



APPENDIX 24-A

Town of Somerset Zoning Ordinance, Including Solar Law

Chapter 96**EXCAVATIONS**

[HISTORY: Adopted by the Town Board of the Town of Somerset 5-10-1988 by L.L. No. 1-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 205.

§ 96-1. Intent.

- A. This chapter is adopted to protect the health, safety and welfare of residents of the Town of Somerset and is intended to mitigate adverse impacts which may be caused by excavation of material within the Town of Somerset.
- B. This chapter shall regulate the excavation of materials, as defined herein, within the territory of the Town of Somerset, outside of the Village of Barker, and is intended to control the location of such excavation, together with the operation of such excavation, where permitted herein.

§ 96-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT — That person making application for a permit and who is responsible for fulfilling the requirements for the restoration plan and all rules and regulations promulgated hereunder. If the "applicant" is other than the property owner, written proof must be presented showing authorization from the property owner to the "applicant."

APPURTENANT ACTIVITIES — All on-site operations involved in the treatment, processing or further fabrication of soil, sand, gravel or natural deposits, including washing, sedimentation ponds, grading, sorting, grinding, concrete batching plants, asphalt mixing plants and aggregate dryers.

BUFFER — Trees, hills, fences, berms or other natural or artificial features which are located so as to conceal or separate the excavation site and related activities from other land uses and to reduce the negative effects on these land uses of noise, glare, dust, visual ugliness and other factors associated with the excavation site and related activities.

EXCAVATION — A cavity, hole, mine, pit or quarry on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, shale or other natural minerals or the topsoil therefrom.

FARM — An area of land of a minimum of 10 acres which is used for gain in the raising of agricultural products, including crops, livestock, poultry or dairy products, and such use properly zoned.

MINE — Any pit or underground workings from which any mineral is produced.

MINERAL — Aggregate, clay, gravel, sand, shale, stone or any other solid material of

commercial value found in or on the earth.

OPERATOR — Any owner, lessee or other person who operates, controls or supervises the operation.

OWNER — That person having title to the tract of land.

PERSON — Any individual, public or private corporation, political subdivision, government agency, partnership, association, trust, estate or any other legal entity.

PLANNING BOARD — The Planning Board of the Town of Somerset.

RESTORATION — The reparation to an environmentally acceptable natural state of an area which has undergone physical change due to excavation and related activities as reviewed by the Town Engineer and approved by the Planning Board of the Town of Somerset.

TOPSOIL — Surface earth, including the organic layer in which most plants have their roots.

§ 96-3. Applicability.

This chapter shall apply to all territory within the Town of Somerset, outside of the Village of Barker, whether or not said excavation is governed by any other state or federal rule or regulation. Where more than one law applies, the more stringent shall control.

§ 96-4. Exceptions.

The following operations and uses are hereby excepted from the application of this chapter:

- A. Excavations or removal of stone, gravel, clay, sand, shale, subsoil or topsoil incident to highway, sidewalk or driveway construction to the extent that said materials are removed solely from the bed of said highway, sidewalk or driveway.
- B. The moving of stone, gravel, clay, sand, shale, subsoil or topsoil from one part of a premises to another part of the same premises incident to the construction of a building or other improvement of land or incident to landscaping.
- C. Removal of excess stone, gravel, clay, sand, shale, subsoil or topsoil from the area of a subdivision granted final approval by the Planning Board of the Town of Somerset, provided that any such removal is in accordance with plans and specifications approved by said Planning Board.
- D. Construction of sewage disposal systems.
- E. Any noncommercial excavation operation conducted by the Town of Somerset, including the cleaning of ditches by the Highway Department and/or official of the Highway Drainage District or their authorized agent.
- F. Construction of drainage facilities, ponds of less than one acre or farm lagoons of less than five acres on a farm as defined in § 96-2 which must be shown on a plan approved by the Soil Conservation Service of the County of Niagara. Such plan must be reviewed by the Planning Board to determine conformance with this

section.

§ 96-5. Permit requirements; restrictions.

- A. No excavation shall be permitted within the Town of Somerset in any use district other than the Industrial (I) District or the General Industrial (GI) District under these or any other Town regulations.¹⁶ [Amended 3-11-1997 by L.L. No. 3-1997; 6-13-2000 by L.L. No. 2-2000]
- B. Any other excavation permitted herein must be pursuant to a written permit or renewal thereof granted under authority of this chapter, subject to the following conditions:
- (1) Each application for a permit or renewal shall be filed with the Town Clerk of the Town of Somerset, which application shall be in substantially the form of application approved by the Town Board. The applicant must file 12 duplicate copies of such application.
 - (2) Proof by deed or otherwise of ownership of property must be submitted.
 - (3) Statement as to period of time required to complete the proposed excavation, including restoration, must be submitted.
 - (4) Statement as to the zoning classification of the land on which the excavation is to be conducted must be submitted.
 - (5) Survey of the land in question, together with a map showing the surrounding area sufficient to identify adjoining property, must be submitted.
 - (6) A map or survey at a scale of no smaller than one inch to 50 feet and prepared by a licensed professional engineer showing the following must be submitted:
 - (a) Existing topography at contour intervals of five feet or grid elevations to be tied into USGS benchmarks.
 - (b) Soil boring sufficient to demonstrate the type of material to be removed to the depth of the proposed excavation.
 - (c) Surface drainage patterns, including grades of all existing creeks.
 - (d) Location of all proposed and existing underground utilities and facilities.
 - (e) Profiles and cross-sections of premises before and after excavation.
 - (7) Prior to granting of a permit, the applicant must submit the following:
 - (a) Operations plan.
 - (b) Long-form environmental impact statement.
 - (c) Restoration plan.

16. Editor's Note: See Ch. 205, Zoning.

§ 96-6. Copies of application.

The Town Clerk shall forward a copy of the application to the following:

- A. Each member of the Town Board.
- B. The Chairman of the Planning Board.
- C. The Town Engineer.
- D. The Town Attorney.
- E. The Town Code Enforcement Officer.

§ 96-7. Public hearing; notice.

The Planning Board shall hold a public hearing, shall publish a notice in the official newspaper of the Town at least 10 days prior to said public hearing and shall post the same on the official signboard of the Town Somerset.

§ 96-8. Variances.

After the public hearing, the Planning Board may require any additional conditions to be met in addition to those listed herein, and the Planning Board shall have the power to vary standards and conditions required herein which, in its discretion, would result in unnecessary hardship to the applicant.

§ 96-9. Standards and conditions for permit.

- A. In approving or denying an excavation permit, the standards and considerations to be taken into account shall include but not be limited to the following:
 - (1) No excavation shall be permitted within 200 feet of any road right-of-way nor within 100 feet of any property line, nor shall any such excavation be permitted within 500 feet of any residential dwelling unit within the Town of Somerset.
 - (2) Whether such excavation and proposed installation plan are in accord with the intent of the Master Plan of the Town of Somerset.
 - (3) Whether such excavation will result in the creation of holes and pits which may be hazardous or dangerous.
 - (4) Whether such excavation will cause soil erosion or depletion of vegetation.
 - (5) Whether such excavation will render the land unproductive or unsuitable for agricultural or developmental purposes.
 - (6) Whether the excavation will impair the aesthetic or natural environment of the area of such excavation or the surrounding area.
 - (7) Whether such excavation will affect the character of surrounding land use.
 - (8) Whether such excavation will create excessive traffic or impair the quality of

existing facilities or drainage or will materially injure existing highways or roadways. The Planning Board may require construction of haul roads to alleviate this problem and may require maintenance of said roads to prevent emission of dust.

- (9) Whether the area excavation can be effectively restored and revegetated.
 - (10) Whether surrounding drainage areas will be adversely affected.
 - (11) Whether such excavation will be in the best interest of the Town of Somerset.
- B. The finding of the Planning Board that any one of the foregoing conditions will be injurious to the general welfare of the people of the Town of Somerset shall be grounds for denial of the special permit.
- C. After consideration of the foregoing conditions, the Planning Board may grant a permit for a period not to exceed two years, which may be extended on a yearly basis without the necessity of further public hearings upon a finding of the Planning Board that such extension will be in the best interest of the people of the Town of Somerset.

§ 96-10. (Reserved)¹⁷

§ 96-11. Certificates of insurance.

- A. Upon approval of the application but before issuance of the permit, the applicant shall file with the Town Clerk certificates of insurance evidencing the issuance of liability coverage in the following amounts:
- (1) Bodily injury: \$1,000,000.
 - (2) Property damage: \$1,000,000.
- B. Said insurance must be maintained throughout the term of the permit and until a certificate of compliance has been issued by the Town Board of the Town of Somerset. Said insurance must name the Town of Somerset and its agents as an additional insured.

§ 96-12. Fees.

- A. Permit fees.
- (1) Upon filing of the application, a nonrefundable filing fee of \$2,500 must be paid to the Town of Somerset. Prior to issuance of any permit pursuant to this chapter, the applicant must pay an additional fee based on the following:
 - (a) Up to 50 acres: \$2,500 plus \$200 per acre.
 - (b) Over 50 acres: \$7,500 plus \$100 per acre.
 - (2) The total sum shall be deemed a reasonable sum to cover costs of review and administration, no part of which shall be returnable to the applicant. Acreage

17. Editor's Note: Former § 96-10, Performance bond, was repealed 3-11-1997 by L.L. No. 3-1997.

shall be based on total area for the overall site plan, including newly relocated off-site ditches. Acreage calculations are to be made by the Town Board.

- (3) The fee for renewal of the permit shall be \$2,500 plus \$100 per acre up to 50 acres and \$3,750 plus \$50 per acre over 50 acres.

B. Excavation fee.

- (1) To assure the Town that the restoration takes place, Town streets are adequately maintained and rebuilt and the improvements required are satisfactorily completed, the Town shall require a fee payment of \$1 per cubic yard of all excavated material removed from the site. This sum shall be billed by the Town and paid by the permittee every six months. The first payment shall be made in advance upon issuance of the permit by payment based on the phasing schedule and computed by the Town Engineer. The Town shall split this excavation fee in two equal parts: 1/2 to be immediately paid over to the Town and used as the Town Board may determine; the other half of the excavation fee shall be placed in an interest-bearing escrow account.
- (2) The amount of the excavation fee, including the upfront payment, shall be determined by the Town. Calculations will be based on original baselines established by the approved surveyor and resurveyed at the semiannual inspection to determine the exact volume removed. The inspection and survey cost shall be paid out of the escrow account, as shall the emergency repairs of any Town roads, including restoration and/or reconstruction of said roads, as well as other reasonable costs incurred by the Town.
- (3) The excavation fee shall be paid within 30 days of receipt of the Town bill. Failure to pay within this time frame shall constitute cancellation of the permit and forfeit of performance bond and escrow fund. At the satisfactory conclusion of the excavation project, including the acceptance by the Town of all utilities and other requirements of this chapter having been met, all unused escrow funds and accumulated interest shall be returned to the developer along with a financial statement of all transactions.

§ 96-13. Nonconforming preexisting excavation.

- A. Any excavation which has been discontinued for a period of one or more years shall not thereafter be reestablished, and any additional excavation must be pursuant to the requirements of this chapter.
- B. Except as provided herein, a nonconforming use for excavation may be continued; provided, however, that such use must be terminated on or before the expiration of a period of time after the effective date of this chapter fixed for such termination. In the case of excavations, such period of time shall be a period of one year [12 months] from the date of the filing of this chapter with the Secretary of State.
- C. Any continuation of the excavation subsequent to that one-year period shall be subject to the terms and conditions and all of the requirements of this chapter.

§ 96-14. SEQR; filing of state permits.

Prior to the issuance of any permit, the applicant must apply to this Town for state environmental quality review (SEQR),¹⁸ and it is hereby declared that any excavation of material shall be a Type I action, and it is the intention of the Town Board or its agent to act as lead agent in relation to any and all applications under this chapter. Further, prior to the issuance of any permit under this chapter, the applicant must file with the Town all necessary permits required by the State of New York for such excavation when required.

§ 96-15. Prohibited acts.

In the Town of Somerset, no refuse, garbage or toxic waste of any kind shall be deposited in any area excavated pursuant to the requirements of this chapter.

§ 96-16. Control of excavations.

This chapter shall be deemed an exercise of power of the Town of Somerset to control excavation and to regulate the manner of construction and removal of material from draining and cleaning and operating and using lands in the Town for excavation purposes and to prohibit such excavations which do not comply with these regulations.

§ 96-17. Penalties for offenses. [Amended 9-10-1996 by L.L. No. 2-1996]

A violation of any provision of this chapter shall be punishable as a misdemeanor to the extent prescribed by law, and each violation shall result in a fine not exceeding \$500 for the first offense, a minimum of \$500 and a maximum of \$1,000 for a second offense within five years and a minimum of \$1,000 and a maximum of \$2,000 for a third or subsequent violation within five years or imprisonment for a period not less than 15 days and not more than one year, or both. Each week of a continued violation shall constitute a separate violation. Also, the Town Board, after five days' notice to the applicant, may modify, suspend or revoke the permit upon any violation of the conditions of that permit. Further, this chapter will authorize the Town Board to initiate a proceeding in the Supreme Court of the State of New York for injunctive relief in the event of a violation of any of the conditions or requirements contained herein.

§ 96-18. Conflicts with other provisions.

This chapter shall supersede any inconsistent law, rule or regulation of the Town of Somerset.

§ 96-19. Enforcement.

The Code Enforcement Officer or any other person designated by the Town Board shall be empowered to enforce this chapter and regulations set forth herein. The issuance of a permit and acceptance of the same by the applicant and landowners shall constitute permission for any authorized Town officer or agent to enter the property subject to the permit for inspection purposes.

18. Editor's Note: See Ch. 92, Environmental Quality Review.

Chapter 131**NOISE**

[HISTORY: Adopted by the Town Board of the Town of Somerset 9-13-2011 by L.L. No. 3-2011. Amendments noted where applicable.]

GENERAL REFERENCES

Animals — See Ch. 65.

§ 131-1. Declaration of policy.

- A. It is hereby declared to be the policy of the Town of Somerset, Niagara County, New York, to safeguard the right of its residents within the privacy of their homes to be free from unreasonably loud, intrusive, repetitive and/or otherwise annoying sounds. Problems concerning disturbance of peace and quiet by noise from various activities are best solved by thoughtful discussions and cooperative agreements between affected parties. However, to resolve remaining problems of noise which is disturbing to others, it is the policy of the Town of Somerset to establish standards, enforcement procedures and penalties.
- B. This chapter shall be liberally construed so as to effectuate the purposes described herein. Nothing herein shall be construed to abridge the emergency powers of the Town Board, or the right of any governmental entity to engage in any of its necessary or proper activities.

§ 131-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DBA — Unit representing the sound level measured with the A-weighting network on a sound level meter.

PROPERTY BEING USED FOR RESIDENTIAL PURPOSES — Occupied property which contains one or more dwelling units, including but not limited to single-family dwellings, multiple dwellings with attached or detached dwelling units, senior citizen housing, adult residential care facilities, as well as hotels and motels.

§ 131-3. Prohibited acts.

No person shall cause or permit to be caused by any means:

- A. Sound which causes the sound level to exceed 80 dBA between the hours of 7:00 a.m. and 11:00 p.m., nor 50 dBA between the hours of 11:00 p.m. and 7:00 a.m. on any property being used for residential purposes (other than the premises from which the sound emanates), including both the residence and the real property outside of the residence and forming a part of the residential property.
- B. The use of any sound-emitting device inside or outside of a structure whereby the

sound emitted from such device is audible on property being used for residential purposes at a point more than 100 feet from the real property boundary line of the property from which said sound emanates.

- C. The use or operation of any sound-producing device, or the production of sound by any other means, within 500 feet of any school, church, synagogue, mosque, temple or courthouse while the same is in session, or within 500 feet of any hospital, nursing home or medical facility at any time, when such sound would disturb a reasonable person of normal auditory sensitivities present in such structure or facility, provided that conspicuous signs are displayed indicating the location of such facility.
- D. The outdoor use or operation of any powered tool or equipment, including but not limited to saws, sanders, drills, grinders, lawn mowers or tractors, leaf blowers, or any other garden tools or equipment, audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day, so as to disturb the quiet, comfort or repose of a reasonable person of normal auditory sensitivities.
- E. The operation of any motor vehicle with a gross vehicle weight rating in excess of 10,000 pounds, or any auxiliary equipment attached to such motor vehicle, for a period longer than 15 minutes in any hour while the vehicle is stationary for reasons other than traffic congestion, so that the sound emanated therefrom is audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.
- F. The operation, repair, rebuilding, modifying or testing of any motor vehicle, motorcycle, motorboat, go-cart, ATV or minibike so as to disturb the quiet, comfort or repose of a reasonable person of normal auditory sensitivities on property being used for residential purposes.
- G. The use or operation of a refuse-collecting vehicle anywhere which, when collecting or compacting, projects sound which is audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.
- H. The owning, possessing or harboring of any animal or bird which shall make sounds which are audible on property being used for residential purposes for a continued duration in excess of 15 minutes or which shall disturb the quiet, comfort or repose of a reasonable person of normal sensitivities.
- I. The conduct of any construction activities, including but not limited to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private roadways, roads, parks, utility lines or other property, including related activities such as land clearing, grading, earthmoving, excavating, blasting, filling or landscaping, so as to project a noise therefrom so as to disturb the quiet comfort or repose of a reasonable person of normal auditory sensitivities on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.
- J. The making of any noise for advertising purposes in any street or public place to advertise any article, business, calling or profession by means of any horn,

megaphone, siren, bell, radio or any other sound-producing or sound-amplifying mechanism, instrument or device.

§ 131-4. Exceptions.

Section 131-3 shall not apply to the following:

- A. Municipally caused sounds.
- B. Sounds caused by normal vehicular, railroad, boat or air traffic (excluding noise by horns, radios or other noise-emitting devices).
- C. Sounds caused by emergency vehicles, emergency activities, or public warning devices.
- D. Sounds produced by vehicles and/or implements, or combinations thereof, being used for farm purposes, or sound produced by farm animals.
- E. Sounds caused by a vehicular horn or warning device when used in an emergency or warning situation.
- F. Sounds caused by parades, free concerts, celebrations, or events in municipal parks or public places, sporting events or carnivals, fairs, exhibitions, or fireworks displays sponsored by municipalities or other civic organizations, provided that such event shall take place between the hours of 7:00 a.m. and 11:00 p.m.
- G. Sounds caused by construction activity between the hours of 7:00 a.m. and 11:00 p.m.
- H. Sounds caused by church, synagogue, mosque, temple, or other noncommercial reasons for assembly, by organs, bells, or chimes, musical instruments, choirs, or the like, having duration of not more than two hours.
- I. Sounds caused by lawnmowers, leaf blowers, chainsaws, and other maintenance equipment when muffled in accordance with manufacturers' specifications, and while being used for property maintenance purposes between the hours of 7:00 a.m. and 11:00 p.m. or snowblowers when used at anytime.

§ 131-5. Enforcement; penalties for offenses.

This article may be enforced by any police agency. This provision shall not prohibit the bringing of a private action suit or the filing of an information by an individual. A violation of this chapter shall constitute an offense punishable by a fine of not more than \$250 or imprisonment for not more than 15 days, or both such fine and imprisonment. In addition, the Town shall be entitled to injunctive relief from a court of competent jurisdiction. Each day that such violation occurs shall be deemed a separate offense and punishable as such.

§ 131-6. Severability.

If any word, phrase or part of this chapter shall be deemed unconstitutional or unenforceable, the remainder of this chapter shall remain in full force and effect.

Chapter 205

ZONING

**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-9-1978.
Amendments noted where applicable.]**

GENERAL REFERENCES

Planning Board — See Ch. 44.

Bed-and-breakfast establishments — See Ch. 68.

Campgrounds — See Ch. 80.

Development fees — See Ch. 86.

Excavations — See Ch. 96.

Farming — See Ch. 98.

Flood damage prevention — See Ch. 104.

Infrastructure preservation — See Ch. 118.

Mobile/manufactured homes — See Ch. 125.

Subdivision of land — See Ch. 171.

Swimming pools — See Ch. 174.

ARTICLE I
General Provisions

§ 205-1. Scope.

This chapter limits and restricts the specified districts and regulates buildings and other structures therein according to their construction and the nature and extent of the use of land, so as to promote health, safety, morals and general welfare of the Town of Somerset, and provides penalties for the violation thereof.

§ 205-2. Title.

This chapter shall be known as and may be cited as the "Zoning Ordinance of the Town of Somerset, Niagara County, New York."

§ 205-3. Purpose. [Amended 9-10-1996 by L.L. No. 2-1996]

The purpose of this chapter shall be as set forth in § 263 of the Town Law.

§ 205-4. Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of public health, safety, comfort, convenience and general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of the law or ordinance or any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of law or ordinance, or by such rules, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.

§ 205-5. Conflict with other provisions.

Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or those imposing the higher standards shall govern.

§ 205-6. Amendments. [Amended 6-11-1985; 9-10-1996 by L.L. No. 2-1996]

- A. The Town Board may, in accordance with the Town Law, Article 16, § 264, from time to time on its own motion or on petition or on recommendation of the Planning Board or of the Board of Appeals, amend, supplement or repeal any or all of the regulations and provisions of this chapter. A petition requesting a change in regulations, district boundaries or in the other provisions of this chapter shall be typewritten and be signed and acknowledged by the person presenting it and shall be filed with the Town Clerk in triplicate.

- B. A notice of amendments or changes shall be published at least 10 days prior to such a meeting stating the time, place and date thereof in the official Town newspaper.
- C. A written notice of any proposed change or amendment affecting property within 500 feet of a boundary of an existing or proposed county or state highway right-of-way or any stream or drainage channel under the jurisdiction of the county shall be sent to the Niagara County Economic Development and Planning Department at least 10 days prior to the date of public hearing.
- D. A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any county or state park shall be given to the Regional State Park Commission having jurisdiction over such state park or parkway at least 10 days prior to the date of such public hearing.
- E. Referrals to County Planning Board.
 - (1) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any village, Town or county shall be given to the Clerk of such municipality and to the Clerk of the county and to the County Planning Board at least 10 days prior to the date of such hearing.
 - (2) Exceptions.
 - (a) This subsection pertains to actions that apply to real property, including the amendment of a Zoning Ordinance (including Zoning Map changes) or local law not having townwide effect, special use permits, approval of site plan, granting of use or area variances and such other authorizations which the Town, Zoning Board or Planning Board may issue under the provisions of any zoning ordinance or local law. Referrals of such matters to the Niagara County Planning Board shall no longer be required, subject to Subsection E(2)(b) and (c) herein, inasmuch as the parties are in agreement that said actions are of local, rather than intercommunity or countywide concern.
 - (b) Both the Town and the county reserve the right to request review of any specific matters.
 - (c) Actions immediately adjacent to a municipal boundary or park, as well as actions concerning corner lots on state or county highways, will continue to be referred to the county.
- F. In case, however, of a protest against such changes signed by the owners of 20% or more of the area of land included in such proposed change or of that immediately adjacent extending 100 feet therefrom or of that directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendments shall not become effective except by the favorable vote of 3/4 of the members of the Town Board.
- G. Any petition filed with the Town of Somerset requesting a change in regulation, district boundaries or any other provisions of this chapter shall be subject to a fee as set forth from time to time by resolution of the Town Board, which fee must be deposited with the Town Clerk of the Town of Somerset prior to the calling of a

public hearing for such relief. The fee shall be nonrefundable.¹

1. Editor's Note: The current fee schedule is on file in the office of the Town Clerk.

ARTICLE II Terminology

§ 205-7. Word usage.

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular. The word "district" includes the plural "districts"; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; the words "occupied" or "used" shall be construed as though followed by the words "or intended, arranged or designed to be used or occupied"; and the words "occupancy" or "use" shall be construed as similarly qualified. All minimum measurements pertaining to lots or spaces shall be exclusive of the rights-of-way of any and all highways, streets or roadways.

§ 205-8. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING OR USE — A subordinate use or building, the purpose of which is incidental to that of the principal use or building and on the same lot. Before there can be any accessory building or accessory use there must first be a principal use or principal building on the lot. **[Amended 12-12-2006 by L.L. No. 6-2006]**

ALTERATIONS — As applied to a building or a structure, a change or rearrangement in the structural parts or an enlargement, whether by extending on a side, increasing in height or the moving from one location or position to another.

ANIMAL HUSBANDRY — The keeping, grazing, feeding and care of animals other than household pets.

AUTO COURT — A building or a group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing accessory off-street parking facilities. A restaurant, tearoom or similar establishment located on the same premises as an "auto court" shall be considered as an accessory use. The term "auto court" includes facilities designed as tourist courts, motor lodges, motels and similar accommodations.

BASEMENT — A story partly underground and having half or more than 1/2 of its height above the average level of the finished grade at the front of the building.

BUILDING, PRINCIPAL — A building or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING — Any structure having a roof supported by columns, piers or walls, including tents, lunch wagons, trailers, dining cars, camp cars or other structures on wheels, and intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING AREA — The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

BUILDING DIRECTORY SIGN — A sign listing the name and location of all tenants in a structure. **[Added 9-10-1996 by L.L. No. 2-1996]**

BUILDING HEIGHT — The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of roof for flat roofs, to the deck line of a mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof.

BUILDING LINE — A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

BUILDING PERMIT — A permit issued by the Code Enforcement Officer stating that the purpose for which a building or land is to be used is in conformity with the uses permitted and all other requirements under this chapter for the zone in which it is located or is to be located. Use arrangement or construction not in compliance with this chapter or other applicable laws shall be a violation of this chapter. **[Amended 9-8-1998 by L.L. No. 3-1998]**

CAMPING GROUND — A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of camping trailers, tents or movable temporary dwellings, rooms or sleeping quarters of any kind.

CELLAR — A story partly underground and having more than 1/2 of its clear height below the average level of the finished grade at the front of the building.

CERTIFICATE OF OCCUPANCY — A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this chapter and such adjustments thereto granted by the Board of Appeals.

CLUBHOUSE — A building used to house a social, fraternal or service organization or club not organized or conducted for profit and which is not an adjunct to or operated by or in conjunction with a public tavern, cafe or other place of business.

CLUSTER DEVELOPMENT — A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs and maintaining a minimum amount of open space.

CODE ENFORCEMENT OFFICER — The officially established Code Enforcement Officer for the Town of Somerset.²

COMMERCIAL WIND-ENERGY SYSTEM — A wind-energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to solely supply electrical power into a power grid for sale. **[Added 7-11-2006 by L.L. No. 1-2006]**

CURB LEVEL — The officially established grade of the curb in front of the midpoint of the lot.

DUMP or LANDFILL — A place for the disposal, by abandonment, dumping, burial, burning, or by any other means, and for whatever purpose, of garbage, offal, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste materials of

2. Editor's Note: The definitions of "construction standards," added 9-10-1996 by L.L. No. 2-1996, as amended, was repealed 8-8-2000 by L.L. No. 3-2000.

any kind.[Added 6-13-2000 by L.L. No. 2-2000]

DWELLING, MULTIFAMILY — A building containing three or more dwelling units.

DWELLING, ONE-FAMILY — A building or dwelling unit designed for or occupied exclusively by one or more persons living as a single, nonprofit housekeeping unit, but said dwelling shall not include mobile/manufactured homes.[Amended 1-13-1998 by L.L. No. 2-1998]

DWELLING, TWO-FAMILY — A building containing two dwelling units.

DWELLING UNIT — One or more rooms providing living facilities for one family, including equipment for cooking and provisions for the same.

FACTORY MANUFACTURED HOME — A factory manufactured home which incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. The structure and/or components shall bear the insignia of approval issued by the New York State Fire Prevention and Building Code Council, which certifies that the home or component is in compliance with the requirements of Subchapter B of the New York State Uniform Fire Prevention and Building Code.[Added 9-10-1996 by L.L. No. 2-1996; amended 1-13-1998 by L.L. No. 2-1998]

FAMILY — One or more persons, related by birth, marriage or other domestic bond, occupying a dwelling unit and living as a single nonprofit housekeeping unit.

FARM — Any parcel of land which is used for gain in the raising of agricultural products, including crops, livestock, poultry or dairy products.

FARM BUILDING — Any building used for the housing of agricultural equipment, produce, livestock or poultry or for the incidental or customary processing of farm products, provided that such building is located on, operated in conjunction with and necessary to the operation of the farm as defined by this section. The term "farm building" shall not include "farm dwelling."

FENCE — An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials erected for the enclosure of yard areas.

FLOOR AREA TOTAL — The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the inside face of exterior walls or from the center line of walls separating two uses. Said areas shall not include areas below the average level of the adjoining ground, garage space or accessory space.

FREESTANDING SIGN — A single-faced or multi-faced sign affixed to a supporting structure or embedded in and extending from the ground or detached from the building. Any support structure shall be included in the sign area to the extent that it is larger than that necessary to support the sign.[Added 9-10-1996 by L.L. No. 2-1996]

GARAGE, PRIVATE — A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.³

GRADE, STREET — The officially established grade of the street upon which the lot fronts. If there is no officially established grade, the existing grade of the street at the midpoint of the lot shall be taken as the street grade.

HOME OCCUPATION — [Amended 9-10-1996 by L.L. No. 2-1996]

- A. A casual activity which is not intended to be the principal or sole source of income of the occupant. Such occupations shall include only those activities which will not exert an unsightly impact on the landscape and/or impact or change the character of the neighborhood. The following conditions are examples (noninclusive) of noncompliance with this chapter:
- (1) Vehicular traffic entering and leaving the premises for commercial/retail purposes regularly or on a daily basis.
 - (2) The parking of two or more vehicles (motor vehicles, trailers, etc.) not owned by the occupant for the purpose of commercial/retail trade.
 - (3) The hiring of employees.
- B. Examples of home occupations include the sale of firewood, fruits, vegetables, books, hand crafts, catalog sales (Avon, etc.), antiques and similar activities.
- C. Those activities which exhibit characteristics which are inconsistent with the conditions described herein shall require a commercial or other appropriate permit or a variance.

HOME PROFESSIONAL OCCUPATION — The office of a member of a recognized profession when conducted on residential property. Such occupations shall include but not be limited to those of doctors, lawyers, architects, engineers, artists, ministers and other recognized professional persons. **[Amended 9-10-1996 by L.L. No. 2-1996⁴]**

JUNKYARD — Two or more abandoned, disabled, dismantled or partly dismantled vehicles allowed to remain on a premises for a period of more than 30 days shall constitute a "junkyard." Also the storage, sale or abandonment of wastepaper, rags, scrap metal or discarded materials or the collecting, dismantling, storage, salvaging or abandonment of machinery or vehicles not in operating condition shall constitute a "junkyard" and is a violation of this chapter. When located in an A District, the storage of agricultural equipment, machinery and vehicles which are being used in farm operation shall not, for the purposes of this chapter, constitute a "junkyard." **[Amended 9-10-1996 by L.L. No. 2-1996]**

LOT — A parcel or area of land, the dimensions and extent of which are determined by the latest official records or by the latest approved map of a subdivision of which the lot is a part.

LOT AREA — An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating "lot area."

3. Editor's Note: The former definition of "public garages," which immediately followed this definition, was repealed 9-10-1996 by L.L. No. 2-1996.

4. Editor's Note: The former definition of "house trailer," which immediately followed this definition, was deleted 9-10-1996 by L.L. No. 2-1996.

LOT COVERAGE — That percentage of the lot area which is devoted to building area.

