

TOWN OF SHERMAN

SCENIC ROADS ORDINANCE

BE AND IT IS HEREBY ORDAINED THAT:

Section 1. AUTHORITY

Pursuant to the provisions of Section 7-149a of the Connecticut General Statutes, as amended, the Planning and Zoning Commission of the Town of Sherman may designate town roads or portions thereof as scenic roads. No state road or portion thereof and no private road may be designated as a scenic road under this ordinance.

Section 2. CRITERIA FOR DESIGNATION

A. To be designated as a scenic road, a road or portion thereof must be free of intensive commercial development and intensive vehicle traffic and must meet at least one of the following additional criteria:

- (1) It offers scenic views;
- (2) It is bordered by mature trees or stone walls;
- (3) It blends naturally into the surrounding terrain;
- (4) It parallels or crosses over brooks, streams, lakes or ponds;
- (5) The traveled portion is no more than twenty (20) feet in width;
- (6) It is unpaved.

B. No road or portion thereof may be designated as a scenic road unless 1) the Board of Selectmen has filed a written statement with the Planning and Zoning Commission concurring with the designation of such road as a scenic road; and 2) the requirement for the filing of a written Statement(s) of Approval

by the owners of a majority of lot frontage abutting said road or applicable portion thereof has been satisfied as provided for by Section 3.A.3 of this ordinance.

Section 3. PROCEDURE FOR DESIGNATION

The Planning and Zoning Commission may on its own initiative, or upon recommendation of the Board of Selectmen, consider a road or portion thereof for designation as a scenic road hereunder. Alternatively, any property owner who owns land within the Town may file an application with the Planning and Zoning Commission for designation of a highway or portion thereof as a scenic road.

A. Property Owner Application: Property owners seeking scenic road designation shall submit an application requesting Scenic Road designation to the Planning and Zoning Commission and shall simultaneously file a verified copy thereof with the Town Clerk (for public inspection) and with the First Selectman. The application shall contain the following information:

(1) The name of the road sought to be designated or a description of such portion or portions of a road sought to be designated, together with a statement of the total length of said road or such portion or portions thereof.

(2) A description of those characteristics of the road or portion of a road which qualify it for scenic road status, including, but not limited to, the criteria the road satisfies as set forth in Section 2.A of this ordinance.

(3) *Statement of Approval:* A written statement of approval signed by at least fifty-one percent (51%) of the property owners abutting the road or portion of

road who collectively own at least fifty-one percent (51%) of the lot frontage abutting the road or portion thereof, stating that they approve of designating the road or portion of road as a scenic road. The written Statement of Approval shall include immediately above or next to each signature, the printed or typewritten name of the person whose signature has been affixed thereon.

(4) The names and addresses of all owners of lot frontage abutting the road or portion thereof and the length of their frontage along the road.

The First Selectman shall forward the Statement(s) of Approval to the Town Assessor. The Town Assessor shall verify the ownership and the total lot frontages of those signing the Statement(s) of Approval, shall verify that said total lot frontage constitutes a majority of lot frontage abutting the highway or portion thereof to be designated as a scenic road and shall submit such verification to the First Selectman and to the Planning & Zoning Commission within fourteen (14) days from the date that the Assessor received the Statement(s) of Approval from the First Selectman.

B. Commission Initiation: If the Planning and Zoning Commission initiates the scenic road designation procedure either upon its own initiative or upon recommendation of the Board of Selectmen, it shall file with the Town Clerk for public inspection, and with the First Selectman, the above listed data at least ten (10) days prior to taking any further action on such designation.

C. Decision Process: Upon receipt of an application for scenic road designation, or upon its own initiative, and when all

necessary information is complete, the Planning and Zoning Commission shall consult with the Board of Selectmen and may, if it deems appropriate, hold a public hearing on the scenic road designation.

If a public hearing is held, such hearing shall commence within sixty-five days after receipt of such application or, when applicable, within sixty-five days of the date that the Planning and Zoning Commission itself initiates the scenic road designation procedure. Any such public hearing shall be completed within thirty-five days after such hearing commences and all decisions on such scenic road designation shall be rendered within sixty-five days after completion of such public hearing. If a public hearing is not held, a decision on the proposed scenic road designation shall be rendered within sixty-five days after receipt of such application, or when applicable, within sixty-five days after the Planning and Zoning Commission itself initiates the scenic road designation. For purposes of this section, the date of receipt of an application for scenic road designation shall be the day of the next regularly scheduled meeting of the Planning and Zoning commission immediately following the day of submission of such application or thirty-five days after submission, whichever is sooner.

