

## ASK THE LEAGUE

*The road crew has started summer maintenance along our town roads. The maintenance activities are entirely within the town's highway right of way. As part of this process, some trees will be removed. Should we notify landowners before we take the trees down?*

Yes. Not only should you notify property owners, but a town should heed the ruling of the Vermont Supreme Court and hold a tree warden hearing to avoid any claim of due process violations. *Hamilton v. Town of Holland*, 950 A.2d 1183, 2007. Anyone who drives on Vermont's rural roads knows that trees, with their arching canopy and sense of enclosure, provide a scenic beauty that marks the change of each passing season. There are other reasons to preserve trees within the highway right of way, such as protection of properties and uses along the highway, and their provision of shade and erosion control. Trees, however, can be an obstruction to highway maintenance and harbor disease and insects that can harm the health of the tree canopy. In order to balance the competing interests of maintaining a highway and preserving the health of trees, the legislature created the office of tree warden, whose responsibility it is to protect and manage "shade and ornamental trees within the limits of the public ways." 24 V.S.A. §§ 871 and 2509.

Highway law allows a town to remove trees and bushes from the highway right of way when they "obstruct the view of the highway ahead" or "cause damage to the highway" or "are objectionable from a material or scenic standpoint." 19 V.S.A. § 904. But before any tree is removed, the town must hold a tree warden hearing. 24 V.S.A. § 2509. The law doesn't provide a notification process; VLCT recommends the tree warden provide direct notification by mail to the affected property owners, as well as posting the notice in three places in town at least 15 days before the hearing. The road foreman should attend and be prepared to explain the maintenance project and indicate which trees will be removed, the reasons why, and answer any questions posed by the public. After the hearing, the tree warden

should write up a brief decision and send a copy to the attendees.

There is an exception to the hearing process for trees "infested with or infected by a recognized tree pest" or that "constitute a hazard to public safety." 24 V.S.A. § 2509. Still, the Municipal Assistance Center believes that it is easier to hold a hearing in all instances before removing trees than to end up in litigation with landowners.

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