LOT WIDTH — The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

MAJOR MODIFICATION OF PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES — A modification of the height, silhouette and/or ground area of any telecommunications tower or telecommunications accessory structure and/or the addition of telecommunications antennas of a new provider to an existing tower. **[Added 2-11-1997 by L.L. No. 2-1997]**

MOBILE/MANUFACTURED HOME — A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The unit shall meet the requirements of manufactured home construction and safety standards as listed in the Code of Federal Regulations Housing and Urban Development, but not bear the insignia of approval issued by the New York State Fire Prevention and Building Code Council. **[Added 9-10-1996 by L.L. No. 2-1996; amended 1-13-1998 by L.L. No. 2-1998]**

MOBILE/MANUFACTURED HOME PARK — Any site, lot, field, plot, parcel or tract of land on which two or more mobile homes are parked or located and for which use said premises are offered to the public or to any person for a fee of any type, including cost sharing. **[Amended 1-13-1998 by L.L. No. 2-1998]**

MOTOR VEHICLE SERVICE STATION — Any building or land used to dispense, sell or offer automotive fuels, oils or accessories, including lubrication, washing, polishing or cleaning, and the replacement or installation of minor parts and accessories, major mechanical repair, body repair or painting. **[Added 9-10-1996 by L.L. No. 2-1996]**

NONCOMMERCIAL WIND-ENERGY SYSTEM — A wind-energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics which has a rated capacity of not more than 250 kilowatts and a total height less than 150 feet. **[Added 7-11-2006 by L.L. No. 1-2006]**

NONCONFORMING USE, NONCONFORMING STRUCTURE or NONCONFORMING LOT — A use or lot which was lawful or a building or structure which was lawfully situated on a lot prior to the adoption, revision or amendment of this chapter but which fails to conform to the requirements of the zone in which it is taking place or located by reason of such adoption, revision or amendment. **[Added 9-10-1996 by L.L. No. 2-1996]**

PARKING SPACE — An off-street space available for the parking of one or more motor vehicles and having an area of not less than 200 square feet per vehicle, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or public way.

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES — Commercial mobile services, unlicensed wireless services and common carrier exchange access services. **[Added 2-11-1997 by L.L. No. 2-1997]**

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICE FACILITY —

Persons, firms or corporations supplying personal wireless telecommunications service, including all equipment, apparatus, facilities and devices used in the supplying of personal wireless telecommunications service.[Added 2-11-1997 by L.L. No. 2-1997]

PLANNING BOARD — The Town of Somerset Planning Board.

PRINCIPAL USE — The main use to which a building or lot is to be used.

RECREATIONAL VEHICLE — See the definition of "recreational vehicle" in Chapter 80, Campgrounds.[Added 9-10-1996 by L.L. No. 2-1996]

RESTAURANT — Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, playfield or park operated by the agency or group or an approved vendor operating the recreational facilities for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

ROOMING HOUSE — A dwelling in which three or more persons, either individually or as families, are housed for hire with or without meals. A lodging house or boardinghouse shall be deemed a rooming house.

SIGN — Any device, structure or object for visual communication that is used for the purpose of bringing the subject thereto to the attention of others, but not including any flag, badge or insignia of any public, quasi-public, civic, charitable or religious groups.

SIGN AREA — The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines said sign.

SITE PLAN — A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SPECIAL PERMIT — The written authorization by the Planning Board to permit, in a given district, a property use which, because of its nature, location or effect on the surrounding neighborhood, warrants special evaluation of each individual case.[Added 9-10-1996 by L.L. No. 2-1996]

STREET — A public thoroughfare which has been dedicated or deeded to the public for public use and which has been improved in accordance with municipal standards.

STREET LINE — The dividing line between the street right-of-way and the lot. For the purposes of this chapter, where the street line is not readily determinable, the center line of the improvement or of the traveled way shall be used to compute the location of the street line.

STRUCTURE — A combination of materials to form a construction that is safe and stable and includes, among other things, stadiums, platforms, radio towers, sheds, storage bins, signs, swimming pools and fences which are more than 50% solid.

SWIMMING POOL, PRIVATE — A swimming pool operated as a secondary use to a residential dwelling unit or units and located on an individual residential lot.

SWIMMING POOL, PUBLIC — A public or privately owned pool open to the general public or on a membership basis and having appropriate dressing room facilities, recreation facilities and off-street parking areas.

TELECOMMUNICATIONS ACCESSORY STRUCTURE — Accessory buildings and structures, including base stations, designed and used to shelter telecommunications equipment and/or to support personal wireless telecommunications facilities.**[Added 2-11-1997 by L.L. No. 2-1997]**

TELECOMMUNICATIONS ANTENNA — An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission (FCC). Design examples of telecommunications antennas are described as follows: whip; panel; and dish.**[Added 2-11-1997 by L.L. No. 2-1997]**

TELECOMMUNICATIONS TOWER — A tower greater than 35 feet in height and which does not exceed 300 feet in height (including antenna) and which supports communication (transmission or receiving) equipment. The term "telecommunications tower" shall not include amateur radio operators' equipment as licensed by the FCC. Design examples of telecommunications towers are described as follows: self-supporting lattice; guyed; and monopole.**[Added 2-11-1997 by L.L. No. 2-1997]**

TEMPORARY USE — An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this chapter. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

TOTAL HEIGHT (also MAXIMUM OVERALL HEIGHT) — The height of the wind-energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.**[Added 7-11-2006 by L.L. No. 1-2006]**

TOWER — The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.**[Added 7-11-2006 by L.L. No. 1-2006]**

TOWER HEIGHT — The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.**[Added 7-11-2006 by L.L. No. 1-2006]**

TOWNHOUSE — One of a series of attached one-family dwelling units, each having a common wall between adjacent sections and having direct access to a private, individual and/or front yard designed as an integral part of each one-family dwelling unit.

USE — The specific purposes for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

WIND-ENERGY SYSTEM — The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.**[Added 7-11-2006 by L.L. No. 1-2006]**

WIND-ENERGY CONVERSION SYSTEMS — One or more mechanical devices, such as wind chargers, windmills or wind turbines, which are designed and used to convert wind energy into a form of useful energy for sale or redistribution to others.**[Added 7-11-2006 by L.L. No. 1-2006]**

WINDOW — An opening in a building to the outside other than a door which provides all or part of the required natural light or natural ventilation, or both, to an interior space. The glass portion of a door in an exterior wall may be considered to be a "window."

YARD, REAR — A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a rear yard shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

YARD, SIDE — An open, unoccupied space between the side line of the lot and the nearest line of the building. It shall extend from the front yard to the rear yard or, in the absence of either, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.

YARD AREA, FRONT — An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of that lot. "Setback line" shall be synonymous with the rear limit of the required front yard area.

ZONING BOARD — The officially established Zoning Board of Appeals of the Town of Somerset.⁵

5. Editor's Note: The former definition of "zoning permit," which followed this definition, was changed to "building permit" 9-8-1998 by L.L. No. 3-1998. Additionally, the former definition of "Zoning Enforcement Officer," which also followed this definition, was deleted 9-10-1996 by L.L. No. 2-1996.

ARTICLE III
General Regulations

§ 205-9. Applicability.

No building shall hereafter be erected and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged nor shall any land be used for any purpose other than those included among the uses listed as permitted uses in each zone by this chapter and meeting the requirements set forth in the appended Schedule.⁶ No open space contiguous to any building shall be encroached upon or reduced in any manner, except in conformity with the area and bulk requirements, off-street parking requirements and all other regulations designated in the Schedule and this chapter for the zone district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this chapter, and the certificate of occupancy shall become void.

§ 205-10. Preservation of natural features.

- A. No structure shall be built within 50 feet of the bed of a stream carrying water on an average of six months of the year or on land subject to periodic overflow.
- B. Before any excavation is commenced to remove from the ground topsoil, earth, sand, gravel, rock or other substance, the owner of lessee of the premises or agent of either shall obtain a written permit therefor from the Planning Board.
 - (1) Before issuing such a permit, the Planning Board shall require the submission of a property plan drawn to scale giving location and dimensions of the premises upon which it is proposed to excavate, including location of existing buildings, also the sworn consent in writing of the owner of the premises, including his address and mortgages, if any. Proof of the existence of no lax liens against the property shall also be submitted.
 - (2) The Planning Board shall also require the submission of a plan for the future care or restoration of the area to be excavated, including the preparation of a seed bedding, liming, fertilization and seed.
 - (3) Nothing contained in this chapter shall require a person to obtain a permit or prevent a person from removing topsoil from one part of the lands to another part of the same premises or other premises owned by him in the Town when removal is necessary as an accessory use or is made for the purpose of improving said property.
- C. Topsoil, earth, sand, gravel, rock or other substance deposited on land in the R-1, R-2 and RLS Districts in the Town shall not be stored more than 45 days before used for its intended purpose, unless permitted by the Zoning Board of Appeals after a public hearing. **[Added 6-10-1980]**
- D. Existing natural features such as trees, brooks, drainage channels and views shall be retained. Whenever such features interfere with the proposed use of such property, a retention of the maximum amount of such features consistent with the

6. Editor's Note: The Zoning Schedule is included as an attachment to this chapter. See also § 205-23.

use of the property shall be required.

§ 205-11. Regulations applicable to all zones.

- A. No lot shall have erected upon it more than one principal building. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered to provide a yard or open space for any other building.
- B. An accessory building attached to a principal building shall comply in all respects with the yard requirements of this chapter for the principal building. Detached accessory buildings shall be located to the rear of the front building line of the principal building and, if located in a side yard area, shall conform to side yard requirements of the schedule.⁷
- C. Every principal building shall be built upon a lot with frontage upon a public street improved to meet the Town's requirements.
- D. At the intersection of two or more streets, no hedge, fence or wall (other than a single post or tree) which is higher than three feet above curb level, nor any obstruction to vision, shall be permitted in the triangular area formed by the intersection street lines and a line joining each 30 feet distant from said intersection along said street line.
- E. Where a building lot has frontage on a street which is proposed for right-of-way widening, the required front yard area shall be measured from such proposed right-of-way line.
- F. Unsightly property.
 - (1) Consistent with the purpose and intent as described in § 205-3, this section specifically addresses the need to prevent and/or eliminate unsightly property. Therefore, it shall be unlawful for a property owner and/or resident of the Town of Somerset to have on his or her property at one time, for 30 days or more, two or more unlicensed, unregistered vehicles without obtaining a special use permit or building permit from the Code Enforcement Officer for the operation of a commercial sales and service, motor vehicle repair shop, junkyard or other appropriate business as determined by the Planning Board. **[Amended 6-10-1980; 9-8-1998 by L.L. No. 3-1998]**
 - (2) When implementing this chapter, the following shall apply:
 - (a) Thirty days will be counted as either consecutive days or a total of 30 days in any sixty-consecutive day period.
 - (b) Current registration by New York State will be required.
 - (c) The same or different vehicles of the following type will be counted: motor vehicles, trailers, motor homes, snowmobiles, motorcycles and/or similar vehicles.

7. Editor's Note: The Zoning Schedule is included as an attachment to this chapter. See also § 205-23.

- G. Business structures or uses shall not display goods for sale purposes or coin-operated vending machines of any type in any location which would infringe upon the required yard areas specified in this chapter.
- H. All yards, open space, off-street parking and required landscaping must be contained within the zone in which the use is permitted.
- I. No commercial vehicle of over one ton's load capacity shall be parked out-of-doors overnight or on Sunday in conjunction with a residential property in a residential zone. No display vehicles for commercial purposes shall be parked in any district for display purposes.
- J. For the purpose of regulating the locations of accessory buildings on corner lots, and on lots extending through between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zone district in which said corner or through lot is located.
- K. When a new lot is formed so as to include within its boundaries any part of a former lot on which there is an existing building or use, the subdivision must be carried out in such a manner as will not infringe upon any of the provisions of this chapter either with respect to any existing structures or use and any proposed structures or use.
- L. Nothing in this chapter shall restrict the construction, use or maintenance of public buildings, structures or facilities, parks or other publicly owned properties nor the installation and maintenance of such public utilities as may be required to service any district. All facilities will be subject to the yard requirements of this chapter and to Town Planning Board site plan review.
- M. Junkyards. Two or more abandoned, disabled, dismantled or partly dismantled vehicles allowed to remain on a premises for a period of more than 30 days shall constitute a junkyard. Also the storage, sale or abandonment of wastepaper, rags, scrap metal or discarded materials or the collecting, dismantling, storage, salvaging or abandonment of machinery or vehicles not in operating condition shall constitute a junkyard and is a violation of this chapter. When located in an A District, the storage of agricultural equipment, machinery and vehicles which are being used in farm operations shall not, for the purposes of this chapter, constitute a junkyard.
- N. The limitations on signs as set forth by this chapter for the various zones shall not apply to any sign or directional device erected by the federal, state, county or local government or agency thereof.
- O. The limitations on sign areas as set forth by this chapter for the business and industrial zones shall not apply to parking lot markers, directional signs, entrances and exit signs and other such signs which are erected on the premises, provided that such signs do not exceed two square feet in area on any one side and do not contain any advertising of the use on the premises.
- P. Fences.
 - (1) Any fences erected in the Town shall adhere to the following:
 - (a) Fences may be erected, altered or reconstructed to a height not to exceed

three feet above ground level when located within 25 feet of the street right-of-way line.

- (b) Fences may be erected, altered or reconstructed to a height not to exceed six feet above ground level when located more than 25 feet from the street line, except when such fence protects a swimming pool, in which event a height of eight feet is allowed.
 - (2) These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth, except if within the highway right-of-way when permission of the Highway Superintendent is required.
 - (3) These restrictions shall not be applied to restrict the erection, alteration or reconstruction of fences used in connection with farms except insofar as such fences might affect the public safety.
 - (4) Fences used for agricultural purposes in the A District shall be exempt from these provisions.
- Q. It shall be unlawful to occupy all or any part of a cellar for living purposes.⁸
- R. Any structure or excavation in the Town of Somerset that, in the unanimous opinion of the quorum of the Town Board, is a source of danger or which constitutes a nuisance or for which a temporary permit has expired shall be repaired, removed, demolished or filled as directed by the Town Board.
- S. Slope of yards. Proper grading and drainage of any improved lot shall be provided to the reasonable satisfaction of the Code Enforcement Officer so as to adequately direct storm runoff away from the building foundation, avoid excessive draining of waters onto abutting properties and minimize risk of flood damage where flood hazard exists. As a guideline only, the surface grade of the front yard at the front wall of a principal building shall not be less than 18 inches above the elevation of the center line of the traveled way of the street or highway measured at the midpoint between the side lines of the lot. **[Amended 11-7-2011 by L.L. No. 7-2011]**
- T. Motor vehicle storage and parking. There shall be provided with every dwelling, storage space for motor vehicles in an amount of not less than one parking area for each family unit in the dwelling. For all other permitted uses, there shall be provided sufficient off-street parking area to accommodate the normal number of vehicles which may simultaneously congregate in the course of the normal use of such building, structure or premises.
- U. No two-family dwelling shall be permitted on a lot less than 200 feet in width and 200 feet in depth.⁹
- V. Unsafe, unsightly buildings.
- (1) Any unoccupied structure which has been unoccupied for one year or more

8. Editor's Note: Former Section 203.18, regulating septic tanks and sewerage, which immediately followed this subsection, was deleted 9-10-1996 by L.L. No. 2-1996.

9. Editor's Note: Former Section 203.23, regulating unsafe, unsightly buildings, which immediately followed this subsection, was deleted 9-10-1996 by L.L. No. 2-1996.

and which has had any utility service disconnected may not be used for residential purposes without obtaining a new certificate of occupancy.

- (2) Any structure completely or partially destroyed by fire shall require a building permit before any reconstruction as well as a new certificate of occupancy before premises may be occupied. **[Added 6-10-1980]**
- (3) Any structure partially destroyed by fire or natural cause shall be secured. **[Added 9-10-1996 by L.L. No. 2-1996]**
 - (a) All openings shall be covered with outdoor building material of at least 1/2 inch thickness being plywood, aspenite or equivalent material.
 - (b) Doors need not be covered additionally if securely locked and if the door is of substantial material and in good condition.
 - (c) Cover material is to be cut to size to completely cover openings and must be of neat and acceptable appearance.
 - (d) Cover material is to be fastened with two-inch nails or screws spaced no more than 12 inches apart.
 - (e) Cover material must be securely fastened so that it cannot be removed or displaced by hand pressure.
 - (f) All covering material and methods of securing must meet the satisfaction of the Code Enforcement Officer or deputy.
- W. The New York State Uniform Fire Prevention and Building Code, as amended, shall be made a part of this chapter and shall be in full force and effect in the Town of Somerset, and any construction within the Town of Somerset must be subject to the requirements of such code. **[Amended 9-10-1996 by L.L. No. 2-1996]**
- X. All structures damaged by fire are to be reconstructed by removing all burned wood and materials and replacing with materials meeting state and Town Building Codes. **[Added 6-10-1980]**
- Y. Exterior walls of all structures shall be completed by finishing with wood, stone, brick, stucco, vinyl, aluminum, cement or similar permanent material. **[Added 6-10-1980]**
- Z. Notwithstanding the provisions of Chapter 96, there shall be no lot, structure or use that allows for the storage of waste, debris, garbage or hazardous material so as to constitute a landfill in any district. Such landfill shall be prohibited in all districts. **[Added 6-13-2000 by L.L. No. 2-2000]**
- AA. New cemeteries. **[Added 4-9-2002 by L.L. No. 3-2002]**
 - (1) No person shall cause the remains of a human being to be buried or establish a burial ground for such purpose, by disposal or burial by cremation or in a grave, mausoleum, vault, columbarium or other receptacle within the Town of Somerset outside the Village of Barker not set apart and recognized as a municipal, religious or not-for-profit corporation cemetery, without the consent of the Town Board after a public hearing and having deposited

adequate and appropriate funds for perpetual maintenance of said grounds.

- (2) The Town Board shall consider availability of suitable and appropriate approved sites; the health and safety of the community; the character of the site under consideration as appropriate for a burial site; the likelihood of the site becoming a public charge as well as considerations raised under the New York State Environmental Quality Review Act (SEQRA).
- (3) A bond shall be deposited with the Town of Somerset to insure adequate and appropriate funds are available for the maintenance of said burial grounds. The amount of the maintenance fund shall be determined annually by the Town Board.
- (4) "Adequate and appropriate funds" is a relative term to be determined by the Town Board of the Town of Somerset in each instance in order to establish an adequate trust fund for the perpetual maintenance of said ground, however in no event shall it be less than \$10,000; and
- (5) Any person who shall be found to violate any provision of this subsection shall be served by the Town Code Enforcement Officer with written notice providing a reasonable time limit for the exhumation of the buried remains. The offender shall, within the period of time stated in such notice, permanently cease all violations. Any person who shall continue any violations beyond said time limit shall be guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding \$250 for each violation. Each day in which any violation shall continue shall be deemed a separate offense. The provisions of this subsection shall be in addition to and shall not preclude the enforcement of this chapter by application to the New York Supreme Court for injunction or by any other lawful remedy. Any person violating any of the provisions of this subsection shall become liable to the Town for any expense, loss or damage, including attorney's fees, occasioned by it by reason of such violation.

BB. Restrictions on industrial wind system. [Added 1-29-2018 by L.L. No. 1-2018]

- (1) "Industrial wind energy conversion system" shall mean any machine or wind facility that converts the kinetic energy in the wind into electricity and where the electricity is primarily produced for commercial sale.
- (2) Industrial wind energy conversion systems shall be prohibited in all districts other than Industrial (I).
- (3) If this law is found to be illegal, void, or is otherwise waived, or not applied, by any court or government body, then all other substantive requirements of the Somerset Town Code relating to the siting of wind energy conversion systems and/or tall structures shall be applied.

ARTICLE IV
Permitted Modifications

§ 205-12. Height modifications.

- A. The height limitations of this chapter shall not apply to silos, church spires, belfries, cupolas and domes not used for human occupancy.
- B. Chimneys, ventilators, skylights, water tanks, heating and cooling towers, television and radio antennas and similar features and necessary mechanical appurtenances usually carried on and above the roof level may exceed the height limitations of this chapter by not more than 20 feet. **[Amended 6-13-2000 by L.L. No. 2-2000]**
- C. The provisions of this chapter shall not apply to prevent the erection of a parapet wall or cornice for ornament extending above the height limits of this chapter by not more than five feet. Public and quasi-public buildings, schools, churches and other similar permitted uses shall increase the front, rear and side yards by one foot for each foot by which such buildings exceed the height limit herein established for such zone in which it is located.

§ 205-13. Yard area modifications.

In such cases in residential zones where the frontage on the same side of the street within 500 feet is 50% or more developed, the required front yard for a new structure may be modified to the average for such existing development. Otherwise, the requirements of the schedule shall apply.¹⁰

10. Editor's Note: The Zoning Schedule is included as an attachment to this chapter. See also § 205-23.

ARTICLE V
Nonconforming Uses

§ 205-14. Existing uses.

Except as otherwise provided in this article, the lawful use of land or buildings existing at the date of the adoption of this chapter may be continued although such use or building does not conform to the regulations specified by this chapter for the zone in which such land or building is located; provided, however, that:

- A. No nonconforming lot shall be further reduced in size.
- B. No nonconforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
 - (1) Exception if the nonconformance is an area setback, the structure may be modified if the new construction shall conform to the setback requirements stated in the Code, provided that the lot size conforms to the 100 feet of minimum width and 200 feet of minimum depth, or a minimum of 20,000 total square feet. **[Added 1-13-1998 by L.L. No. 2-1998]**
- C. No nonconforming use may be expanded.

§ 205-15. Abandonment.

A nonconforming use shall be considered abandoned when there occurs a cessation of any use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of one year from the date of cessation or discontinuance. Also a certificate of occupancy shall be required.

§ 205-16. Restoration. [Amended 6-10-1980]

Any building damaged by fire or other cause to the extent of 75% of true value which is nonconforming shall not be repaired or used unless the building shall conform to the requirements of this chapter. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any wall or roof which has been declared unsafe by the Code Enforcement Officer.

§ 205-17. Reversion.

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

§ 205-18. Alterations.

A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50% of the assessed value of the building unless said building is changed to conform to the requirements of this chapter.

§ 205-19. District boundary changes.

Whenever the boundaries of a district shall be changed so as to transfer an area from one

district to another of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein or created thereby.

§ 205-20. Unlawful uses.

Notwithstanding any other provision of this chapter, any automobile wrecking yard or junkyard in existence in any R District and any billboard, advertising structure or nonconforming sign in existence in any district at the time of enactment of this chapter shall, at the expiration of a period of five years from such date, become a prohibited and unlawful use and shall be discontinued. Lawfully existing signs accessory to a nonconforming use or building shall not be subject to this provision.

ARTICLE VI
Establishment of Zones

§ 205-21. Enumeration of districts. [Amended 6-13-2000 by L.L. No. 2-2000]

For the purposes of this chapter, the Town of Somerset is hereby divided into the following districts, which are referred to in this chapter by the abbreviations indicated:

District	Abbreviation
Agricultural District	A
Single-Family Residential District	R-1
Single- and Two-Family Residential District	R-2
Lake Shore Residential District	RLS
Business District	B
Industrial District	I
General Industrial District	GI
Planned Unit Development District	PUD

§ 205-22. Zoning Map.

The boundaries of all zone districts set forth in this chapter shall be shown on a map bearing the date of adoption. Said map shall be filed in the office of the Town Clerk and shall hereafter be the Official Zoning Map of the Town.¹¹ Such map is hereby declared a part of this chapter and shall be duly certified in accordance with Article 16 of the Town Law of the State of New York.

§ 205-23. Zoning Schedule.

The Schedule of Area, Lot and Bulk Requirements enclosed herein is made a part of this chapter.¹² The regulations included in said Schedule are hereby established as minimum regulations of this chapter. Municipal facilities deemed necessary and appropriate by the Town Board are hereby exempted from such area and bulk requirements.

11. Editor's Note: The Zoning Map is on file in the office of the Town Clerk and is available for inspection during regular business hours.

12. Editor's Note: The Zoning Schedule is included as an attachment to this chapter.

ARTICLE VII
A Agricultural District

§ 205-24. Permitted principal uses.

The following uses shall be permitted principal uses in the A Agricultural District:

- A. Single-family dwellings.
- B. Farms and related farming activities, provided that no storage of manure or odor- or dust-producing substance shall be permitted within 100 feet of an adjoining lot line.

§ 205-25. Permitted accessory uses.

The following uses shall be permitted accessory uses in the A Agricultural District:

- A. Private garages.
- B. Customary residential storage structures.
- C. Other customary residential structures such as private swimming pools, fireplaces, trellises, lamps, posts and the like.
- D. Customary farm buildings for the storage of products or equipment located on the same parcel as the principal use. Tenant farm dwellings shall also be permitted as an accessory use, provided that each permanent structure shall be on an area as required in the zoning schedule, § 205-23, for a single-family residence, shall be at least 100 feet from all other structures and shall be occupied by a permanent full-time employee of said farm. **[Amended 9-8-1998 by L.L. No. 3-1998]**
- E. Parking in accordance with Article XIV.
- F. Signs in accordance with the following: one nameplate sign situated within the property line and not exceeding two square foot in area on either of two sides.
- G. Accessory buildings used exclusively for the sale of homegrown agricultural products may be constructed upon approval of the Planning Board, following submission of an approved site plan. The following regulations shall apply: **[Amended 6-10-1980]**
 - (1) The application must be for the use of such building by the owner or tenant of the property in question.
 - (2) Buildings may be permitted in any district in which agricultural activity is permitted.
 - (3) Buildings shall be placed only in an approved location which shall encourage safety and discourage traffic congestion. No portions of any stand or any attendant use shall be located closer than 35 feet to the highway pavement edge. Parking space for no less than three cars shall be maintained in connection with the operation of any stand. All parking spaces shall be well marked and easily discernible by an approaching motorist.

- (4) Trucks, trailers, tractors or other vehicles parked for the purpose of sale or disposal of agricultural products to the general public shall be permitted only under the same limitations which apply to the use of accessory buildings for the sale of such products.
- H. Stands of a nonpermanent nature (movable and temporary) may be utilized for the sale of homegrown agricultural products and/or other products during the harvest season under the following conditions:
- (1) Stand setback must be at least 20 feet from the edge of the road pavement.
 - (2) Parking space large enough to accommodate at least three vehicles must be provided on site.
 - (3) A sign, not to exceed 16 square feet, may be erected on site for the purpose of advertising.

§ 205-26. Uses permitted with special use permit.

The following uses shall be permitted with a special use permit:

- A. Public utility uses.
- B. Campgrounds.
- C. Restricted industrial uses.
- D. Motor vehicle service stations.
- E. Excavation operations.
- F. Cluster residential developments.
- G. Mobile/manufactured home parks. (See Chapter 125, Mobile/Manufactured Homes.) **[Amended 1-13-1998 by L.L. No. 2-1998]**
- H. Mobile/manufactured homes when temporarily occupied by members of the farm family for not more than six months of any calendar year or when occupied by persons temporarily employed on the premises and their families. **[Amended 9-8-1998 by L.L. No. 3-1998]**
- I. Air strips (private).
- J. Retirement and convalescent homes, in compliance with the laws of such agencies having jurisdiction.
- K. Public buildings, libraries and public and nonprofit private schools accredited by the State Education Department.
- L. Churches and other similar places of worship, parish houses, convents, cemeteries and other such facilities of recognized religious groups.
- M. Municipal parks, playgrounds and buildings deemed appropriate by the Town Board.

- N. Professional offices and home occupation uses, provided that they are carried on in conjunction with a residential use on the property.
- O. Animal husbandry on lots smaller than six acres in size.
- P. Wind-energy conversion systems. [**Added 7-11-2006 by L.L. No. 1-2006**]

ARTICLE VIII
R-1 Single-Family Residential District

§ 205-27. Permitted principal uses.

The following uses shall be permitted principal uses in the R-1 Residential District:

- A. Single-family dwellings.

§ 205-28. Permitted accessory uses.

The following uses shall be permitted accessory uses in the R-1 Residential District:

- A. Private garages.
- B. Customary residential storage structures.
- C. Animal shelters for domestic pets.

§ 205-29. Uses permitted with special use permit.

The following uses shall be permitted with a special use permit:

- A. Cluster residential developments.
- B. Animal husbandry when lot size is in excess of six acres in size.

ARTICLE IX
R-2 Single- and Two-Family Residential District

§ 205-30. Permitted principal uses.

The following uses shall be permitted principal uses in the R-2 Single- and Two-Family Residential District:

- A. Single- and two-family dwellings.

§ 205-31. Permitted accessory uses. [Amended 9-10-1996 by L.L. No. 2-1996]

The following uses shall be permitted accessory uses in the R-2 Single- and Two-Family Residential District:

- A. Private garages.
- B. Customary residential storage structures.
- C. Animal shelters for domestic pets.

§ 205-32. Uses permitted with special use permit.

The following uses shall be permitted with a special use permit:

- A. Cluster residential development.
- B. Membership clubs and lodges or other community organizations.
- C. Medical centers or clinics; convalescent homes.

ARTICLE X
RLS Lake Shore Residential District

§ 205-33. Permitted principal uses.

The following uses shall be permitted principal uses in the RLS Lake Shore Residential District:

- A. Single-family dwellings.

§ 205-34. Accessory uses. [Amended 9-10-1996 by L.L. No. 2-1996; 12-12-2006 by L.L. No. 6-2006]

- A. Permitted accessory uses. The following uses shall be permitted accessory uses in the RLS Lake Shore Residential District:

- (1) Private garages.
- (2) Customary residential storage structures.
- (3) Animal shelters for domestic pets.

- B. Before there can be any accessory building or accessory use in a Residential Lake Shore District (RLS), there must first be a principal use or principal dwelling on the lot, except as provided in § 205-35B. **[Amended 5-13-2015 by L.L. No. 1-2015]**

- C. On the south side of the road:

- (1) All accessory buildings shall be set back a minimum of 100 feet from the road right-of-way. **[Amended 5-13-2015 by L.L. No. 1-2015]**
- (2) The maximum height of an accessory building shall be 25 feet.
- (3) The minimum square footage of an accessory structure shall be 250 square feet, and the maximum square footage of an accessory structure shall be 900 square feet. **[Added 5-13-2015 by L.L. No. 1-2015]**

§ 205-35. Uses permitted with special use permit.

The following uses shall be permitted with a special use permit:

- A. Cluster residential development.
- B. An accessory structure on a separate lot used to service a principal structure located on a lot having lake frontage when either: a) The accessory structure is located on a lot on the south side of the same road as the lot upon which the principal structure is located, or b) the accessory structure is located on a lot on a road intersecting the road which the principal structure is located and within 500 feet of the principal structure. The Planning Board shall take into consideration and review the structure's overall appearance and proposed location, including, but not limited to, architectural styles, design materials, and colors; the surrounding area including the impact of lake views and other buildings located in area; and the overall aesthetic enhancement of the Town and the Lake Shore District. Any approval of the special use permit by the Planning Board may be conditioned upon its review of the

foregoing considerations. [Added 5-13-2015 by L.L. No. 1-2015]

§ 205-35.1. Height of fences. [Added 12-12-2006 by L.L. No. 6-2006]

On the lake side of road only, the maximum height of fences is four feet from grade level, from the high bank to the front forward line of the primary structure.

§ 205-35.2. Yards for lots along Lake Ontario. [Added 9-17-2013 by L.L. No. 5-2013]

Notwithstanding the provisions of § 205-8, regarding "yard, front" and "yard, rear," for lots along the north side of the road and abutting Lake Ontario, the full width of that portion of the lot lying between the northerly line of the primary structure extended the full width of the lot and the edge of the high bank (or, if there is no bank, the mean high water line of Lake Ontario) shall be regarded as the front yard, and the full width of that portion of the lot lying between the southerly line of the primary structure extended the full width of the lot and the street line shall be regarded as the rear yard for purposes of determination of front yard and rear yard setbacks and locations of accessory buildings.

ARTICLE XI
B Business District

§ 205-36. Principal permitted uses.

The following uses shall be permitted principal uses in the B Business District:

- A. Retail business establishments which are clearly of a community service characteristic such as, but not limited to, the following:
 - (1) Stores selling groceries, meats, baked goods and other such food items.
 - (2) Drugstores.
 - (3) Stationery, tobacco and newspaper stores and confectionery stores.
 - (4) Variety and general merchandise stores.
 - (5) Hardware, appliance, radio and television sales and service.
 - (6) Restaurants, including drive-in.
- B. Personal service establishments which are clearly of a community service character such as, but not limited to, the following:
 - (1) Barber and beauty shops.
 - (2) Shoe repair and fix-it shop.
 - (3) Dry cleaning stores and laundromats.
 - (4) Business and professional offices, including medical clinics.
 - (5) Funeral homes.
- C. Other business uses which, in the opinion of the Planning Board, are similar in nature and scale to those permitted above. **[Amended 6-10-1980]**

§ 205-37. Permitted accessory uses.

The following uses shall be permitted accessory uses in the B Business District:

- A. Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use.
- B. One sign per business, per street front. Said sign shall not exceed an area of one square feet per linear foot of building frontage upon which it will be placed as occupied by that use.

§ 205-38. Uses permitted with special use permit.

The following uses shall be permitted with a special use permit:

- A. Public utility uses, such as dial stations and substations, exclusive of maintenance buildings and yard and equipment storage yards.

