time of filing.

Section 16. Road Access

No land use permit or certificate of compliance shall be issued for any use or structure on any lot which does not directly abut a public or approved private road, as required by Town Law Section 280-a. This abutment shall include at least 15 feet of road frontage suitable for access by emergency vehicles. Easements may be considered for access.

ARTICLE G. SPECIAL USE PERMIT REVIEWS

Section 1. Authority

The Town Board is hereby authorized pursuant to Town Law Section 274-b to review and approve, approve with modifications, or disapprove special use permits within the town as designated in accordance with the standards and procedures set forth in this law.

Section 2. Allowed Uses with Special Use Permit Required

The following uses shall be required to have a special use permit approved by the Town Board prior to the issuance of a land use permit or a certificate of compliance by the enforcement officer.

1. Recreation facility
2. Campground
3. Essential facilities
4. Major excavation
5. Home business
6. Public utility
7. Junkyard-class A and B
8. Mobile home park (prohibited F-Forest Districts)
9. Commercial uses-retail and wholesale offices, personal and consumer services, hotels, motels, boarding houses, bed and breakfast inns, restaurants, and manufacturing (prohibited in F-Forest Districts)
10. More than one dwelling on a single parcel of land
11. Alterations or reconstructions which area on the premises of a nonconforming use
12. Major Wind Power Generating Facilities (Allowed in Rural Residential and Forest Areas)

Section 3, Considerations

1. In considering and acting on a special use permits, the Town Board shall consider the public health safety, welfare, and comfort and convenience of the public in general, the residents of proposed developments, and the residents of the immediate surrounding area.

2. The Town Board may prescribe such appropriate conditions and safeguards as may be required in order that the results of its action shall, to the maximum extent possible, further the accomplishment of the following objectives:

- a. Compatibility: That the proposed use is of a character compatible with the surrounding neighborhood and in harmony with the comprehensive plan for the community.
- b. Public Facilities: That the public facilities to service the proposed use, including water supply, sewage disposal, drainage facilities, and road facilities, and any other utilities and public services are adequate for the intended level of use.

Section 4. General Review Criteria

The Town Board shall require that all special use permits comply with the following general review criteria:

- 1. that the site is designed in the interests of the public health, safety, welfare, and comfort and convenience of the public in general, the residents of the proposed development, and the residents of the immediate surrounding area;
- 2. that the site is designed so as to be in harmony with the comprehensive plan for the community.
- 3. that parking areas are adequate for the intended level of use, and arranged and screened so as to minimize negative impacts on adjacent properties;
- 4. that access to the site is safe and convenient and relates in an appropriate way to both the internal circulation on the site as well as the town road system;
- 5. that the internal circulation of the site is arranged so as to minimize impacts on the town road system;
- 6. that the site is suitably landscaped, and appropriately screened from adjacent properties and the road so as to protect the visual character of the area and to minimize negative impacts on adjacent properties and the neighborhood;
- 7. that any changes to existing drainage patterns, or increased drainage due to development activity has no negative impacts on adjacent property;
- 8. that proposed water supply and sewage disposal facilities are adequate;
- 9. that development activity complies with all other standards and requirements of this law.

Section 5. Application

The enforcement officer shall refer any application for a land use permit which requires a special use permit to the Town Board. An application for a special use permit shall be filed with the Town Board, and the appropriate fee as determined by the fee schedule adopted by Town Board resolution shall be

paid to the town clerk. Three copies of the application and site plans shall be provided which shall include the following:

1. Name and address of applicant and owner, if different, and of the person responsible for preparation of drawings;
2. Date, north point, written and graphic scale;
3. Boundaries of the site plotted to scale, including distances, bearings, and areas;
4. Location and ownership of all adjacent lands as shown on the latest tax records;
5. Location of all land use district boundaries;
6. Location, name, and existing width of adjacent roads;
7. Location, width, and purpose of all existing and proposal easements, setbacks, reservations, and areas dedicated to public use or adjoining the property;
8. Complete outline of existing or proposed deed restrictions or covenants applying to the property;
9. Existing hydrologic features;
10. Location, proposed use, and height and dimensions of all buildings including the number and distribution by type of all proposed dwelling units;
11. Location and design of all parking areas;
12. Description of the method of securing water supply and disposing of sewage, and the location and design of such facilities;
13. Location and design of all energy distribution facilities, including electrical, gas, and solar energy;
14. An environmental assessment form (EAF) and, where required a draft environmental impact statement (EIS);
15. Other elements integral to the proposed development as considered necessary by the Town Board.

Section 6. Waiver of Submission Requirement

The Town Board may waive any of the submission requirements listed above where it deems that the information is either not applicable or is unnecessary to a particular view.

Section 7. Environment Impact Review

The Town Board shall be responsible for the completion of an environmental assessment form (EAF) for each application for special use permit review. The Town Board shall be responsible for compliance with 6 NYCRR Part 617 (State Environmental Quality Review regulations) in cooperation with other involved agencies in the review of any special use permit.