The Planning and Zoning Commission decision shall be based upon the criteria set forth in Section 2 of this Ordinance. The Commission shall state the basis for the designation or non-

designation of scenic road status on its record and shall include either a detailed description of the special features which make the road so designated scenic or an accounting of the reasons why designation was denied.

Within fifteen (15) days after such decision is rendered, the Planning and Zoning Commission 1) shall published notice of its decision in a newspaper having a substantial circulation in the Town of Sherman, 2) shall send such notice by certified mail to the owner of each lot fronting on the road in question indicating that the road or portion thereof was or was not designated as a scenic road and the date and time of such action, and 3) if scenic road designation has been approved, shall cause a notice of the scenic road designation to be recorded on the land records of the Town of Sherman, which notice shall set forth the road name, the limits of the scenic road designation and the name of each lot owner owning land fronting on such scenic road as shown on the Town's assessment records.

Section 4. PROCEDURE FOR RESCISSION

The designation of a road or portion thereof as a scenic road may be rescinded by the Planning and Zoning Commission using the above procedures and provided that the owners of the majority of the lot frontage abutting the road or portion thereof concur with such rescission as set forth in this Ordinance.

Section 5. APPEAL

Any person aggrieved by a designation of a road or portion of a road as a scenic road, or by a rescission of such designation, pursuant to this ordinance, may appeal such designation or rescission, in the same manner and utilizing the same standards of review provided for appeals from the decisions of the Planning and Zoning Commission under Section 8-28 of the Connecticut General Statutes.

Section 6. SCENIC ROAD MAINTENANCE AND ALTERATION

A. Preservation Objective: Routine maintenance and the regulation of future alterations and improvements of designated scenic roads shall be carried out so as to preserve to the highest degree possible the scenic views, stone walls, mature trees and other characteristics that the Planning and Zoning Commission has identified as the basis for the scenic road designation.

B. Maintenance and Alteration: Scenic roads may be maintained in good and sufficient repair and in passable condition. Scenic road designation does not alter the Town's obligation to keep such roads reasonably safe for public travel.

1. *Routine Maintenance:*

Routine maintenance of scenic roads is permitted. Such maintenance shall include drainage system maintenance and correction of drainage problems; the grading, graveling, treatment and repair of existing roadway surfaces; removal of dead and seriously diseased or damaged trees and branches of trees; trimming of the tree branches that encroach on the traveled portion of the highway below the height needed to allow school buses and emergency vehicles to pass; trimming or removal of brush and removal of boulders or other obstacles that encroach on the traveled portion of the road; necessary minimal trimming for utility lines; trimming of brush to maintain sight lines; and such other activities as would clearly enhance and protect scenic views, stone walls, mature trees and other characteristics of the scenic road that the Planning and Zoning Commission has identified as the basis for the scenic road designation. Such maintenance shall not include widening of the traveled portion of the road; paving of dirt or gravel roads; changes of grade; road straightening; removal of stone walls; or removal of mature trees. On existing dirt or gravel roads, such maintenance to the traveled portion of the road shall be done in a manner to minimize root damage to bordering trees.

2. *Storm Damage and Natural Disasters:* In the case of a storm or natural disaster in which a scenic road becomes damaged, impassable or unsafe for public travel and access must be

provided, emergency repairs may be made as needed to restore the road to its original condition.

3. *Alterations and Improvements - Procedure:* The Board of Selectmen shall not alter, improve or otherwise authorize an alteration in or improvement to a scenic road, until it has complied with the following procedures. Alteration or improvement of scenic roads shall be discouraged except for reasons of public safety.

An application for alteration or improvement of a designated scenic road, shall be submitted to the Planning and Zoning Commission along with a suitable map showing in detail the proposed alteration or improvement.

At its next regularly scheduled meeting the Planning and Zoning Commission shall review the proposal. The Planning and Zoning Commission may require engineering or other technical reports documenting the need for the alteration and offering potential alternative solutions.

The Planning and Zoning Commission may hold a public hearing once the application for improvement or alteration is complete. The hearing shall follow the same procedure as for the designation of scenic roads as set forth in Section 3.B. of this ordinance. If no hearing is held, the final decision shall be made within 65 days after receipt of the completed application. If a public hearing is held, the final decision shall be made within 65 days after the close of the hearing.