B. Motor vehicle service stations.

§ 205-39. Special provisions.

- A. Site plan. A site plan showing the location and proposed business use of buildings, structures and lands shall be submitted with each application for a building permit for the erection, alteration or location of a building or structure in the B District, and such site plan shall be subject to review and approval by the Town Planning Board. **[Amended 2-9-1999 by L.L. No. 1-1999]**
- B. Combination uses. A principal building may be used for a combination of business and residence use, subject to approved building use and site plan.

ARTICLE XII

I Industrial and GI General Industrial Districts**§ 205-40. Industrial District (I). [Amended 9-10-1996 by L.L. No. 2-1996; 6-13-2000 by L.L. No. 2-2000]**

- A. Permitted principal uses. Any of the following uses are permitted in the Industrial District, provided that such use complies with all dimensional and other requirements of this chapter, including obtaining any permits required by the Town of Somerset or any other government agencies. The intent is to provide for light industry, research and development and related uses in a planned setting that establishes a coordinated and harmonious development of any area so zoned.
- (1) Laboratory engaged in research, testing and experimental work, including any process normal to laboratory practice and technique.
 - (2) The assembly and/or treatment of articles or merchandise from previously prepared materials consisting of fiber, glass, fur, leather, paper, plastics, wax, wood and wire, provided that no chemical process is involved in the basic manufacture of such materials.
 - (3) The manufacture and/or assembly of mechanical devices, electrical appliances, the machining and assembly of parts made of metal, electrical and electromechanical devices and components, not to include heavy stamp forging and the like that would produce earth jarring or other objectionable noise beyond the property boundaries, and further provided that all necessary and approved safeguards are employed to reduce hazard and annoyance to the community.
 - (4) The processing and storage of candy and confections, frozen foods, cosmetics, pharmaceutical products, toiletries and food products, excluding a slaughterhouse.
 - (5) Wholesale business and storage for the following types of commodities: clothing, drugs, dry goods, packaged food, furniture, hardware, beverage and other similar commodities as approved by the Planning Board.
 - (6) Office use necessary and incidental to any permitted use within the district.
 - (7) Farm.
 - (8) Industrial wind energy conversion system, as defined by § 205-11BB. Siting and construction of any industrial wind energy conversion system shall be subject to all other requirements of this chapter, including but not limited to requirements applicable to any tall structure and wind energy conversion system. **[Added 1-29-2018 by L.L. No. 1-2018]**
- B. Uses permitted by special use permit. Special uses may be permitted with a special use permit in the Industrial Use District, provided that such use complies with all applicable dimensional and other requirements of this chapter, including any permits required by Article XII.
- C. Permitted accessory uses. Any other related uses consistent with the uses in this

section and accessory uses related and incidental to the uses permitted herein (i.e., enclosed storage, equipment storage in tanker/trailer operations and limited retailing of the above uses where the retail portion is restricted to a maximum of 15% on premises of the area of the building).

D. Prohibited uses.

- (1) No building(s) in the Industrial District shall, at any time, be used, erected or converted for the manufacture, storage, distribution or sale of any product or items which shall increase the fire hazard to adjoining buildings, or land adjacent to the district; or for any use which constitutes a nuisance or causes the emission of odors or gases which could reasonably be expected to be injurious to people or products manufactured or stored within such building(s), or upon such land; or for any purpose or use in violation of the laws of the United States, the State of New York or any political subdivision thereof. Storage of junk or secondhand material, the use of equipment or manufacturing processes which cause earth tremors or vibrations beyond the boundaries of any building lot upon which they are situate and the manufacture, storage, distribution and sale of explosives are prohibited.
- (2) The storage of materials necessary in conjunction with approved uses herein, and which meet all legal, state and federal codes, shall not be prohibited but shall be clearly incidental to the permitted uses.

E. Dimensional requirements.

- (1) Area. The minimum lot area shall be one acre.
- (2) Lot width. The minimum lot width shall be 200 feet of frontage on a dedicated street.
- (3) Setback. The minimum setback shall be 50 feet to any street right-of-way.
- (4) Side yard. The minimum side yard shall be 25 feet to the property line, except where it abuts another nonindustrial district in which case 75 feet shall be required. Driveways shall not be constructed closer than 10 feet to any side lot line.
- (5) Rear yard. The minimum rear yard shall be 10 feet, except where the lot abuts a residential district in which case it will be 100 feet.
- (6) Height. Thirty feet (maximum).
- (7) Building coverage. 25% (maximum of total area).

F. Design standards. All building(s) and/or addition(s) thereto shall be designed by a New-York-State-registered architect or licensed professional engineer. No building(s) or any addition(s) thereto shall be erected or any lot improved until the building plans, specifications and site plans have been approved in accordance with this chapter. All plans and permits for site and building improvements in this district shall be approved by the Town of Somerset Planning Board prior to any final approval or the issuance of any permits for construction.

- (1) Materials. All building(s) or addition(s) thereto shall be of masonry construction. No such building(s) or addition(s) shall be covered with sheet aluminum, iron or steel, or corrugated aluminum, asbestos or iron, except when such materials form an integral part of a standard modular curtain wall panel or insulated sandwich wall as defined by the modular industry. In the event that any such buildings or additions thereto shall be constructed with concrete, concrete blocks, tile blocks or tile brick, the outside face of the wall(s) thereof which are exposed to the street, shall be finished with face brick, insulated curtain wall, insulated sandwich wall, their equivalent or better; and, in addition, the outside face of walls abutting such walls exposed to streets shall be so finished to a minimum depth of 15 feet.
- (2) Rooftop structures. All objects such as water and cooling tanks, processing equipment, fans, vents and other rooftop structures and equipment shall be architecturally compatible and shielded from public view. Such structures or facilities shall be subject to height regulations in accordance with § 205-12 of this chapter.
- (3) Storage. Outdoor storage is not allowed in the front or side yard. Permitted outdoor storage areas shall be suitably screened or fenced from view from adjacent parcels.
- (4) Fencing. No fence shall be erected in any required setback area.
- (5) Landscape and screening. All lots in the district shall be suitably landscaped in accordance with the provisions of this chapter. All setback areas shall be landscaped, including street trees (deciduous, minimum two-inch caliper) at intervals of 50 feet along the frontage of any street, yet outside the dedicated street right-of-way. In addition, a fifty-foot buffer strip of plant materials, suitably planted and maintained, shall be provided between the park boundary and any adjacent residential uses.
- (6) Fill dirt. Where fill is necessary to obtain the proper topography and finish ground elevation, it shall be soil or earth fill, free of waste material and slag and shall not contain noxious materials that will give off odors of any kind. All fill material shall be leveled immediately after completion of any building or addition thereto, and any excess excavation earth shall be removed promptly therefrom.
- (7) Maintenance. The buildings, improvements and appurtenances erected and situate upon any lot in the district shall at all times be kept in a safe, clean, wholesome condition and shall comply with all government, health and police requirements. All rubbish of any kind which may accumulate on any such building lot shall be promptly removed.
- (8) Parking. There shall be no parking on public streets situate in the district or required yards. Employee parking facilities shall conform to § 205-51 of this chapter. Employee parking shall not be located within any setback area or in front of the building.
- (9) Signage. No sign shall be permitted in the district unless and until it has been approved as part of the building and site plans as prescribed in this chapter.

Such signs shall be attached to the walls or roof of the building(s) thereof and shall not project above the roof of any such building. Employee directional, parking and other similar signs shall be included in all plans and permits and shall be approved accordingly. Flashing or animated signs are prohibited.

- (10) Plan required. A concept plan is required for the coordination of development and utilities, including site layout, access, traffic impact and circulation, principal structures, stormwater management, grading and utilities. Consolidated signage and landscaping will be required. A final site plan will be required in accordance with site plan review procedures.¹³

§ 205-41. General Industrial (GI) District. [Added 6-13-2000 by L.L. No. 2-2000¹⁴]

A. Permitted principal uses.

- (1) Any of the following uses are permitted in the General Industrial District, provided that such use complies with all dimensional and other requirements of this chapter, including obtaining any permits required by the Town of Somerset or other government agency. Unless a use is permitted, it is prohibited. The district is intended to provide for unique heavy commercial uses and industrial uses that accommodate or are directly related to the generation of electrical power from coal and natural fuels, specifically excluding nuclear power and facilities.
- (a) Fossil-fuel-fired electrical power-generating stations.
 - (b) Industrial uses and their accessory uses that are directly related to an existing fossil-fuel-fired power-generating facility or similar use that utilize a waste or by-product of said power generation to divert or lessen the waste system produced by the power-generating station.
- (2) All uses in this district shall comply with the following performance standards:
- (a) Hazardous condition. Any use, building, structure or land in the GI District shall be operated or occupied in a manner so as to avoid any hazardous, noxious, injurious, dangerous or otherwise objectionable fire, explosive, radioactive or other hazardous condition.
 - (b) Noise. All noise shall be muffled or restricted so as not to be objectionable as a result of intermittence, frequency or shrillness. No sound levels, measured at the nearest lot line, shall exceed 65 decibels during the day and 47 decibels at night (6:00 p.m. to 7:00 a.m.).
 - (c) Vibration. No vibration that can be detected at the nearest lot line without the aid of instruments shall be permitted.
 - (d) Air pollution smoke. There shall not be discharged into the atmosphere from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that could result in damage to public health, animals or vegetation or that

13. Editor's Note: See Art. XVA, Site Plan Review.

14. Editor's Note: Provisions of this local law also superseded former § 205-41, Permitted accessory uses, pertaining to the Industrial (I) District. See now § 205-40.

exceeds the approved regulatory standards of state or federal permitting agencies.

- (e) Fugitive dust. There shall not be discharged locally from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that results in an unsightly condition or could result in damage to public health, animals, vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
 - (f) Odor. No odorous or noxious gas or any other odorous or noxious material shall be discharged or permitted to escape into the atmosphere from any operation on any lot in the GI District.
 - (g) Radioactivity. Radioactive material, processes or uses shall be prohibited in the district, and no such material shall be stored, handled or discharged in the district.
 - (h) Electrical interference. There shall be no electrical disturbance emanating from any lot that would adversely affect the operation of any equipment, use or other operation on any lot or premises or the navigation or control of aircraft.
 - (i) Liquid or solid wastes. There shall be no discharge of any liquid or solid wastes from any establishment into any stream, pond, waterway or land or groundwater except as authorized by the New York State Department of Environmental Conservation. No waste, debris or other discarded materials shall be allowed to accumulate in any yard or open space on the premises.
 - (j) Glare and heat. No direct or sky-reflected glare as a result of lighting, high-temperature processes, combustion, welding or other activities, so as to be visible from the lot line, right-of-way or adjacent use, shall be permitted. All lighting shall be diffused and hooded or screened to avoid glare or spread to adjacent properties.
- B. Uses permitted by special use permit. Any of the following uses may be permitted with a special use permit in the General Industrial District, provided that such use complies with all applicable dimensional and other requirements of this chapter, including any permits required by the Town of Somerset or other government agencies.
- (1) The manufacture and/or assembly of musical instruments, novelty toys or related products; mechanical and electrical devices, appliances and components; wood products; compounding, processing and storage of candy and confections; frozen foods; cosmetics, pharmaceutical products, toiletries and food products, including a slaughterhouse.
 - (2) Wholesale business and storage for the following types of commodities: clothing, drugs, dry goods, packaged food, furniture, hardware, beverage and other similar commodities as approved by the Planning Board.
 - (3) Office uses necessary and incidental to any permitted use within the district.

- (4) Laboratory research, testing and experimental work.
 - (5) Any other related uses consistent with the uses in this section and accessory uses related and incidental to the uses permitted herein (i.e., enclosed storage, equipment storage in tanker/trailer operations, etc.).
 - (6) Excavations as regulated under Chapter 96 of the Code of the Town of Somerset.
- C. Prohibited uses.
- (1) No residential uses shall be allowed in the General Industrial District. Storage of junk or secondhand material, automobiles or scrap is prohibited. No landfills shall be allowed.
 - (2) The storage of materials necessary in conjunction with approved uses herein which meet all legal, state and federal codes shall not be prohibited but shall be clearly incidental to the permitted use.
- D. Dimensional requirements.
- (1) Area. The minimum lot area shall be five acres.
 - (2) Lot width. The minimum lot width shall be 200 feet of frontage on a dedicated street.
 - (3) Setback. The minimum setback shall be 50 feet to any street right-of-way.
 - (4) Side yard. The minimum side yard shall be 25 feet to the property line, except where it abuts another agricultural or residential district, in which case 200 feet shall be required.
 - (5) Rear yard. The minimum rear yard shall be 25 feet, except where the lot abuts an agricultural or residential district, in which case it will be 200 feet.
 - (6) Height. Thirty-five feet (maximum).
 - (7) Building coverage. 35% percent (maximum of total area).

§ 205-42. Parking, loading and other regulations. [Amended 2-9-1999 by L.L. No. 1-1999]

- A. Site plan. A site plan showing the location and proposed industrial use of buildings, structures and lands shall be submitted with each application for a building permit for the erection, alteration or location of a building or structure in the I District, and such site plan shall be subject to review and approval by the Town Planning Board.
- B. Parking areas may be located in any of the required yard areas, provided that they are not less than 50 feet from a street line or 20 feet from a property line.
- C. Each use located in this zone shall provide truck loading and unloading space on the same lot and in other than the required front yard so as to permit the transfer of goods in other than a public street.
- D. Each use established in this zone shall set aside 10% of the tract for seeding and

landscaping and use this area for no other purpose.

- E. All industrial processes shall take place within an enclosed building. Industrial storage of materials out of doors shall be permitted. Industrial uses shall be located so as to be a minimum of 100 feet from any nonindustrial district. This one-hundred-foot buffer strip shall be perpetually maintained so as to provide visual screening of the industrial uses.

ARTICLE XIII
Supplemental Regulations

§ 205-43. Uses requiring special use permit.

- A. The uses contained in this article may be permitted, provided that a special use permit is obtained from the Planning Board under the terms and specifications herein. Whereas the necessity for certain specific uses is recognized and at the same time appreciating the fact that they or any one of them may be, or become, inimical to the public health, safety and general welfare of the community if located without consideration to the existing conditions and surroundings, the following standards and proceedings are hereby established which are intended to provide the Planning Board with a guide for the purpose of reviewing certain uses not otherwise permitted in this chapter. The Planning Board shall review and administer applications for the following uses according to procedures spelled out for the Planning Board under Article XX of this chapter. **[Amended 10-3-2011 by L.L. No. 5-2011]**
- B. In specific cases which are not clearly covered by other existing ordinances, special use permits will be required. Examples would be cemeteries, pet cemeteries and other uses not specifically covered in other sections of these ordinances.

§ 205-43.1. Personal wireless telecommunications service facilities. [Added 2-11-1997 by L.L. No. 2-1997]

- A. The placement, construction and major modification of all personal wireless telecommunications facilities within the boundaries of the Town of Somerset shall be permitted only by special permit, upon site plan approval issued by the Planning Board herein and issuance of a building permit, and subject to all the provisions of this chapter and all other applicable regulations.
- B. Any new telecommunications antenna which is to be attached to any structure other than a telecommunications tower (i.e., smokestack, building, etc.) shall also comply with the requirements of this section to the extent applicable. **[Amended 5-14-2013 by L.L. No. 2-2013]**
- C. All telecommunications towers existing on February 11, 1997 (the effective date of this local law), shall be allowed to continue their usage as they presently exist and additional new telecommunications antennas shall be permitted thereon without regard to the zoning district in which the tower is located. New construction other than routine maintenance on an existing telecommunications tower shall comply with the requirements of this chapter.
- D. Applications under this section shall be made as follows:
- (1) Co-location. New telecommunications facilities shall be sited on existing telecommunications facilities or in areas already in use for telecommunications and/or utility distribution lines in order to preserve the aesthetic and scenic value of the Town unless the applicant demonstrates that collocation is not feasible.
 - (2) Applicants for a special permit to place, construct or modify personal wireless

telecommunications facilities within the Town of Somerset shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation:

- (a) Visual environmental assessment form (visual EAF), landscaping plan and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the Visual EAF, existing treelines and proposed elevations.
- (b) Preliminary report describing:
 - [1] Feasibility of co-location on existing structures and telecommunications facilities.
 - [2] Applicant's full map and grid coverage in the Town.
 - [3] Surrounding topography and relation to line-of-sight transmission.
 - [4] Available road access, electric power and land-based telephone lines and/or microwave link capability.
 - [5] Required improvements or construction activities, including those within the public right-of-way or lands owned or controlled by the Town of Somerset.
 - [6] Identity of location, ownership and usage of currently existing telecommunications facilities within the Town.
 - [7] Plans for construction of telecommunications accessory equipment building or structure and landscaping plan.
 - [8] Proposed mitigation measures for visual impacts.
 - [9] Proposed safety measures.
 - [10] Compatibility with existing telecommunications networks, New York State Thruway Authority telecommunications network and public safety and emergency networks, such as fire, ambulance, police and 911.
- (c) In the case of an application for a telecommunications tower, additional information shall be provided describing the telecommunications tower height and design, including a cross-section of the structure; the telecommunications tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications antennas it can accommodate and the basis of calculation of capacity.
- (d) In the case of a telecommunications antenna mounted on an existing structure, additional information shall be provided indicating the existing structure's suitability to accept the telecommunications antenna; the proposed method of affixing the telecommunications antenna to the structure; and complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.

- (e) Filing of certificate of public convenience and necessity in this geographic area, from New York State Public Service Commission for applicant with the Town.
 - (f) Demonstration that the proposed site is the most appropriate available site within the immediate area for the location of the cellular telephone facility.
 - (g) Inventory of existing telecommunications facilities within the Town, outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility.
 - (h) Filing map with Town showing all of applicant's proposed facilities within the geographic area covered by the certificate of public convenience and necessity.
 - (i) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.
 - (j) A map showing the location of the premises for which the permit is sought and a sketch plan showing all features of the facility necessary for providing road access, electrical service, land-based telephone line connection and/or microwave link capability within the property boundaries of the proposed location.
 - (k) In the case of an application for a telecommunications antenna or tower to be located on private lands owned by a party other than the applicant or the Town, a copy of the lease agreement, without requiring the amount of rent, with the property owner shall be provided to the Planning Board.
 - (l) Such other information as may be required by the Planning Board or its engineer.
 - (m) All plans or specifications required by the State Education Law to be prepared by or under supervision of a professional engineer (PE), surveyor or architect shall be stamped and signed by such licensee.
- E. Special permits issued for personal wireless telecommunications service facilities shall be subject to the following general conditions:
- (1) Separation distance. Telecommunications facilities shall be separated from all residential dwellings by a distance of 250 feet or 1 1/2 times the height of the tower, whichever is greater.
 - (2) All telecommunications accessory structures shall comply with zoning setback regulations in the affected zone. In any event, a telecommunications tower shall be set back a distance at least equal to its height. Additional setbacks may be required by the Planning Board in order to provide for the public safety.

- (3) Minimal visual impacts. All telecommunications towers and telecommunications antennas shall be sited to have the least possible practical visual effect on the environment.
- (4) Lighting. Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.
- (5) Material and paint. Telecommunications towers and telecommunications antennas shall be of a galvanized finish, or painted gray above the surrounding tree line and gray or green below the tree line; the mountings of telecommunications antennas shall be nonreflective and of the appropriate color to blend with their backgrounds, unless otherwise required by the FAA.
- (6) Screening.
 - (a) Screening may be required by the Planning Board to screen portions of the telecommunications tower and tower base from nearby residential property or important views.
 - (b) Architectural character. Design measures shall be used to integrate the facilities with existing buildings in the area.
- (7) Height. The size of telecommunications sites shall be limited to the minimum required to provide proposed telecommunications services but shall include consideration of height needed for co-location.
- (8) Access roads. Existing roadways shall be used for access to the site whenever possible.
- (9) Telecommunications accessory structures. Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures shall be screened, placed underground, depressed, earth bermed or sited below the ridge line to the greatest extent feasible, particularly in areas of high visibility.
- (10) Telecommunications antennas. Due to their high visibility, dish and parabolic telecommunications antennas shall be located at as low an elevation as possible without compromising the function of the device, preferably on the sides of buildings or ground mounted on slopes below the ridge line wherever possible, rather than elevated on telecommunications towers. Microwave and satellite dishes shall be of mesh construction wherever possible.
- (11) Utility service. At the discretion of the Board, electrical and land-based telephone utilities extended to serve telecommunications sites shall be undergrounded on the applicant's property.
- (12) Security provisions. Each site shall have a security program, including physical features such as fencing, anti-climbing devices or elevating ladders on the telecommunications towers, and/or monitoring either by staff or electronic devices, to prevent unauthorized access and vandalism.
- (13) Safe zone. Telecommunications towers shall be designed so that in the event

of failure they will fall within the setback area of the site and/or away from adjacent development.

- (14) Noise. Noise-producing equipment shall be sited and/or insulated to minimize noise impacts on adjacent properties.
 - (15) Annual inspection and report. Unless waived by the Board, telecommunications towers over 100 feet in height, including towers existing on the effective date hereof, shall be inspected annually by a licensed professional engineer or at any other time upon a determination by the Town's Building Inspector that the telecommunications tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer.
 - (16) Removal. All telecommunications facilities, including but not limited to antennas, towers and accessory structures, shall be dismantled and removed from the site when they have been inoperative, abandoned or had their special permit revoked for six months. Applicants shall post a bond or other suitable undertaking as a condition of the use permit in order to guarantee removal of abandoned structures.
 - (17) Post-installation field report. A post-installation field report identifying the facility's coverage area, the telecommunications tower's maximum capacity, committed capacity and unused capacity, if any, and co-located users of the telecommunications tower shall be submitted to the Town.
 - (18) Proof of insurance. The applicant shall annually provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
 - (19) Special permit term. Special permits granted pursuant to this section shall be issued for a term of one year. Permits may be renewed yearly, without the need of a public hearing.
 - (20) To the extent determined by the Board, the applicant shall provide for the placement of antennas and other telecommunication devices on its facilities for public safety organizations.
 - (21) The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.
- F. The Planning Board may grant the special permit, deny the special permit or grant the special permit with written stated conditions. Denial of the special permit shall be by written decision based upon substantial evidence submitted to the Board.
- G. The special permit shall be assignable and shall run with the land; provided, however, that the assignee must comply with the conditions of the special permit, must assume all obligations thereunder, and must provide proof of insurance and proof of removal cost bonding to the Town Clerk. **[Amended 5-14-2013 by L.L. No. 2-2013]**
- H. Revocation. If the applicant violates any of the conditions of its permit or violates any other local, state or federal laws, rules or regulations, this shall be grounds for

revocation of the special permit. Revocation may occur after the applicant is notified of the violations and the Planning Board holds a hearing on same.

§ 205-43.2. (Reserved)¹⁵

§ 205-43.3. (Reserved)¹⁶

§ 205-43.4. Bioremediation. [Added 10-10-2006 by L.L. No. 5-2006]

The purpose of this section is to allow for use of bioremediation for the treatment of petroleum-contaminated soils within the I and A Districts. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

- A. Definitions. As used in this section, the following terms shall have the meanings as indicated:

CONTAMINATED SOIL(S) — Any material that contains petroleum products is prohibited from being discharged into the ground or water by any local, state, or federal law, or whose discharge requires any type of permit from any governmental agency or official.

- B. Prohibitions and restrictions. The movement of contaminated soils into or within an R-1, R-2, or RLS District is prohibited. The movement of contaminated soils into or within an I or A District without an approved bioremediation plan is prohibited. The movement of contaminated soils into or within an I District with an approved bioremediation plan shall be permitted only by special use permit, upon site plan approval issued by the Planning Board herein, and issuance of a building permit, and subject to the provisions of this chapter and all other applicable regulations. The movement of contaminated soils within an A District with an approved bioremediation plan shall be permitted only by special use permit if bioremediation occurs on the originating parcel, upon site plan approval issued by the Planning Board herein, and issuance of a building permit, and subject to the provisions of this chapter and all other applicable regulations. All contaminated soils to be treated must have originated from within the Town of Somerset. No contaminated soils from property located outside of the Town of Somerset shall be used in a bioremediation process located within the Town.

- C. Applications under this section shall be made as follows:

(1) In addition to the requirements for a site plan set forth in Article XVA, applicants for a special permit shall submit the following information to the Planning Board.

- (a) A report from a New York State Department of Environmental Conservation (DEC) licensed testing laboratory:

[1] Specifying and explaining the testing protocol performed on the

15. Editor's Note: Former § 205-43.2, Commercial wind-energy conversion systems, added 7-11-2006 by L.L. No. 1-2006, was repealed 1-29-2018 by L.L. No. 3-2018.

16. Editor's Note: Former § 205-43.3, Noncommercial wind-energy conversion systems, added 7-11-2006 by L.L. No. 2-2006, was repealed 1-29-2018 by L.L. No. 3-2018.

- contaminated soil;
 - [2] Listing the contaminants and their levels or strengths;
 - [3] Providing MSDS sheets for the contaminants.
- (b) A detailed bioremediation plan specifying and explaining the:
- [1] Size, location and depth of the area that will be receiving contaminated soil ("the bioremediation cell");
 - [2] The amount of soil, in cubic yards, that will be brought onto the bioremediation cell;
 - [3] The location from which contaminated soil is being brought ("the originating parcel");
 - [4] A grading, site drainage and landscaping plan;
 - [5] The amount of time to complete the final grading of the bioremediation cell;
 - [6] Time frame for final seeding and/or landscaping.
- (c) A detailed plan specifically explaining the:
- [1] Size, location and depth of the area that will be providing the contaminated soil from the originating parcel;
 - [2] The amount of soil, in cubic yards, that will be brought onto the originating parcel;
 - [3] The location from which replacement soil is being brought;
 - [4] A grading, site drainage and landscaping plan;
 - [5] The amount of time to complete the final grading;
 - [6] Time frame for final seeding and/or landscaping of the originating parcel.
- (2) If SEQRA has not already been completed by the NYSDEC, the applicant shall prepare a full environmental assessment form impact statement, unless the Planning Board, in its sole discretion, decides that a full environmental assessment form is not required.
- (3) A copy of the NYSDEC permit authorizing bioremediation, if applicable.
- D. Special use permits issued for bioremediation cells shall be subject to the following general conditions as well as any other conditions which the Planning Board deems appropriate:
- (1) Separation distance. For other than the property containing the cell, the boundaries of any bioremediation cell shall be separated from all residential dwellings, places of public assembly, and sources of drinking water by a distance of 1,000 feet.

- (2) Final appearance. All bioremediation cells and originating parcels shall be graded, seeded and otherwise landscaped so that the result is consistent with the appearance of the property prior to any remediation work. If a liner is used in the bioremediation process, it shall be perforated and excess sheeting removed prior to final grading and seeding.
- (3) Safety. During the course of any bioremediation work, the applicant shall be required to keep any and all public roads traversed by trucks or other equipment associated with the bioremediation project clean and free from dust, mud, gravel or other debris associated with the project.
- (4) Storage. During the course of any bioremediation work, the applicant shall not store any materials or equipment on any Town road right-of-way without permission from the Town Highway Superintendent.
- (5) Damage to roads or bridges. During the course of any bioremediation work, the applicant shall ensure that any trucks or other equipment associated with the bioremediation project comply with the weight postings for all roads and bridges within the Town.
- (6) Contents prohibited. No contaminated material may include concrete, blacktop, asphalt macadam, wood, metal, or any material that is foreign to natural soil, other than the chemical contaminants.
- (7) Other permits. Any conditions imposed in any other permits issued by any other governmental agency shall, in the discretion of the Planning Board, be incorporated into the special use permit.
- (8) Security. Prior to approval of any special use permit, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the cleanup and/or remediation of said bioremediation cell(s) during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the bioremediation cell(s) and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction, sampling, maintenance and reclamation data to the authorizing board prior to approval of any application to accomplish the foregoing.
- (9) Reports. Any time within three years after final grading, the applicant shall supply either: a report from the DEC certifying that bioremediation is complete and the soil at both the bioremediation cell and the originating parcel comply with all then-existing DEC requirements; or a report from a DEC-approved soil testing laboratory certifying that the soil at both the bioremediation cell and the originating parcel comply with all then-existing DEC requirements.
- (10) Any conditions necessary to mitigate the long- or short-term effects on the originating parcel, the bioremediation cell, and any property adjacent to either parcels.

- (11) Failure to complete. After three years, if the soil on the originating parcel or the bioremediation cell is contaminated according to then-current DEC specifications, the soil shall be removed to a landfill licensed to accept the contaminated soil outside the Town of Somerset within six months.
 - (12) Nontransferable. Any special use permit issued pursuant to this section is issued to the applicant and not transferable or assignable without permission of the Planning Board.
 - (13) Revocation. Any violation of the conditions of the special use permit or any violation of any other local, state or federal laws, rules or regulations by the applicant shall be grounds for revocation of the special use permit. Revocation will occur after the applicant is notified of the violations and the Planning Board has held a hearing on the same.
- E. Fees. Fees for special use permits issued under this section shall be set by resolution of the Town Board.
- F. All applications made after effective date for a special use permit shall be subject to all requirements of this chapter. Any existing bioremediations projects regulated by DEC shall be subject to Subsection D(2), (8), (9), (10) and (11).

§ 205-43.5. Commercial/industrial wind energy conversion systems. [Added 2-24-2016 by L.L. No. 3-2016]

- A. Purposes. The Town Board of the Town of Somerset adopts this section to regulate the placement of commercial and industrial wind energy conversion systems to protect the public safety, health and welfare; to provide a regulatory structure that promotes the protection of the Town of Somerset residents; to minimize the adverse impacts on the Town's character and environment and economy and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways, and the residential and farming communities of the Town.
- B. Authority. The Town Board of the Town of Somerset enacts this section under the authority granted by:
- (1) Article IX of the New York State Constitution, § 2(c)(6) and (10).
 - (2) New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.
 - (3) New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)a(6), (11), (12) and (14).
 - (4) The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this section, and what variances may be granted to the extent such grant of power is different than under Town Law § 267 and § 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this section differ from the authority granted to the Town by Article 16 of the Town Law.
 - (5) New York Town Law, Article 16 (Zoning).

- (6) New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
 - (7) New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).
 - (8) New York Real Property Tax Law § 487.
 - (9) Police powers of the Town of Somerset; and the laws of the State of New York.
- C. Findings. The Town Board of the Town of Somerset makes the following findings:
- (1) Shortsighted planning has often resulted in creation of problem industries which adversely affect public health and quality of life; examples are found in Somerset, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Commercial wind energy facilities are not exempt from these problems, and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This section will contribute to this effort. The existence of Article 10 of the Public Service Law does not negate this responsibility, and in fact recognizes it. Further, Article 10 remains untested by judicial review addressing several potential legal issues. This section is not unduly burdensome to the mandates or the process set forth in Article 10 but is rather compatible with them.
 - (2) The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.
 - (3) Commercial/industrial wind energy facilities have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
 - (4) Commercial/industrial wind energy facilities should benefit the residents of the local areas where they are sited.
 - (5) Commercial/industrial wind energy facilities are, by their very nature, not aesthetically pleasing due to their height and disruption of views and skylines, especially in rural, flat-landed communities without many high structures.
 - (6) The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.
 - (7) The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing

region.

- (8) The Town of Somerset has very few tall structures.
- (9) The Town of Somerset is bordered on the north by Lake Ontario and on the east, south and west by towns which share Somerset's agricultural and rural residential character and are similarly low, flat areas.
- (10) The only other municipality in the Town of Somerset is the Village of Barker, which is a small village bedroom community, and which is also part of the rural, residential community devoid of high structures.
- (11) Commercial/industrial wind energy facilities represent potential for extreme adverse aesthetic impacts due to their height as well as other effects.
- (12) The Town of Somerset is located on a major migration route for many species of birds and is a habitat for many species, both year-round and seasonal.
- (13) The bat population in the Town of Somerset is important and in distress.
- (14) Commercial/industrial wind energy facilities are known to pose danger to birds and bats and have been demonstrated to kill numerous members of both species annually.
- (15) Commercial/industrial wind energy facilities can cause danger to humans and animals, including livestock, resulting from ice throw.
- (16) If not properly regulated, installation of commercial/industrial wind energy facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.
- (17) Commercial/industrial wind energy facilities, when improperly sited, are known to adversely affect property values and cause economic hardship to property owners.
- (18) The Town of Somerset contains clusters and stretches of homes, including along the Lake Ontario shoreline, in and around the Village of Barker and West Somerset, along Route 18 and Lake Road, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural-pastoral lifestyle.
- (19) Town of Somerset residents and visitors enjoy outdoor activities, including marine (boating, fishing, sailing, swimming, kayaking, etc.) and land (hunting, hiking, cycling, snowmobiling, jogging, etc.), all of which are potentially adversely affected by the presence of commercial/industrial wind energy facilities.
- (20) Commercial/industrial wind energy facilities may be significant sources of noise, including infrasound, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.
- (21) Construction of wind facilities can create traffic problems and can cause

damage to local roads and infrastructure.

