

ARTICLE 24

SCENIC ROADS REGULATIONS

SECTION 1. Definitions. In the absence of contrary meaning established through legislative or judicial action pursuant to M.G.L. Chapter 40 Section 15C, the following terms contained in that statute shall be defined as follows:

"Cutting or Removal of Trees" shall mean the removal of one or more trees, trimming of major branches or cutting of roots, but not trimming or cutting of dead trees or dead branches.

"Repair, Maintenance, Reconstruction, or Paving Work" shall mean any work done within the right-of-way by any person or agency, public or private. Within this definition is any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing ones is also included, in so far as it takes place within the right-of-way.

"Road" shall mean a right-of-way of any way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting street or driveways. When the boundary of the right-of-way is in issue so that a dispute arises as to whether or not certain trees or stonewalls or portions thereof are within or without the way, the trees or stone walls shall be presumed to be within the way until the contrary is shown.

"Trees" shall mean a tree whose trunk has a diameter of four inches or more as measured on foot above the ground.

SECTION 2. Purpose. These regulations are intended to ensure that:

- a. Ways will be recommended for designation as scenic roads on stated criteria;
- b. Trees and stone walls along scenic roads will be protected and will not be altered except after a public hearing following notification of interested parties and after consideration of the work project by the Planning Board based on stated criteria set forth in Section 6 below.

SECTION 3. Recommending Designation as a Scenic Road

SECTION 3.1. Public Hearing. M.G.L. Chapter 40, Section 15C authorized designation of a road as a scenic road by the Town upon recommendation or request of the Planning Board, the Conservation Commission or Historical Commission. Prior to making any recommendation or request to Town Meeting regarding designation of a particular road as a scenic road, the Planning Board, Conservation Commission or Historical Commission, as the case may be, shall conduct a public hearing regarding such proposed designation. Notice of the public hearing shall be given by the body conducting the hearing pursuant to the requirements for notice set forth in Section 5.2 of these regulations.

SECTION 3.2. Criteria for Designation as a Scenic Road. The Planning Board, Conservation Commission, or Historical Commission shall, in recommending which roads should be designated as scenic roads, consider the following criteria:

- a. Ways bordered by trees of exceptional quality, in terms of type, age, specimen size or spread, density of stand, or related flora;
- b. Ways bordered by stone walls;
- c. Ways bordered by any other natural or man-made features of aesthetic value;
- d. Ways for which any alteration would lessen the aesthetic value of natural or man-made features bordering them.

SECTION 4. Notification of Designation as Scenic Road

Upon the designation at Town Meeting of any road as a scenic road, the Planning Board shall take the following steps within 30 days of such designation:

- a. Notify all municipal departments that may take any action with respect to such road;
- b. Notify the State Department of Public Works;
- c. Publish in the local paper by a news release that the road, or roads, have been so designated;
- d. Indicate such designation on all maps currently in use by municipal departments; and
- e. Notify all utility companies or other such parties which may be working on the border of such road.

SECTION 5. Procedures for Obtaining Permits

5.1. **Filing.** Any person, organization, state or municipal agency seeking the written consent of the Planning Board under M.G.L. Ch. 40. Section 15(c) (The Scenic Roads Act) regarding the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof shall file a request with the Planning Board, together with the following:

- a. The text of a legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable specificity on the ground without need for additional plans or references, and describing in reasonable detail the proposed changes to trees and stone walls;
- b. A statement of the purpose, or purposes, for the changes proposed;
- c. A list of owners of properties located in whole or in part within 100 feet of the proposed action;
- d. Except in the case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
- e. Any further explanatory material as may be required by the Planning Board.

5.2. Notice. The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Board of Selectmen, the Conservation Commission, the Historical Commission, the Municipal Engineer, the Tree Warden, the Department of Public Works, and the owners of property within 100 feet of the proposed action. Any defect in notice required under this section, will not affect the validity of the Planning Board's decision, except to the extent c. 40, S15C so provides.

5.3. Timing of Notice. The first publication of the notice shall be as soon as feasible after the Planning Board receives the request from the applicant, and shall in all cases be at least 14 days before the hearing. The last publication shall occur, as required by statute, at least seven days prior to the hearing.

5.4. Timing of Hearing. The Planning Board shall hold a public hearing within 30 days of the Planning Board meeting at which a properly filed request is received. The date and time of the public hearing shall be set outside of normal weekday work hours (8:00 a.m. - 5:00 p.m., Monday-Friday) so as to encourage maximum citizen participation.

5.5. Timing of Decision. The Planning Board shall render a written decision on the request within 21 days of the public hearing.

5.6. Performance Guarantee. Before endorsement of its approval on a plan, the Planning Board may require that the proposed work to be done, be secured by a bond sufficient in form and amount in the opinion of the Planning Board to ensure satisfactory performance of the proposed work.

5.7. Tree Warden. Whenever feasible, Planning Board hearing shall be held in conjunction with those held by the Tree Warden acting under M.G.L. Ch. 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work should be done until all applicable provisions of the Public Shad Tree Law, M.G.L. Ch. 87, have been complied with.

SECTION 6. Considerations. The Planning Board's decision on any application for proposed action effecting scenic roads shall be based on consideration of the following:

- a. The degree to which the proposed action would adversely affect the scenic, aesthetic, and historical values upon which the scenic road designation was originally based;
- b. The necessity for the proposed action in terms of public safety, welfare or convenience;
- c. Availability of reasonable alternatives to the proposed action which could reduce or eliminate anticipated damage to trees or stone walls;
- d. Whether the proposed action would compromise or harm other environmental or historical values;
- e. Compensatory actions proposed, such as replacement of trees or walls;
- f. Consistency of the proposed action with previously adopted Town plans and policies.

SECTION 7. General. The Planning Board may adopt more detailed regulations for carrying out provisions hereunder.

SECTION 8. Severability. If any section or portion of this By-Law is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the By-Law.

(T.M. 5/11/87)