Tree Law FAQs

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The Vermont Legislature passed an update to the laws governing trees with the enactment of Act 171, which took effect in November 2020. The Act makes substantial changes to Vermont's tree laws, including defining the term "shade tree." Other amendments define how trees may be removed and the methods by which they are managed on both public and private land. You can find the current statutes online.

The following FAQs contain information about the major changes and additions to the law. They are intended to highlight general questions about the new tree laws and explain the existing statutory framework for regulating shade trees in your municipality.

More detail on roles and responsibilities of municipal officials involved in managing shade trees is available on our Tree Law home page. Please also review New Tree Warden Laws in Effect about Act 171 first published in the VLCT News May/June 2021 Magazine.

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Tree Warden Appointments and Reporting

What has changed about the law, and do we have to follow it?

A lot, as Act 171 represents a substantial rewrite of Vermont tree law. In addition to finally defining exactly what constitutes a "shade tree," the new law adds a comprehensive planning element; changes the notice and hearing requirements for cutting shade trees; and expands in some respects, and limits in others, the statutory role of the tree warden and their deputies. Unless a town has a municipal governance charter that provides otherwise, this law will govern, for better or worse, how trees are managed in your town. As a "Dillon's Rule" state, towns in Vermont have "only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate, or necessary to the exercise thereof."[1][SS1] In short, this means that towns can only do what the State has given them the authority to do and must do what the State tells them to do. The law has changed, creating both a new regulatory environment and new roles and responsibilities to manage trees. It is the hope that these FAQs will aid tree wardens and other town officers working with trees to understand Act 171's changes and tree law in general.

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[1] *Petition of Ball Mountain Dam Hydroelectric Project*, 154 Vt. 189 (1990)

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Must a town have a tree warden?

Yes. Unless it has a municipal governance charter that provides otherwise, State law requires that all towns have a tree warden. 24 V.S.A. § 871(b).

What is the process for appointing a tree warden and who makes the appointment?

The appointment of the tree warden occurs at the first meeting of the selectboard following the annual town meeting, also known as the selectboard's organizational meeting. The law states that the selectboard appoints the tree warden but does not prescribe any special process for doing so. A motion to appoint the tree warden must be approved by a majority of the total membership of the selectboard. The selectboard must certify its appointment to the town clerk (who must record the same) and to the Commissioner of Forests, Parks and Recreation. The certification to the Commissioner must include the appointed tree warden's contact information. Certify at https://anrweb.vt.gov/FPR/vtFPR/TreeWarden.aspx.

Must a tree warden be a town resident?

No. The law governing the appointment of tree wardens explicitly states that a tree warden "need not be a resident of the municipality..." 24 V.S.A. § 871(b).

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Can the selectboard appoint itself or one of its members as tree warden?

Yes. The offices of selectperson and tree warden are not statutorily incompatible offices so the law does not prohibit a person from holding both. However, selectboards should check with their own municipal governance charter and conflict of interest policy, if applicable, to ascertain whether such dual office holding is prohibited in its community. Even if a town's policy doesn't prohibit this dual office holding, there will doubtless be times where potential conflicts will arise and must be managed accordingly. Selectboards should refer to their conflicts of interest policy for guidance in the event a conflict of interest arises.

How are vacancies in the office of tree warden and deputy tree warden handled?

The offices of tree warden and deputy tree warden are appointed, not elected, offices. Consequently, a vacancy created in either office is filled by appointment by the selectboard which has the sole authority to appoint tree wardens, deputy tree wardens, and "their successors." 24 V.S.A. § 871(b). Because these are not elected offices, no notice of the vacancy is required nor do the voters have the right to petition to call a special town meeting to fill a vacancy. As with any other appointment to these offices, the selectboard must certify its appointment to the town clerk (who must record the same) and to the Commissioner of Forests, Parks and Recreation. The certification to the Commissioner must include the appointed tree warden's contact

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information. Certify at https://anrweb.vt.gov/FPR/vtFPR/TreeWarden.aspx.

What is the statutory authority of the tree warden?

Tree wardens have control over all shade trees within a town. The law allows tree wardens the following enabling authority. A tree warden may:

- Adopt (with approval of the selectboard) a shade tree preservation plan;
- Remove or cause to be removed from the public way or places any trees that are infected by a tree pest or that constitute a public hazard;
- Determine that an owner or lessee of abutting property has sufficiently controlled all insect pests or tree diseases upon the trees within the limits of the public way or place abutting the property and determine that removing the trees is unnecessary;
- Propose to the selectboard the rules, ordinances, or regulations for the planting, protection, care, or removal of public shade trees.