- (22) Commercial/industrial wind energy facilities have the potential to cause electromagnetic interference with various types of communications.
 - (23) Commercial/industrial wind energy facilities have the potential to adversely interfere with orderly development of the Town of Somerset, including single-family residences and small subdivisions, by making such development unappealing.
 - (24) Commercial/industrial wind energy facilities need to be regulated for removal when no longer utilized.
 - (25) Commercial/industrial wind energy facilities provide renewable energy. Their viability is highly dependent on state and federal subsidies, and renewable energy companies are subject to economic pressure and potential bankruptcies. Funding and mechanisms for removal when the facilities are no longer operating need to be in place.
 - (26) The Town of Somerset has regulated wind energy facilities for the past decade through local laws. This section represents an updating of said regulation.
 - (27) In formulation of this section, many studies have been reviewed and taken into consideration. Wind energy laws in other locations have been reviewed and considered; experiences of other areas have been studied; the Town of Somerset Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this section and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.
 - (28) When considering large-scale construction and maintenance, due weight should be given to the following:
 - (a) The relative distress caused to a community and its residents;
 - (b) The actual necessity for such facility given energy production in the area and region, including clean energy production;
 - (c) Past and present stresses and disruption imposed upon an area due to all types of energy production;
 - (d) Alternatives to facilities, including location in other areas, location in areas where demand is needed, and alternative methods of producing clean energy;
 - (e) Location in areas of highest consumption; and
 - (f) The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.
- D. Definitions. As used in this section, the following definitions apply. If any definition herein conflicts with a definition found elsewhere in the Town Code, the

definitions set forth here apply. If not defined in this section, the definitions as set forth in § 205-8 shall apply. As used in this section, the following terms shall have the meanings indicated:

AMBIENT SOUND — Ambient sound encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient sound also includes insect and other nearby sounds from birds and animals or people. The nearby and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

ANSI — Refers to or means the American National Standards Institute.

APPLICANT — The person or entity filing an application and seeking license under this section; the owner of a WECS or a proposed project; the operator of a WECS or proposed project; or any person acting on behalf of an applicant, WECS project or proposed WECS. Whenever the term "applicant" or "owner" or "operator" is used in this section, said term shall include any person acting as an applicant, owner or operator.

BACKGROUND SOUND — Background sounds are those heard during lulls in the ambient sound environment and represent the quietest 10% of the time, for example, the quietest one minute.

dBA — A-weighted sound-pressure level. A measure of overall sound-pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low frequencies with respect to the frequencies centered around 1,000 Hz. The resultant sound level is said to be "weighted," and the units are "dBA." Sound-level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997, for Type 1 instruments and are capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this section, dBA means LAeq unless specified otherwise.

dBC — C-weighted sound-pressure level, similar in concept to the A-weighted sound Level (dBA), but C-weighting does not deemphasize the frequencies below 1kHz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI SI. 43-1997, Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this section, dBC means L unless specified otherwise.

DECIBEL — A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

EAF — The environmental assessment form used in the implementation of SEQRA as that term is defined in 6 NYCRR 617.

LWRP — The Local Waterfront Revitalization Program or Plan of the Town of Somerset, together with the Town of Somerset Waterfront Consistency Law.

NONPARTICIPANT — Any and all Somerset landowners having no contractual relationship with a wind developer.

PARTICIPANT — Any and all landowners having a signed lease, easement, or good neighbor agreement with a wind developer.

PERSON — Any person, partnership, LLC, corporation, joint venture, trust or other entity.

QUALIFIED ACOUSTICAL CONSULTANT — A person with demonstrated competence in the specialty of community noise testing who is a person with full membership in the Institute of Noise Control Engineers (INCE).

RESIDENCE — Any building suitable for habitation in the Town of Somerset on the date an application for a wind energy facility permit is received. A residence may be part of a multidwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, nursing homes, schools, churches or buildings used for educational purposes or public gatherings.

ROTOR DIAMETER — The diameter of the largest swept area of a rotating turbine blade.

SECTION or THIS SECTION — Shall mean, unless otherwise identified, § 205-43.5.

SEQRA — The New York State Environmental Quality Review Act and its implementing regulations in 6 NYCRR 617.

SETBACKS — A distance measured from the closest rights-of-way line of the road rights-of-way, property lines, village limits, edge of wetlands, high-water level of Lake Ontario, edge of streambed, closest point of residence foundation to the base of the turbine or measurement tower, zoning districts, LWRP boundaries, or other point or line of reference.

SHADOW FLICKER — The visual effect of viewing the moving shadow of the wind energy conversion system (WECS) rotor blades when they are in a position between the receptor (person viewing them) and the sun and/or the "strobe" lighting effect of this condition as perceived by the receptor, whether directly or indirectly (as in a reflection off a light-colored wall).

SITE — The minimum area necessary for a wind energy facility to satisfy the required setbacks and any other standards in this section. The site may be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where an individual or group of individuals owns or control adjacent properties, those properties may be combined for the purposes of this section through an easement or other legally enforceable agreement recorded in the real property records in the Niagara County Clerk's office. The agreement must, at a minimum, describe all lands that may be impacted if the WECS fell and must remain in effect as long as the WECS is in place. Where multiple adjacent lots are in single ownership or are combined through such agreement, such multiple or combined lots shall together be considered the "site."

SOUND-PRESSURE LEVEL — The level, expressed in decibels, which is equaled or exceeded a stated percentage of time. Sound-pressure level is spectrally weighted to correspond to a spectrum of interest. For example, the A-weighted decibel scale (dBA) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale (dBC) approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale (dBG) is designed for infrasound. Sound measurements shall use sound meters that meet the American National Standards Institute Specifications for Integrating Averaging Sound Level Meters, S1.43-1997, for Type I instruments and be capable of accurate readings (corrections for interval noise and microphone response permitted) at 20 dBA or lower.

SPECIAL USE PERMIT — A construction and operating permit granted in accordance with the provisions of this section.

TOTAL HEIGHT — The height of the tower from the finished ground elevation to the furthest vertical extension of the turbine rotor plane.

TOWER HEIGHT — The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for turbine blades.

WIND ENERGY CONVERSION SYSTEM ("WECS") or WIND ENERGY CONVERSION FACILITY — Any machine or wind facility that converts the kinetic energy in the wind into electricity, including all related infrastructure, electrical lines and substations, access roads and accessory structures; also known as a commercial/industrial wind energy conversion system. Excluded from the definition are noncommercial wind energy conversion systems regulated by § 205-43.3 and having a height of 150 feet or less.

E. **Applicability/severability.** No wind facility or wind energy conversion system shall be constructed, reconstructed, modified or operated in the Town of Somerset except in compliance with this section and in compliance with all conditions of approval established by the Town Board. **[Amended 1-29-2018 by L.L. No. 3-2018]**

- (1) This section shall not supersede §§ 205-11BB, 205-40A(8), or 205-55B(8)(g) of the Somerset Town Code. If any provision of this section conflicts with any provision of the Town of Somerset Town Code other than §§ 205-11BB, 205-40A(8), or 205-55B(8)(g), provisions of this section shall apply.
- (2) If any provision, section, or requirement of this section shall be finally determined not to apply or to be unenforceable by any court or government agency or body, then all other applicable provisions of the Somerset Town Code shall apply, including but not limited to §§ 205-11BB, 205-40A(8), and 205-55B(8)(g), and any tall structures zoning law the Town may adopt.
- (3) If any provision, section or requirement of this section shall be finally determined not to apply, or to be unenforceable or void, by any court, state or federal agency having authority to so determine, it shall not affect the validity or enforceability of this section as a whole or any other part thereof.
- (4) Nothing in this section shall prevent the ability of the Town of Somerset to appeal or seek court determination of any action by any agency, tribunal, or lower court.

F. Applications for wind energy conversion systems.

- (1) An application for a special use permit for a wind energy facility or a single WECS shall include the following:
 - (a) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent, as well as an original signature of the applicant authorizing the representation.
 - (b) Name and address of the property owner. If the property owner is not the applicant, the application shall include proof of site control by recorded document establishing that the applicant is authorized to utilize the property for the intended purpose.
 - (c) Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, and latitude and longitude coordinates.
 - (d) A description of the project, including the number and maximum rated power output capacity of each WECS.
 - (e) For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
 - [1] Property lines and physical dimensions of the site;
 - [2] Location, approximate dimensions and types of existing structures and uses on site, public roads, and adjoining properties within a three-thousand-foot radius of the proposed WECS.
 - [3] Location and ground elevation of each proposed WECS.
 - [4] Location of all above- and below-ground utility lines on the site, and all related transformers, power lines, interconnection points with transmission lines, and other ancillary facilities or structures.
 - [5] Location and size of structures above 35 feet within a three-thousand-foot-radius of any proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open-lattice towers are considered structures.
 - [6] Location of, and measured distances (accurate GPS measurements may be utilized) of, each proposed WECS tower from every setback required pursuant to this section.
 - [7] To help demonstrate compliance with the setback requirements of this section, circles drawn around each proposed tower site having a radius equal to:
 - [a] Five times the total height of the proposed WECS;
 - [b] One thousand feet;

- [c] Three thousand feet;
 - [d] One-half mile;
 - [e] One mile;
 - [f] One and one-half times the total height of the proposed WECS;
 - [g] Two times the total height of the proposed WECS; and
 - [h] Five thousand feet.
- [8] All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- [9] The names and addresses of all property owners within a three-thousand-foot-radius of each WECS, as shown on the assessment roll of the Town of Somerset, together with the current use of all such property.
- (f) Elevation drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between the ground and the lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.
 - (g) Landscaping plan: depicting vegetation and forest cover, describing the area to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added, identified by species and size of specimens at installation, and their locations.
 - (h) Lighting plan: showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure; but if such determination is not available at the time of the application, the application shall so state, and such determination shall be submitted prior to final approval.
 - (i) Decommissioning plan: a decommissioning plan as specified in this section.
 - (j) Complaint resolution plan: a complaint resolution plan to address complaints within 24 hours of receipt of notice thereof and to resolve any complaint in a diligent and timely manner under the circumstances.
 - (k) Information relating to the construction/installation of the wind energy facility as follows:
 - [1] A proposed construction schedule describing commencement and completion dates of the project and beginning and ending hours of daily construction.
 - [2] A description of the routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.

- (l) Completed Part 1 of the full EAF.
- (m) For each proposed WECS: include make, model, picture, and manufacturer's specifications, including noise decibel data. Include manufacturers' material safety data sheet documentation for the type and quantity of all materials used in the operation of all equipment, including, but not limited to, all lubricants and coolants.
- (n) As part of the application, or as a supplement to the application and simultaneously submitted, the following: Each submittal shall contain a thorough analysis/explanation of the ability and means to comply with the "Standards for commercial/industrial WECS," Subsection H of this section.
 - [1] Shadow flicker: The applicant shall submit a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may be present at locations of any residences, highways, parks or open recreation areas and detail measures that will be taken to mitigate or eliminate such interference and to comply with the requirements of this section.
 - [2] Visual impact: Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least several locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - [3] Fire protection/emergency response plan: a fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed wind energy facility, to address coordination with local emergency/fire protection providers during the construction or operation phase in the event of an emergency, fire or other hazard.
 - [4] Noise analysis/study: a noise analysis by a qualified acoustical consultant documenting the noise levels associated with each proposed WECS. The study shall document noise levels at property lines and at the property line of the nearest residences not on the site for each residence in a three-hundred-sixty-degree circle of the site. The noise analysis shall be performed according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other procedure accepted by the Town Board, and shall include both a dBA analysis and dBC analysis. The noise analysis/study shall demonstrate compliance with the noise provisions as set forth in the "Standards for

commercial/industrial WECS," Subsection H of this section.

- [5] Property value analysis: property value analysis, prepared by a New York State licensed appraiser experienced in appraising rural properties of the type and nature typically found in the Town of Somerset, evaluating the potential impact of the project on values of properties in the Town of Somerset, and in addition a proposed means to protect property owners from decrease in values caused by the establishment and operation of the proposed WECS, and to comply with the property value preservation subsection set forth in the "Standards for commercial/industrial WECS," Subsection H of this section.
- [6] Electromagnetic interference: an assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, including broadband, weather and other radar, identifying specific potential interference to established systems.
- [7] Transportation impacts: an analysis of impacts on local transportation, identifying impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Transportation impacts to be considered shall include, at a minimum: potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS' materials; impacts on school bus routes; and impacts of visitors to the WECS' facilities. Local roads shall include all state highways, county highways, Town highways, and village streets and highways, which will be or may be used by the applicant.
- [8] Transportation plan: a transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, Town highways, and village streets and highways, which will be or may be used by the applicant.
- [9] Groundwater impacts: an analysis of impacts on local groundwater resources shall be prepared regarding impacts anticipated during construction, reconstruction, modification, or operation, decommissioning and post-decommissioning of each WECS. A geotechnical report shall be provided and shall include: soil and geologic characteristics of the site based on site sampling and testing; a bedrock profile within 1 mile of the site; information on depth of well; average flow rate; and with permission by owner, test of water quality for all wells within two miles of the site; grading criteria for ground preparation, cuts and fills, soil compaction, and a

slope stability analysis.

- [10] An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground- and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the site preparation phase.
- [11] Cultural, historical and archaeological resources plan: an analysis of impacts on cultural, historical and archaeological resources addressing and assessing impacts anticipated during construction, reconstruction, modification or operation of each WECS. This assessment shall be conducted in accordance with standards of the New York State Office of Parks, Recreation and Historic Preservation.
- [12] Wildlife impacts: An analysis of impacts on local wildlife shall be prepared, addressing impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna shall also be prepared. The analysis will include migratory and resident avian species and bat species. The scope of such assessment shall take into consideration New York State Department of Environmental Conservation and United States Fish and Wildlife Service studies, standards and recommendations and must, at a minimum, consist of preconstruction data of three years, and literature/studies/survey for threatened and endangered species and species of concern, and migratory species that provide relevant information on critical flyways and migration routes, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The reports shall provide sufficient information to allow the Town Board to make a determination on any mitigation conditions or a denial of permits as provided in the standards for commercial/industrial WECS section.
- [13] Operation and maintenance plan: an operation and maintenance plan providing for regular periodic wind energy facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- [14] Blade throw report: a report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade may be thrown. (The basis of the calculation and all assumptions must be thoroughly explained and justified.) The frequency incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included, and the report must specifically address the climatic and weather conditions found in the Town of Somerset.

- [15] Stray voltage report: an assessment, pre- and post-installation, of possible stray voltage problems on the site and neighboring properties within one mile of the project boundary to show what properties need upgraded wiring and grounding.
- [16] A health report utilizing available background health, including mental health, analysis for the Town and the region, including age, proliferation of known health disorders, and effects of noise presence of WECS and flicker effect on people, as well as a proposed means of accessing a health background on individuals who wish to participate for determination of health effects if a WECS is constructed; a thorough analysis of the potential health effects, including mental health, related to commercial/industrial wind turbines, and a plan to mitigate each of the effects and to address them.
- [17] An agriculture effect report, including impacts on all types of agricultural activities present in the Town of Somerset. The report shall address the effects of wind turbulence and disruption on fruit production, effects on beef and dairy farms, grain farming and all other farming activities. The report must address insect and bee population effects, effects on orchard and crop pollination, micro-climate effects and impacts on orchard and crop growing seasons.
- [18] A report/analysis of the effects on the economy of the Town, including income of residents and effects on other industries and jobs.
- [19] A report and analysis on any effect on any military installation in the County of Niagara, including the Niagara Falls Air Reserve Station, its potential effects on flight patterns, its potential to cause radar interference, effect on base siting evaluations, and the potential economic effect on the County of Niagara should the base be closed, including job loss and economic impact.
- [20] A report and analysis on any outdoor activities common in the Town of Somerset, including hunting, hiking, biking, etc.
- [21] A complete report on:
- [a] The need for the project, including demand analysis and limitations on transport of power to high-demand areas.
 - [b] Other "clean" energy power projects in the area, including the Niagara Power Project, with analysis of total clean power generated in Niagara County versus other areas in the state.
 - [c] The effect on the Great Lakes Seaway Trail, a national scenic byway.
 - [d] Increased expenses imposed upon the Town of Somerset as a result of the proposed project.

- [e] All alternative sites identified by the applicant and its affected entities.
 - [f] Local power needs in the Town of Somerset and total power generated.
 - [g] Total disruption/burden placed upon the Town of Somerset for all power-generation activities, including existing facilities and infrastructure. Compare to other areas of the state; use population/energy usage per capita versus total energy burden.
- (o) For any requirement of a report, analysis or study, required pursuant to this Subsection F or required by any other provision of this section, or by the Town Board in its review process, the Town may require an expanded or supplemental report or study by the applicant, or an independent study, analysis or report by a consultant of the Board's choosing. The applicant shall be responsible for the cost of any review/report study or analysis commissioned by the applicant, to be paid for from the escrow fund established pursuant to this section.
 - (p) The applicant shall, prior to the receipt of a special use permit, provide proof that it has executed an interconnection agreement with the New York independent system operator and the applicable transmission owner. The applicant shall also provide proof of complying with Public Service Commission power purchase requirements.
 - (q) A statement, signed under the penalty of perjury, that the information contained in the application is true and accurate to the best of the applicant's knowledge.
 - (r) Proof of continuous liability insurance in the amount of \$5,000,000 per occurrence with a total policy minimum of \$10,000,000 per year. This shall be submitted to the Town of Somerset indicating coverage for potential damages or injury to landowners and the public.
 - (s) Disclosure of financial interests. For any financial interest held by a municipal officer, or his or her relative, in any wind development company or its assets, within three years prior to the date of an application for a permit under this section, the wind company shall disclose on the application the municipal officer or his or her relative and the nature and scope of the financial interest of each person.
 - (t) All wind speed data obtained by the applicant from any wind measurement tower in the Town, including an explanation of the methodology utilized to obtain measurements.
 - (u) The applicant shall fund an escrow as required by this section to cover the amount by which the Town's cost to review the applicant's application, including the cost of any independent study, analysis or report and the cost of the Town Engineer, exceeds the application fees paid by the applicant. The applicant and the Town may enter into an agreement as to the amount of the escrow. If no agreement is reached prior to review, the

fund shall be 1.5% of the total estimated cost of the project, including both "hard" and "soft" costs, approvals, etc. The amounts paid to the Town shall not exceed this amount. This amount is determined to be the best estimate of all costs to the Town for its review process as set forth in this section. The escrow shall be funded prior to review of the application. If, at the end of the review process and decision on the application by the Town Board, funds remain in the escrow fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.

- (v) Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town Board and placed in the Town Library and Town Clerk's office as well as on the Town of Somerset website.

G. Application review process.

- (1) Applicants may request a preapplication meeting with the Town Supervisor, Town Code/Zoning Enforcement Officer and such consultants as the Supervisor shall determine. Such meeting shall be informal, and no party shall be bound by any statements made.
- (2) An original executed and 15 copies of the application and a complete digital version shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. The Town Clerk shall forward one copy to the Code/Zoning Enforcement Officer, five copies to the Town Supervisor, and additional copies to such individuals as the Supervisor shall direct.
- (3) The Code/Zoning Enforcement Officer, in consultation with the Town Engineer and any other consultants deemed necessary, shall determine whether the application is complete. If the application is deemed incomplete, the Town Code/Zoning Enforcement Officer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information, unless the number of WECS proposed is increased. When the application is complete, it shall be filed, and the applicant shall be notified it has been accepted for filing.
- (4) Upon filing of a complete application, the Town Clerk shall transmit the application to the Board.
- (5) In addition to the public hearing requirement, the Town Board may, in its discretion, require the applicant to conduct information sessions for the public benefit. The number of such sessions shall be at the discretion of the Town Board, and notice shall be given to media in such a manner as the Town Board shall determine. During these sessions, the public will be afforded the opportunity to question the applicant regarding the project.
- (6) The Town Board shall hold at least one formal public hearing on the application. Notice shall be published in the Town's official newspaper no less than 10 days before the hearing. In the event any hearing is adjourned by the

Board to hear additional comments, no further publication or mailing shall be required. Notice shall also be given to property owners in the Town of Somerset at the address shown on the assessment roll of the Town of Somerset, or by publishing such notice in the Town's newsletter.

- (7) At the discretion of the Town Board, the public hearing may be combined with public hearings on any environmental impact statement. Notice for SEQRA public hearings must meet the specification set out in 6 NYCRR 617.12(c).
 - (8) Notice of the project shall also be given, when applicable, to: the Niagara County Planning Board, if required by General Municipal Law § 239-1 and 239-m; and to adjoining towns where the project site is located within 3,000 feet of the adjoining town boundary.
 - (9) SEQRA review. Applications for commercial/industrial WECS are deemed Type I projects under SEQRA. The Town Board may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Town Board's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA.
 - (10) After a thorough and detailed evaluation of the application in which the Town Board completes the required "hard look" of all materials and public input, and upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board shall approve, approve with conditions, or deny the application(s). The Board shall issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
 - (11) If approved, the Town Board will issue to the applicant a special use permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said permit. This authorizes the Code Enforcement Officer/Building Inspector to issue a building permit for each WECS upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this section.
 - (12) The decision of the Town Board shall be filed within five business days in the office of the Town Clerk and a copy mailed to the applicant by first-class mail.
 - (13) If any approved WECS is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.
- H. Standards for commercial/industrial WECS. The following restrictions on location, standards and conditions shall apply to all commercial/industrial WECS. Applications must demonstrate compliance with these standards.
- (1) Restricted areas:
 - (a) No commercial/industrial wind energy systems shall be allowed in any zoning district other than Industrial. **[Amended 1-29-2018 by L.L. No. 3-2018]**

- (b) No commercial/industrial wind energy systems shall be allowed within the boundary areas of the Town of Somerset LWRP.
 - (c) No commercial/industrial wind energy systems shall be allowed in any area where such system or systems are likely to have a material and adverse impact on the land use plans set forth in the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara Counties Regional Planning Board, dated November 1979. **[Added 1-29-2018 by L.L. No. 3-2018]**
 - (d) No wind energy conversion systems shall be allowed within three miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park. **[Added 1-29-2018 by L.L. No. 3-2018]**
- (2) Setbacks. No commercial/industrial wind energy systems shall be allowed within the following setbacks. If more than one setback applies, the most - restrictive setback shall prevail. To protect the public health and safety, the setbacks set forth in this section shall not be waived by any person or entity. **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (a) The minimum setback from any residence, structure, public road, or property line where one property owner has not entered into an agreement with any person or entity seeking to develop or operate a wind energy conversion system shall be 1/2 mile or six times the height of the turbine, whichever is higher.
 - (b) Minimum setback from any villages, hamlets, schools, churches, cemeteries shall be one mile.
 - (c) Minimum setback from any structure, district, building, or site eligible for listing on the National Registry of Historic Places shall be one mile.
 - (d) Notwithstanding the setbacks described in § 205-43H(2)(a), the minimum setback for a residence, if greater than the setbacks described in § 205-43H(2)(a), shall be the minimum distance necessary to ensure that Lmax does not exceed 6 dB above preexisting daytime or nighttime A-weighted background noise levels. For the purposes of this subsection, "Lmax" shall mean the maximum instantaneous sound level modeled within a one-second period. Lmax for any given distance from a wind turbine shall be modeled in accordance with ISO 9613-2, using a ground attenuation factor of zero ($G = 0$) to compensate for the elevated height of the noise source. In addition, low-frequency sound with a frequency below 63 Hz shall be modeled in accordance with ISO 9613-2 assuming no atmospheric attenuation. The input to the ISO 9613-2 propagation model shall be the test results for loudest turbine model considered under IEC 61400-14. Model output should be used to generate a map of 6 dB Lmax isolines around each proposed noise source. If the distance from the noise source to the modeled 6 dB isoline is greater than the setbacks described in Subsection H(2)(a), the setback of 6 dB described here shall apply.

- (3) All power transmission lines from the tower to any building or other structure shall be located underground.
- (4) No television, radio or other communication antennas may be affixed or otherwise made part of any commercial/industrial WECS, except pursuant to the Town Site Plan Review and Subdivision Law. Applications may be jointly submitted for WECS under this section and telecommunications facilities under the Site Plan and Subdivision Law.
- (5) No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
- (6) Lighting of tower. No tower shall be lit except to comply with FAA requirements. Motion-sensitive on-demand lighting is required. Minimum-security lighting for ground-level facilities shall be allowed as approved on the site plan.
- (7) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. All structures in a project shall be finished in a single, nonreflective, matte-finished color. Individual WECS shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project so as to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- (8) No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antennas for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the special use permit for the specific WECS causing the interference.
- (9) All solid waste and hazardous waste and construction debris shall be removed from the site and managed in a manner consistent with all applicable rules and regulations.
- (10) WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible. All topsoil disturbed during construction, reconstruction or modification of each WECS will be stockpiled and returned to the site upon completion of the activity that disturbed the soil.
- (11) WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the United States Fish and Wildlife

Service as threatened or endangered. When the Town Board determines that significant negative impacts have not or cannot be sufficiently mitigated by a proposed WECS, no permit may be issued.

- (12) WECS shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- (13) Stormwater runoff and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- (14) For all aspects of the application and operations of WECS, the New York State Department of Agriculture and Markets' guidelines for agricultural mitigation for wind power projects in effect as of the date of the application shall be adhered to, and any other agricultural effects identified shall be mitigated, both inside and outside of agricultural districts.
- (15) The maximum total height of any WECS shall not exceed 200 feet under any circumstances. **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (16) Construction of the WECS shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (17) If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems, up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for suspension or revocation of the special use permit for the specific WECS causing the problems.
- (18) WECS shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community (i.e., high concentration of historic stone houses and buildings and old-style barns). This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of New York Department of State Guidelines for Scenic Areas of Statewide Significance shall be respected.
- (19) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- (20) Fencing may be required, as determined by the Town Board.
- (21) Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower, warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with twenty-four-hour, seven-day-a-week, coverage. The Town Board may require additional signs based on safety needs.
- (22) No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the tower structure.

- (23) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (24) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- (25) The owner and/or operator of a WECS that has received approval under this section, and for which a permit has been issued, shall file with the Town Clerk on an annual basis an operation and maintenance compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the operation and maintenance plan. The annual report shall include a noise analysis by a qualified acoustical consultant, performed according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11) or such other procedure as accepted by the Town Board during the permit review process, which certifies to the Town that the noise level of the WECS is in full compliance with the provisions of this section and the permit as issued.
- (26) Traffic routes.
- (a) Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process.
- (b) The applicant is responsible for remediation of damaged roads and infrastructure upon completion of the installation and/or maintenance of a WECS. The applicant shall comply with all requirements of any Town of Somerset infrastructure, preservation or protection law.
- (c) In addition to complying with any Town of Somerset infrastructure preservation or protection law, prior to placing the wind energy facility in operation, and for the life of the project, the applicant shall repair or reconstruct all state highways, county highways, Town highways and village streets and highways damaged by the applicant to the standards set forth by the Niagara County Highway Department, regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.
- (27) Noise standards for wind energy systems. No wind generation facility shall be measured or modeled to emit A-weighted sound levels in excess of the following during operation: **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (a) Facilities with a plant capacity up to and including 50 kilowatts. Operation of facilities with a plant capacity up to and including 50 kilowatts shall not result in 1) sound pressure levels that exceed 42 dBA more than 5% of the time at a distance of 100 feet from any residence or inhabitable structure or 2) audible prominent discrete-frequency tones pursuant to the latest revision of ANSI S1.13 Annex A at a distance of 100 feet from any residence or inhabitable structure.
- (b) Facilities with a plant capacity greater than 50 and up to and including

150 kilowatts. Operation of facilities with a plant capacity greater than 50 kilowatts and up to and including 150 kilowatts shall not result in sound pressure levels in excess of 42 dBA, including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.

- (c) Facilities with a plant capacity greater than 150 kilowatts. Operation of facilities with a plant capacity greater than 150 kW shall not result in sound pressure levels in excess of 42 dBA between the hours of 7:00 a.m. and 9:00 p.m. or 35 dBA between the hours of 9:00 p.m. and 7:00 a.m., including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.
 - (d) Modeling sound levels. Modeled sound levels for a proposed facility shall not exceed the limits set forth in this section. The sound impact of any proposed wind turbine shall be modeled such that broadband sound is modeled in accordance with ISO 9613-2, assuming no ground attenuation ($G = 0$). In addition, low-frequency noise with a frequency lower than 63 Hz shall be modeled in accordance with ISO 9613-2 assuming no atmospheric attenuation. The input to the ISO 9613-2 propagation model shall be the test results for loudest turbine model considered under IEC 61400-14. Sound modeling shall include and report Lmax sound levels that could be generated by the project, and such report shall include a map of isolines representing Lmax sound levels at 1 dB intervals up to and including 6 dB for each proposed wind turbine.
- (28) Economic effects. WECS shall be sited and constructed so as to minimize any adverse economic effects on the Town, its residents and its economic activities, including agricultural activities, in accordance with conditions established by the Town Board.
- (29) Health effects. WECS shall not adversely affect the health, including mental health, of the residents of the Town of Somerset. All available material and studies as well as baseline health reports of willing residents must be contained in a health maintenance plan for any WECS project. Preconstruction health exams shall be provided to willing residents. Reports of residents' exams shall be sealed or maintained in the possession of residents or their physicians, unless they are made available by residents in accordance with HIPAA procedures.
- (30) No WECS shall be located in the Town of Somerset which, after all data, required reports and studies are considered, as determined by the Town Board, will cause unacceptable interference with or danger to bird or bat populations or to migration routes.
- (a) When a WECS has been constructed in the Town of Somerset, the applicant/owner/operator shall inventory all bird or bat kill and report the same to the Town on a monthly basis. The applicant/owner/operator shall also provide access to the site and surrounding area to the Town-designated representative to inventory killed birds or bats on a daily basis, if requested.

- (b) If a tower or towers in a WECS are determined to cause numbers of bird or bat kill which are determined to be excessive, after consultation with the Department of Environmental Conservation and other involved agencies, remedial action shall be required, up to and including suspension or revocation of a permit or any part thereof.
- (31) Real property value protection plan. The WECS owner(s) ("applicant") shall assure the Town of Somerset that there will be no loss in real property value within two miles of each wind turbine within their WECS. To legally support this claim, the applicant shall consent, in writing, to a real property value protection agreement ("agreement") as a condition of approval for the WECS. This agreement shall provide assurance to nonparticipating real property owners (i.e., those with no turbines on their property) near the WECS that they have some protection from WECS-related real property value losses. The applicant shall agree to guarantee the property values of all real property partially or fully within two miles of the WECS. Any real property owner(s) included in that area who believes that his/her property may have been devalued due to the WECS may elect to exercise the following option:
- (a) All appraiser costs are paid by the applicant from the escrow account. The applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("diminution value"), caused by the proximity to the WECS. This shall be determined by calculating the difference between the current fair market value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WECS was proposed or constructed.
- [1] If the higher of the diminution valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("average diminution value" ADV.)
- [2] If the higher of the diminution valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to the applicant and property owner a written appraisal report as to the diminution value for the real property. The parties agree that the resulting average of the two highest diminution valuations shall constitute the ADV.
- [3] In either case, the property owner may elect to receive payment from the applicant of the ADV. The applicant is required to make this payment within 60 days of receiving said written election from the property owner to have such payment made.
- (b) Other agreement conditions.
- [1] If a property owner wants to exercise this option, he/she must do so within 10 years of the WECS receiving final approval from the Town of Somerset.
- [2] A property owner may elect to exercise this option only once.