Section 8. Review

Upon a determination by the Town Board that the application for a special use permit is complete, the board shall review the application taking into consideration the objectives for special use permit review as outlined about, and any other standards of this law.

Section 9. Variance

During the course of the review, should the Town Board determine that a special use permit approval may not be feasible without the granting of a variance as defined by Town Law Section 267, the Town Board may at any time refer the application to the board of appeals for the consideration of such variance.

Section 10. Public Hearing

The Town Board shall conduct a public hearing. Such public hearing shall be conducted within 62 days of the receipt of the completed application and shall be advertised at least five days before the hearing in a newspaper in general circulation in the town. A notice of the hearing shall be mailed to applicant at least 10 days before the hearing.

Section 11. Referral to County Planning Board

At least 10 days before the hearing, the Town Board shall refer all applications that fall within those area specified under General Municipal Law Section 239-m to the Lewis County Department of Planning prior to final action. This includes any use that falls within 500 feet of the following: the boundary of the town; a state or county park or recreation area; a state or county highway or expressway; a state or county owned drainage channel; or state or county land where a public building or institution is located. Such referral shall be to the Lewis County Department of Planning for their recommendations thereon. If the Lewis County Department of Planning does not respond within 30 days from the time it received a full statement on the referral matter, then the Town Board may act without such report.

Section 12. Final Action

1. Within 62 days of the public hearing, the Town Board shall act on the special use permit. The time within which the Town Board must render its decision may be extended upon mutual consent of the applicants and the Town Board. The action of the Town Board shall be in the form of a written statement to the applicant stating whether or not the special use permit is approved, approved with modifications, or disapproved. The decision of the Town Board shall immediately be filed in the office of the town clerk and a copy mailed to the applicant.
2. If the special use permit is approved, and upon payment by the applicant of all fees and reimbursable costs due the town, the Town Board shall endorse its approval on a copy of the application and site plans.
3. If the special use permit is approved with modifications, the Town Board shall specify in the statement all modifications to be made. Upon payment by the applicant of all fees and reimbursable costs due to town, and upon approval of the modified application and site plans, the Town Board shall endorse its approval on a copy of the application and site plans.
4. If the special use permit is disapproved, the statement shall contain the reasons for such findings. In such case, the Town Board may recommend further study of the application and resubmission after it has been revised or redesigned.

Section 13. Report to County Planning Department

The Town Board shall report to the Lewis County Department of Planning on its final action within 30 days of that event.

ARTICLE H. NONCONFORMITIES

Section 1. Intent

The intent of this article is to recognize ("grandfather") lots, structures and uses of land and structures which legally existed prior to the enactment or subsequent amendment of this law which would be prohibited or unreasonably restricted by the requirements herein. All rights of nonconformity shall continue regardless of the transfer of ownership of nonconforming lots, structures or uses.

Section 2. Nonconforming Lots

Any lot held under separate ownership prior to the enactment or amendment of this law, and having a frontage or area less than the minimum requirements set forth in this law, may be developed for any use allowed in the district in which it is located provided that such lot has sufficient size to undertake development which will:

1. Maintain the required minimum front setback;

2. Maintain at least 2/3 of the required minimum side setback.

Section 3. Nonconforming Structures

No structure which by the enactment or amendment of this law is made nonconforming or placed in a nonconforming situation with regard to setbacks, height or any requirement of this law, other than the use to which it is put, shall be changed so as to increase its nonconformity. If a structure is nonconforming as to use, see Section 4 below. Any such nonconforming structure may be used for any compatible use listed for the district in which it is located as designated in this law.

Section 4. Nonconforming Uses of Land or Structures

Any use of land or structures which by the enactment or amendment of this law is made nonconforming may be continued on the premises and to the extent preexisting provided that:

1. No nonconforming use shall be increased in size so as to occupy a greater area of land or floor area that was committed to the nonconforming use at the time of such enactment or amendment;
2. No nonconforming use which has for any reason been discontinued for a period of one year or more shall be reestablished; and
3. A special use permit shall be required for any alteration or reconstruction which is on the premises of a nonconforming use.

Section 5. Nonconforming Structures Damaged or Destroyed

Any structure which is nonconforming as to use, setbacks, height or any other requirement of this law, which is damaged or destroyed by fire or other hazard, may be repaired, restored or reconstructed provided that such work is undertaken within one year of the date on which the damage or destruction occurred. No such work shall increase the nonconformity of the structure.

ARTICLE I. MISCELLANEOUS PROVISIONS

Section 1. Amendments

The Town Board may amend the provisions of this law upon compliance with the Municipal Home Rule Law, the State Environment Quality Review Act (6 NYCRR Part 617), where applicable, and Section 239-m of the General Municipal Law.