Tree wardens may also do the following, but only with the consent of the selectboard:

- Enter into financial or other agreements with the owners of land adjoining or facing public ways and places for the purpose of encouraging and effecting the shade tree preservation plan;
- Enter into agreements with other municipalities to provide tree warden services or training;

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- Cooperate with federal, State, county, or other municipal governments, agencies, or other public or private organizations or individuals; and
- Accept on behalf of the municipality any funds, equipment, supplies, or services from organizations and individuals, or others for use in carrying out the law.

What are the duties of the tree warden?

The duties of the tree warden include enforcing all laws relating to shade trees and posting public notice of the intent to cut or remove a shade tree or group of shade trees. As an appointed official, the tree warden may also perform other related duties as designated by the selectboard.

How long is the tree warden's term?

Following the town's annual meeting, the selectboard must appoint a tree warden who will serve until their successors are appointed and qualified. Practically, this means the selectboard should re-appoint a tree warden each year; however, the tree warden will continue to hold the position until the selectboard chooses to appoint another person.

How is a tree warden removed?

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The tree warden serves until their successor is chosen. This means that they serve at the pleasure of the selectboard which may remove and replace the tree warden for any non-discriminatory reason – or no reason at all – by majority vote of the total membership of the board.

Can a town have deputy tree wardens? If so, what is their authority?

Yes. Towns may have as many deputy tree wardens as they deem necessary. Deputy tree

wardens, like tree wardens, are appointed by the selectboard. They have the same duties and authority as tree wardens under whose direction they serve. This means that deputy tree wardens should only act when they have received the specific go ahead from the tree warden or delegated authority to act for stated purposes, such as overseeing a district within town. Given this relationship, it may be wise for the selectboard to consult with the tree warden regarding a deputy tree warden appointment(s).

How are tree wardens and deputy tree wardens compensated?

The compensation, if any, for tree wardens and deputy tree wardens, like for all other appointed town officials, is set by the voters at the town's annual meeting or, failing that, by the selectboard. 24 V.S.A. §§ 932, 933. Ordinarily,

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any compensation that is provided is set by the voters through their act of approving the budget that is presented for them by the selectboard.

How are deputy tree wardens removed?

Deputy tree wardens serve at the direction of the tree warden. However, they serve at the pleasure of, and are ultimately accountable to, the selectboard which may dismiss them for any non-discriminatory reason or no reason at all. Even though deputy tree wardens have the independent statutory authority to act on their own, they're also subject to the control of the tree warden so anything they do should be done with the tree warden's knowledge and approval. Selectboards with one or more deputy tree wardens should establish clear lines of communication, explain expectations, and clarify the authority between the selectboard, tree warden, and the deputy(ies) when it appoints the deputy(ies) so everyone is on the same page and understands their roles from the start.

Shade Tree Preservation Plans and Public Shade Tree Ordinances

What is a "shade tree"?

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A shade tree is defined by the law as a shade or ornamental tree that is located in whole or in part within the limits of a public way or public places, provided the tree: was planted by a town; or is designated as a shade tree pursuant to a town's Shade Tree Preservation Plan ("Plan"). In order to be designated as a "shade tree" under a town's Plan, the selectboard and tree warden must agree that the tree is critical to the cultural, historical, or aesthetic character of the town. This is presumably a relatively low bar, but we would advise that a legislative record be created, which is either captured in the hearing minutes or the plan itself, that states why such trees are critical to the cultural, historical, or aesthetic character of the town. A "public way" means a right-of-way held by a town, including a town highway. A "public place" means any municipal property (e.g., a park, recreation area, municipal building, etc.), but explicitly excludes any municipal forestland or property subject to any ownership interest held by the VT Agency of Transportation.

What is a Shade Tree Preservation Plan?

A Shade Tree Preservation Plan ("Plan") is an optional document that the tree warden and selectboard may adopt to direct the town's efforts to plant, maintain, and manage shade trees and the process, consistent with governing state law, to remove certain shade trees. If a Plan is adopted, it must contain certain elements listed in statute and it may contain additional elements that the tree warden and selectboard deem appropriate. See below for more details on the required and discretionary contents of any Plan.

