

<b>Topic:</b>	Natural Resource Protection & Conservation
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Somers
<b>Year (adopted, written, etc.):</b>	1997
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Somers Scenic Resource Protection Ordinance
<b>Document Last Updated in Database:</b>	April 17, 2017

### ***Abstract***

The Scenic Resource Protection Ordinance seeks to safeguard the town's scenic resources, aesthetic, and cultural heritage, as embodied in the landscape and geologic features and improvements of the town. The regulation attempts to stabilize and improve property values in such scenic resource areas, preserve the semi-rural character of the town and promote traffic and pedestrian safety.

### ***Resource***

#### **ARTICLE I General Provisions**

##### **§ 138-1. Statutory authority.**

Pursuant to the General Municipal Law § 96-a of the State of New York and the Town Law of the State of New York, the Town Board of the Town of Somers hereby enacts a Scenic Resource Protection Ordinance.

##### **§ 138-2. Title.**

This chapter shall be known and may be cited as the "Scenic Resource Protection Ordinance of the Town of Somers, New York."

##### **§ 138-3. Findings; purpose; intent.**

A. The Town Board of the Town of Somers finds that many landscape and geologic features and improvements, as herein defined, having a special scenic character, including a special historic or aesthetic interest or value, have been altered or changed, notwithstanding the feasibility of preserving and continuing the use of such landscape and geologic features and improvements and without adequate consideration of the

irreplaceable loss to the people of the town of the scenic, aesthetic, cultural and historic values represented by such landscape and geologic features and improvements. In addition, distinct areas of landscape, geologic and improved features may be similarly altered or changed or have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the sense of the Board that the town should not disregard the scenic landscape, geologic and aesthetic features of the town and should not permit their destruction and in the alternative should further their preservation and creation.

B. It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and scenic use of landscape and geologic features and improvements of special character or aesthetic interest or value is a public necessity and is required in the interest of health, safety and general welfare of the people. The purpose of this chapter is to:

(1) Effect and accomplish the protection, enhancement and perpetuation of such scenic resources, landscape and geologic features and improvements which represent or reflect the elements of the town's background.

(2) Safeguard the town's scenic resources, aesthetic and cultural heritage, as embodied in the landscape and geologic features and improvements of the town.

(3) Stabilize and improve property values in such scenic resource areas.

(4) Foster civic pride in the beauty of the town.

(5) Protect and enhance the town's attractions of open space and scenic beauty to people and the support and stimulus to business thereby provided.

(6) Promote the use of scenic and aesthetic resources for the education, pleasure and welfare of the people of the town.

(7) Preserve the semirural character of the town.

(8) Promote traffic and pedestrian safety.

(9) Implement the objectives and policies of the Town Development Plan.

C. It is declared to be the intent of the Town of Somers to protect and conserve the scenic resources of the town, to ensure that the benefits found to be provided by the scenic resource, as set forth in this § 138-3, will not be lost for present and future generations and to protect the broader public interest.

D. These regulations are enacted with the intent of providing an equitable balance between the rights of the individual property owner to the free use of his property and the rights of present and future generations. Therefore, this chapter recognizes the rights of

the owners of property designated as a scenic resource to use their property for reasonable purposes consistent with these and other regulations and controls, provided that such use does not result in a significant loss or impairment to the scenic resource or the functions which they fulfill.

**§ 138-4. (Reserved)**

**ARTICLE II Identification and Designation**

**§ 138-5. Types of scenic resources.**

The Town Board of the Town of Somers hereby recognizes, identifies and creates the following types of scenic resources and designates them as worthy of protection:

- A. Roadways.
- B. Slopes.
- C. Ridgelines.
- D. Open fields and meadows.
- E. Water's edge.
- F. Cultural places.
- G. Trees and stands of trees.

**§ 138-6. View from legally accessible public property required.**

All property identified and to be considered for designation as a scenic resource by the Town Board shall be able to be viewed from existing roads, parks or legally accessible public property.