- [3] The applicant and the property owner may accept mutually agreeable modifications of this agreement, although the applicant is not allowed to put other conditions on a financial settlement (e.g., confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method, that is considered an exercise of this option.
 - [4] This agreement applies to the property owner of record as of the date of the issuance of the permit and is not transferrable to subsequent owners.
 - [5] The property owner of record as of the date of the issuance of the WECS permit must reasonably maintain the property from that time, until he/she chooses to elect this option.
 - [6] The property owner must permit full access to the property by the appraisers, as needed, to perform the appraisals.
 - [7] The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the WECS application.
 - [8] This agreement will be guaranteed by the applicant (and all its successors and assigns) for 10 years following the WECS receiving final approval from the Town of Somerset, by providing a bond (or other surety), in an amount determined to be acceptable by the county;
 - [9] Payment by the applicant not made within 60 days will accrue an interest penalty. This will be 12% annually, from the date of the written election from the property owner.
 - [10] For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the applicant.
 - [11] Upon application, the applicant shall provide a performance bond (or equivalent) in an amount determined by the Town of Somerset and held by the Town of Somerset. This surety account will ensure execution of all aspects of this agreement (including compensation of eligible property owners in the case of default by the applicant). Failure to maintain this surety account shall be cause for revocation or suspension of the WECS permit.
- (32) Any other standard or requirement established by the Town Board as set forth as a condition of approval of an application shall apply.
- (33) All electrical transmission lines associated with WECS shall be buried underground to the maximum extent physically possible. Where aboveground transmission lines must be installed, guy wires or similar support structures shall be prohibited. **[Added 1-29-2018 by L.L. No. 3-2018]**

I. Decommissioning.

- (1) If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant shall, without any further action by the Town Board, remove said system at its own expense in accordance with the provisions of Subsection C of this section. This provision shall not apply if the applicant demonstrates to the Town that it has been making good-faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town Board's ability to order a remedial action plan.
- (2) Nonfunction or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available to the Town all reports from the purchaser of energy from individual WECS. Upon request of the Supervisor, the Supervisor may also require periodic documentation reporting the power output generated by the WECS.
- (3) Decommissioning and site restoration plan and requirements. An application for a wind energy facility permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.
 - (a) The plan shall provide for the removal from the project parcels, and lawful disposal or disposition of, all wind turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 60 inches below grade. The plan shall provide for the removal of all access roads that the owner of the project parcels wants removed. The plan shall provide for the restoration of the project parcels to farmland of similar condition to that which existed before construction of the WECS.
 - (b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the nonfunctioning of the WECS.
 - (c) The plan shall include: the estimated decommissioning cost in current dollars; how said estimate was determined; the method of ensuring that funds will be available for decommissioning and restoration; and the method that will be used to keep the decommissioning costs current, adjusted annually based on a suitable index such as the "RS Means Heavy Construction Cost Data" index.
 - (d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of nonfunctional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 125% of the estimated cost of full decommissioning and restoration in the form of a cash deposit with the Town in the amount of 25% of such fund, and the balance of such fund in the form of an irrevocable bond in form and content as approved by the Town Board. All decommissioning funding requirements shall be met prior to commencement of construction.

- (e) The plan shall include written nonrevocable authorization from the permit holder and the owners of all parcels within the project for the Town to access the parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan. The written authorization shall be in a form approved by the Town and shall be binding on the heirs, assigns and distributees of the owner(s) and shall be recorded in the office of the Niagara County Clerk.
 - (f) Use of decommissioning fund.
 - [1] Any nonfunctional WECS or any WECS for which the special use permit has been revoked shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration within 180 days of the date on which the facility becomes nonfunctional or of the revocation of the special use permit, by the applicant or owner of the WECS.
 - [2] If removal of the WECS is required and the applicant, permittee, or successors fail to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.
 - [3] If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.
- J. Limitations on approvals; easements on Town property.
- (1) Nothing in this section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the wind energy facility. Nothing in this section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any wind energy facility.
 - (2) Notwithstanding anything to the contrary contained in this section or any other local law, ordinance, rule or regulation of the Town of Somerset, building permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is located within a setback required by this section. No property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this section and/or as set forth in the permit.
- K. Permit enforcement revocation.
- (1) Testing fund. A special use permit shall contain a requirement that the applicant perform periodic noise testing by a qualified acoustical measurement consultant, which shall be included in the annual operation maintenance and compliance report required under this section, and may be required more

frequently upon request of the Code Enforcement Officer in response to complaints or reasonable suspicion of violation of permit requirements. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this section and shall include an evaluation of any complaints received by the Town. The Town may, if the Code/Zoning Enforcement Officer so determines, conduct or have conducted such testing as it determines, in addition to the applicant/operator. Such testing shall be paid for by the applicant.

- (2) Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions and requirements of this section. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition or any provision of this section, the owner or operator shall immediately notify the Code Enforcement Officer. Upon such notice, or if the Code Enforcement Officer determines that a violation exists, he shall determine the severity of the noncompliance. If he determines the violation to be a threat to the life, safety, health or immediate well-being of the public, he may order the WECS to be shut down. Upon notification of a violation, the applicant/owner/operator shall submit a remediation plan, in writing, within 10 days outlining the steps to be taken to remedy the violation. If no plan is submitted, or if remediation is not completed within 90 days of notice, or at any other time the Code Enforcement Officer deems appropriate, the Code Enforcement Officer shall notify the Town Board.
- (3) Notwithstanding any other enforcement provision under this section, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: order either remedial action within a particular time frame; or order suspension of the permit until compliance is achieved; or order revocation of the wind energy permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town shall have the right to use the security posted as part of the decommission plan to remove the WECS.

L. Fees.

- (1) Nonrefundable application fees for WECS, wind measurement towers, and small WECS shall be established by the Town Board and reviewed periodically. The fee may be changed by resolution of the Town Board. Until established, the fee shall be \$1,000 per megawatt of rated maximum capacity, submitted with the application.
- (2) Reimbursement of expenses related to WECS project. The Town Board of the Town of Somerset has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant(s) hired by the Town to review the plans and inspect

the work. The Town and the applicant will enter into an agreement for an inspection and/or certification procedure for these unique facilities, and the applicant will be required to deposit the sum of \$100,000 in an escrow account with the Town, which the Town may use to pay for any expenses it incurs related to this project. The fees established herein may be amended from time to time by resolution of the Town Board.

- (3) Nothing in this section shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

M. Project management and oversight.

- (1) Upon approval by the Town Board of a WECS special use permit application, and as a condition to the issuance of a WECS special use permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the permit. Such representative and site manager shall be in place for as long as the WECS is in place. This person will have the authority to make management and technical decisions as situations demand. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of the field representative and site manager to the Town Code Enforcement Officer and the Town Supervisor. The applicant shall also provide contact information for all entities providing operation, maintenance and monitoring services.
- (2) As a condition to the issuance of a WECS special use permit, the services of an engineering firm will be retained by the Town of Somerset during the construction phase of the WECS project.
- (3) Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of 3% of the estimated cost of construction, including all materials, contracts and labor. Said amount is determined to be the reasonable cost to the Town to provide for such inspection. If the cost to the Town is less than that amount, the balance shall be refunded to the applicant upon completion of the construction, issuance of a certificate of occupancy and approval of all state and federal agencies.
- (4) The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specifications and drawings. A representative of the engineering firm shall be on site at all times during the construction phase. The firm will also monitor road and infrastructure use and determine any damages to the same.
- (5) The engineering firm's duties shall include coordination with the Code Enforcement Officer for enforcement actions and project specification compliance, and it will be confirming that all project specifications are implemented. The firm's representative may recommend that the Code Enforcement Officer issue a stop-work order for issues including but not

limited to: safety; developer compliance issues; and insufficient project documentation.

- (6) The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the engineering firm representative.
- (7) The applicant shall provide the engineering firm representative and the Code Enforcement Officer with as-built drawings within one week of completion of each portion of the construction phase, or as requested by the engineering firm representative, or Building Inspector.
- (8) All upgrades or changes to the WECS project, as permitted, shall be reviewed and approved by the engineering firm and Code Enforcement Officer prior to the implementation of such upgrades or changes. No changes to basic design, height or location will be permitted unless approved as an amendment to the application by the Town Board.
- (9) A final maintenance plan shall be provided to and approved by the Code Enforcement Officer, with input from the engineering firm, prior to issuance of a certificate of occupancy, including but not limited to:
 - (a) A list of all items requiring regular maintenance.
 - (b) Duration of accumulated time between scheduled maintenance.
 - (c) Work to be completed during the maintenance operation.
 - (d) Person responsible for the maintenance.
 - (e) Process the applicant uses to ensure maintenance is carried out appropriately.
- (10) All performance data routinely monitored during turbine operation shall be provided to the Code Enforcement Officer. Data shall include, but is not limited to:
 - (a) Vibration levels.
 - (b) Noise levels.
 - (c) Rotational speeds.
 - (d) Kilowatt-hours of production.
- (11) All maintenance reports shall be filed with the Code Enforcement Officer monthly, or more frequently as required.
- (12) In the event of an accident, the Town Code Enforcement Officer shall have the authority to shut down all of the affected turbines until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur, as evidenced by a report to the Code Enforcement Officer.

N. Enforcement; penalties and remedies for violations.

- (1) This section shall be enforced by the Town Code Enforcement Officer.
- (2) Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this section, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.
- (3) The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator to remedy the violation with specifications to be taken and an agreed schedule.
- (4) Special proceeding. In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a wind energy facility, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.

O. Miscellaneous.

- (1) Nothing in this section, including the issuance of the permit by the Town, shall eliminate any property or rights of property owners or residents to enforce their legal remedies, including, but not limited to, actions in law or equity, in the nature of nuisance proceedings, or tort or negligence proceedings.
- (2) The Town reserves its right to opt out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subsection (8) of said law, or by any other provision of law.

P. Effective date. This section shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

§ 205-44. Public utilities.

Public utility uses, such as dial equipment centers and substations, but no service or storage yards, may be permitted in Agricultural or Business Districts with a special use permit. No special use permit shall be issued unless the Planning Board shall determine that:

- A. The proposed installation in a specific location is necessary and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
- B. The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the zone in which it is located.

- C. Adequate and attractive fences and other safety devices will be provided.
- D. A buffer strip 10 feet in width shall be provided around the perimeter of the property.
- E. Adequate off-street parking shall be provided.
- F. All of the area, yard and building coverage requirements of the respective zone will be met.

§ 205-45. Motor vehicle service stations.

Motor vehicle service stations may be permitted in the Agricultural and Business Districts of the Town, provided that the following standards are observed:

- A. In addition to the information required in the special permit application and enumerated in § 205-65 of this chapter, the site plan submitted shall also show the number and location of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, the number and location of pumps to be installed and the type of structure and accessory buildings to be constructed.
- B. The area and yard specifications for motor vehicle service stations are identified in the Schedule included as an attachment to this chapter.
- C. The entire area of the site traveled by motor vehicles shall be hard surfaced.
- D. Any repair of motor vehicles shall be performed in a fully enclosed building, and no motor vehicle shall be offered for sale on the site. No motor vehicle parts or partially dismantled motor vehicles shall be stored outside of an enclosed building.
- E. No vehicles shall be permitted to be standing or parked on the premises of a motor vehicle service station other than those used by the employees in the indirect or direct operation of the establishment.
- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be placed on the respective island if provided for in a suitable stand or rack.
- G. No motor vehicle service station or public garage shall be located within 500 feet of any public entrance to a church, school, library, hospital, charitable institution or place of public assembly. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.
- H. Where a motor vehicle service station abuts a residential zone, it shall be screened by a buffer area no less than 10 feet in depth composed of densely planted evergreen shrubbery, solid fencing or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of six feet above the station. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide an adequate screen, the Code Enforcement Officer may direct the property owner to replace said shrubs.

- I. All fuel pumps shall be located at least 40 feet from any street right-of-way or property line.
- J. Each motor vehicle service station shall be permitted to have one freestanding pylon sign setting forth the name of the station and for the principal products sold on the premises, including a special company or brand name, insignia or emblem, provided that such sign shall not exceed 20 square feet in area on either of two sides and shall be hung within the property line and no less than 10 feet nor more than 25 feet above the ground. In addition, one sign may be placed or inscribed upon the front of a motor vehicle service station. Said sign shall not exceed an area equal to 15% of the surface upon which it is located and shall not project more than 12 inches in front of the facade. Such signs may be illuminated but shall not be flashing.
- K. Service stations may also exhibit one temporary sign located no less than 10 feet inside the property line and specifically setting forth special seasonal servicing of automobiles, provided that such sign does not exceed seven square feet in area.

§ 205-46. Excavation operations.

- A. Excavation operations, including the extraction of sand and gravel and processing, or other operations for the preparation of sand and gravel, but not including excavations for building construction, may be permitted in the I Industrial District, provided that the following conditions and standards are observed: **[Amended 6-10-1980; 3-11-1997 by L.L. No. 3-1997]**
 - (1) The minimum lot area for any such use shall be 10 acres. All buildings and excavation operations shall be located or shall occur not less than 200 feet from any street right-of-way and 100 feet from property lines. The Planning Board may require fencing or some similarly effective barrier six feet in height where excavations are to exceed a depth of four feet.
 - (2) All buildings and structures used in such operations shall be dismantled and removed within 12 months following the termination of the operations, shall be made at the expense of the operator and shall be a condition of approval of the special use permit.
 - (3) All buildings, structures and plants used for the processing of excavated materials shall be maintained so as to assure that such buildings, structures and plants shall not become dangerously dilapidated.
 - (4) All equipment used for the excavation of sand and gravel and processing thereof shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noises and vibrations and dust conditions which are injurious or substantially annoying to all persons living in the vicinity. All operations shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., except on Sundays and except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
 - (5) All land which has been excavated must be rehabilitated, within one year after the termination of operations, at the expense of the operator in accordance with

standards set and shall be a condition of approval of the special use permit.

- (6) All excavations must either be made to a water-producing depth or graded and backfilled.
 - (7) Excavations made to a water-producing depth shall be properly sloped to the waterline, with banks sodded or surfaced with soil of an equal quality to adjacent land area topsoil. Such topsoil required under this section shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible.
 - (8) Excavations not made to a water-producing depth must be graded or backfilled with nonnoxious, nonflammable noncombustible solid material and a topographic character which will result in substantial general conformity to adjacent lands. Such grading or backfilling shall be designed to minimize erosion and shall be surfaced with a soil equal in quality to the adjacent land area and planted with trees, shrubs, legumes or grasses upon the parts of such areas where revegetation is possible.
- B. All the foregoing conditions shall be bonded, the amount subject to the discretion of Planning Board.

§ 205-47. Structures taller than general district regulations.¹⁷ [Added 1-29-2018 by L.L. No. 2-2018]

A. General provisions.

- (1) A "tall structure" is any structure taller than generally permitted within a zoning district.
- (2) Unless otherwise specified in this chapter, structures taller than 150 feet are not permitted in any district.
- (3) Any request for a tall structure as defined in this section shall be considered a Type I action under the New York State Environmental Quality Review Act.
- (4) No tall structure shall hereafter be used, erected, moved, reconstructed, changed or altered except in compliance with a special use permit granted by the Planning Board in conformity with these regulations. No existing structure shall be modified, and no existing special use permit shall be renewed, unless in conformity with these regulations.
- (5) These regulations shall apply to all districts in the Town.
- (6) Exceptions to these regulations are limited to new uses that are accessory to residential uses and lawful or approved uses existing prior to the effective date of these regulations. No existing special use permit shall be renewed unless in conformity with these regulations.
- (7) Where these regulations conflict with other laws and regulations of the Town

17. Editor's Note: Former §§ 205-47, 205-48 and 205-49, regarding cluster residential developments, planned unit developments and planned business areas, respectively, were repealed 5-14-2013 by L.L. No. 2-2013.

of Somerset, the more restrictive shall apply.

- (8) No special use permit shall be issued for a tall structure unless the proposed use is deemed by the Planning Board to be in compliance with the Comprehensive Plan, the LWRP, and the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara Counties Regional Planning Board, dated November 1979.
- (9) At all times shared use of existing structures shall be preferred to the construction of new structures. Additionally, where such shared use is unavailable, location of antenna(s) on preexisting structures shall be considered. An applicant shall be required to present an adequate report listing existing tall structures within a reasonable distance of the proposed site and the possible use thereof.
- (10) The applicant shall pay all reasonable fees and costs of adapting an existing structure to a new shared use. These costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening and other changes, including real property acquisition or lease required to accommodate shared use.

B. Use-specific regulations.

- (1) Residential and commercial buildings and their accessory use(s) may, by special use permit, use a tall structure not in accordance with regulations for the underlying district if the tall structure does not detract from the character of the surrounding structures and character of the neighborhood.
- (2) Telecommunications facilities may be allowed by special use permit in the Agricultural (A), Industrial (I), General Industrial (GI), and Planned Unit Development (PUD) Districts only if the applicant provides specific scientific evidence that the facility site is required to maintain adequate service. Telecommunication facilities in all other districts shall not be permitted. Telecommunication structures shall conform to static structure setback requirements of this article.
- (3) Church steeples may be erected by special use permit in any district.
- (4) Elevated water tanks connected to any public water supply system may be erected by special use permit in any district and shall conform to static structure setback requirements of this article.
- (5) Commercial and industrial smokestacks may be erected by special use permit only in Industrial (I), General Industrial (GI), and Planned Unit Development (PUD) Districts and shall conform to static structure setback requirements of this article.
- (6) Small chimney flues from heating appliances attached to residential and commercial structures shall not require a special use permit and are limited in height to 10 feet above the highest roof elevation. The structure and chimney may be subject to other requirements in this chapter.
- (7) Amusement and carnival rides such as roller coasters and Ferris wheels shall

conform to static structure setback from parcel boundaries. Temporary installations associated with traveling shows installed for no more than 15 days do not require a special use permit. Installations for longer durations, including permanent structures, require a special use permit before construction.

- (8) Any wind energy facility shall use its electricity for primarily on-site consumption to offset utility expenses and/or provide independence from the power grid, with ties to the electrical grid as approved by the utility company. Power production primarily for sale to the electrical grid shall not be permitted unless in accordance with this chapter. Each facility shall conform to height and setback requirements of Subsection D(1)(b) of this section.
- (9) Agricultural silos, barns, and other tall agricultural accessory use structures shall conform to the height regulations and special use permit requirements outlined in this article. Agricultural wind energy facilities shall conform to height, setback and special use permit requirements defined in this article.
- (10) Public utility poles required for the delivery of electric, telecommunications, and/or streetlighting service(s) to customer premises may be erected without a special use permit in any district.
- (11) No tall structure shall be permitted within the Town unless the structure's use is explicitly enumerated in this section or otherwise permitted under this chapter.

C. Regulations relating to new tall structures.

- (1) Any applicant seeking a special use permit under this article shall be required to submit a site plan as described in Article XVA of this chapter. If the application is for a wind energy facility, the site plan shall also include documentation on the proposed capacity and uses as well as justification for the height of any structure and associated instrumentation or turbines. Additionally, all special use permit applications to the Planning Board under this article shall require that the site plan include a completed Visual Environmental Assessment Form. The Planning Board may require submittal of a more detailed visual analysis and/or Local Waterfront Revitalization Plan (LWRP) review, or other review, based on the results of the Visual Environmental Assessment Form.
- (2) For new telecommunications structures, the applicant shall be required to submit a "search ring" prepared, signed and sealed by a licensed engineer in New York State and overlaid on an appropriate background map depicting the area within which a communications facility needs to be located, in order to provide proper signal strength and coverage to the target cell. The applicant must explain to the Planning Board why it selected the proposed site and discuss the availability or lack thereof of a suitable structure within the search ring for co-location and the extent to which the applicant has explored locating the proposed structure in a less sensitive area. All correspondence with other telecommunications providers shall be included as part of the application.
- (3) In the interest of minimizing the number of new tall structures, the Planning Board shall require, as a condition of any permits granted, that the applicant

indicate in writing its commitment to co-location of other uses on its tower(s). The applicant will agree to negotiate in good faith for shared use of the proposed tower by other co-locators in the future. The condition for future co-location may not be required if the applicant demonstrates that provisions of future shared usage are not feasible based on:

- (a) Whether the kind of structure and site plan proposed is compatible with co-located uses.
 - (b) Whether there are already adequate available spaces on other existing and approved structures.
 - (c) Whether the potential for adverse visual impact of a new or changed structure would be increased by a design accommodating shared use and co-location.
- (4) All tall structures shall be sited to minimize the adverse visual effect on the environment.

D. Additional substantive requirements.

(1) Setbacks.

- (a) Static structure setbacks. Tall structures supporting only nonmoving instruments shall maintain a property line setback of 1.5 times the total structure height. The setback measurement shall begin from the outermost edge of the structural base.
- (b) Dynamic structure setbacks. Tall structures supporting any moving features or parts larger than one meter in diameter, including but not limited to a wind energy facility, shall maintain a property line setback of 5.5 times the total structure height. For wind energy facilities, the setback measurement shall start from the outermost point of any turbine blade at any directional position on the tower or outermost edge of the structural base, whichever is further from the central vertical axis of the tower. Tall structures with moving features or parts larger than one meter in diameter shall not be permitted closer than three miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park; nor within the greater of 1/2 mile or six times the height of the turbine of any residence, structure, public road, or property line where one property owner has not entered into an agreement with any person or entity seeking to develop or operate a wind energy conversion system; nor within one mile of any village, hamlet, school, church, cemetery, or area eligible for listing on the National Registry of Historic Places.
- (c) Setbacks shall apply to all structural foundations, appurtenances, and turbine parts, excluding guy wires and anchors. All accessory structures shall comply with the existing setbacks within the underlying district regulations found in this chapter.
- (d) Guy wires and anchors shall have a minimum of 15 feet setback from any

structure or property line.

- (e) In no case shall setbacks be less than the existing setbacks within the underlying district.
 - (f) Additional setbacks may be required by the Planning Board to preserve privacy or protect health, safety and welfare of adjoining property owners.
- (2) Lighting. Tall structures shall not have artificial lighting except to assure human safety as required by the FAA and employ ground-avoidance in lighting fixture selection. Aviation safety lighting shall be night-vision-goggle compliant. Tall structures shall be galvanized finish or painted gray unless other standards are required by the FAA. Structures should be designed and sited, including height limitations, so as to avoid, whenever possible, application of the FAA lighting and painting requirements. Ground-based floodlights used for nighttime illumination shall minimize light dispersion and pollution in directions other than onto the structure. The Planning Board may impose additional restrictions regarding illumination to reduce impacts to adjoining parcels and maintain neighborhood character.
- (3) Screening and fencing. Tall structures shall be screened from public view to the maximum extent practicable. Existing on-site vegetation shall be preserved to the maximum extent possible. Deciduous or evergreen tree planting may be required to screen portions of the structure(s) from nearby property. In addition, all tall structures, guy wires, and other supporting or appurtenant structures shall be surrounded by fencing sufficient to protect the public health and safety, as determined by the Planning Board and/or the Code Enforcement Officer.
- (4) Parking. The applicant shall provide a single-lane service road to assure adequate emergency and service access. Road construction shall be consistent with proper practice to reduce loss of vegetation and eliminate soil erosion.
- (5) Supporting documentation. The following documentation related to any tall structure sited in the Town of Somerset shall be provided to the Planning Board:
- (a) All information prepared by the manufacturer of the proposed structure, tower, instruments, and/or turbine (if a wind energy facility), including but not limited to i) Make and model of tower or structure; ii) Manufacturer's design data for installation instructions and construction plans; iii) Applicant's proposed maintenance and inspection procedures and records systems; iv) Anti-climb devices for the structure and any guy wires.
 - (b) A copy of the applicant's FCC and/or FAA licenses (if applicable).
 - (c) When shared use is possible, an engineer's report certifying that a proposed shared use will not diminish the structural integrity and safety of the existing tall structure or explaining what modification(s), if any, will be required in order to certify to the above.

- (d) Documentation from the owner of an existing tall structure or tower for allowed shared use.
 - (e) Documentation that all guy wires, guy wire anchors and structures shall be sufficiently secured to protect them from trespassing or vandalism.
 - (f) The applicant shall agree in writing to keep the tall structure facility, including road and all surrounding area, in good working order and safe condition.
- (6) Removal of obsolete and/or unused tall structures.
- (a) The applicant shall agree in writing, and post a bond or other security acceptable by the Planning Board approximate to the sum of anticipated removal expenses at the end of useful service, to remove the structure if the facility becomes obsolete or damaged beyond use or ceases to be used for its intended use for 12 consecutive months. After that twelve-month period, removal shall take place within six months. Such agreement shall also include a commitment by the applicant to impose a similar obligation upon any person subsequently securing any rights to the structure.
 - (b) All applicants applying for tall structure special use permits shall reimburse the Town of Somerset for fees incurred for consultants and/or specialists to assist in the application and/or engineering costs and may be required to enter into an agreement and maintain a fund with the Town for such purpose.
 - (c) The owners of any tall structure shall have it inspected by a New York State-licensed engineer for structural integrity at least one time each calendar year, or more frequently if required by technical documentation, or if requested by the Code Enforcement Officer. A copy of the inspection report shall be submitted to the Code Enforcement Officer.
- (7) Additional conditions. The Planning Board may impose any additional conditions to a tall structure special use permit necessary to protect public health, safety, and welfare or any conditions that are otherwise to enforce the goals and objectives of this chapter.

§ 205-48. through § 205-49. (Reserved)

ARTICLE XIV
Off-Street Parking and Loading Regulations

§ 205-50. Parking regulations. [Amended 9-8-1998 by L.L. No. 3-1998; 6-13-2000 by L.L. No. 2-2000]

- A. All parking/loading areas shall be adequately drained with appropriate stormwater management facilities and subject to the approval of the Town Engineer.
- B. None of the off-street facilities that are required in this article shall be required for any existing building or use unless said building or use shall be enlarged or changed to a more intensive use requiring additional parking, in which case the provisions of this chapter shall apply.
- C. Off-street parking areas located in commercial zones and which provide parking for 20 or more vehicles shall be provided with a landscaped buffer strip along the highway or primary access drive planted with shade trees of a type approved by the Town Superintendent of Highways and located on the approved site plan as shown. Total green space in such parking areas shall be 25% of the total parking area and designated to provide for separation of parking areas, snow storage and organization of circulation in the parking area.
- D. Improvements. Every parcel used as a parking area (other than parking required for single- and two-family dwellings) shall be provided with safe and convenient access to a street and shall be improved in accordance with the following requirements:
- (1) Paving. The ground surface shall be paved with a durable, dust-free and hard material, such as bituminous hot mix or Portland cement concrete or some comparable material. Such paving shall be maintained for safe and convenient use at all times.
 - (2) Curbs and delineation. Fixed and permanent wheel bumpers at least four inches high shall be installed for each parking space that faces a highway or slope declining down from the parking area. Parking spaces shall be delineated and periodically restored to maintain a clear identification of separate parking stalls.
 - (3) Curb cuts. Driveway openings through the right-of-way shall be a minimum of 30 feet in width and a maximum of 50 feet in width, measured at the street line. There shall not be less than 25 feet between driveway openings, and there shall not be less than 10 feet from any driveway openings to any property line. All the above requirements may be superseded by the State of New York or the County of Niagara. All driveways located in the state highway right-of-way will be required to conform to the New York State Department of Transportation Policy and Standards for Entrances to State Highways.
 - (4) Screening. Except between abutting R-zoned lots or where topography achieves the same effect, where any part of such parking area is located closer than 50 feet to a side or rear lot line of a lot in A or R Districts, or where such parking extends into A or R Districts as a permitted transitional use, a wall or fence shall be erected along the boundary thereof. Such wall or fence shall

consist of durable material so arranged that direct light cannot penetrate the face thereof. Such wall or fence shall have a minimum height of 3 1/2 feet above the finished surface.

- (5) Lighting. Any lights used to illuminate any such area shall be so arranged and shielded as to confine all light rays entirely within the boundary lines of such area.
- (6) Plans. Any application for a building permit, or for a certificate of occupancy where no building permit is required, shall include plans in duplicate covering all the foregoing requirements, which shall be approved by the Code Enforcement Officer before work is commenced.

§ 205-51. Required off-street parking space. [Amended 9-10-1996 by L.L. No. 2-1996; 6-13-2000 by L.L. No. 2-2000]

- A. Parking or standing spaces shall be provided for each use, as permitted in respective classifications, in not less than the amounts set forth as follows for every building, or addition thereto, and for all uses of land hereafter established or expanded. Parking or standing space required by this chapter shall be used only for those purposes. Any other use of said space, including any repair work or servicing of any kind, shall be deemed to constitute a separate commercial use of said space in violation of the provisions of this chapter.
- B. Residential uses.
 - (1) Establishment with sleeping accommodation, other than dwellings, including hotels, motels, tourist homes and courts and lodging or rooming houses: one space for each room or unit and one space for each two employees or permanent residents.
- C. Commercial uses.
 - (1) Offices.
 - (a) One space for each 300 square feet of gross floor area for general administrative uses.
 - (b) One space for each 200 square feet of gross floor area for physicians, surgeons and dentists.
 - (2) Drive-in facilities (bank, restaurant, etc.): five standing spaces for each drive-in teller or customer window (plus any spaces required for non-drive-in facilities).
- D. Industrial, warehouse and wholesale uses.
 - (1) One parking space for each employee, plus one space for each 1,000 square feet of gross floor area in the buildings for use by visitors to the building or buildings.
 - (a) The employee ratio shall be applied to the shift of work activity that has the greatest number of employees.

- (b) Such parking area may be located in the required yard area but shall not be located within 50 feet of a public street or within a buffer area as required by this section.

- (2) Sufficient parking for trucks waiting for loading, unloading and transfer.

E. Dimensions.

- (1) Minimum of all parking and maneuvering space. All parking (spaces) shall be a minimum of nine feet by 20 feet. The minimum aisle space for 90° parking shall be 24 feet in width. The minimum aisle space for 60° parking shall be 22 feet in width. The minimum aisle space for 45° parking shall be 20 feet in width.

- (2) Computation.

- (a) For the purpose of computing required off-street standing and parking or loading space in relation to floor area, the gross floor area shall be used.
- (b) When computing parking space requirements on the basis of the number of occupants, practitioners or employees, the total maximum number of said occupants on the premises at any one time shall be used.
- (c) When application of the requirements would result in a fractional space, any fraction shall be counted as one space.
- (d) If there is any uncertainty with respect to the amount of parking space(s) required by the provision of this chapter as a result of any indefiniteness as to the proposed use of a building or of land, the maximum requirement for the general type of use that is involved shall govern.

§ 205-52. Off-street loading regulations.

- A. For every building, structure or part thereof having over 5,000 square feet of gross building area erected and occupied for commerce, hospital, laundry, dry cleaning, places of public and quasi-public assembly, industry and other similar uses involved in the receipt and distribution by vehicles of materials or merchandise, there shall be provided and permanently maintained adequate space for standing, loading and unloading services in order to avoid undue interference with the public use of streets or alleys. Every building, structure or addition thereto having a use which complies with the above definition shall be provided with at least one truck standing, loading and unloading space to the rear or side of the premises not less than 12 feet in width and 35 feet in length. One additional truck space of these dimensions shall be provided for every additional 20,000 square feet, or fraction thereof, of gross area in the building.
- B. Access to truck standing, loading and unloading space shall be provided directly from a public street or alley or from any right-of-way that will not interfere with public convenience and will permit orderly and safe movement of truck vehicles.
- C. Loading space as required under this section shall be provided an area in addition to customer off-street parking space and shall not be considered as supplying off-street parking space.

- D. Off-street loading and unloading areas shall be surfaced with a dustless, all-weather pavement, which shall be adequately drained, subject to the approval of the Town Superintendent of Highways.
- E. Whenever an off-street loading and unloading area shall be located next to a residential zone, said loading and unloading area shall be screened and buffered.

ARTICLE XV
Planned Unit Development (PUD) District
[Amended 6-13-2000 by L.L. No. 2-2000]

§ 205-53. General regulations. [Amended 5-14-2013 by L.L. No. 2-2013]

It is the intent of the PUD District to provide greater flexibility and opportunity for the development of mixed uses in specific areas of the Town. Innovative design and creative use mixes are encouraged to offer the potential for a sustainable development that can provide the economic and service base consistent with the objectives of the Somerset Comprehensive Plan. In addition, the PUD District is intended to encourage imaginative ways of accommodating environmental considerations and conservation into the development plan to strike a balance of physical features, environmental responsibility and development opportunity. The PUD District is a "floating zone," which can be applied through a rezoning application, to a property or properties within the Town. The Town, in determining whether to allow the use of the PUD District, shall consider the Town's Comprehensive Plan and the objectives of this district.