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Do you have a model Shade Tree Preservation Plan?

The Vermont Urban and Community Forest Program has resources on drafting a Shade Tree Development Plan and has assisted 10 towns in drafting theirs, so please contact them for more information.

Does a town have to adopt a Shade Tree Preservation Plan?

No. The authority to adopt a Shade Tree Preservation Plan ("Plan") is enabling, not mandatory; this means that a town may, but does not have to, adopt one. Though not mandatory, because the definition of "shade tree" in part includes those trees designated as shade trees pursuant to the Plan, it's likely in the town's best interest to adopt a Plan in order to have an active role in tree management.

What MUST a Shade Tree Preservation Plan include?

A Shade Tree Preservation Plan ("Plan") must do all the following:

1. describe any program for the planting of new trees and shrubs;
2. provide for the maintenance of shade trees through feeding, pruning, and protection from noxious insect and disease pests;

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3. determine the apportionment of costs for tree warden services, if any, that the town provides to other municipalities;
4. determine whether tree maintenance or removal on specific town property will require the approval of another town officer or selectboard; and
5. determine the process, not inconsistent with the governing state law, for the removal of:
    1. diseased, dying, or dead shade trees; and
    2. any shade trees that create a hazard to public safety, impact a disease or insect control program, or that must be removed to comply with State or federal law or permitting requirements.

For more information on Shade Tree Preservation Plans, guidance, and models, please see the Vermont Urban Community Forest Program's website.

In addition to the statutory requirements for the Plan's contents, what else MAY a Shade Tree Preservation Plan include?

A Shade Tree Preservation Plan may also do the following:

(1) map locations or zones within the town where all trees located in whole or in part within a particular public way or place are designated as "shade trees"; and

(2) designate any tree located in whole or in part within a public way as a "shade tree", provided the tree warden and selectboard find that the tree is critical to the cultural, historical, or aesthetic character of the town.

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What trees may be designated as “shade trees” in a Shade Tree Preservation Plan?

Any shade or ornamental tree located in whole or in part within the limits of a public way or place is automatically a shade tree if it was planted by the town. In addition, any trees that are in whole or in part within a public way or place may be designated as shade trees by the plan.

Does a Shade Tree Preservation Plan need to be updated every time a “shade tree” is added?

Not necessarily, but in some cases the Shade Tree Preservation Plan (“Plan”) will need to be updated. A Plan must be updated every time a shade tree is designated, if it is a tree located in whole or in part within a public way, as a shade tree, provided the tree warden and selectboard find that the tree is critical to the cultural, historical, or aesthetic character of the town. These must be added or else the protections afforded as a result of that designation won’t attach. However, in some cases, a tree may be automatically deemed a shade tree by virtue of the Plan. Trees planted by the town in public ways or places are legally going to be deemed shade trees. The Plan can also designate areas or zones where all trees in that location are shade trees, which would automatically include any newly planted tree as a shade tree.

Do municipal Shade Tree Preservation Plans extend to school property?

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It depends. Regardless of who owns the underlying property, a shade tree is defined by the law as a shade or ornamental tree that is located in whole or in part within the limits of a public way or public places, provided the tree: was planted by a town or is designated as a shade tree pursuant to a town's shade tree preservation plan. A "public way" means a right-of-way held by a town, including a town highway. A "public place" means any municipal property (e.g., a park, recreation area, municipal building, etc.), but explicitly excludes any municipal forestland or property subject to any ownership interest held by the VT Agency of Transportation. Therefore, shade trees could exist on a public way that runs through school or other private property, and they can exist on public places which may apply to the school if the town owns the property; note that school property is typically owned by the school district, not the town.

What is the benefit of a selectboard designating additional trees as "shade trees" in its Shade Tree Preservation Plan?

The benefit of the selectboard and tree warden designating additional trees as "shade trees" in the Shade Tree Preservation Plan ("Plan") is that the town would have more control and management over these trees, particularly when and how they are cut or removed. The potential downside, however, is that the control will likely result in additional cost and effort if they are under the town's jurisdiction. For more information on the benefits of designating additional trees as "shade trees" in a Plan, please visit the Vermont Urban & Community Forestry website.

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How is a Shade Tree Preservation Plan adopted/amended/repealed?

A Shade Tree Preservation Plan ("Plan") is adopted/amended/repealed through approval of the tree warden and the selectboard. Therefore, any such adoption/amendment/repeal would necessarily require the agreement of both the tree warden and a majority of the total membership of the selectboard.