**§ 138-7. Procedure.**

From time to time the Town Board of the Town of Somers shall, on its own motion, identify and designate certain areas within the Town of Somers as a scenic resource of one of the types listed in § 138-5. The procedure for designation shall be as follows:

- A. Identification by Town Board. The Town Board shall identify a scenic resource within the town. The Town Board, where appropriate, shall seek the advice and counsel of other boards and officials in the furtherance of the designation process.
- B. Public hearing required. After the Town Board identifies a specific resource area, it shall hold a public hearing at which time the public, parties in interest and the owners of

the scenic resource shall have the opportunity to be heard regarding the proposed scenic resource designation.

C. Notice required. Notice for a public hearing on the designation of a scenic resource, except designation of scenic roadways, shall be provided as follows:

(1) After the Town Board identifies a potential scenic resource it shall notify all owners of the land upon which the resource is located and the owners of land adjacent thereto of the intent to designate the area a scenic resource. Such notice shall be sent by certified mail no less than 25 days before the scheduled date of the hearing. The notice shall contain the time, date and place of the public hearing, and state the intent to designate the area as a scenic resource.

(2) Such notice shall also be filed with the Town Clerk and be available for public inspection no less than 15 days prior to the scheduled date of the public hearing.

(3) Notice of public hearing shall be published in the town's official newspaper no less than 10 days in advance of the scheduled date of the public hearing. The notice shall be published at the expense and at the direction of the town.

(4) Personal service of the notice on the owner of the property/area of the proposed scenic resource within the time delivery requirements of Subsection C(1) above shall be deemed to satisfy the requirement of notice to the owner.

D. Notice required for scenic roadways. Notice for a public hearing on the designation of a scenic roadway shall be provided as follows:

(1) After the Town Board identifies a road as being worthy of scenic roadway designation, it shall notify all owners of property adjacent to the road section proposed for designation of the intent to designate the road as a scenic roadway. Such notice to the adjacent property owners shall be sent by first class mail and shall be sent no less than 15 but not more than 40 days prior to the scheduled date of the public hearing. The notice shall contain the time, date and place of the public hearing and state the intent to designate the road as a scenic resource.

(2) Such notice shall also be filed with the Town Clerk and be available for public inspection no less than 15 days prior to the scheduled date of the public hearing.

(3) Notice of public hearing shall be published in the town's official newspaper no less than 10 days in advance of the scheduled date of the public hearing. The notice shall be published at the expense and at the direction of the town.

E. Town Board action. After conducting the public hearing on the intent to designate a scenic resource, the Town Board shall approve or disapprove the designation according to its regular voting procedures.

## **§ 138-8. Designation criteria.**

A. General characteristics. A scenic resource shall be found to possess one or more of the following general characteristics:

- (1) Illustrative of a natural landscape feature, geologic feature or improvement representing the natural character and history of the town.
- (2) Possessing a unique overall quality of scenic beauty, scale, texture and form.

B. Specific characteristics. A scenic resource shall be found to have one or more of the following specific characteristics:

(1) Roadways.

- (a) The natural landscape on the edge of the roadway consists of dense forest edge with extensive, healthy or unusual variety of major rock outcroppings.
- (b) The roadway provides a scenic vista or a panoramic view over one or more of the other types of scenic resources identified in § 138-5.
- (c) The road has a narrow, winding quality linking it with the town's rural past.
- (d) The road has a special character defined in the Town Development Plan.
- (e) The road is bordered by a stone wall.

(2) Slopes.

- (a) A rise in elevation providing a focal point of a vista or elements of a panoramic view.
- (b) An elevation which because of steepness, geologic structure, water flow or vegetation is aesthetically pleasing.

(3) Ridgelines.

- (a) The crest of hills that are the focal points of vistas or are elements of a panoramic view.
- (b) Linear elements that define the horizon or define progressions of significant elevation.