- A. A requisite of the PUD District is the planning of the entire site of integrated uses (human, physical and environmental) to redefine land use concepts into a consolidated, coordinated group that offers new approaches to community development. Therefore, instead of traditional zoning and subdivision requirements and standard development review procedures, this section establishes new procedures for the review and consideration of a proposal for a PUD District.
- B. An application for any development within an existing PUD District and any proposed new PUD District must promote and adhere to most of the following objectives:
- (1) Present a varied choice of the type of environment, tenure, types and costs of housing, commercial uses, economic opportunities and/or recreation and community facilities that exist within the Town.
 - (2) Offer a more efficient and economic arrangement of land uses, traffic circulation, utilities, open space and services that would lessen the cost and maintenance of the development.
 - (3) Incorporate uses and facilities that consolidate infrastructure and ancillary services to encourage self-sufficiency of the ultimate development.
 - (4) Integrate the comprehensive design of stormwater management drainage, flood control and open space into the development plans.
 - (5) Provide for the safe and adequate conveyance of trucks, automobiles, pedestrians and bicyclists consistent with public safety and the capacity of the existing transportation system.
 - (6) Extend and enhance the usable recreation and open space in the community via size, location, diversity and suitability for use.
 - (7) Preserve the physical features of the area to the greatest extent possible, including the natural topography, soils, woodlands, vegetation, marshlands,

floodplains and geologic features of the landscape.

- (8) Offer a creative use of land and existing natural elements to provide an orderly transition from adjacent area uses to the proposed development and, where such a transition cannot be fulfilled, incorporate buffering and landscaping to enhance this transition.
- (9) Achieve a balance of natural and developmental elements to complement the surrounding environment and provide a succession of land uses within the development area.
- (10) In the coastal area, promote the use and access to the waterfront consistent with the resources of the area and its environmental sensitivities.
- (11) Provide a consistent and unified architectural design theme or concept for the site and its elements to produce a cohesive visual appearance throughout the development.
- (12) Create a more desirable development atmosphere than would be possible through the strict application of other sections of this Zoning Ordinance.
- (13) Offer a development pattern in harmony with and in furtherance of the Town of Somerset Comprehensive Plan.

§ 205-54. Objectives.

- A. A requisite of the PUD District is the planning of the entire site of integrated uses (human, physical and environmental) to redefine land use concepts into a consolidated, coordinated group that offers new approaches to community development. Therefore, instead of traditional zoning and subdivision requirements and standard development review procedures, this section establishes new procedures for the review and consideration of a proposal in the PUD District.
- B. An application for any development within an existing PUD District or any proposed new PUD District must promote and adhere to the following objectives:
 - (1) Present a varied choice of the type of environment, tenure, types and costs of housing, commercial uses, economic opportunities and/or recreation and community facilities that exist within the Town.
 - (2) Offer a more efficient and economic arrangement of land uses, traffic circulation, utilities, open space and services that would lessen the cost and maintenance of the development.
 - (3) Incorporate uses and facilities that consolidate infrastructure and ancillary services to encourage self-sufficiency of the ultimate development.
 - (4) Integrate the comprehensive design of stormwater management drainage, flood control and open space into the development plans.
 - (5) Provide for the safe and adequate conveyance of trucks, automobiles, pedestrians and bicyclists consistent with public safety and the capacity of the existing transportation system.

- (6) Extend and enhance the usable recreation and open space in the community via size, location, diversity and suitability for use.
- (7) Preserve the physical features of the area to the greatest extent possible, including the natural topography, soils, woodlands, vegetation, marshlands, floodplains and geologic features of the landscape.
- (8) Offer a creative use of land and existing natural elements to provide an orderly transition from adjacent area uses to the proposed development and, where such a transition cannot be fulfilled, incorporate buffering and landscaping to enhance this transition.
- (9) Achieve a balance of natural and developmental elements to complement the surrounding environment and provide a succession of land uses within the development area.
- (10) In the coastal area, promote the use and access to the waterfront consistent with the resources of the area and its environmental sensitivities.
- (11) Provide a consistent and unified architectural design theme or concept for the site and its elements to produce a cohesive visual appearance throughout the development.
- (12) Create a more desirable development atmosphere than would be possible through the strict application of other sections of this Zoning Ordinance.
- (13) Offer a development pattern in harmony with and in furtherance of the Town of Somerset Comprehensive Plan.

§ 205-55. Permitted uses. [Amended 5-14-2013 by L.L. No. 2-2013]

A. Uses and structures permitted in the PUD District are as follows:

- (1) Principal and special permit uses and structures including farm-related activities and other activities as permitted in the RLS Lake Shore Residential District, R-2 Single- and Two-Family Residential District, B Business District, GI General Industrial District and I Industrial District or similar uses as determined by the Planning Board and related accessory uses.
- (2) Permitted uses shall provide a mixture of activities, open space, services and infrastructure to provide a multiuse development designed as a cohesive development and planned as a consolidated entity. The development may contain a mixture of business/industrial type uses and residential uses, or can contain just a mixture of business/industrial type uses. It is not the intent of the Somerset PUD zoning to only create a mixture of business and residential uses. Approved concept and development plans are required for the entire area.
- (3) Accessory uses and structures as permitted in the RLS, R-2, B, GI and I Districts.

B. Dimensional and developmental requirements.

- (1) Area. The minimum area designated for establishment of a PUD District shall

be 10 acres. The minimum area eligible for addition to any existing PUD District for the expansion of that district shall be two acres, subject to the approval of the Planning Board for infrastructure and coordination of area development.

- (2) Lot size and yard requirements: If creating lots within the proposed PUD, the minimum lot designated for any eligible use shall generally be as required for the district in which it is allowable (RLS, R-2, B, GI or I Districts). However, clustering and innovative grouping of structures for site design and protection of open space or natural features is encouraged and eligible for approval through the PUD rezoning process rather than through strict adherence to the lot setback, width and yard requirements (no variances would be needed by the Zoning Board of Appeals).
- (3) Height. The maximum height of any structure shall be set by the approved plan.
- (4) Landscape and open space. There shall be a minimum of 25% open space for the entire development, which shall be exclusive of stormwater management areas, roadways, driveways, buildings, paved surfaces of parking areas, and utility facilities. Such areas may be left in a natural state or landscaped for aesthetics or functional use. Landscaped and open space areas shall be designed to coordinate development uses, buffer dissimilar uses, protect natural and environmental features, separate buildings, prevent erosion and accommodate drainage, ensure proper light and ventilation around buildings and/or link development elements.
- (5) Public facilities. There shall be the provision of adequate public facilities to accommodate the proposed development, including sanitary sewerage, potable water and roadways sufficient in size and design in accordance with local and state standards. Appropriate sites suitable for fire protection shall be identified and offered for dedication to the Town.
- (6) Streets. All streets, rights-of-way, entrances and circulation drives shall conform to the Town of Somerset Highway Construction Standards (Chapter 114) and as regulated by the New York Department of Transportation for state highways and their entry, Niagara County Department of Public Works for county highways and their entry and the Somerset Highway Department for Town roads and their entry.
- (7) Parking. Minimum parking for each use shall be as required in Article XIV for that individual activity. Multiuse parking facilities are encouraged, and the total required spaces shall be reduced up to 15% for those required for the separate uses due to the shared nature of the multiuse plan. Parking spaces shall be a minimum of nine feet by 18 feet with a twenty-foot aisle for circulation. There shall be at least 25% of each parking area reserved for open space and properly landscaped to interrupt the continuity of paved surface [which shall be countable as open space under the requirements listed in Subsection B(4) above]. All parking lots shall be paved with asphalt or an equivalent permanent surface, curbed and properly drained.
- (8) Use limitation. The following uses shall be prohibited in the PUD District:

- (a) Uses that produce earth jarring, vibration or noise beyond the structure within which the use is contained.
- (b) The storage, sale, distribution or use of hazardous materials or their by-products; or the storage of any material which would unreasonably increase the risk of fire hazard to adjoining buildings.
- (c) Any use or process which would cause the emission of noxious odors or gases beyond the building, constituting a nuisance to adjacent structures or potentially injurious to nearby occupants or property.
- (d) Activities which produce smoke, fly ash, dust, dirt, fumes or stack emissions that exceed state air quality regulations.
- (e) Fugitive dust. There shall not be discharged locally from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that results in an unsightly condition or could result in damage to the public health, animals or vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
- (f) Outdoor storage of junk, refuse, trash, secondhand materials or abandoned automobiles.
- (g) Any industrial wind energy conversion system as defined by § 205-11BB. **[Added 1-29-2018 by L.L. No. 1-2018]**

§ 205-56. Application and procedures. [Amended 5-14-2013 by L.L. No. 2-2013]

- A. Preapplication conference. Each proposal for the rezoning of an area to PUD or the potential development of an existing PUD (that does not have an approved plan or has requested a modification to an approved plan) shall be scheduled with the Code Enforcement Officer and other Town officials as appropriate.
- B. Sketch plan.
 - (1) The applicant shall prepare and submit a sketch of the conceptual development of the site and the primary components to be included in the development.
 - (2) The sketch shall be prepared on a survey of the property(ies) involved and of sufficient scale to demonstrate the major natural features, roads, proposed circulation, development elements and the conceptual areas proposed for the project.
 - (3) The sketch shall be submitted to the Code Enforcement Officer as a preliminary indication of intention to develop and the initiation of the development review process.
 - (4) The Code Enforcement Officer, upon receipt of the conceptual development sketch, shall immediately notify the Town Board and Planning Board of such plan in writing. Preliminary consideration of such sketch shall take place at the next meeting of each of the Boards.
 - (5) Based on input by the Planning Board and others, the Town Board will decide

whether the PUD rezoning request would be entertained (authorized to move forward in the process). If entertained, the applicant can proceed to the next steps. Entertainment of the application by the Town Board does not bind the Town Board to approve the PUD.

- C. Development plan. Upon successful consideration of the sketch concept plan, and if the applicant chooses to proceed, a development plan shall be submitted to identify proposed uses on the site in accordance with the following (this development plan, if approved, would represent the zoning of the site):
- (1) One map at a scale of one inch equals 200 feet or greater identifying the property boundaries, existing structures, adjacent uses and road systems, topography at five-foot intervals, existing natural features, drainage features, wetlands, floodplains, and coastal and other environmental features.
- D. Proposed land uses, acreage of each and estimated development densities (dwelling units, approximate square footage of buildings, etc.). In addition to the development plan, the applicant shall submit the following information to assist with the review of the PUD designation:
- (1) Proposed access and circulation and their connection to the highway system; primary pedestrian and bicycle circulation.
 - (2) Existing and proposed water and sewer systems to serve site development, their connections to the municipal system and the adequacy of that system to accommodate proposed flows.
 - (3) Preliminary grading implication for proposed development, stormwater management drainage and erosion and any development impact on floodplains, floodways and wetlands.
 - (4) Preparation of a State Environmental Quality Review Act environmental assessment form (Part 1) for the proposed development and any necessary backup/supplemental information needed.
 - (5) Treatment of major open space areas and primary landscape forms.
 - (6) Sketches of typical structures and development elements to identify the basic concepts and the architectural approach to be used.
 - (7) Any additional information requested by the Planning Board or Town Board.
- E. Planning Board review. A development plan and other information received by the Town Code Enforcement Officer shall be sent to the Town Engineer, Highway Superintendent and such other agencies or Town officials as appropriate for review and recommendation. The Code Enforcement Officer shall forward all documents and comments to the Planning Board for its review. Within 62 days of submission of complete documentation to the Planning Board, the Planning Board shall review and make a finding that the application complies fully with the applicable regulations and standards prescribed by this chapter or, absent compliance, is recommended for approval with modifications, returned to the applicant for amendments to the development plan or disapproved. The Town Board and the applicant shall be notified of the Planning Board's determination and any basis for

its findings.

- F. Town Board determination. Upon receiving a recommendation for approval from the Planning Board or upon receipt of any application to the Town Clerk following a Planning Board recommendation other than approval, the Town Board shall schedule a public hearing in accordance with its procedures (rezoning of property) to consider the development plan submitted. The Town Board shall make a determination and decision on the development plan within 62 days of the public hearing (this time period does not begin unless the SEQRA process is completed), considering the regulations and the objectives of the PUD contained therein; the report of the Planning Board in its deliberations; the comments from the public hearing; the SEQRA process and any pertinent documentation; and the protection of the public health, safety and welfare. A decision by the Town Board on the approval or amendment of a PUD or the approval of a development plan shall constitute a zoning determination (a rezoning of the property—local law revision) and include the same rights and obligations of a zoning matter. The development plan shall become an amendment to the zoning classification for the designated properties and thereby modify the Town Zoning Map and the eligible uses appropriately. The modification of the development plan, once approved by the Town Board, is through the same process in which it was originally approved.
- G. Development plan implementation. Upon approval of a development plan (rezoning to PUD) by the Town Board, specific site development approval may then proceed in accordance with the approved PUD plan, and the standard review requirements of the Somerset Zoning Ordinance. (Applications can be made to the Town for site plan and, if necessary, subdivision approval.) The applicant can proceed with approval and development of the entire PUD, or the applicant can apply for any portion of the development area designated by the approved development plan. These applications shall be submitted consistent with the regulations and procedures of Town site plan review and, if applicable (creating subdivision lots), Chapter 171, Subdivision of Land.
- H. Proposed development shall be generally consistent with the approved PUD plan as determined by the Planning Board.

ARTICLE XVA
Site Plan Review
[Added 6-13-2000 by L.L. No. 2-2000]

§ 205-57. Purpose and intent. [Amended 5-14-2013 by L.L. No. 2-2013]

It is the intention of this article to ensure the efficient use of land, consideration of potential impacts on the environment and their avoidance, wherever possible, and the promotion of high standards in the design, layout, landscaping and construction of development, and to ensure development conforms to the provisions of this chapter.

§ 205-57.1. Applicability; site plan required.

- A. No development shall occur within the Town of Somerset unless in accordance with the provisions of this article. No building permit, variance, special use permit or certificate of occupancy shall be issued until all requirements of this article have been satisfied and the site plan has been approved by the Planning Board.
- B. A site plan shall be submitted and required for the following:
- (1) Any development in a B, PUD, GI or I District that involves construction or addition requiring a building permit or the addition or improvement of parking spaces, utilities/roads or stormwater management.
 - (2) Churches, private schools, institutional uses and recreational development where parking, landscaping or structures are involved.
- C. Exemptions. [Added 5-14-2013 by L.L. No. 2-2013]
- (1) The following actions/projects have been deemed to be minor in nature, and if they are shown to meet the criteria in this section, will not require site plan approval as outlined in this article. The first criterion needed to be met to obtain this exemption from site plan approval is that an approved site plan representing the project site must be on file at the Town (valid site plan or building plan from previous construction on the site). If the project meets this criterion, requires no variances, and, in general, meets one or more of the following criteria, the project may not require site plan approval:
 - (a) Additions to existing structures, new accessory structures or additions to accessory structures, of less than 1,000 square feet or which represent less than 10% of the existing structure as shown on the approved filed site plan, whichever is less.
 - (b) Modifications to the exterior of the building.
 - (c) Interior changes to a building or structure not requiring additional parking (as determined by the Code Enforcement Officer).
 - (2) To obtain this exemption, the following process shall be followed. Upon application for a building permit, the Town's Code Enforcement Officer, utilizing a form created by the Town, will review the application and make a preliminary determination as to whether site plan review is required. This

form, and the Code Enforcement Officer's determination, will be reviewed by the Town Engineer (or another person designated by the Town Board) and if both agree that the project does not require site plan review, sign the form. This signed form will allow the applicant to proceed with acquiring a building permit. If it is determined that the project does not meet the criteria for an exemption, the project must be processed through the requirements of site plan approval outlined in this article.

§ 205-57.2. Site plan application.

A. Sketch plan.

- (1) Presubmittal meeting. Prospective applicants for site plan review shall schedule a meeting with the Code Enforcement Officer and other appropriate individual(s) for identification of critical development issues and the appropriate information to accompany the application. Appropriate review agencies and Town officials will be identified for coordination and the SEQRA responsibilities will be provided. The Code Enforcement Officer may waive sketch plan requirements for small projects and institutional projects that would not benefit from sketch plan review.
- (2) Sketch plan.
 - (a) All applicants for site plan review shall submit 10 copies of a sketch plan of the proposed development, an application with supportive information and a State Environmental Quality Review Act environmental assessment form (Part I) to the Code Enforcement Officer for review by the Planning Board. The submission will be reviewed for completeness and scheduled for Planning Board review by the Code Enforcement Officer.
 - (b) The Planning Board will review the overall design concepts, development layout, infrastructure, natural features, neighborhood implications and prospective environmental issues to guide the site plan development. The Planning Board will also initiate the SEQRA process, if appropriate, and advise the applicant on the likely preparation of an environmental impact statement and a SEQRA hearing.
 - (c) The Planning Board will assess the sketch plan and accept; accept with conditions; or reject the submission. Any conditions recommended by the Planning Board must be included in the formal application and shall be reflected in the site plan. Such conditions may include a variance or other zoning approval, which must be authorized prior to the submission of the formal site plan. Any reasons for disapproval of the sketch plan will be provided in writing to the applicant and would offer the minimum response for any reconsideration of a new sketch plan.
- (3) Sketch plan requirements. The sketch plan shall include the following minimum elements for consideration:
 - (a) A boundary survey of the property certified by a licensed surveyor or engineer, including overall dimensions, acreage, owner(s), adjacent owner(s), rights-of-way and easements.

- (b) A location map of the property identifying the general area and adjacent roads.
- (c) Identification of major landforms, streams, steep slopes and natural features.
- (d) Approximate location of existing and proposed structures, parking and loading spaces, site access and circulation, utility connections, buffers for adjacent development, easements and other planned development at a scale of one inch equals 200 feet or greater.
- (e) Anticipated changes to the site with respect to topography/grading, flood hazard areas, drainage/stormwater management, vegetation/landscape and physical features of the site.
- (f) The zoning of the site, including any proffers of conditions thereto, and the zoning designation of properties surrounding the site.
- (g) Any other information as may be required by the Code Enforcement Office or Town Engineer to clarify the proposed development and/or aid the Planning Board in the evaluation of the application.

B. Site plan.

- (1) Upon approval or approval with conditions of a sketch plan by the Planning Board, an applicant may prepare a formal site plan in accordance with this section and submit it to the Code Enforcement Officer for scheduling of a public hearing and formal consideration. Any conditions requested by the Planning Board in the sketch plan review must be addressed by the site plan and included, where appropriate. The site plan shall be prepared by an architect, landscape architect, engineer or surveyor licensed in New York State and certified with his or her original signature and seal.
- (2) The Code Enforcement Officer shall determine the completeness of the application for consideration by the Planning Board based on the following minimal information:
 - (a) The location of the tract or parcel by means of an inset map at a scale not less than one inch equals 2,000 feet, indicating the names of adjoining roads, streams, bodies of water, railroads, subdivisions and landmarks sufficient to identify the location of the property.
 - (b) A boundary survey of the property, plotted to scale, including the acreage and legal description thereof and the location of survey datum.
 - (c) A certificate bearing the original signature of the surveyor or engineer, setting forth the source of title and the place of record of the last instrument in the chain of title.
 - (d) Title of drawing, including the name and address of the applicant, the developer and person(s) responsible for preparation of the drawing.
 - (e) Existing structures, roads, easements, utility lines, streams and

drainageways, floodplain and wetland designations, natural features and landforms.

- (f) Existing topography at a maximum of two-foot intervals.
- (g) Zoning and present use of the property and surrounding properties; setback of existing development to the nearest property line.
- (h) A plan of the proposed site development at a scale of one inch equals 50 feet or larger that includes the following elements:
 - [1] North arrow, scale and date.
 - [2] Proposed streets and easements.
 - [3] Location, type and size of vehicle entrances, including fire lanes. Any project located on a state highway, requiring a new or modified entrance, shall have a plan also depicting all existing driveways and roadways adjacent to and opposite from the proposed development. The plan shall also include driveway details showing driveway dimensions and curb radii, pavement markings and any necessary signage.
 - [4] All off-street parking, loading and stacking, indicating surfacing, size and angle of stalls, width of aisles and the schedule of spaces to serve the proposed development.
 - [5] Location of proposed structures, including number of floors, floor area, height, gross density (building square footage per total acres) and net density (building square footage per net acres, i.e., total acres minus setback and required conservation area), setback and proposed use of each structure.
 - [6] Layout of proposed structures, including number of floors, floor area and height.
 - [7] Proposed grading matched to existing contours and supplemented by finished floor, building and spot elevations, where appropriate.
 - [8] Location, type and height of lighting, fencing, retaining walls and screen planting, where required, and signage.
 - [9] Drainage channels and their direction of flow and stormwater management facilities.
 - [10] Proposed utility connections and location, size and grade of sewer and water lines.
 - [11] Refuse collection and removal areas and their screening from adjacent streets and properties.
 - [12] Water and sanitary sewer profiles identifying the vertical and horizontal alignments, connection details to existing facilities, invert and rim elevations, pump stations and force mains, hydrants, valves,

blowoffs, etc.

[13] Pavement profile and details, including a typical cross-section of parking and drive areas, vertical and horizontal curves (where appropriate), entry and curb radii, handicapped parking designation and handicapped ramps and curbs.

[14] Grading and drainage plan which incorporates stormwater management for the proposed development, including location, type and size of facilities and the identification of easements to accommodate existing and proposed drainage and management facilities; calculations of stormwater management and drainage shall be prepared by a professional engineer, in accordance with generally accepted engineering practices.

[15] General landscape plan and planting schedule.

[16] Summary of the proposed development, including uses, acreage, descriptions of the utility plans, projected traffic impact and circulation, site soils and zoning conditions that apply to the development. Any separate permits (state or federal) required for the development must be obtained prior to finalization of site plan approval. Proposed easement or right-of-way dedications must be provided on a separate plot map for recording.

§ 205-57.3. Site plan review procedures.

- A. Staff evaluation. An application for site plan review must be complete as specified in this section and submitted to the Code Enforcement Officer at least 30 days prior to the Planning Board meeting to provide adequate opportunity for review, distribution of notices and advertisement of necessary meetings. The Code Enforcement Officer is responsible for coordination of the review and may include the Town Engineer, Highway Superintendent and such other agencies in the review process, as appropriate, to advise the Planning Board. The application must be accompanied by the application form, application fees (as established by the Town Board), the plan as specified herein, supportive documentation, SEQRA environmental assessment form (Part 1) and any additional information as may be requested by the Code Enforcement Officer or the Town Engineer for consideration of the site plan. The evaluation shall include compliance with the Zoning Ordinance and this article, consistency with Town maps and plans for development review, compatibility with neighborhood development and conformance with general principles of site planning and engineering. **[Amended 5-14-2013 by L.L. No. 2-2013]**
- B. Environmental review. Any application for site plan review must be accompanied by a completed environmental assessment form (Part 1) identifying the prospective impact resulting from the proposed development and demonstrating the opportunities or mitigation or planned revisions to avoid such impacts. It is assumed that the Planning Board will be lead agency for all applications, subject to SEQRA determination, and be responsible for the conduct of review procedures as required by SEQRA. Any obligations for fulfillment of the SEQRA regulations, including

the satisfaction of procedures and the preparation and review of an environmental impact statement, if required, shall be borne by the applicant. A SEQRA (EIS) public hearing, if required, shall be coordinated with the site plan hearing and conducted simultaneously, where practical.

C. Planning Board Review.

- (1) An applicant shall provide 10 copies, clearly legible, of the complete application to the Code Enforcement Officer for review by the Planning Board. The Planning Board shall review the site plan and make a determination based on the provisions of this article within 62 days of the public hearing, unless extended by the applicant. (This time period does not begin unless the SEQRA process is completed.) The determination shall be in the form of a written record of approval, approval with conditions or disapproval of the site plan and shall be filed with the Town Clerk.
- (2) The Planning Board may impose special conditions or modifications limiting the use or occupancy of the proposed land and development consistent with the intent and purposes of this chapter. Any conditions so imposed shall become a part of the site plan approval and must be satisfied prior to the issuance of any permits for development. No building or other development permit shall be issued for property that is subject to the site plan review process except in conformity with the approved plan for that site.
- (3) The Planning Board approval or denial and any conditions thereto shall be guided by the following general standards for site development:
 - (a) Conformance with this chapter, adopted Town development plans, an approved development plan that includes the subject site, if one exists, and all other applicable laws.
 - (b) Compatibility of the proposed development with the natural features of the land, the topography and the environmental attributes of the site.
 - (c) The general layout and design of buildings, light, signage, open space and development features consistent with reasonable planning principals.
 - (d) The location and design of vehicular entrances/exits, including emergency access and fire lanes, in relation to the street system, traffic circulation and control within the site; and coordination of access points and circulation with adjoining properties.
 - (e) The provision and protection of pedestrian movement on the site and their coordination with adjoining properties and the street system (handicapped accessibility as required).
 - (f) The location and adequacy of parking, loading and stacking areas, including the provision of opportunities for handicapped parking.
 - (g) Provisions of landscape, screening and buffers to complement development and protect adjacent uses from unsightliness, noise, glare and other nuisances. Such elements shall also be used to promote the availability of green space in nonresidential development and recreation

space in residential development to avoid a continuous pavement or building environment.

- (h) Adequate provision for drainage and stormwater management facilities.
- (i) Adequacy of sewer and water facilities, fire protection and conformance with Town regulations for the provision and construction of those services.
- (j) The concurrence of Town agencies, New York State Department of Transportation, New York State Department of Environmental Conservation and other county or state agencies, as appropriate.

§ 205-57.4. Required improvements.

In furtherance of the purposes of this chapter and to assure the public safety and general welfare, the Planning Board may require the following improvements:

- A. The designation of pedestrian walkways or sidewalks for the safe, convenient movement of patron(s) from building to building within the site and to adjoining sites.
- B. The dedication of rights-of-way and easements for all facilities which may become publicly maintained for full frontage of the lot or parcel prior to the issuance of any certificate of occupancy.
- C. The construction of off-site curbs, gutters, sidewalks and road widening or construction as shown in the Town of Somerset Highway Construction Standards,¹⁸ and any amendments thereto.
- D. The construction of curbs, gutters and drives which will permit vehicular travel on the site, and their connection to and from adjacent parking areas and properties.
- E. Screening, fencing, walls, berms and plantings adequate to screen views in accordance with requirements of this chapter for adjacent subdivisions, contrasting development of less intensity and state highways of limited access. Designated plantings and landscaping shall be in accordance with the approved schedule and annually maintained by the property owner.
- F. Adequate sewer, water and stormwater drainage facilities in accordance with Town regulations, including lines, connections, retention facilities, valves, hydrants and other facilities.

§ 205-57.5. Performance bond.

Prior to the issuance of any building permit or authorization for development of any portion of the site, there shall be executed by the owner or developer an agreement to construct the required physical improvements located within public rights-of-way and easements together with a bond securing the estimated cost of said improvements and necessary legal and engineering fees as determined by the Code Enforcement Officer. The agreement and bond shall be adequate to provide for the completion of all work

¹⁸. Editor's Note: See Ch. 114, Highway Construction Standards.

covered therein plus an additional 20% for administration and services should execution of the bond be necessary. The reservation of performance offered by the bond may be released in phases by the Code Enforcement Officer as entire components of the work are concluded, inspected and approved as complete.

§ 205-57.6. Site plan revisions; extension.

- A. No change, revision or modification to any approved plan may be made without the authorization of the Planning Board after due consideration of a written request. Minor changes which do not affect the site facilities or the intent of the site plan may be authorized by the Code Enforcement Officer. Any site plan may be formally revised in the same manner and utilizing the same process as originally approved by the Planning Board, including fees and hearings as required.
- B. Approval of a site plan authorized under this article shall expire within one year from the date of approval unless building permits have been obtained for the proposed development. A single extension of six months may be granted after consideration by the Planning Board prior to the expiration of the site plan.
- C. Any application which has been inactive, incomplete or which has not had a building permit application for a period of six months shall be subject to termination by the Code Enforcement Officer, and the applicant must reapply to be considered further.

§ 205-57.7. Inspections; certificate of occupancy.

- A. Upon satisfactory completion of all required improvements shown on the approved site plan, an "as-built" plan shall be submitted for the review and approval of the Code Enforcement Officer at least two weeks prior to the occupancy of the building. Such plan shall include the record of all progress and final inspections for the installation of all on-site and off-site improvements as approved by the Code Enforcement Officer or certified by a licensed engineer. The completion of "as-built" plans and the successful inspection reports shall be the basis for releases of any performance bond or portion thereof as it relates to the public improvement(s) and excluding any private improvements that may be part of the project.
- B. A final occupancy permit may be issued for any appropriately completed building, or portion thereof, located on a part of any approved site plan, provided that:
 - (1) "As-built" plans have been submitted and approved for the required improvements on the site plan that relate to and provide services to the requested building for occupancy;
 - (2) All inspections and conditions that are required for the service and support of the building requested for occupancy have been successfully completed and are certified for use by the proposed use(s) being requested;
 - (3) Any off-site improvements related to and necessary to service the requested building for occupancy have been completed and successfully inspected; and
 - (4) Any remaining on-site construction will not adversely affect the occupants or the intended use of the building requested for occupancy.

ARTICLE XVI
Miscellaneous Provisions

§ 205-58. Garage and yard sales.

Garage sales may be conducted under the following regulations:

- A. A garage or yard sale shall consist of the public offering of goods for sale of more than five items in number from private property of up to four consecutive days in duration. **[Amended 4-13-1993]**
- B. A garage or yard sale, as defined herein, may be held five times during any calendar year from an occupied residence within the Town of Somerset outside the Village of Barker. The holding of more than five such sales from any property in the Town in any one calendar year shall constitute a business and is not permitted by this regulation. **[Amended 4-13-1993]**
- C. No permit shall be required for conducting up to five yard or garage sales in any one year.
- D. All garage sales shall be conducted during daylight hours.
- E. A sign not greater than two by two feet by two feet may be installed on the property where the sale is being conducted, which sign shall be removed within 24 hours after completion of the sale.
- F. The person/persons conducting the sale shall be responsible for the maintenance of good order and decorum on the premises during all hours of the sale or activity. No such person shall permit any loud or boisterous conduct on said premises or permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises. **[Amended 4-13-1993]**
- G. Persons and sales exempted shall be as follows:
 - (1) Persons selling goods pursuant to an order of process of a court of competent jurisdiction.
 - (2) Persons acting in accordance with their powers and duties as public officials.
 - (3) Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five in number.

§ 205-59. Political signs.

- A. Political signs announcing the candidacy of a candidate for public office may not be posted in the Town of Somerset before four weeks prior to Election Day and Primary Day.
- B. All political signs posted in the Town of Somerset must be removed no later than one week after Election Day and Primary Day.

§ 205-60. Farm ponds and excavations. [Amended 6-10-1980; 9-10-1996 by L.L.]

No. 2-1996; 8-8-2000 by L.L. No. 3-2000]

- A. All ponds (farm and other types) and similar excavation work carried out in the Town of Somerset not covered in § 205-46 will require a special use permit to be issued by the Zoning Board of Appeals. Said permits shall run with the property and be unlimited in duration unless the Zoning Board of Appeals, in its discretion, limits the transfer or duration of said permit.
- B. All ponds existing under current special use permits issued by the Planning Board shall forthwith be deemed to be unlimited in duration and run with the property unless the Zoning Board of Appeals, by December 31, 2000, and after a public hearing; issues a decision limiting the transfer or duration.
- C. Boundaries. All ponds and excavations must be a minimum of 200 feet from all street rights-of-way and 100 feet from property lines and shall not be excavated on a lot of less than 10 acres.
- D. Owners of property upon which ponds, excavations, quarries and gravel pits exist, excavated or formed by natural causes, shall be responsible for the posting of no-trespassing signs.

ARTICLE XVII
Administration and Enforcement
[Amended 10-3-2011 by L.L. No. 4-2011]

§ 205-61. Purpose and intent.