Section 2. Interpretation

Interpretation and application of the provisions of this law shall be held to be minimal requirements, adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this law differ from the requirements of any other lawfully adopted rules, regulations,

or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

Section 3. Separability

Should any article, section, subsection, sentence or clause of this law be decide by the courts ot be unconstitutional or invalid, such decision shall not affect the validity of the law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 4. Effective Date

The provisions of this law shall take effect upon filing with the Secretary of State.

ARTICLE J. TELECOMMUNICATION TOWERS

Sections 1. Telecommunication Towers

1. **Temporary Special Use Permit Required:** Telecommunications towers shall be sited only upon approval of a temporary special use permit issued for a maximum period of five years. Such permit application shall be reviewed by the planning board pursuant to the authority of New York State Town Law Section 274-b, and pursuant to the procedures of Article ?? of this law. The public hearing as provided for in Section ?? of this law may be waived. Such permit may be issued or extended upon proof by the owner or operator that 1) the facility is in use as a transmission facility, and 2) that there is a necessity for the tower at the particular location for which application is made. Where such temporary special permit is not renewed, the tower shall be removed from the premises within 60 days.
2. **Shared Use:** Shared use of existing towers shall be preferred to the construction of new towers. Where such shared use is unavailable, location of antennae on pre-existing structures shall be sought. An applicant shall be required to present an adequate report inventorying existing towers within a reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other pre-existing structures as an alternative to new construction. An applicant proposing to share use of an existing tower shall be required to document intent from an existing tower owner to share use. In the case of new towers, the applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers and to secure location of antennae on preexisting structures, as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.
3. **Setbacks:** Towers and antennae shall be setback form all lot lines a distance equal to the height of the tower plus 25 feet. Additional setbacks may be required to contain ice-fall or debris from tower failure on -site, and/or to preserve privacy of adjoining residential and public property. The normal setbacks for the district shall apply to all ancillary tower parts, including guy wire anchors and accessory facilities.
4. **General Aesthetics:** All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment. Accessory structures shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. **Lighting:** Towers shall not be artificially lighted except for 1) a single red aviation warning light on the top, or 2) as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding tree line and painted gray, green or black below the surrounding tree line unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
6. **Tower Design:** Whenever feasible, tower construction shall be a "monopole" design. Guyed towers shall be preferable to free-standing structures. All towers shall be fitted with anti-climb devices. Tower shall be designed to provide collocation by at least three providers, or designed so that they can be retrofitted to accommodate at least three providers unless such collocation is not feasible as demonstrated by competent engineering or technical proof.
7. **Signs:** Signs shall not be permitted on towers except for signs displaying owner contact information and safety instructions. Such signs shall not exceed five square feet in surface area.
8. **Vegetation:** Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
9. **Screening:** Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including roads, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten feet in height within two years of planting shall be provided to effectively screen the tower base and accessory structures. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
10. **Fencing:** The base of any tower and anchors on guyed towers shall be surrounded by an opaque security fence eight feet in height. Such fence shall enclose the base of the tower as well as any and all accessory equipment and structures.
11. **Access and Parking:** A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road standards may be waived in meeting the objectives of this section.
12. **Utility and System Connections:** All utility connections shall be installed beneath the ground surface. Where technologically feasible, connections between telecommunications towers and the system of which they are a part shall be made by use of land line cable rather than parabolic or dish antennas. When such antenna links are technologically necessary, they shall be located, painted and otherwise situated so as to minimize visual impacts. In no case shall the diameter of such an antenna exceed six feet.

13. **Financial Security for Demolition:** The owner/operator shall provide a demolition bond or other security acceptable to the town for the purpose of removing the facility in case the applicant fails to do so upon the revocation, expiration or the nonrenewal of the special use permit.
14. **Annual Inspection:** Towers shall be inspected annually on behalf of the tower owner/operator by a New York State licensed professional engineer for structural integrity and continued compliance with these regulations. A copy of such inspection report, including findings and conclusions, shall be submitted to the enforcement officer no later than December 31 of each calendar year.
15. **Annual Radiation Emission Certificate:** The owner/operator shall submit certification on an annual basis, signed by a New York State licensed professional engineer, verifying that such facility is in compliance with all applicable federal, state and local radio frequency radiation emission standards. Such annual certification shall be delivered to the enforcement officer during the month of December of each calendar year. This requirement shall be considered an implied condition to any site plan, special use permit and/or use variance granted for the facility.
16. **Maintenance:** All facilities shall be maintained in good order and repair. Routine maintenance and repair shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, except for emergency repairs which may be undertaken at any time with prior notice to the enforcement officer.
17. Any new Telecommunication Tower shall be constructed closer than 6 road miles from an existing Telecommunication Tower:

Definitions

Antenna: A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, and microwave communications. The frequency of these waves generally range from 10 hertz to 300,000 megahertz.

Telecommunications Tower: A structure on which transmitting and/or receiving antenna(e) are located.