(4) Open fields and meadows.

- (a) A large open area where the predominant vegetation consists of herbaceous growth and shrubs that provide a unique and distinct landscape scenery significantly different from the predominant wooded landscape of the town.

(b) The open field or meadow provides a visual link to the agricultural history of the town.

(c) The open field provides an important visual focus for stands of trees, stone walls or fences.

(5) Water's edge.

(a) Reservoirs, ponds, lakes and permanently running streams and brooks that are focal points of vistas or are elements of a panoramic view.

(b) The reservoir, pond, lake or permanently running stream or brook provides a reflective or aesthetically scenic view.

(6) Cultural places.

(a) Settings and locations, including buildings, walls, fences, cemeteries, markers, monuments, statues, other structures and the surrounding areas which provide a visual link to the culture and history of the town.

(b) Any historically unique or significant area, including the Business Historic Preservation District identified in Chapter 170, Zoning.

(c) Any property designated or eligible for designation on an official list of historic places.

(7) Trees and stands of trees.

(a) Unique trees with regard to speciation.

(b) Any tree or stand of trees with historic significance.

(c) Landmark trees, defined as any tree which is representative of a particular species in form, size (height, diameter breast height, crown width) and age-potential and has reached the limits of one of these characteristics, or is unusual based on its location or history, and is identified as contributing significantly to the character or visual amenity of the town.

### **ARTICLE III Use and Development**

#### **§ 138-9. Site plan approval required.**

The owner of the property that is the proposed site of activity affecting scenic resources shall apply for and obtain site plan approval from the Planning Board. Wherever site plan review is required by this chapter, such review and approval shall be made in accordance with Chapter 144 and § 170-114 of the Code of the Town of Somers, together with the additional review requirements of this Article.

### **§ 138-10. Conflicting provisions.**

If in any case the provisions of this chapter conflict with any other provisions of the Code of the Town of Somers, the provisions which impose the more stringent requirement shall apply.

### **§ 138-11. Compliance with other regulations.**

All development and improvement allowed by right or allowed by permit shall also conform to all rules and regulations contained in the Code of the Town of Somers and all other applicable laws and regulations.

### **§ 138-12. Planning Board review.**

A. General. Whenever site plan review by the Planning Board is required by this Article, the Planning Board shall consider the consistency of the proposed development or improvement with the declaration of public policy set forth in § 138-3. In addition, the Planning Board shall consider the consistency of the development or improvement with the provisions of § 138-13 and with the policies, objectives and recommendations of the Town of Somers Town Development Plan (Master Plan).

B. Coordination with other reviews. To the maximum extent possible, the site plan review, hearings and decision required under this Article shall be coincident with other procedures and applications that may be before the Planning Board related to the same proposed activity.

### **§ 138-13. Regulations for designated scenic resources.**

A. Scenic roadways. **[Amended 3-13-1997 by L.L. No. 2-1997]**

(1) Each property adjacent to a scenic roadway shall maintain an area 30 feet in width extending from the right-of-way line into the property in a state recognized by the Town Board in its designation of the scenic roadway. Within such area, there shall be no significant disturbance, such as building, grading or clearing, except as indicated below and subject to approval by the authorized municipal approval agency, as required:

(a) Access corridors to and from the property.

(b) Expansion of an existing structure, if such structure is located within 30 feet of the right-of-way line.

(c) Customary and/or minor landscaping activity within 30 feet of the right-of-way line.

(d) Placement of fencing within 30 feet of the right-of-way line, provided that such fencing does not interfere with scenic viewsheds.

(e) Repair or reconstruction of existing retaining walls or within 30 feet of the right-of-way line.

(2) The buffer shall closely resemble the natural appearance of the undeveloped land.

(3) The provisions of this subsection shall not apply to presently developed property in such designated areas; provided, however, that the character of what would be the thirty-foot vegetative buffer is maintained in its current state or is returned to a state similar to that required in Subsection A(1) above.