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code), the State Energy Conservation Construction Code (the Energy Code), and other provisions of this chapter in the Town of Somerset. This article is adopted pursuant to § 10 of the Municipal Home Rule Law and Article 18 of the Executive Law and rules and regulations promulgated pursuant thereto. Except as otherwise provided in the Uniform Code, other state law, or other section of this article, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

§ 205-61.1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BUILDING PERMIT — A permit issued pursuant to § 205-62 of this article. The term "building permit" shall also include a building permit which is renewed, amended or extended pursuant to any provision of this article.

CERTIFICATE OF COMPLIANCE — A certificate issued pursuant to Subsection B of § 205-63 of this article for a building or structure not intended to be occupied.

CERTIFICATE OF OCCUPANCY — A certificate issued pursuant to Subsection B of § 205-63 of this article for a building or structure intended to be occupied.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer appointed pursuant to Subdivision B of § 205-61.2 of this article and shall include the designation "Building Inspector." The terms "Code Enforcement Officer" and "Building Inspector" shall be used interchangeably in the Code of the Town of Somerset.

COMPLIANCE ORDER — An order issued by the Code Enforcement Officer pursuant to Subdivision A of § 205-67.3 of this article.

ENERGY CODE — The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

OPERATING PERMIT — A permit issued pursuant to § 205-65 of this article. The term "operating permit" shall also include an operating permit which is renewed, amended or extended pursuant to any provision of this article.

PERMIT HOLDER — The person to whom a building permit has been issued.

PERSON — An individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

STOP-WORK ORDER — An order issued pursuant to § 205-62.2 of this article.

TEMPORARY CERTIFICATE — A certificate issued pursuant to Subsection D of § 205-63 of this article.

TOWN — The Town of Somerset.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

§ 205-61.2. Code Enforcement Officer.

- A. In addition to the other powers and duties of the Code Enforcement Officer set forth in this chapter, the Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code and the Energy Code and shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy, temporary certificates and operating permits, and the plans, specifications and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of occupancy, temporary certificates and operating permits, and to include in building permits, certificates of occupancy, certificates of compliance, temporary certificates and operating permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;
 - (3) To conduct construction inspections, inspections to be made prior to the issuance of certificates of occupancy, certificates of compliance, temporary certificates and operating permits, firesafety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this article;
 - (4) To issue stop-work orders;
 - (5) To review and investigate complaints;
 - (6) To issue orders pursuant to Subsection A of § 205-67.3, Violations; penalties for offenses, of this article;
 - (7) To maintain records;
 - (8) To collect fees as set by the Town Board of this Town;
 - (9) To pursue administrative enforcement actions and proceedings;
 - (10) To pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this article, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this article; and
 - (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this article.
- B. The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and

the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this article.
- D. One or more inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this article. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

§ 205-62. Building permits.

- A. Building permits required. Except as otherwise provided in Subsection B of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Code Enforcement Officer.
- B. Exemptions. No building permit shall be required for work in any of the following categories:
 - (1) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (2) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely aboveground;
 - (3) Installation of fences which are not part of an enclosure surrounding a swimming pool;
 - (4) Construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
 - (5) Construction of temporary motion picture, television and theater stage sets and scenery;
 - (6) Installation of window awnings supported by an exterior wall of a one- or two-

- family dwelling or multiple single-family dwellings (townhouses);
- (7) Installation of partitions or movable cases less than five feet nine inches in height;
 - (8) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (9) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - (10) Replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
 - (11) Repairs, provided that such repairs do not involve:
 - (a) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
 - (b) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
 - (c) The enlargement, alteration, replacement or relocation of any building system; or
 - (d) The removal from service of all or part of a fire-protection system for any period of time.
- C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection B of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code, the Zoning Code or other general or local law, ordinance, rule or regulation.
- D. Applications for building permits. Applications for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:
- (1) The full name and address of the owner and the authorized agent, if any.
 - (2) A description of the proposed work;
 - (3) The Tax Map number and the street address of the premises where the work is to be performed;
 - (4) The occupancy classification of any affected building or structure;

- (5) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
 - (6) At least two sets of construction documents (drawings and/or specifications) which:
 - (a) Define the scope of the proposed work;
 - (b) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
 - (c) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
 - (d) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
 - (e) Where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.
- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection D(6) of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.
- F. Issuance of building permits. An application for a building permit or an amendment thereto shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit,

such change shall not be made until and unless a new or amended building permit reflecting such change is issued.

- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.
- J. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Zoning Code or any other general or local law, ordinance, rule or regulation, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that:
 - (1) All work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and
 - (2) All work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4 of this article must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

§ 205-62.1. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subdivision B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
 - (1) Work site prior to the issuance of a building permit;
 - (2) Footing and foundation;
 - (3) Preparation for concrete slab;
 - (4) Framing;
 - (5) Building systems, including underground and rough-in;
 - (6) Fire-resistant construction;
 - (7) Fire-resistant penetrations;
 - (8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;

- (9) Energy Code compliance; and
 - (10) A final inspection after all work authorized by the building permit has been completed.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 205-62.2. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work;
 - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall:
- (1) Be in writing;
 - (2) Be dated and signed by the Code Enforcement Officer;
 - (3) State the reason or reasons for issuance; and
 - (4) If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property

and, if the owner is not the permit holder, on the permit holder personally or by registered mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.

- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subdivision A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 205-67.3, Violations; penalties for offenses, of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

§ 205-63. Certificates of occupancy; certificates of compliance.

- A. Certificates required. A certificate of occupancy or a certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy or a certificate of compliance.
 - (1) No person shall use or occupy a building or structure, or portion thereof, for which a building permit was required until a certificate of occupancy or certificate of compliance therefore has been issued.
- B. Issuance of certificates of occupancy or certificates of compliance. The Code Enforcement Officer shall issue a certificate of occupancy or a certificate of compliance if the building, structure or work has been inspected and it has been found that the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code, the Zoning Code and other general and local laws, ordinances, rules and regulations, and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy or a certificate of compliance. In addition,

where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy or a certificate of compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy or a certificate of compliance:

- (1) A written statement of structural observations and/or a final report of special inspections prepared in accordance with the provisions of the Uniform Code and/or Energy Code; and
 - (2) Flood hazard certifications, where applicable.
- C. Contents of certificates of occupancy. A certificate of occupancy or certificate of compliance shall contain the following information:
- (1) The building permit number, if any;
 - (2) The date of issuance of the building permit, if any;
 - (3) The name, address and Tax Map number of the property;
 - (4) If the certificate of occupancy is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy is issued;
 - (5) The use and occupancy classification of the structure;
 - (6) The type of construction of the structure;
 - (7) The assembly occupant load of the structure, if any;
 - (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
 - (9) Any special conditions imposed in connection with the issuance of the building permit; and
 - (10) The signature of the Code Enforcement Officer issuing the certificate of occupancy and the date of issuance.
- D. Temporary certificate. The Code Enforcement Officer shall be permitted to issue a temporary certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines that the building or structure, or the portion thereof covered by the temporary certificate, may be occupied safely, that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code

Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy or a temporary certificate was issued in error for any reason, including, but not limited to, because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid at the time of submission of an application for a certificate of occupancy or for temporary certificate.

§ 205-64. Notification regarding fire or explosion.

The chief of any fire department providing firefighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel-burning appliance, chimney or gas vent.

§ 205-64.1. Unsafe buildings, equipment and structures.

Unsafe buildings, structures and equipment in this Town shall be identified and addressed in accordance with the procedures established by Chapter 78 of the Code of the Town of Somerset, as now in effect or as hereafter amended from time to time.

§ 205-65. Operating permits.

- A. Operating permits required.
 - (1) Operating permits shall be required for conducting the activities or using the categories of buildings listed below:
 - (a) Manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR 1225.1, as amended from time to time;
 - (b) Hazardous processes and activities, including, but not limited to, commercial and industrial operations which produce combustible dust as a by-product, fruit and crop ripening, and waste handling;
 - (c) Use of pyrotechnic devices in assembly occupancies;
 - (d) Buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
 - (e) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by

the Somerset Town Board.

- (2) Any person who proposes to undertake any activity or to operate any type of building listed in this Subdivision A shall be required to obtain an operating permit prior to commencing such activity or operation.
- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- C. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
- D. Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
- E. Duration of operating permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any operating permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each operating permit shall be specified in the operating permit. An operating permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- F. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.
- G. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

§ 205-66. Firesafety and property maintenance inspections.

- A. Inspections required. Firesafety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:
 - (1) Firesafety and property maintenance inspections of buildings or structures

which contain an area of public assembly shall be performed at least once every 12 months.

- (2) Firesafety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
 - (3) Firesafety and property maintenance inspections of all multiple dwellings not included in Subsection A(1) or (2), and all nonresidential occupancies not included in Subsection A(1) or (2) shall be performed at least once every 36 months.
- B. Inspections permitted. In addition to the inspections required by Subsection A of this section, a firesafety and/or property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer at any time upon the request of the owner of the property to be inspected or an authorized agent of such owner; receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.
- C. Other inspections. Nothing in this section or in any other provision of this article shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (OFPC) and the New York State Fire Administrator under Executive Law § 156-e and Education Law § 807-b.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid prior to or at the time each inspection performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

§ 205-67. Complaints.

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this chapter, or any other local law, ordinance, rule, or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code or other local law, ordinance, rule or regulation. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- A. Making an initial determination of the basis of the complaint and whether further investigation is merited;
- B. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;

- C. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § 205-67.3, Violations; penalties for offenses, of this article;
- D. If appropriate, issuing a stop-work order;
- E. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 205-67.1. Recordkeeping.

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all code enforcement personnel, including records of:
 - (1) All applications received, reviewed and approved or denied;
 - (2) All plans, specifications and construction documents approved;
 - (3) All building permits, certificates of occupancy, certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
 - (4) All inspections and tests performed;
 - (5) All statements and reports issued;
 - (6) All complaints received;
 - (7) All investigations conducted;
 - (8) All other features and activities specified in or contemplated by § 205-62 through 205-67.5, inclusive, of this article; and
 - (9) All fees charged and collected.
- B. To the extent all such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto shall be retained for at least the minimum time period so required by state law and regulation.

§ 205-67.2. Program review and reporting.

- A. The Code Enforcement Officer shall annually submit to the Town Board a written report and summary of all business conducted by the Code Enforcement Officer, including a report and summary of all transactions and activities described in § 205-67.1, Recordkeeping, of this article and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of the Town of Somerset, on a form prescribed by the Secretary of State, a

report of the activities of the Town relative to administration and enforcement of the Uniform Code.

- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to it, from the records and related materials the Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of the Town in connection with administration and enforcement of the Uniform Code.

§ 205-67.3. Violations; penalties for offenses.

- A. Compliance orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order. The compliance order shall be in writing; be dated and signed by the Code Enforcement Officer; specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter; specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity; specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; direct that compliance be achieved within the specified period of time; and state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail. Service on the person listed as the owner on the current tax rolls shall be sufficient. The Code Enforcement Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.
- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of this chapter.
- C. Violation; penalties for offenses. Any person who violates any provisions of this chapter, or any term or condition of any building permit, certificate of occupancy, certificate of compliance, special use permit, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be guilty of a violation punishable by a fine not exceeding \$250, or imprisonment for a period not to exceed 15 days, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. **[Amended 2-24-2016 by L.L. No. 1-2016]**
- D. Injunctive relief. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy

Code, this chapter, or any term or condition of any building permit, certificate of occupancy, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this chapter, or any stop-work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this chapter, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the authorization from the Town Board.

- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 205-62.2, Stop-work orders, of this article, in any other section of this article, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 205-62.2, Stop-work orders, of this article, or in any other applicable law. **[Amended 2-24-2016 by L.L. No. 1-2016]**
- F. Authority. The provisions of § 205-67.3C supersede Town Law § 135 and Town Law § 268(1) and are enacted pursuant to the New York State Constitution, Article X, § 2C(1) and Municipal Home Rule Law § 10(1)(ii)(d)(3). **[Amended 2-24-2016 by L.L. No. 1-2016]**

§ 205-67.4. Fees.

A fee schedule shall be established by resolution of the Somerset Town Board. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of building permits, amended building permits, renewed building permits, certificates of occupancy, certificates of compliance, temporary certificates, operating permits, special use permits, firesafety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this chapter.

§ 205-67.5. Intermunicipal agreements.

The Somerset Town Board may, by resolution, authorize the Supervisor to enter into an agreement with other governments to carry out the terms of this article, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

ARTICLE XVIII
Board of Appeals

§ 205-68. Creation, appointment and organization.

A Board of Appeals is hereby created. Said Board shall consist of five members appointed by the Town Board, which shall also designate a Chairman. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. Of the members of the Board first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years from and after his appointment. Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term.

§ 205-69. Powers and duties.

A. The Board of Appeals shall have all the powers and duties prescribed by Chapter 62, §§ 267-a and 267-b, of the Town Law of the State of New York and by this chapter, which powers and duties are more particularly specified as follows:
[Amended 9-10-1996 by L.L. No. 2-1996]

- (1) Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (2) Variances. To vary or adopt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved but in no other case. No variance in the strict application of this chapter shall be granted by the Board of Appeals unless it finds:
 - (a) That there are special circumstances or conditions, fully described in the findings of the Board, applying to such land or buildings and not applying generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or buildings.
 - (b) That, for reasons fully set forth in the findings of the Board, the granting of the variances is necessary for the reasonable use of the land or building and that the variance, as granted by the Board, is the minimum variance that will accomplish this purpose.
 - (c) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- (3) Special permits. To issue special permits for ponds. **[Added 8-8-2000 by L.L. No. 3-2000]**

B. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

§ 205-70. Appeal procedure. [Amended 12-10-2002 by L.L. No. 6-2002]

The Board of Appeals shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board and available from the Code Enforcement Officer. Every appeal or application shall refer to the specific provision of the chapter involved and shall exactly set forth the interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.

§ 205-71. Board of Appeals office. [Amended 9-10-1996 by L.L. No. 2-1996]

The office of the Town Clerk shall be the office of the Board of Appeals, and every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall be filed within five days in said office as required by § 267-a of the Town Law of the State of New York.

§ 205-72. Notice of Board hearings. [Amended 9-10-1996 by L.L. No. 2-1996]

The Board shall fix reasonable time for the hearing of appeals and shall give due notice of the time set for the hearing to the applicant and to state and county agencies as may be required by § 267-a of the Town Law. Public notice shall be by the publication of a notice in the official newspaper of the Town, pursuant to law, and shall briefly describe the nature of the appeal and the time and place of the hearing. The Town Clerk will send notice of application for variance to owners of property adjacent to the affected property according to latest assessment roll on file with the Town. Failure of notification shall in no way affect the legality of these proceedings.

ARTICLE XIX
Adult Uses and Entertainment
[Added 8-9-2005 by L.L. No. 4-2005]

§ 205-73. Purpose.

- A. It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town of Somerset, this article is intended to restrict adult uses to nonresidential and nonbusiness areas of the Town. The Town Board hereby finds that the operational characteristics of adult uses increase the detrimental impact on a community when such uses are concentrated. Incidents of crime may increase, property values may diminish and retail trade may be harmed. This article is intended to protect and preserve the quality of neighborhoods, commercial districts and quality of life. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials. All possible options and alternative to enactment of this article have been considered. It has been determined that the type of regulation imposed by this article is the least intrusive method.
- B. The Town Board recognizes that there are secondary impacts associated with adult entertainment establishments that are not appropriate within certain areas of the Town of Somerset. This conclusion was reached through the review of numerous comprehensive secondary impact studies that indicated an increase in crime, prostitution and violence and a decrease in residential property values when adult entertainment establishments are permitted within residential areas.

§ 205-74. Definitions.

- A. General. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.
- B. Specific terms. As used in this article, the following terms shall have the meanings indicated:

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE — An establishment having more than 15% of gross floor area devoted to or 15% of gross revenues derived from the sale or rental of books, magazines, periodicals and other printed matter, photographs, films, motion pictures, DVDs, compact discs, videos, computer software or other visual representations and viewing materials, for sale, lease, rental or viewing on the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities; or an establishment with a segment or section devoted to the sale, lease or display or such material.

ADULT ENTERTAINMENT CABARET — A public or private establishment which may or may not be licensed to serve food and/or alcoholic beverages, which regularly features persons who appear in a state of nudity, topless and/or bottomless dancers, strippers and/or films, motion pictures, videos, slides, compact discs or other photographic reproductions or other visual representations, including computer-generated, which are distinguished or characterized by their emphasis on matter depicting, describing or related to specific sexual activities or specific anatomical areas.

ADULT ENTERTAINMENT ESTABLISHMENT — A public or private establishment which regularly presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers, strippers, topless waitressing, busing or service, topless hair care or massages, service or entertainment where the servers or entertainment are wearing only pasties or G-strings or both, or other adult uses as defined herein.

ADULT MASSAGE PARLOR — A public or private establishment which is used for the provision of the service of stroking, kneading, tapping or vibrating the human body with the hands or other devices, except by those licensed to perform such activities by Title VIII of the New York State Education Law.

ADULT MOTEL — A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs, computer software or other photographic reproductions or other visual representations which depict, describe or relate to specific sexual activities of specific anatomical areas and which has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions; or offers a sleeping room for rent for a period of time of 10 hours or less; or allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is 10 hours or less.

ADULT MOTION-PICTURE THEATER — An enclosed building or drive-in theater which is used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified anatomical areas or specified sexual activities for observation by patrons therein.

ADULT THEATER — A theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

ADULT USE — Any establishment or business which disseminates material, any performance or entertainment or any exhibition or the provision of services distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities and/or specified anatomical areas, including but not limited to adult bookstores, adult entertainment cabarets, adult entertainment establishments, adult mini motion-picture theaters, adult motion-picture theaters, adult motels, adult theaters, escort agencies, nude model studios and sexual encounter centers.

AUDIENCE — One or more persons who are permitted to view a performance for any valuable consideration, in or from a public place.

BUSINESS — Any commercial enterprise, association or arrangement for profit.

DISSEMINATION — The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide or date for any person or who agrees or offers to privately model lingerie or to privately perform a strip tease for another person.

ESCORT AGENCY — A person or business who or which furnishes, offers to furnish or advertises to furnish escorts as one of its primary businesses for a fee, tip or other consideration.

ESTABLISHMENT — Means and includes any of the following:

- (1) The opening or commencement of any business as a new business;
- (2) The conversion of an existing business, whether or not an adult use to any of the adult use businesses defined in this article;
- (3) The addition of any of the adult use businesses defined in this article to any other existing adult use business; or
- (4) The relocation of any adult use business.

PERFORMANCE — Any live or reproduced exhibition, including but not limited to any play, motion-picture film, dance or appearance or other visual representation presented to or performed before an audience.

PERSON — Any person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

PUBLIC PARK OR RECREATION AREA — Public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis courts, athletic courts, pedestrian/bicycle paths, open space, wilderness area or similar public land within the Town which is under the control, operation or management of the Town, a religious institution, a school or other governmental entity.

RELIGIOUS INSTITUTION — Any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities, including education and instruction.

RESIDENTIAL DISTRICT OR USE — A single-family dwelling, two-family dwelling, row dwelling, multifamily dwelling or mobile home park use or district as defined or designated in the Code of the Town of Somerset.

SCHOOL — Any public or private educational facility, including but not limited to child day-care facilities, nursery school, preschool, kindergarten, elementary school, primary school, intermediate school, junior high school, middle school, high school, vocational school, secondary school, continuation school, special education school, junior college, and university. "School" includes the school

grounds but does not include the facilities used primarily for another purpose or incidentally as a school.

SIGNAGE — As permitted under § 205-40F(9) of the Code of the Town of Somerset.

SPECIFIED ANATOMICAL AREAS —

- (1) Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
- (2) Human male genital in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES —

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

§ 205-75. Permitted locations.

Adult entertainment establishments, including but not limited to adult bookstores, adult entertainment cabarets, adult massage parlors and adult motion-picture theaters, shall be permitted only in Industrial [Zoning] Districts, subject to the following restrictions:

- A. No adult entertainment establishment shall be allowed within 1,000 feet of the nearest property line of a residential district, or zoned as a planned unit development (PUD) as defined by Chapter 205 of the Code of the Town of Somerset.
- B. No adult entertainment establishment shall be allowed within 1,000 feet of the nearest property line of any school, library, church, synagogue or other place of religious worship, child day-center, park, playground or playing field.
- C. No adult entertainment establishment shall be located within 750 feet of the nearest property line of another existing adult entertainment establishment.
- D. No more than one adult entertainment use shall be located on any lot.
- E. No adult entertainment establishment shall violate any federal, state, county or local law or regulation.

§ 205-76. Prohibitions regarding minors and adult uses.

A person violates this article if such person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for said business under this article, and knowingly or with reasonable cause to know permits, suffers or allows:

- A. Admittance of a person under 18 years of age to the business premises unless accompanied by a parent or guardian;

- B. A person under 18 years of age to remain at the business premises unless accompanied by a parent or guardian;
- C. A person under 18 years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian.

§ 205-77. Advertising and lighting.

- A. It shall be a violation of this article if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this article, and advertises the presentation of any activity prohibited by any applicable federal, state, or local statute, law, rule or regulation.
- B. It shall be a violation of this article if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this article, and displays or otherwise exhibits the materials and/or performances at such adult use in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such adult use.
- C. It is a violation of this article if the owner and/or person in control of any property registered as an adult use allows, causes or permits any portions of the interior premises to be visible from outside the premises.
- D. All off-street parking areas and premises entries of the adult use will be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one footcandle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the business for personal safety of patrons and employees and to reduce the incidents of vandalism and criminal conduct.

§ 205-78. Hours of operation.

- A. It shall be a violation of this article if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this article, and allows such business to remain open for business or to permit any employee to engage in any solicited performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 12:00 midnight and 9:00 a.m. local time of any particular day.
- B. It shall be a violation of this article if a person working as an employee of an adult use business, regardless of whether or not a certificate of registration has been issued for such business under this article, engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service or solicits a service between the hours of 12:00 midnight and 9:00 a.m. local time of any particular day.

§ 205-79. Special use permit issued by Planning Board.

- A. The owner, manager or agent of a building or premises, any part of which contains an adult entertainment establishment, shall file a site plan with the Planning Board in accordance with § 205-65 and Article XVA showing the following information:

- (1) The address of the premises.
 - (2) The name and address of the owner of the premises.
 - (3) The name of the business or the establishment subject to the provisions of this article.
 - (4) The names and addresses of the owners, beneficial owners or the major stockholders of the business or the establishment subject to the provisions of this article.
 - (5) The date of initiation of the adult entertainment establishment.
 - (6) The nature of the adult entertainment.
- B. It is a violation of this article for the owner, manager or agent of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult entertainment establishment without having obtained a special use permit from the Planning Board.

§ 205-80. Penalties for offenses.

A violation of this article shall be punishable as provided in § 205-61 of this chapter.

ARTICLE XX
Special Use Permits
[Added 10-3-2011 by L.L. No. 5-2011]

§ 205-81. Purpose and applicability.

The Town of Somerset allows a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the character of the Town and its neighborhoods. Many of the uses listed in this chapter are therefore permitted only upon issuance of a special permit by the Planning Board in order to ensure that these uses are appropriate to their surroundings and satisfy performance criteria. Accessory uses or structures used in connection with a special permit use shall be subject to the same special permit approval requirements as the principal structure or use. Special permits are found to be necessary for those uses which, though intended to be allowed when certain criteria are met, are not allowed as a matter of right. It is the intent of this article to determine whether such uses are compatible, desirable, and allowable on a case-by-case basis. Special uses are only allowed where the Planning Board makes findings that they meet the criteria of this article. The burden of establishing that the criteria set forth in this article have been met shall in all cases be on the applicant.

§ 205-82. Procedure.

- A. Whenever a use is permitted in a zoning district by special permit only, or in the case of a use described in Article XIII of this chapter, an application for a special use permit may be made to the Code Enforcement Officer, which application shall include a site plan in accordance with Article XVA. The Code Enforcement Officer, after determining if the application is in the proper form and after receiving the appropriate fee therefor, shall transmit copies of the application and supporting documents to the Planning Board members.
- B. Each application for a building permit or special use permit shall be made in triplicate and with an accompanying site plan. The materials to be submitted with each application shall clearly show the conditions on the site at the time of the application, the features of the site which are to be incorporated into the proposed use or building and the appearance and function of the proposed use of building. As a minimum, the application shall include the following information and plans for both before and after conditions:
- (1) The location, use, design and dimensions and height of each use and building.
 - (2) The location and arrangement of vehicular accessways and the location, size and capacity of all areas used for off-street parking, loading and unloading.
 - (3) The location and dimensions of sidewalks, walkways and other areas established for pedestrian use.
 - (4) The design and treatment of open areas, buffer areas and screening devices maintained, including dimensions of all areas devoted to lawns, trees and other landscaping devices.

- (5) Provision for water supply, sewage disposal and storm drainage.
 - (6) Such other data and plans as the Code Enforcement Officer or the Planning Board may require to properly take action on the application.
- C. The Planning Board shall conduct a public hearing on application referred to it by the Code Enforcement Officer in accordance with Town Law § 274-b, Subdivision 6, within 62 days after receipt of such application by the Code Enforcement Officer. Within 62 days from the date of such public hearing, the Planning Board shall by resolution either approve or disapprove the application so heard. The Planning Board may approve a special use permit application, may approve a special use permit application in part, and disapprove in part, approve a special use permit application with conditions as set forth in its decision, or may deny a special use permit application. In approving an application, the Board may impose any modifications or conditions it deems necessary to carry out the intent of this chapter or to protect the health, safety or general welfare of the public.
- D. Any application under Article XIII of this chapter shall also include the information and/or documentation required under any applicable section of such article. At any state of consideration, whenever the Planning Board determines that supplemental materials, analyses or studies are necessary to thoroughly evaluate an application, it shall notify the applicant, which shall provide such materials, analyses or studies in a timely fashion.
- E. If an application is for a parcel or parcels on which more than one use requiring a special permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others.
- F. The applicant shall reimburse costs actually expended by the Town to obtain consultants chosen by the Planning Board, to evaluate, review, supplement or redo any studies or analysis or material required under this article, other than initial review of the application and materials for processing purposes, provided such fees shall be reasonable, and audited by the Town Board, after preliminary audit by the Planning Board, which shall reject any excessive or unnecessary charges. The applicant shall be entitled to inspect all vouchers upon request. The fees shall be paid upon presentation to the applicant. Further review may be suspended until payment of fees, or, if a project is approved, permits shall not be issued until payment of all such fees.

§ 205-83. Findings required.

- A. In granting or denying special permits, the Planning Board shall take into consideration the purposes of this article, the scale of the proposed project, the possible impact of the proposed project on the nearby properties and neighborhoods, architectural aesthetics of the area, and measures that will mitigate potential adverse impacts and preserve or enhance the character of the Town, and the welfare of its citizens, and shall make specific written findings with respect to whether the proposed project:
- (1) Will be in harmony with the purposes of the land use district in which it is

located and with the general intent and purposes of this chapter.

- (2) Will be detrimental to adjacent uses.
 - (3) Will cause undue traffic congestion, unduly impair pedestrian safety, or overload existing roads considering their current width, surfacing, and condition and will have appropriate parking and be accessible to fire, police and other emergency vehicles.
 - (4) Will overload any public water, drainage, or sewer system, or any other municipal facility, or degrade any natural resource or ecosystem.
 - (5) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads, and its existing and proposed use.
 - (6) Will result in excessive noise, dust, odors, solid waste, or glare, or create any other nuisances, and will satisfy the general land use performance standards of this chapter.
 - (7) Will adversely affect the aesthetics of the premises and adjacent properties and the neighborhoods.
 - (8) Will cause the site to be unduly congested, dangerous, unattractive to visitors, or unfriendly to pedestrians.
- B. The Board shall further find whether the adverse impacts of the proposed special use can be mitigated to such an extent that the special use permit should be granted and, if so, what conditions need be required to achieve such mitigation.

§ 205-84. Issuance; denial.

If an application is approved in whole or in part by the Planning Board, said Board shall issue the special use permit as approved and transmit copies to the applicant, Code Enforcement Officer and Town Clerk. If an application is disapproved by the Planning Board, the reasons for such denial shall be set forth in the Board resolution, and a copy of such resolution shall be transmitted to the applicant, the Code Enforcement Officer and Town Clerk.

§ 205-85. Amendments.

The terms and conditions of any special permit may be amended in the same manner as required for the issuance of a special permit, following the criteria and procedures in this chapter. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a special permit amendment.

§ 205-86. Expiration/annual review; change of use; revocation; and enforcement.

- A. A special permit shall expire if the special permit use or uses cease for more than 24 consecutive months for any reason, or if the applicant fails to obtain the necessary building permit within 12 months of the granting of a special use permit, or fails to comply with the conditions of the special permit within 12 months of its

issuance, or if its time limit, if any, expires without renewal.

- B. Each special use permit shall be reviewed annually by the Planning Board at its March meeting, beginning with the first such meeting that is one year or more after the date of issuance of the permit, to determine if all conditions of such permit are being met.
- C. Upon notice and hearing by the Planning Board, a special permit may be revoked by the Planning Board if the permittee violates the conditions of the special permit and fails to terminate such violation within 30 days of notice or engages in any construction or alteration not authorized by special permit.
- D. Any violation of the conditions of a special permit shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided in § 205-67.3 hereof.

§ 205-87. District requirements.

The granting of a special permit shall not supersede the requirements of the underlying district in which the premises is located.

§ 205-88. Site plan review.

Any consideration of a special use permit application shall be in addition to, and not in lieu of, site plan review, where required. Where appropriate, the two procedures may be conducted simultaneously, and public hearings may be held simultaneously.

§ 205-89. Conflict with Town Law.

This article shall be governed by the provisions of Town Law § 274-b, except that as to any provision of this chapter which is in conflict with said law, this chapter shall supersede said law pursuant to § 10, Subdivision 1(ii)a(1) and 1(ii)d(3), of the Municipal Home Rule Law.

§ 205-90. Fees.

Fees for special use permit applications shall be established, from time to time, by the Town Board.

ARTICLE XXI
Cluster Residential Developments
[Added 5-14-2013 by L.L. No. 2-2013]

§ 205-91. Statement of intent and purpose.

The purpose of a cluster development shall be to enable and encourage flexibility of design and development of lands in such a manner as to enhance and preserve the natural and scenic qualities of open lands and to thereby maintain the rural quality of the community. This includes the preservation of unique or significant features of the site, including, but not limited to, a vegetative feature (i.e., important woods, etc.), wildlife habitat, endangered species area, unusual land formation, agricultural land, waterfront or other significant features. It may also include an important view or aesthetic/scenic component of the Town, or help to preserve the rural character of the community. In some instances, the cluster development concept may be utilized to create an important recreational or scenic component for the community. It is not the intent of cluster development to create useless open space such as standard lawned areas or vacant field.

§ 205-92. Statutory authority.

Pursuant to the provisions of Town Law § 278, the Town Board of the Town of Somerset does hereby authorize the Planning Board of the Town of Somerset to approve a cluster residential development simultaneously with the approval of a plat or plats. Approval of cluster developments shall be subject to the conditions set forth in this article and in Town Law § 278, and the subdivision approval process set forth in the Code of the Town of Somerset, Chapter 171.

§ 205-93. Preemption.

In addition to provisions of Town Law § 278, the provisions set forth in this chapter shall be followed in reviewing applications for cluster development. Whenever the provisions of this chapter are more restrictive than, or contain additional requirements to, § 278, the provisions of this chapter shall prevail.

§ 205-94. Definitions; where allowed; discretion.

A. As used in this section, the following terms shall have the meanings indicated:

CLUSTER RESIDENTIAL DEVELOPMENT — A subdivision plat or plats, approved pursuant to this article, in which the applicable Zoning Ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands where allowed, while maintaining the same density of use within such plat as would otherwise be allowed in the relevant district(s).

B. Cluster residential developments may be allowed in the following districts: A, RLS, R-1, R-2 and PUD.

C. Cluster residential development shall not be a use allowed by right. It may be allowed at the discretion of the Planning Board. The procedure set forth herein and

the authorization of cluster development may be followed and allowed at the discretion of the Planning Board if, and in the Planning Board's judgment, its application would benefit the Town, meet the Town's goals, and the objectives and the purposes of this article.

§ 205-95. Density.

A cluster residential development shall result in a permitted number of building lots or dwelling units, which shall in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming with the minimum lot size and density requirements of the Zoning Law of the Town of Somerset applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Where the plat falls within two or more contiguous districts, the Planning Board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more such districts.

