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Town of Thetford Town Road Right of Way Clearing and Tree Policy

The sources consulted for this document are Vermont Statutes Title 24, Sections 2501-2511; Title 19, Sections 702 and 901-904; VLCT News, April 1998; "The Law of Trees," Vermont Institute for Government, March 1998; and "The Public Right of Way and You," *ibid.*, 1994. The statutes are available in the Town Offices and on the World Wide Web at <http://www.leg.state.vt.us/statutes/statutes.htm>. First, we give some background, then present pertinent laws, then the Town's proposed policy.

Background

Right of way: Municipalities own an easement, or right of way, for highway purposes. The width of a highway is usually three rods (49.5 feet), or 24.75 feet each side of the center line of the currently existing highway, but may be wider. For the public benefit of a road, the abutting landowner is stopped from exercising his or her full rights to the land under a right of way. The municipality has the authority to remove trees and other growing things, straighten curves, expand the traveled portion and maintain or improve the road surface, all without the permission of the owners of the land the easement crosses, provided the work is done within the limits of the easement. Towns are obligated to maintain a road to certain standards that are dictated by a road's classification and by state statute.

Public place: Includes cemeteries, greens, parks, lawns around public buildings. Requirements for their maintenance are similar to those for highways.

Tree Warden: Responsibilities include shade and ornamental trees in the public ways and places; control of tree infestations; deciding when diseased, dead or dying trees should be removed and when new trees are appropriate; determining necessary care of trees; holds public hearings when it is proposed to remove a shade tree from a residential area.

Select Board: Is responsible for maintaining the usefulness and safety of town roads; decides appeals of certain of the Tree Warden's decisions.

Highway Department: Performs or oversees road maintenance, including tree and brush removal.

Generally speaking, Vermont law allows the Town to remove trees and bushes that are a hazard, interfere with highway use, or that because of disease or infestation threaten public safety or disease or insect control programs.

However, abutting property owners and the public enjoy certain protections.

Pertinent laws

§19-901 Removal of roadside growth

A person, other than the abutting landowner, shall not cut, trim, remove or otherwise damage any grasses, shrubs, vines, or trees growing within the limits of a state or town highway, without first having obtained the consent of the agency for state highways or the board of selectmen for town highways. (However, note 24-2502, 2508 and 2509 below.)

§19-904 Brush removal

The selectmen of a town, if necessary, shall cause to be cut and burned, or removed from within the limits of the highways under their care, trees and bushes which obstruct the view of the highway ahead or that cause damage to the highway or that are objectionable from a material or scenic standpoint. Shade and fruit trees that have been set out or marked by the abutting landowners shall be preserved if the usefulness or safety of the highway is not impaired. Young trees standing at a proper distance from the roadbed and from each other, and banks and hedges of bushes that serve as a protection to the highway or add beauty to the roadside, shall be preserved. (But see 24-2504 below.)

§24-2502 Tree wardens and preservation of shade trees

Shade and ornamental trees within the limits of public ways and places shall be under the control of the tree warden. . . .

§24-2504 Removal of trees, exception

The tree warden may remove or cause to be removed from the public ways or places all trees and other plants upon which noxious insects or tree diseases naturally breed. However, where an owner or lessee of abutting real estate shall annually, to the satisfaction of such warden, control all insect pests or tree diseases upon the trees and other plants within the limits of a highway or place abutting such real estate, such trees and plants shall not be removed.

§24-2505 Deputy tree wardens

A tree warden may appoint deputy tree wardens and dismiss them at pleasure.

§24-2508 Cutting shade trees; regulations

Unless otherwise provided, a public shade tree shall not be cut or removed, in whole or in part, except by a tree warden or his deputy or by a person having the written permission of a tree warden.

§24-2509 Hearing

A public shade tree within the residential part of a municipality shall not be felled without a public hearing by the tree warden, except that when it is infested with or infected by a recognized tree pest, or when it constitutes a hazard to public safety, no hearing shall be required. In all cases the decision of the tree warden shall be final except that when the tree warden is an interested party or when a party in interest so requests in writing, such final decision shall be made by the legislative body of the municipality.

The Town's policy on right of way clearing and trees is as follows.

(1) The Town shall comply with State statutes and regulations when performing road work. While the town is obligated to maintain the usefulness and safety of its roads, it is also interested in preserving their esthetic qualities.

(2) Except in emergencies, road maintenance that proposes removal of trees from the right of way will be reviewed by the Tree Warden. With the Road Commissioner, the Tree Warden will view trees that have been identified for removal, and provide a report to the Select Board and the Highway Department. The Select Board and the Highway Department will file the report in the Town Office. The Select Board will notify the landowners by letter if the report recommends tree removal, and hold a public hearing if necessary.

(3) Except in emergencies, landowners will be notified by certified letter when the following work is scheduled in the public right of way across their land:

tree cutting

road straightening or widening

any work that will significantly alter the road or right of way

The Highway Department will send this notification letter at least two weeks before the work is to begin. The letter will advise landowners of planned work, the tentative schedule for it, and will inform individuals of their opportunity to express their concerns regarding the work. Similar notification of proposed major road reconstruction projects will be mailed at least 60 days before the work is to begin.

(4) Actions that will be taken by the Road Commissioner before cutting trees or shrubs:

Confirm the width of the right of way, and measure and mark its edges.

Describe the location and proposed work to the Tree Warden.

Request the Tree Warden's opinion whether the proposed work will require cutting of shade, fruit, or ornamental trees or shrubs, and whether such plants are in a residential area. If such plants are to be cut, obtain written permission from the Tree Warden, then notify the Select Board.

Send notification letters as required in (3) above.

Require a certificate of insurance before a contractor begins any cutting.

(5) Actions to be taken by the Tree Warden:

Consult with the Road Commissioner on proposed right of way clearing.

If the cutting of shade, fruit, or ornamental trees or shrubs is recommended, hold a public hearing.

When appropriate, issue written permission to the Road Commissioner to remove trees.

(6) Actions to be taken by the Select Board:

Decide cases involving cutting of shade, fruit, or ornamental trees or shrubs, after the Tree Warden's hearing, when the Tree Warden is precluded from deciding the case or an interested party requests in writing that the Select Board do so.