Before adoption, the tree warden and the selectboard must hold at least one public hearing concerning any adoption/amendment/repeal of the Plan for the purpose of soliciting public input. The selectboard must publish the proposed Plan at least 10 days prior to the public hearing.

How much notice must be provided prior to the public hearing concerning the Shade Tree Preservation Plan?

The controlling law requires the selectboard to publish the proposed Shade Tree Preservation Plan ("Plan") 10 days in advance of the required public hearing but is otherwise silent on the timeframe for noticing the hearing itself. Since this is a legislative hearing (i.e. a meeting of a public body held for the purpose of soliciting public feedback), it will likely be held at some date and time other than the selectboard's regularly scheduled meeting, in which case it should be warned as a special selectboard meeting. A "special meeting" must be publicly announced at least 24 hours in advance. A meeting is "publicly announced" when notice is given either orally or in writing to all the

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members of the selectboard; to an editor, publisher, or news director of a newspaper or radio station serving the area; and to any person who has requested notice of such meetings. 1 V.S.A. § 310(4). In addition, notices and agendas must be posted at the town clerk's office and in at least two other designated public places in the town at least 24 hours in advance. 1 V.S.A. § 312(c)(2). Practically, because the selectboard must publish the proposed Plan 10 days in advance of the public hearing, it's a good idea for the selectboard to simultaneously give notice of the hearing, well before 24 hours in advance as stated above.

Can a Shade Tree Preservation Plan be adopted without the tree warden's approval?

No. The law requires that a Shade Tree Preservation Plan be adopted by both the tree warden and the selectboard: "[t]he tree warden and the legislative body of the municipality may adopt a shade tree preservation plan." 24 V.S.A. § 2502(b).

How often must a Shade Tree Preservation Plan be updated?

Unlike with the town plan, the law does not prescribe a certain timeframe by which a Shade Tree Preservation Plan ("Plan") must be updated. Consequently, it only needs to be updated whenever any changes are made to the Plan.

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What is the legal effect of a Shade Tree Preservation Plan?

For the most part, a Shade Tree Preservation Plan ("Plan") is just that, a plan, a guidance document that describes the town's internal policy. As such it is a primarily a non-regulatory tool, meaning that it's largely of no legal effect on its own, though it could inform a regulatory tool (e.g. ordinance) adopted for carrying out its purposes.

There is one exception to this: the law states that a shade tree is, in part, any tree designated as such in the Plan. Furthermore, the law prohibits the cutting or removal of any shade tree without approval of the tree warden and provides a penalty for a violation. In short, this means that a plan that has designated shade trees is legally effective to facilitate protection of shade trees and enforcement against prohibited cutting or removal, even without an ordinance.

How can a town enforce its Shade Tree Preservation Plan?

Much like a town plan, which is implemented by duly adopted zoning regulations, the provisions of a Shade Tree Preservation Plan can be implemented and enforced through the enactment of a public shade tree ordinance.

How is a public shade tree ordinance adopted/amended/repealed?

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A public shade tree ordinance, like any other ordinance (other than zoning ordinances), is governed by 24 V.S.A. §§ 1972, 1973. The process starts with the selectboard's review of the draft ordinance and then its adoption of a final draft.

- The selectboard must formally adopt the ordinance, by a majority vote of its members at a duly warned selectboard meeting and must ensure that the action and a copy of the proposed ordinance are entered into the minutes of the meeting.
- The ordinance must be posted in at least five conspicuous places in town and published in a newspaper of general circulation within 14 days of the selectboard's vote to adopt the ordinance. The information published in the newspaper must include the following:
    - the town's name;
    - the name of its website, if it is actively updated on a regular basis;
    - the title or subject of the ordinance or rule;
    - the name, telephone number, and mailing address of a town official designated to answer questions and receive comments on the proposal; and where the full text of the ordinance may be examined.
    - The notice must also explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting, as provided in 24 V.S.A. § 1973.
- If a petition signed by at least five percent of the voters of the town is received by the town clerk within 44 days following the date of adoption

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of the ordinance, the selectboard must either:

(1) call a special town meeting within 60 days from the date of receipt of the petition; or

(2) if the annual town meeting falls within the 60-day period, include an article asking the voters whether they will disapprove of the ordinance in the warning for that annual meeting. 24 V.S.A. § 1973(c).