(4) Where the requirement of the thirty-foot-wide scenic roadway corridor presents an undue hardship or is an impossibility because of topography or other natural features of the property, the owner of the property may apply for relief through an application for site plan review to the Planning Board.

B. Slopes and ridgelines.

(1) Development, alteration or improvement of property containing a scenic slope or scenic ridgeline shall require an application for site plan review to the Planning Board.

(2) Development, alteration or improvement of property containing a scenic slope or scenic ridgeline shall preserve the scenic qualities and natural appearance of the scenic slope, including but not limited to:

(a) Minimizing the excavation and paving required for foundations and access to the slope or ridgeline site.

(b) Minimizing the disturbance of vegetation to only that which is absolutely necessary for the development or improvement.

(c) Minimizing the impact of development and improvement such that the natural elevations and vegetative cover of a scenic ridgeline shall be disturbed only if the crest of the ridge and the tree line at the ridge as viewed from legally accessible land remains uninterrupted either by positioning buildings and areas of disturbance below the ridgeline or by positioning buildings and areas of disturbance so that the roofline of the building is seen as a continuation of the natural tree line.

(3) The provisions of this subsection shall not apply to property developed prior to the designation of the scenic slope area or the scenic ridgeline to the extent that the property has already been developed. The provisions of this section shall, however, apply to all future alterations of existing development and improvements.

C. Open fields and meadows.

(1) Development, alteration or improvement of property containing a scenic open field or meadow shall require an application for site plan review to the Planning Board.



(2) Development, alteration or improvement of property containing a scenic open field or meadow shall preserve the existing character of the scenic resource, including but not limited to:

(a) Minimizing the impact of development and improvement such that structures and improvements are placed so as not to detract from the existing scenic significance of the open field or meadow as viewed from legally accessible land. Appropriate locations for development and improvement may include behind existing windbreaks, in woodlots existing on the site or on the fringes of the open field or meadow.

(b) Minimizing the excavation and paving required for foundations and access to the open field or meadow.

(c) Minimizing the disturbance of vegetation to only that which is absolutely necessary for the development or improvement.

(d) Retaining fences, stone walls and other features of open fields and meadows.

(e) Retaining open field and meadow vegetation.

D. Water's edge.

(1) Development, alteration or improvement of property along a scenic water's edge shall require an application for site plan review to the Planning Board.

(2) Development, alteration or improvement of property along a scenic water's edge shall preserve the scenic qualities and natural appearance of the scenic resource, including but not limited to:

(a) Minimizing the impact of development and improvement so as to not detract from the existing scenic significance of the water's edge.

(b) Minimizing the excavation and paving required for foundations and access near the water's edge.

(c) Minimizing the disturbance and destruction of the natural shore features, including the retention of rocks, vegetation and other natural water's edge features.

(3) The provisions of this subsection shall not apply to property developed prior to the designation of the scenic water's edge to the extent that the property has already been developed. The provisions of this subsection shall, however, apply to all future alterations of existing development and improvements.

E. Cultural places.

(1) Development, alteration or improvement of property that encompasses a scenic cultural place shall require an application for site plan review to the Planning Board.

(2) Development, alteration or improvement of property that encompasses a scenic cultural place shall preserve the existing character and qualities of the scenic resource, including but not limited to:

(a) Minimizing development, alterations and improvements that are inconsistent with the specific scenic, cultural or historical significance of the site.

(b) Minimizing the disturbance and destruction of those structures, improvements and landscape features, including walls, fences, cemeteries, monuments, markers and statues of scenic cultural significance.

(c) Undertaking maintenance of the place to enhance its scenic cultural value.

(3) The provisions of this subsection shall apply to all development, improvement and alteration of a scenic cultural place.

