

Chapter 164

SCENIC ROADS

[HISTORY: Adopted by the Special Town Meeting of the Town of Lee 10-15-1992 by Art. 9. Amendments noted where applicable.]

GENERAL REFERENCES

Forest lands — See Ch. 111.

Streets and sidewalks — See Ch. 176.

Vehicles and traffic — See Ch. 246

§ 164-1. Definitions.

In the absence of a contrary meaning established through legislative or judicial action pursuant to MGL c. 40, § 15C, the following terms contained in that statute shall be defined as follows:

CUTTING AND REMOVAL OF TREES — The removal of one or more trees and trimming of major branches.

REPAIR, MAINTENANCE, RECONSTRUCTION OR PAVING WORK — Any work done within the right-of-way by any person or agency, public or private. Included 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, insofar as it takes place within the right-of-way.

ROAD — 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 streets 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 stone walls 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.

TEARING DOWN OR DESTRUCTION OF STONE WALLS — The destruction of more than five linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade, but shall not be construed to include temporary removal and replacement at the same location with the same materials.

TREE — Includes a tree whose trunk has a diameter of four inches or more as measured one foot above the ground.

§ 164-2. Purpose.

These regulations are intended to ensure that:

A. Ways will be recommended for designation as scenic roads on stated criteria;

- B. Ways so designated will not be altered without following proper procedures and without adherence to proper considerations; and
- C. Ways so designated will not be altered by the decision of any person, organization or agency other than the Planning Board.

§ 164-3. Criteria for designation. ¹

The Planning Board, Conservation Commission or Historical Commission shall, in determining which roads or portions of roads should be designated as scenic roads, consider the following criteria:

- A. Ways bordered by trees of exceptional quality;
- B. Ways bordered by stone walls;
- C. Ways bordered by any other natural or man-made features of aesthetic value;
- D. Ways for which alteration is being planned or is likely to be planned in the future; and
- E. Ways for which any alteration would lessen the aesthetic value of natural or man-made features bordering them.

§ 164-4. Notice upon designation.

Upon the designation of any road or portion of a road as a scenic road, the Planning Board shall take the following steps within 30 days of such designation. It shall:

- 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 an informal article 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.

§ 164-5. Alteration procedure; notice and hearing.

- A. Filing. Any person, organization, state or municipal agency seeking the written consent of the Planning Board regarding the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, on a scenic road shall file a request with the Planning Board, together with the following:
 - (1) 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 plats or references and describing in reasonable detail the proposed

¹. Editor's Note: The following roads were designated scenic roads by Art. 35 of the 1990 Annual Town Meeting: Devon Road from Stockbridge Road to the Stockbridge Town line; and Maple Street from Greylock Street to East Street.

changes to trees and stone walls;

- (2) A statement of the purpose or purposes for the changes proposed;
 - (3) A list of owners of properties located in whole or in part within 100 feet of the proposed action;
 - (4) Except in the case of Town agencies, a deposit sufficient to cover the cost of advertising and notification; and
 - (5) Any further explanatory material useful to adequately inform the Planning Board.
- B. 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 Selectmen or the City Council, 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.
- C. 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.
- D. 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 hours (8:00 a.m. to 5:00 p.m., Monday to Friday) so as to encourage maximum citizen participation.
- E. Timing of decision. The Planning Board shall make a decision on the request within 21 days of the public hearing.
- F. Public Shade Tree Act. Whenever feasible, notice shall be given and Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under MGL c. 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 Shade Tree Law, MGL c. 87, have been complied with.

§ 164-6. Basis for decision.

The Planning Board's decision on any application for proposed action affecting scenic roads shall be based on consideration of the following:

- A. Preservation of natural resources.
- B. Environmental values.
- C. Historical values.
- D. Scenic and aesthetic characteristics.

- E. Public safety.
- F. Compensatory actions proposed, such as replacement of trees or walls.
- G. Other sound planning considerations.

§ 164-7. Violations and penalties; enforcement.

- A. Whoever violates any of the provisions of this chapter shall forfeit and pay a fine not to exceed \$300 for each offense.
- B. Each and every cutting or removal of a tree shall be deemed a separate offense.
- C. The Planning Board, acting through its Chairperson, shall be imposed to enforce this chapter.
- D. This chapter may be enforced by noncriminal disposition as provided for by MGL c. 40, § 21D.

§ 164-8. Additional regulations.

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