How is a public shade tree ordinance enforced?

Local ordinances are enforced in either the Vermont Judicial Bureau or in Superior Court at the election of the selectboard, as stated in its ordinance. The Judicial Bureau process is generally less expensive and less time consuming than the court process and does not require the assistance of an attorney. This method of enforcement is appropriate for less severe violations of an ordinance and situations where monetary penalties of less than $800.00 are sufficient to address the underlying violation. In instances where a town seeks either penalties that escalate beyond $800.00 or "injunctive relief" (a court order to compel or stop an action), the enforcement action must be pursued in Superior Court. 24 V.S.A. § 1974a(b). The Judicial Bureau does not have the legal authority to order injunctive relief. For more information about ordinances generally and specifically their enforcement, please see our User's Guide to VLCT Model Ordinances: https://www.vlct.org/resource/users-guide-vlct-model-ordinances.

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Who enforces a public shade tree ordinance?

A tree ordinance is enforced by the tree warden. "A tree warden shall enforce all laws relating to public shade trees..." 24 V.S.A. § 2506. As such, tree wardens should be designated as enforcement officers in any shade tree ordinance. The selectboard may also designate others as additional enforcement officers.

If a Shade Tree Preservation Plan or tree ordinance contradicts a town's governance charter, which controls?

The town's governance charter will generally control. When determining which provision should control, a statute of general applicability to all Vermont municipalities (e.g., the adoption of a tree ordinance) or a particular provision of a town's governance charter, the Vermont Supreme Court has instructed that it will "apply the long-standing rule of statutory construction that where two statutes deal with the same subject matter, and one is general and the other specific, the more specific statute controls . . .(applying rule to conflict between city charter and more general statute). We conclude that the charter prevails because it is more specific to the Town. . ." *Town of Brattleboro v. Garfield*, 180 Vt. 90 (2006).

If a Shade Tree Preservation Plan or tree ordinance contradicts state law, which controls?

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State law will control, as a Vermont is a "Dillon's Rule" state, which means that towns in Vermont only have those "powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate, or necessary to the exercise thereof."[1] In short, this means that towns can only do what the State has given them the authority to do and must do what the State tells them to do. Therefore, any Plan or tree ordinance, or other tree-related action that a town takes, which is inconsistent or contrary to state law, will be void.

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[1] *Petition of Ball Mountain Dam Hydroelectric Project*, 154 Vt. 189 (1990)

Shade Trees: Designation, Maintenance, and Removal

Who has control over the town's trees?

The answer to this question depends on what kind of tree it is and where it is located. The tree warden has control over "all shade trees within the municipality." 24 V.S.A. § 2506(a). This includes all trees located on town property including those located in a park, recreation area, or near a town building or within the town right-of-way that was either been planted by the town or has been designated as a "shade tree" pursuant to the town's Shade

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Tree Preservation Plan. If a tree was not planted by the town or designated as a shade tree and it is located on town property then it is either under the control of the library trustees if it is located on library property, the cemetery commissioners if on cemetery property, the town manager, or the selectboard for those towns without the town manager form of government.

Who can remove a shade tree?

A shade tree can only be removed by the tree warden, their deputy, or a person with the written permission of the tree warden. In addition, a Shade Tree Preservation Plan may specify that the approval of another town officer is required prior to removing a tree on specific town property, regardless of whether it is a shade tree. Shade trees can also be removed from the town highway right-of-way under certain circumstances under the direction of the selectboard.

Who makes the decision to remove a shade tree?

The initial decision to remove a shade tree is made by the tree warden or their deputy, but if the tree warden's decision is appealed, the ultimate decision is made by the selectboard. Additionally, the selectboard can cause to be removed any tree within the highway right-of-way that obstructs the view of the highway ahead, causes damage to the highway, or that is objectionable from a material or scenic standpoint. Shade trees or trees that have been set

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out or marked by abutting landowners must be preserved unless the usefulness of safety of the highway is impaired in which case no notice or hearing would be required prior to their removal. 19 V.S.A. § 904.

What is the process for removing a shade tree?