4. *Standards for Alteration:* Recommendations by the Planning and Zoning Commission to allow alterations or improvements to a scenic road shall reflect the least possible damage to the existing character of such road. If alterations or improvements to a scenic road are recommended, then they shall conform to the following requirements:

a) Curves. Scenic values are correlated with the existence of curves which allow a constant unfolding of new and changing views. Curves shall not be eliminated until they are found to be a definite hazard within the concept of the specific road.

b) Grades. Hills and valleys are correlated with scenic values. They shall not be destroyed by cuts and fills unless absolutely essential for road safety.

c) Widths. A narrow road is correlated with high scenic beauty. Designated Scenic Roads should never be widened unless the amount of traffic, as determined by a factual study, demands it. For some rural roads, the amount of traffic that can be handled can be greatly increased by wide by-passes and turn-outs, constructed at intervals where they do the least damage to scenic values. Such by-passes and turn-outs shall be implemented wherever possible.

d) Side Slopes. Existing steepness of side slopes is preferable to reduction of gradient by extensive removal of soil and rock. This is especially true where the slope is fully stabilized and where it is rich with existing ground cover, shrubs and trees.

e) Vistas Roadside views of distant landscapes shall be preserved by suitable vegetation management techniques.

f) Vegetation. Vegetation on the side of the road shall be managed in such a way as to preserve wild flowers, shrubs of ornamental and wildlife values, and trees. Overarching isolated trees, and the canopy of a closed forest, can have extremely high scenic values.

g) Stone Walls. If stone walls or portions thereof must be removed, they shall be rebuilt along the untraveled portion of the Scenic Road.

i) Non-scenic activities and structures shall be forbidden, such as billboards; sand, gravel and salt piles; refuse disposal; and other unsightly situations. Where possible, scenic and preservation easements should be acquired from adjacent owners to insure the continuance of natural relief and historic values in the public interest.

j) Paving Criteria Paving of the unpaved traveled portion of a scenic road shall be permitted only if it is deemed by the Planning and Zoning Commission to be the only reasonable solution to a long-standing maintenance problem or necessary to keep such road reasonably safe for public travel.

A decision by the Planning and Zoning Commission to authorize alteration or improvement of a scenic road shall be based upon the criteria set forth in Sections 6.B.4(a) through 6.B.4(i) above.

5. *Rights of Landowners*: A scenic road setback that is contiguous with the Town's right of way is hereby established, it being the intent of this setback to preserve such scenic features of the road as mature trees, stone walls, and scenic views. The unauthorized removal of or injury to trees, significant vegetation, stone walls, drainage structures or facilities or other structures having scenic characteristics and located within the scenic road setback is expressly prohibited. This prohibition, however, shall not be deemed to prohibit a person owning or occupying land abutting a designated scenic road from:

(1) Maintaining and repairing the existing condition of and enhancing the scenic value of the land which abuts the scenic road or which is within the scenic road setback if the maintenance, repairs, or

enhancement occurs on land not within the right of way of the scenic road.

(2) Having access to his property by driveway or subdivision road that encroaches within the highway right-of-way or within the scenic road setback, provided that such encroachment is constructed so as to safeguard, to the extent practicable, the road's scenic features as identified by the Planning and Zoning Commission and provided that a permit has first been issued by the Board of Selectmen authorizing such encroachment.

Activities not exempt under subsections (1) and (2) of this subparagraph 5 shall require a permit issued by the Board of Selectmen.

Section 8. ENFORCEMENT

Any person who violates, and any property owner whose property gives rise to a violation of any provision of this ordinance shall be subject to a fine of one hundred dollars (\$100.00) for each day that such violation continues; and shall also be subject to any and all civil remedies, including temporary and permanent injunction, which may be available to the Town to abate such violation. In addition and without limitation, the Board of Selectmen may refer the violation for criminal prosecution under the provisions of the Connecticut General Statutes.

Section 8. SEVERABILITY

If any portion of this ordinance shall be found not to be constitutional or otherwise defective by a court of competent jurisdiction, such holding shall not be deemed to invalidate the remainder of this ordinance.

Section 9. EFFECTIVE DATE

This ordinance shall take effect August 15, 2005.