



TOWN OF DURHAM
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Town Planner's Project Review
Wednesday, July 25, 2018

- IX. **Public Hearing – Removal of trees on Scenic Roads.** Request from Eversource Energy to cut and remove trees along Bennett Road and Packers Falls Road, both designated by the Town as scenic roads. Eversource has identified 50 “risk trees” to be removed and marked each with a blue and white checked ribbon. Approval for cutting and removal from the Planning Board is required per RSA 231-158.
- I recommend scheduling a site drive and continuing the review to August 8

Please note the following:

- **Request.** Eversource is requesting approval from the Durham Planning Board to remove 50 trees located within the Town’s right of way on Bennett Road (19 trees) and Packers Falls Road (31 trees) pursuant to RSA 231-158. Each tree is marked with a blue and white ribbon. I believe the statute applies only to trees situated within the road right of way, not to trees near the road situated on private land.
- **Trimming of branches.** We will need to clarify which trees are proposed for removal and which only for trimming. For significant trimming of trees located within the right of way, I believe that Planning Board approval is required as the statute refers to the “cutting” of trees.
- **Information provided.** The narrative states indicates utility pole is closest, the type of tree, the reason for removal or trimming, the diameter (DBH = diameter at breast height, i.e. 4 feet +/- above grade), and approximate height of the tree.
- Bay Road and Durham Point Road are also scenic roads but Eversource does not plan on any tree removal there now.
- **Drive around.** It would be useful to schedule a drive for the Planning Board to look at the trees proposed for removal. I can look into scheduling the Recreation Department van. We would ask Mike Lynch, Durham Tree Warden, to join us if he is available and an arborist with Eversource – Bob Berner or somebody else.
- **Criteria.** The Planning Board has reviewed several requests like this one over the years. There are no specific criteria established for the board in evaluating the request for each tree. The board could set criteria if desired or simply use its judgment. Intuitively, I think this is a matter of weighing of cost and benefit: the character of the tree (size, health, quality, appearance) vs. the impact and potential impact upon the effective operation of the utility line.

(over)

- Here is the pertinent statute:

Scenic Roads. Section 231:158

231:158 Effect of Designation as Scenic Roads. –

I. As used in this subdivision, "tree" means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground.

II. Upon a road being designated as a scenic road as provided in RSA 231:157, any repair, maintenance, reconstruction, or paving work done with respect thereto by the state or municipality, or any action taken by any utility or other person acting to erect, install or maintain poles, conduits, cables, wires, pipes or other structures pursuant to RSA 231:159-189 shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this subdivision, after a public hearing duly advertised as to time, date, place and purpose, 2 times in a newspaper of general circulation in the area, the last publication to occur at least 7 days prior to such hearing, provided, however, that a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property, and provided, further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the selectmen, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the selectmen of the nature of the emergency and the work performed, in such manner as the selectmen may require.

III. Designation of a road as scenic shall not affect the eligibility of the town to receive construction, maintenance or reconstruction aid pursuant to the provisions of RSA 235 for such road.

IV. Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to RSA 231:139-156, and except that RSA 472:6 limits the removal or alteration of boundary markers including stone walls.

V. A town may, as part of a scenic road designation under RSA 231:157 or as an amendment to such designation adopted in the same manner, impose provisions with respect to such road which are different from or in addition to those set forth in this section. Such provisions may include, but are not limited to, decisional criteria for the granting of consent by the planning board or other designated municipal body under paragraph II, or protections for trees smaller than those described in paragraph I, designated for the purpose of establishing regenerative growth along the scenic road.

VI. Any person who violates this section or any local provision adopted under this section shall be guilty of a violation and shall be liable for all damages resulting therefrom.