In most instances, the tree warden must post a public notice 15 days prior to cutting or removing a shade tree. The proposed tree cutting or removal may be appealed within the 15-day notice period to the selectboard. If appealed, the selectboard must hold a public hearing with the tree warden within 10 business days from receipt of the appeal to receive public comment on the proposed tree cutting or removal. The tree warden cannot act until the selectboard renders its decision. The purpose of the hearing is for the selectboard to receive public comment to help inform its decision as to whether to uphold the tree warden's proposed cutting or removal. There are a few exceptions; please see the question, "Must notice and an opportunity to appeal be provided prior to cutting or removing every shade tree?" below.

What notice must the tree warden provide prior to cutting or removing a shade tree?

The tree warden must post public notice of the intent to cut or remove a shade tree or a group of shade trees in at least two conspicuous places in town and in or near the town clerk's office. If the shade tree or group of shade

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trees are located on another's property, the tree warden must also notify each abutting landowner at their address of record. This notice must occur at least 15 days prior to the tree warden's action. There are a few exceptions to this notice requirement; please see the question, "Must notice and an opportunity to appeal be provided prior to cutting or removing every shade tree?" below.

Must notice and an opportunity to appeal be provided prior to cutting or removing every shade tree?

No. Notice and a public hearing on appeal is not required for a shade tree removal when the shade tree meets any of the following criteria:

1. 1. infested or infected, 24 V.S.A. § 2504(a);
   2. infested or infected (or at risk to become so) and are also located in an infestation area designated by the Agency of Agriculture, Food and Markets and Department of Forests, Parks and Recreation;
   3. a hazard to public safety; or
   4. required to be removed by the municipality in order to comply with state or federal laws or permitting requirements. 24 V.S.A. § 2509(a).

This would include, for example, cutting or tree removal to manage the emerald ash borer. A notice and appeal hearing would also not be required to be held prior to removal of any shade tree located within the town highway right-of-way that impairs the usefulness or safety of the highway. Because no hearing is held, no public notice is required in these instances either.

Is the tree warden's decision to cut or remove a shade tree appealable?

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Yes. A landowner or resident may appeal in writing to the selectboard within 15 days after the posting of the public notice to object to cutting or removing a shade tree. The selectboard must give notice of the appeal to the tree warden. The selectboard and tree warden then have 10 business days from the receipt of the notice of appeal to hold a hearing to receive public comment on the proposed cutting or removal of the shade tree.

When an appeal hearing is held, who decides whether to cut or remove a shade tree?

The selectboard. The law quite clearly states that, "(I)n all cases, the decision of the legislative body of the municipality shall be final." 24 V.S.A. § 2509(d).

Must the selectboard's decision on an appeal be in writing?

No, but it may. The board's decision may be captured by the minutes of the meeting (i.e. the public hearing) where the decision was publicly made. Alternatively, the board may choose to issue its decision in writing, following a deliberative session at the conclusion of the hearing. See the question, "Can the selectboard use deliberative session to make its decision?" below.

Can the selectboard use deliberative session to make its decision?

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Yes. A deliberative session occurs only in conjunction with a quasi-judicial proceeding. These are situations where a public body is acting like a judge or jury in that it takes evidence or testimony, and then weighs, examines, and discusses the reasons for or against an act or decision based on that evidence. The law allows a public body to make a decision in private deliberative session so long as the decision is issued in writing and the writing is a public record. This means that after the selectboard has heard all of the evidence in the hearing, it may adjourn the public portion of the hearing, privately discuss and determine the merits of the case, and then circulate drafts of an opinion for comment and approval prior to issuing its formal written decision. The written decision, if not publicly announced, should be sent to all those interested persons who appeared and testified/submitted evidence at the hearing and made available as a public record.

What must be included in the selectboard's decision?

The law doesn't specify what must be included in the selectboard's decision. At the very least any decision, whether it's captured in the meeting minutes or in a separate written decision should include the date and time of the hearing; the identity of the participants; the selectboard's decision concerning the subject tree(s); and the reasons supporting their decision (a brief explanation of its reasons should suffice).

Who signs the selectboard's decision?

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The selectboard's decision must be signed by at least all members that voted in favor of it. It may also be signed by all members, even those who didn't vote in favor of it, so long as a majority of the total membership of the selectboard did. This latter option provides some measure of anonymity to how members voted.

When must the selectboard issue its decision?

The law is silent on this point as well. We would recommend a reasonableness standard based on the circumstances. We would say no more than 30 – 45 days from the date of the hearing.

Is the selectboard's decision to cut or remove a shade tree appealable?