§ 205-96. Maintenance.

The Planning Board, as a condition of plat approval, shall establish such conditions on the ownership, use and maintenance of such open lands shown on the plat as it deems necessary to assure and preserve the natural and scenic qualities of such open lands, such as deed restrictions on development, conservation easements, or the like. The filed plat shall clearly indicate that no further development shall be permitted in the open lands.

§ 205-97. Plat requirements.

The plat showing such cluster residential development shall depict the areas within which structures may be located with building footprints, the height and spacing of buildings, open spaces, and their landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the Planning Board.

§ 205-98. Dual plats required.

At the time of submission of the sketch or concept plan, or in the event that the developer elects to submit a preliminary plan, at the same time of such submission, two plans shall be submitted, with one layout designating the layout of a standard subdivision in the underlying district and the second layout showing the proposed cluster residential development. Each lot in the standard subdivision layout shall meet the minimal lot size and lot width requirements of the Zoning Law of the Town of Somerset for the district in which the property is located. The standard subdivision layout shall be utilized by the Planning Board to determine the maximum density for the cluster residential development.

- A. The standard subdivision layout required to determine the proper density for a cluster development shall be in all respects consistent with federal, state and Town laws, including, but not limited to, laws regulating:
- (1) Construction in floodways.

- (2) Wetland protection.
 - (3) Subdivision regulations.
 - (4) Zoning.
- B. A specification sheet shall be attached showing all calculations used to arrive at density and open space.
- C. Based on this submission and other required information and information requested by the Planning Board, the Planning Board shall determine whether to allow the applicant to proceed with a cluster development or deny its usage.

§ 205-99. Layout limitations.

Areas which would not be available for construction on standard layout, in the judgment of the Planning Board, must be preserved as open space on the standard subdivision plan, including but not limited to:

- A. Portions required or set aside for drainage basins or drainage purposes;
- B. All streets and rights-of-way (public or private);
- C. Major utility easements; and
- D. Portions of the developed area which are not available for building because of slopes, soil conditions, or other conditions rendering the area not suitable for development.

§ 205-100. Additional requirements.

In addition to the above, cluster residential developments shall meet the following criteria:

- A. Streets, private driveways and rights-of-way providing access to individual residences shall be shown and shall be of sufficient design and construction to permit access by emergency vehicles;
- B. If any dwelling unit is not to have access by way of a street or highway (i.e., by way of private driveway, right-of-way, or easement), designation of the cluster residential development as an open development area by resolution of the Town Board pursuant to Town Law § 280-a shall be required;
- C. No structure in a cluster development shall be closer to a preexisting street or highway than a structure in a standard subdivision;
- D. All structures shall be set back sufficiently from the street or highway to accommodate all necessary public and private utilities and easements; and
- E. Individual lot size shall not be less than 6,000 square feet if public sewer is available or, where public sewer is not available, lot size shall not be less than 20,000 square feet or the minimum size required by the Niagara County Health Department for septic system design approval, whichever is greater.

§ 205-101. Open space.

- A. In reviewing proposed cluster developments, the Planning Board shall evaluate subdivision layout with respect to scenic views, natural landscape features, topography of the site, woodlands, wetlands, other features of the site, and other adjacent areas, and shall require development in a fashion or manner which it finds will enhance and preserve such features, including but not limited to:
- (1) Lands adjacent to or linking with existing parks and publicly accessible open spaces along the waterfront and important creeks within the Town;
 - (2) Lands adjacent to other dedicated open space areas on adjacent parcels;
 - (3) Buffer lands between adjacent active agricultural uses and residential development;
 - (4) Trail networks which meet Town of Somerset open space goals.
- B. In addition, the Planning Board may require additional amenities, enhancement of, changes to configuration of, and location of open space, to enhance the benefits to the residents and/or the Town derived from the cluster residential development. Failure or refusal to include such requirements shall result in disapproval of the proposed plan.

§ 205-102. Further restrictions; effect.

- A. The provisions of this article shall not be deemed to authorize a change in the permissible use of such lands as provided elsewhere in the Zoning Law of the Town of Somerset applicable to such lands.
- B. Nothing herein shall supersede any requirements of the subdivision regulations in effect, which may impose additional requirements for approval of the proposed subdivision.
- C. Further subdivision of an approved cluster residential development shall not be allowed. This shall be indicated on the final subdivision plat.

§ 205-103. Reference to guidelines.

Applicants for cluster residential development approval are referred to the Rural Development Guidelines published by the Dutchess County Department of Planning and Development, dated October 1994, copies of which may be obtained from the Town of Somerset Town Clerk.

ARTICLE XXII
Solar Energy Systems
[Added 1-26-2022 by L.L. No. 3-2022¹⁹]

§ 205-104. Authority.

- A. This solar energy local law is adopted pursuant to Sections 261 to 263 of the Town Law for the State of New York, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore."
- B. The Town Board of the Town of Somerset enacts this solar energy system article under the authority granted by:
- (1) Article IX of the New York State Constitution, § 2(c)(6) and (10).
 - (2) New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.
 - (3) New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)a(6), (11), (12) and (14).
 - (4) The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this article, and what variances may be granted to the extent such grant of power is different than under Town Law § 267 and § 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this article differ from the authority granted to the Town by Article 16 of the Town Law.
 - (5) New York Town Law, Article 16 (Zoning).
 - (6) New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
 - (7) New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).§ 1.
 - (8) New York Real Property Tax Law § 487.
 - (9) Police powers of the Town of Somerset; and the laws of the State of New York.

§ 205-105. Findings/statement of purpose.

19. Editor's Note: This local law also provided for the repeal of former Art. XXII, Solar Energy Systems, adopted 12-21-2016 by L.L. No. 5-2016, which local law repealed former Art. XXII, Small-Scale Solar Energy Systems, adopted 10-8-2013 by L.L. No. 7-2013.

- A. The Town Board of the Town of Somerset recognizes that solar energy conversion systems are a readily available and renewable energy source, and the Town of Somerset intends to accommodate the use of solar energy conversion systems.
- B. However, the Town Board finds a growing need to properly site all types of solar energy systems within the boundaries of the Town of Somerset to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Somerset, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Somerset.
- C. This Solar Energy System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Somerset by creating regulations for the installation and use of solar energy systems, and to be consistent with the Town's Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), and other local and regional plans with the following objectives:
- (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of solar energy systems.
 - (2) To ensure that solar energy systems are compatible with land uses in the vicinity of any proposed solar energy system.
 - (3) To ensure that the installation of solar energy systems is in conformance with the Town's Comprehensive Plan. The Comprehensive Plan sets basic Town policies for protecting the Town's important drainage features, agricultural lands and environmentally sensitive areas, the large forested areas of the Town, the creeks, the floodplains and the wetlands and watershed. To mitigate the impacts and damage of solar energy systems on environmental resources such as important agricultural lands and important soils, forests, wildlife and other protected resources, and to minimize the adverse impacts on the Town's character and environment and economy, health and safety of the Town's residents, and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways and the residential and farming communities of the Town. These features add natural beauty to the Town and provide important habitats for wildlife. Maps of the Town defining the features listed are available in the Town of Somerset Comprehensive Plan and other local and regional documents.
 - (4) To protect the health and economic well-being of residents, farms and businesses of the Town in emergency situations.
 - (5) Solar energy systems need to be regulated from permitting through construction and ultimately for their removal when no longer utilized.
- D. Findings. The Town Board of the Town of Somerset makes the following findings:
- (1) Shortsighted planning has often resulted in creation of problem land uses which adversely affect public health and quality of life; examples are found in Somerset, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution

has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Commercial wind energy and solar energy facilities are not exempt from these problems, and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This article will contribute to this effort. The existence of Article 10 of the Public Service Law and Section 94-c of the Executive Law does not negate this responsibility, and in fact recognizes it. This section is not unduly burdensome to the mandates or the process set forth in Article 10 and Section 94-c but is rather compatible with them.

- (2) The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.
 - (a) Commercial/industrial solar energy systems have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
 - (b) The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.
 - (c) The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.
 - (d) The Town of Somerset has very few tall structures and large-scale land uses.
 - (e) The Town of Somerset is bordered on the north by Lake Ontario and on the east, south and west by towns which share Somerset's agricultural and rural residential character and are similarly low, flat areas.
 - (f) The only other municipality in the Town of Somerset is the Village of Barker, which is a small village bedroom community, and which is also part of the rural, residential community.
 - (g) If not properly regulated, installation of large-scale solar energy system facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.
 - (h) Large-scale solar energy facilities, when improperly sited, are known to adversely affect the areas around these facilities which may lead to property value impacts and cause economic hardship to property owners.
 - (i) The Town of Somerset contains clusters and stretches of homes, including along the Lake Ontario shoreline, in and around the Village of Barker and West Somerset, along Route 18 and Lake Road, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural-pastoral lifestyle.

- (j) Large-scale solar energy system facilities may be significant sources of noise, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.
- (k) Construction of large-scale solar energy system facilities can create traffic problems and can cause damage to local roads and infrastructure during construction.
- (l) Large-scale solar energy system facilities have the potential to cause electromagnetic interference with various types of communications.
- (m) Solar energy system facilities need to be regulated for removal when no longer utilized. Funding and mechanisms for removal when the facilities are no longer operating need to be in place.
- (n) The Town of Somerset Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this article and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.
- (o) When considering large-scale construction and maintenance, due weight should be given to the following:
 - [1] The relative distress caused to a community and its residents;
 - [2] The actual necessity for such facility given energy production in the area and region, including clean energy production;
 - [3] Past and present stresses and disruption imposed upon an area due to all types of energy production;
 - [4] Alternatives to facilities, including location in other areas, location in areas where demand is needed, and alternative methods of producing clean energy;
 - [5] Location in areas of highest consumption; and
 - [6] The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.

§ 205-106. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AGRICULTURAL LAND — Land used for cultivated crops, hay, or pasture in the last five years.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM — A combination of solar panels and solar energy equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for on-site consumption.

DWELLING UNIT — Any residence/house/apartment that may be occupied or vacant.

ENVIRONMENTALLY SENSITIVE AREA — An area of the Town described and depicted in the Town of Somerset Comprehensive Plan.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "Farmland of Statewide Importance" in the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

GLARE — The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

GLINT — Giving out or reflecting small flashes of light.

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for on-site or off-site consumption.

HOST COMMUNITY AGREEMENT — A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

NATIVE PERENNIAL VEGETATION — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

NON-PARTICIPATING PROPERTY — A property that is not affiliated with a solar energy system project in any way.

PARCEL(S) — A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a solar energy system is proposed to be constructed.

PARTICIPATING PROPERTY — A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar-related improvements constructed upon it.

POLLINATOR — Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND — Land, designated as "Prime Farmland" or "Prime Farmland where drained" in the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soagil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

ROOF-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system located on the roof of any legally permitted building or structure that produces electricity for on-site or off-site consumption.

SOLAR ACCESS — Space open to the sun and clear of overhangs or shade so as to

permit the use of active and/or passive solar energy systems on individual properties.

SOLAR ENERGY EQUIPMENT — Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM — The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, solar panels and solar energy equipment. A solar energy system in the Town of Somerset is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 solar energy system as follows.

- A. Tier 1 solar energy systems include the following:
 - (1) Roof-mounted solar energy systems.
 - (2) Building-integrated solar energy systems.
- B. Tier 2 solar energy systems include ground-mounted solar energy systems up to 1,500 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months (or calculations provided for new builds).
- C. Tier 3 solar energy systems are systems that do not meet the definition of a Tier 1 or Tier 2 solar energy system and are 20 acres or less in size (defined as the fenced in area that encloses the panels and other related solar energy equipment) and do not meet the requirements of a Tier 4 solar energy system.
- D. Tier 4 solar energy systems meet the definition of a Tier 3 solar energy system and are over 20 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

SOLAR PANEL — A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY — A device that stores energy and makes it available in an electrical form (see Town law on battery storage).²⁰

WETLANDS — Any areas designated as such by the New York State Department of Environmental Conservation and the United States Army Corps of Engineers.

§ 205-106.1. Applicability.

- A. The requirements of this article shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this article, excluding general maintenance and repair.
- B. Solar energy systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C. Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this article.

20. Editor's Note: See Ch. 67, Battery Energy Storage Systems.

- D. All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code ("Building Code"), the New York State Energy Conservation Code ("Energy Code"), and the Town Code.
- E. This article shall not apply to any lot owned by a municipality.
- F. This article shall not apply to any lot located within the Village of Barker.

§ 205-107. General requirements.

- A. A building permit shall be required for installation of all solar energy systems.
- B. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").
- C. This article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.

§ 205-108. Permitting requirements for Tier 1 solar energy systems.

All Tier 1 solar energy systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of solar energy system:

- A. Roof-mounted solar energy systems.
 - (1) Roof-mounted solar energy systems shall incorporate, where appropriate, the following design requirements:
 - (a) Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface and the highest edge of the system.
 - (b) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - (c) Height: Tier 1 solar energy systems shall have the following height restrictions for all zoning districts: two feet above roof of highest existing structure but shall not be higher than the allowed height in the underlying zoning district.
 - (d) Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
 - (2) Glare: All solar panels shall have antireflective coating(s) and proof of such must be provided with the building permit application.
 - (3) Fire safety: All roof-mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code standards.

- B. Building-integrated solar energy systems. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system.

§ 205-109. Permitting requirements for Tier 2 solar energy systems.

All Tier 2 solar energy systems are permitted as accessory structures (with Planning Board site plan approval) in the following districts (unless restricted in any zoning overlay district): Agricultural District (A), Business District (B), Planned Unit Development District (PUD), Industrial District (I), Single-Family Residential District (R-1), Single- and Two-Family Residential District (R-2) or Lake Shore Residential District (RLS). The site plan application shall include a site plan and address the following requirements:

- A. Glare, glint and reflection and color. The design, construction, operation and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public spaces in excess of that which already exists. All solar panels shall have antireflective materials and/or coating(s) and proof of such must be provided with the building permit application. Panel and equipment color shall be consistent with industry standards; usually dark colors or shades of black, dark blue or grey.
- B. Ground screw installations. Ground screw columns designed to properly support solar panels and equipment are required. Concrete pads or platforms shall not be permitted.
- C. Setbacks. Tier 2 solar energy systems shall be set back a minimum of 25 feet from any side or rear property line. All Tier 2 solar energy systems shall only be installed in the side or rear yards in all zoning districts except residential districts. In residential districts, only rear yard installations shall be allowed. Note, the front yard in the RLS District is on the lakeside. In all cases, the solar panels shall be located a minimum of 50 feet from any dwelling unit on an adjoining non-participating property.
- D. Height. The height of Tier 2 solar energy systems shall be no greater than 12 feet in any residential districts. Height shall be less than 15 feet for all remaining districts.
- E. Screening and visibility.
 - (1) All Tier 2 solar energy systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
 - (2) Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access. Tier 2 installations on lakeshore properties may create view issues for the neighbors and must be located in a manner that does not impact neighbor views.
- F. Site plan requirements. Site plans for Tier 2 solar energy systems shall be processed in accordance with the Town site plan regulations, and shall include the following minimal information:

- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any stormwater or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and
- (2) Property lot lines and the location and dimensions of all existing structures and uses on site within 200 feet of the solar panels; and
- (3) Any proposed fencing and/or screening for said project; and
- (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Somerset Planning Board, Town Attorney, Building Inspector or other Town entity.
- (5) Tier 2 solar energy systems are not permitted in front yards, or side yards in the R-1, R-2, and RLS Zoning Districts.

§ 205-110. Permitting requirements for Tier 3 solar energy systems.

- A. Tier 3 solar energy systems are primarily intended to collect energy for off-site distribution, consumption, and energy markets and by the Town's definition are large solar energy projects that can have a significant impact on the Town. Tier 3 solar energy systems shall not be installed in environmentally sensitive areas, such as floodplains, wetlands and watershed protection areas as designated by the Town, county or other agency, waterfront areas of the Town and wood lots or in areas of important farm soils and tourism-related facilities. Specifically, Tier 3 systems are not allowed in the waterfront protection, agriculture/agri-tourism and environmentally sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town).
- (1) All Tier 3 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and Planned Unit Development Districts (as restricted above), and subject to site plan application requirements set forth in this section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset requires the applicant to enter into a solar energy system host community agreement with the Town of Somerset.
 - (2) Notwithstanding Article XVA of Chapter 205 of the Town Code of the Town of Somerset, Tier 3 solar energy systems shall be permitted through the process set forth in this article. The requirements set forth in Article XV of Chapter 205 of the Town Code shall not be applicable to Tier 3 solar energy system within a Planned Unit Development District.
- B. Applications (process) for the installation of Tier 3 solar energy system shall be:
- (1) Received by the Code Enforcement Officer (CEO) and checked to make sure the appropriate documents and fees have been submitted. The CEO will then forward to the Planning Board, by having it placed on the next available agenda, for them to determine completeness of the application. Applicants

shall be advised within 10 business days of the first Planning Board meeting of the completeness of their application or any deficiencies that must be addressed prior to substantive review of the special use permit and site plan.

- (2) Once the application is deemed complete and while the Planning Board is completing their reviews, the project/application shall be referred to the Town Board to begin completion of the host community agreement; this agreement will need to be finalized before the Planning Board acts on the special use permit.
 - (3) Subject to a public hearing to hear all comments for and against the application. The Town shall complete all public notice requirements in accordance with the special use requirements of the Town.
 - (4) Referred to the Niagara County Planning Department pursuant to General Municipal Law § 239-m if required.
 - (5) Acted upon by the Planning Board, once the required steps are completed and the Planning Board has completed the SEQOR process.
- C. Design and application requirements. Applications for Tier 3 solar projects shall address and include the following:
- (1) Battery storage. The applicant must identify whether or not battery energy storage is part of the solar energy system project. Solar storage batteries, equipment and facilities are only permitted as prescribed in the Town of Somerset Battery Energy Storage Law.²¹
 - (2) Drainage. Solar energy systems must comply with New York State stormwater regulations. Applicants must demonstrate that solar systems will not create adverse drainage, runoff or hydrology conditions that could impact adjoining and other non-participating properties. Applicants are required to submit drainage design plans to the Planning Board that may be forwarded to the Town Engineer for review.
 - (3) Groundwater and wells. The applicant must identify the groundwater conditions in the area and all public and private wells within 1,000 feet of the site.
 - (4) Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
 - (5) Signage.
 - (a) No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.
 - (b) As required by National Electric Code (NEC), disconnect and other

21. Editor's Note: See Ch. 67, Battery Energy Storage Systems.

emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

- (6) Glare/glint. All solar panels shall have antireflective coating(s) and proof of such submitted. All equipment and support structures should not produce glare or glint.
- (7) Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.
- (8) Noise. The project shall be shown to not have adverse or unreasonable noise impacts on surrounding homes or other sensitive receptors. The one-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from World Health Organization. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the solar energy system to demonstrate compliance with this standard.
- (9) Tree cutting. Removal of existing trees larger than six inches in diameter should be minimized to the extent possible. The standard being no more than 10% of the existing trees larger than six inches in diameter should be removed.

D. Decommissioning.

- (1) Solar energy systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity of the system for a period of at least six months) for a period of one year shall be removed at the owner and/or operator's expense, which at the owner's option may come from any security made with the Town as set forth in this article. A yearly operational report will be required to be submitted to the Town documenting the system's performance.
- (2) A decommissioning plan signed by the owner and/or operator of the solar energy system shall be submitted by the applicant, addressing the following:
 - (a) The cost of removing the solar energy system (no allowance for recycle value).
 - (b) The time required to decommission and remove the solar system and any ancillary structures.
 - (c) The time required to repair any damage caused to the property by the installation and removal of the solar energy system.
 - (d) If on agricultural lands, the plan must include meeting the New York State agriculture and markets standards.

- (3) Security.
 - (a) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 solar energy system and restoration of the property with an escalator of 2% annually for the life of the solar energy system. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the solar energy system. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.
 - (b) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - (c) In the event of default or abandonment of the solar energy system, the system shall be decommissioned as set forth in this article.
- E. Maintenance plan. Applications shall include a maintenance plan for all leased and owned lands (including required setbacks/buffers). Maintenance includes equipment, roadways/access drives, plantings under the panels, landscaped areas, and all other areas of the site.
- F. Safety. Applications shall include a safety plan (including communication with emergency service providers).
 - (1) Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
 - (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe startup following cessation of emergency conditions.
 - (b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - (c) Procedures to be followed in response to notifications from the solar energy system, when provided, that could signify potentially dangerous

conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.

- (d) The property must be inspected after a National Weather Service designation of a Severe Weather Watch or Severe Weather Warning to ensure that the property did not sustain damage. Report to be filed with Town Planning Board.
 - (e) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and/or extinguishing the fire.
 - (f) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - (g) Procedures for dealing with solar energy system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged solar energy system equipment from the facility. System owner shall provide guaranteed nonemergency and emergency response times of a qualified subject matter expert to the Town Hall and local first responders.
 - (h) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders, that shall include but not be limited to a smoke plume test for evacuation purposes. All smoke plume test findings shall be made public.
 - (i) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures. Training of local first responders shall be done biannually. Training in a classroom setting shall be done annually in the winter and an on-site training session shall be done annually in the spring. This training shall include local and mutual aid first responders.
 - (j) The system owner shall notify the local fire department, County Emergency Management office and the Town Hall at least one week prior to any scheduled maintenance or battery swap out.
 - (k) In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.
- G. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Somerset) on the subject property and surrounding properties.

§ 205-111. Site plan requirements.

Site plan application. For any solar energy system requiring a special use permit, site plan approval shall be required. This required site plan application shall include a site plan and the following information:

- A. A plan illustrating property lines and physical features, including roads, for the project site.
- B. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- C. A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- D. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- E. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the solar energy system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- F. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.
- G. Zoning district designation for the parcel(s) of land comprising the project site.
- H. Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep (especially the landscaped areas used for screening), such as mowing and trimming (or other methodologies).
- I. Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- J. Engineering documents must be signed and sealed by a New York State (NYS) licensed professional engineer or New York State registered architect.
- K. A completed SEQR Full Environmental Assessment Form (if over 10 acres or requested by the Planning Board).
- L. A landscape plan in accordance with the special use permit requirements of this article.
- M. An overall project location map (illustrating surrounding properties within 1,000 feet) illustrating zoning (including any overlays), land use, environmental features and structures.
- N. Application fees. All applications for Tier 3 (and Tier 4) solar energy systems shall

include the appropriate fees as set by the Somerset Town Board (see § 205-13).

§ 205-112. Special use permit standards.

A. Specific standards.

- (1) Lot size. There are no lot size requirements; the project must be shown to meet all setback and other requirements of this article.
- (2) Setbacks. All Tier 3 solar energy systems shall be set back a minimum of 200 feet from the fence surrounding the solar panels and equipment to all non-participating property lines and to the edge of any road ROW. This setback shall be a minimum of 50 feet from a participating property line. Additionally, the setback from the fence line shall be a minimum of 400 feet from a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet.
- (3) Height. The Tier 3 solar energy systems shall be less than or equal to 20 feet. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.
- (4) Fencing requirements. All solar panels and mechanical equipment, and any related structures, shall be enclosed by a fence (seven feet high), and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. The type of fencing (including the need for barbed wire) will be determined by the Planning Board and shall fit into the character of the area. Fencing shall be of a good quality and have a typical lifespan of a minimum of 30 years.
- (5) Screening and visibility.
 - (a) Solar energy systems smaller than five acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - (b) Solar energy systems larger than five acres shall be required to:
 - [1] Conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
 - [2] Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of solar panels and solar energy equipment shall be minimized as reasonably practical, from public roadways and adjacent properties to the extent feasible at the start of activation. The Planning Board

will in good faith determine the adequacy of these measures in its sole and absolute discretion.

- [3] The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of one evergreen tree, at least six feet high at time of planting, plus two supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the exterior of the fencing required by § 205-112A(4) above. Existing vegetation on the subject property may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species shall be provided by the applicant for the Town to review. This minimum screening requirement will be reduced if adjoining properties are participating properties. Every effort should be made to plant native trees and shrubs to preserve the character of the area and support local wildlife. The contractor in conjunction with a local nursery should recommend shrub screening for Planning Board approval. For all Tier 3 projects, the recommendations of a landscape professional are required. The Planning Board can require that Tier 3 systems involving complex or sensitive visual and/or aesthetic concerns be approved by a New York State registered landscape architect. All Tier 3 solar energy systems landscape plans must be approved by a New York State registered landscape architect.
- [4] For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, any buildings can be made to look like agricultural structures such as barns.
- (6) Agricultural resources. For projects located on agricultural lands:
- (a) Any Tier 3 solar energy system shall not be permitted on any property, lot, parcel that contains 50% or more land classified as prime farmland soils or farmland soils of statewide importance. Prime farmland is determined and classified by the United States Department of Agriculture (USDA) and the percentage of prime farmland and farmland of statewide importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It is the responsibility of the developer and/or landowner to provide written evaluation, data and mapping to the Planning Board that this 50% requirement is met. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, New York State Agriculture and Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the Town Engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.

- (b) Tier 3 solar energy systems located on farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See New York State Agriculture and Markets Guidelines).
 - (c) Tier 3 solar energy system owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged.
 - (d) Agricultural restoration requirements. Once the system is decommissioned, the site shall be restored and remediated in accordance with the New York State Agriculture and Markets Guidelines (this will be a condition of the special use permit).
- (7) Noise. The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (see earlier section of the law for specific requirements).
- (8) Hazardous materials. The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.), MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.

B. Solar energy system liability insurance:

- (1) The holder of a special use permit for a solar energy system shall agree to secure and maintain for the duration of the permit public liability insurance as follows:
 - (a) Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Somerset and its officers, councils, employees, attorneys, agents and consultants as additional named insured.
 - (b) Umbrella coverage: \$10,000,000.
- (2) Insurance company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with at least a Best's rating of "A."
- (3) Insurance policy cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Somerset with at least 30 days' prior written notice in advance of cancellation.
- (4) Insurance policy renewal: Renewal or replacement policies shall be delivered

to the Town of Somerset at least 15 days before the expiration of the insurance that such policies are to renew or replace.

- (5) Copies of insurance policy: No more than 15 days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Somerset a copy of each of the policies or certificates representing the insurance in the required amounts.
- (6) Certificate of insurance: A certificate of insurance that states it is for informational purposes only and does not confer sufficient rights upon the Town of Somerset shall not be deemed to comply with this article.
- (7) Indemnification: Any application for a solar energy system within the Town of Somerset shall contain an indemnification provision. The provision shall require the applicant/owner/operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town of Somerset and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said solar energy system, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Somerset or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Somerset.

§ 205-113. Permitting requirements for Tier 4 solar energy systems.

- A. All Tier 4 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry, and Planned Unit Development Zoning Districts, and subject to site plan and special use permit requirements as set forth previously in this article and in addition to the Tier 3 requirements set forth above.
- B. Notwithstanding Article XVA of Chapter 205 of the Town Code of the Town of Somerset, Tier 4 solar energy systems shall be permitted through the process set forth in this article. The requirements set forth in Article XV of Chapter 205 of the Town Code shall not be applicable to Tier 4 solar energy systems within a Planned Unit Development District.
- C. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset shall require all Tier 4 applicants to enter into a solar energy system host community agreement.
- D. These Tier 4 systems are very large systems that have a potential to significantly impact on the Town of Somerset, its citizens, the character, and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in

addition to those in the Tier 3 level) submittals and requirements, or include revisions to Tier 3 requirements:

- (1) Any Tier 4 solar energy system shall not be permitted on any agricultural property, lot or parcel that contains 25% or more land classified as prime farmland or farmland of statewide importance.
- (2) Tier 4 systems shall not be allowed in the waterfront protection, agriculture/agritourism, land of statewide importance and environmentally sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file with the Town Clerk). They also cannot be located within a one-half mile of any other Tier 3 or Tier 4 system.
- (3) Submittal of an agricultural impact statement to determine the solar system's impact on agriculture in the Town. The Planning Board, on a project-by-project basis, can amend the scope and detail of information required from the applicant; and the applicant should consult with New York State Agriculture and Markets, USDA and the Natural Resources Conservation District (NRCS) representatives in preparation of this statement.
- (4) Submittal of an economic impact analysis to determine the effect a solar energy project will have on the economy of the Town. This includes those outlined in the agricultural impact statement and other factors related to commerce, employment, housing, transportation, tourism, education, environmental protection, municipal services, revenues and taxation. The Planning Board, on a project-by-project basis, can further amend the scope and detail of information required from the applicant.

§ 205-114. Ownership changes.

If the owner or operator of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. The new owner/operator must also submit new "security/bonds" for approval by the Town attorney. A new owner or operator of the solar energy system shall notify the Zoning Enforcement Officer, Town Planning Board, Niagara County Planning Board and Town Attorney of such change in ownership or operator 30 days prior to ownership change.

§ 205-115. Safety.

- A. Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the solar energy system is located in an ambulance district, the local ambulance corps.
- C. If storage batteries are included as part of the solar energy system, they shall meet the requirements of any applicable local law (including the Town of Somerset's Battery Energy Storage Law²²), fire prevention and building code when in use and,

when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

§ 205-116. Permit time frame, maintenance, abandonment and fees.

- A. The special use permit and site plan approval for a solar energy system shall be valid for a period of 18 months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for a one-time extension of six months. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- B. Inspections. Upon reasonable notice, the Town of Somerset Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or, at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- C. Construction inspections.
- (1) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection C(2) of this section is ready for inspection.
 - (2) Elements of work to be inspected. The following minimal elements of the construction process shall be inspected, where applicable:
 - (a) Work site prior to the issuance of a building permit;
 - (b) Footing and foundation;
 - (c) Preparation for concrete slab;
 - (d) Framing;
 - (e) Building systems, including underground and rough-in;
 - (f) Fire-resistant construction;
 - (g) Fire-resistant penetrations;
 - (h) Solid-fuel-burning heating appliances, chimneys, flues or gas vents; and

- (i) Energy Code compliance.
 - (3) Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and Town Engineer.
 - (4) A final inspection by the fire marshal must be completed prior to activation.
 - (5) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
 - (6) Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, required by this article must be paid prior to or at the time of each inspection performed pursuant to this section.
- D. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- E. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- (1) Annual report. The owner and/or operator of a large-scale solar energy system must submit to the Town's Code Enforcement Officer a yearly report, due no later than February 15, which is certified as accurate and complete under penalty of perjury and contains the following information:
 - (a) The rated capacity of the system;
 - (b) The amount of electricity generated by the system in the most recent twelve-month period;
 - (c) The amount of electricity transmitted to the power grid in the most recent twelve-month period;
 - (d) Identifying any change of ownership of the large-scale solar energy system or the owner of the land upon which it is sited;
 - (e) Identifying any change in the party responsible for decommissioning and removal of the system upon its abandonment; and
 - (f) Evidence that the surety required for decommissioning remains in effect and is irrevocable for at least the next two years.
 - (g) Annual testing of groundwater and wells and a report of the findings

provided to the Town.

- F. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Somerset Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel. All materials to be removed shall be disposed of in a proper manner and in accordance with Niagara County law, preferably recycled.
- G. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Somerset Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing by certified mail his written determination, and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire. Removal of the system must be in accordance with the approved decommissioning plan.
- H. If the owner and/or operator fails to comply with decommissioning upon any abandonment as outlined previously, the Town may, at its discretion, utilize the bond and/or security for the removal of the solar energy system and restoration of the site in accordance with the decommissioning plan.
- I. Application and annual fees. Application and annual fees shall be set by the Town Board and include the following:
- (1) Tier 3 and 4 solar energy systems. An applicant shall pay an initial application fee upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the owner shall pay an annual fee to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
 - (2) Site plan application for a ground-mounted solar energy system. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
 - (3) The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.
 - (4) The Town of Somerset reserves the right to, by local law, provide that no exemption pursuant to the provision of New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.

- J. The Town of Somerset requires that the applicant complete all the requirements of the Town Infrastructure Preservation Law.²³ Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- K. Upon cessation of electricity generation of a solar energy system on a continuous basis for 12 months, the Town may notify and instruct the owner and/operator of the solar energy system to implement the decommissioning plan.

§ 205-117. Enforcement.

- A. If the applicant violates any of the conditions of its special permit or site plan approval, or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Somerset Planning Board holds a hearing on same.
- B. Any violation of this Solar Energy Law shall also be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

§ 205-118. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

23. Editor's Note: See Ch. 118, Infrastructure Preservation Law.