F. Trees and stands of trees.

(1) Development, alteration or improvement of property containing scenic trees or stands of trees shall require an application for site plan review to the Planning Board.

(2) Development, alteration or improvement of property containing scenic trees or stands of trees shall preserve the scenic qualities and natural appearance of the trees, including but not limited to:

(a) Minimizing the impact of development, alteration or improvement such that structures and improvements are placed so as not to detract from the existing scenic significance of the scenic trees or stands of trees as viewed from legally accessible land.

(b) Minimizing the excavation, paving and building within close proximity to the scenic resource.

(c) Minimizing the disturbance of vegetation to only that which is absolutely necessary for the development, alteration or improvement.

(d) Limiting any injury, destruction or removal of the scenic trees or stands of trees, to only that which is absolutely necessary for the development, alteration or improvement.

(3) The provisions of this subsection shall apply to all development, improvement and alteration of any site containing scenic trees or stands of trees.

## **ARTICLE IV Appeals and Enforcement**

### **§ 138-14. Rehearing and appeals.**

A. Rehearing by the Planning Board. Any person making application under the review procedures of Article III and aggrieved by the Planning Board's decision of said application may seek a rehearing by the Planning Board within 20 days from the filing of said decision. Upon receipt of the request for rehearing, the Planning Board shall set a time within 30 days thereafter when a rehearing will be heard. Public notice shall be given in the town's official newspaper no less than 10 days prior to such date.

B. Appeal. Any decision or order of the Planning Board pursuant to this chapter may be reviewed at the insistence of any affected person to the Somers Zoning Board of Appeals in accordance with Article XIX of Chapter 170.

### **§ 138-15. Penalties for offenses.**

#### A. Civil sanctions.

(1) Any person found violating any provision of this chapter or conditions duly imposed pursuant thereto shall be served by the Building Inspector with a written notice stating the nature of the violation and providing a specified time within which the violation shall cease and satisfactory corrective action taken by the violator.

(2) Any person who is found to have violated, disobeyed or disregarded any provision of this chapter shall be liable to the people of the Town of Somers for a civil penalty not to exceed \$10,000 for every such violation, to be assessed by the Town Court, after a hearing or opportunity to be heard before the Town Court.

(3) The Town Court shall have the power, following a hearing, to direct the violator to cease violation of the chapter and satisfactorily restore the affected area to its condition prior to the violation or otherwise complete the terms and conditions of the permit. The Town Court may order the use of all or part of any performance bonds to complete, restore or otherwise improve the affected area.

#### B. Criminal sanctions.

(1) Any person found violating any provision of this chapter or conditions duly imposed pursuant thereto shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000.

(2) For a second and each subsequent offense, such person shall be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of no more than six months, or both.

(3) Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

(4) The Town Attorney shall prosecute any person alleged to have violated the provisions of this chapter and shall seek equitable relief to restrain any violation or threatened violation of its provisions.

### **§ 138-16. Existing or prior development or improvements.**

The provisions of this chapter shall not apply to any development, alteration or improvement of property containing a designated scenic resource for which final approval shall have been obtained and not expired and the approved work not completed prior to the designation by the Town Board of said scenic resource. As used in this section, the term "final approval" shall mean:

A. In the case of the subdivision of land, conditional approval of a final plat as the term is defined in § 276 of the Town Law.

B. In the case of a site plan not involving the subdivision of land, adoption by the Planning Board of a resolution granting approval.

C. In those cases not covered by Subsection A or B above, the issuance of a building permit or other authorization for the commencement of the development, alteration or improvement of property or for those developments, alterations or improvements for which the Town of Somers does not require such permits, the actual commencement of the development, alteration or improvement of property.

### **§ 138-17. Amendments.**

This chapter may be amended by the Town Board after due notice and public hearing.

### **§ 138-18. Severability.**

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or as determined by such judgment.

### **§ 138-19. When effective.**

This chapter shall take effect 10 days after publication.