Yes. The selectboard's decision can be challenged by filing a Rule 75 petition/complaint in superior court. "Any action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any department, board, commission, or officer, that is not appealable under Rule 74 may be reviewed in accordance with this rule if such review is otherwise available by law." Vermont Rules of Civil Procedure (V.R.C.P.) Rule 75. This is the process of appeal for any decision of "an agency of the state or a political subdivision thereof, including any department, board, commission, or officer" when there is no statutory appeal process. The appellant (the person

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appealing) would need to get in touch with the clerk of the superior court for more information.

Is there a penalty for cutting or removing a shade tree without the town's permission?

Yes. Anyone who willfully mars or defaces a shade tree without the written permission of the tree warden or selectboard is subject to a fine of not more than $50.00 paid to the town. Anyone who willfully and critically injures or cuts down a shade tree without the written permission of the tree warden or selectboard is subject to a fine as calculated pursuant to 13 V.S.A. § 3602 for each tree so injured or cut, for use of the town.

Can a town designate a shade tree along a state-maintained road?

No. Towns are only able to designate trees that are shade trees that are located in whole or in part with a public way. A "public way" means a right-of-way held by a town, not the state.

Who owns trees located in the town highway right-of-way?

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It depends on the particular right-of-way, but the most common relationship is that the town holds a public easement and the abutting property owner owns the underlying land, including the trees that grow on it. The landowner's right to use the property located within that right-of-way is limited by law and often subject to the control of the selectboard.

How do towns cut trees located in the town highway right-of-way?

It depends on several factors. The selectboard has the authority to remove trees and bushes within the town highway right-of-way that obstruct the view of the highway ahead, cause damage to the highway, or that are objectionable from a material or scenic standpoint. This is going to include most routine town highway right-of-way maintenance. Trees that have been set out or marked by abutting landowners and shade trees must be preserved, so long as 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 are also to be preserved.

The answer to this question also depends on who does the cutting. The law also says that "[a] person, other than the abutting landowner or municipality, shall not cut, trim, remove, or otherwise damage any grasses, shrubs, vines, or trees growing within the limits of a town highway without first having obtained the consent of the legislative body." The negative implication is that an abutting landowner may cut a tree without permission of the selectboard,

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assuming it's not a shade tree.

If a shade tree located within the town's highway right-of-way is cut or removed, to whom does the wood go?

To help answer this question, it may help to think of property rights as a bundle of sticks. Each stick represents a different right on the property. The abutting landowners holds the stick of ownership while the selectboard holds the stick to control what occurs within the limits of the town highway right-of-way including, subject to the limitations enumerated herein, the right to cut a tree down. A property owner has not lost their interest in their land, including the trees that grow there, just because it is subject to a public easement even though the existence of the town's right-of-way does very much limit the landowner's use of that property. Accordingly, it's safe to assume that the abutting landowner probably has the greatest claim to any of the wood resulting from the cutting of any tree within the town highway right-of-way.

Utilities and the Public Utility Commission (PUC)

Do utility clearance crews need to notify towns in advance of cutting associated with scheduled line clearance?

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Yes. The law that utility companies must adhere to (30 V.S.A. § 2506) when cutting trees was one of the few that was left untouched during the Legislature's recent overhaul of the tree laws. According to this statutory provision, a tree "within a street or highway shall not be cut or injured in constructing, maintaining, or repairing a line of wires, without the written consent of the adjoining owner or occupant, unless the . . . selectboard of the town in which the tree is situated, after due notice to the parties and upon hearing, shall decide that such cutting or injury is necessary." Note that the Vermont Supreme Court has ruled that the town is an adjoining owner or occupant for purposes of this provision, if a tree is located within the town's right of way, so written consent must be obtained from the selectboard.[1] If an adjoining owner or occupant refuses to provide written consent to the utility company, the selectboard has authority to, after providing due notice to interested parties and holding a hearing, deem the cutting or injury "necessary" which would then allow the utility company to cut or injure the tree.

[1] See, e.g., *Ives v. Central Vt. Pub. Serv. Corp.*, 134 Vt. 67 (1975).

How does the new law impact (if at all) existing law governing utility line installation and maintenance?

It doesn't. We interpret 30 V.S.A. § 2506 to be more specific than the tree laws in Title 24 when utility companies are constructing or maintaining their lines. Therefore, no additional notice from the tree warden would be required if this process is followed, even if the tree being cut or injured is a shade tree.

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