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Town of Ware Scenic Road Bylaw Adopted TBD

126 Main Street
Ware, MA 01082
413-967-9648

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1.1 Purpose

The purpose of the Scenic Road Bylaw is to help the Town of Ware maintain and enhance its rural, small-town character by ensuring that work done to trees and stone walls on the public right-of way of scenic roads is done in a way that helps preserve the scenic, historic and aesthetic characteristics of the public right-of-way. In ****, Ware Town Meeting voted to accept the Scenic Road Bylaw and roads designated at this time. (See Designated Road List)

Commented [WR1]: This would refer to roads added after this bylaw is voted in at Town Meeting. There will be no roads initially considered as Scenic.

1.2 Definitions

The following terms not qualified or defined in the Scenic Roads Act, M.G.L. Ch.40, Sec 15C, shall be defined as follows for the purpose of this Bylaw.

BRANCH – A living branch that is fully attached to a tree (as defined herein) and that has a diameter of three inches (3”) or more twelve inches (12”) from the point at which said branch connects to the tree.

CUTTING or REMOVING TREES – The removal of one or more trees, trimming of branches (both as defined herein) or cutting of roots sufficient in the Tree Warden’s written opinion to cause eventual destruction of the tree. It does not include clearing nuisance growth, routine or emergency tree maintenance which removes only permanently diseased or damaged limbs, trunks or roots and dead trees or thinning overcrowded trees as determined by the Tree Warden.

POLLARDING – A pruning method where the new growth of a tree is cut back to the main stem or a framework of stubby branches. Promoting a dense head of foliage and branches. A method that causes a tree to provide less shade, to control its outward growth, and restrict canopy coverage.

REPAIR, MAINTENANCE, RECONSTRUCTION or PAVING WORK – Any work done within the right-of-way by any person or agency, public or private. Construction of new driveways or alterations of existing ones is included, insofar as it takes place within the right-of-way. Construction or alternation of water, sewer, electric, telephone, cable TV, or other utilities within the right-of-way is also included. This definition includes 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.

ROADS – A vehicular traveled way plus its necessary appurtenances within the right-of-way, including bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. The right-of-way includes the area on and within the boundaries of the public way and air space above. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown to be otherwise.

TEARING DOWN or DESTRUCTION OF STONE WALLS – The destruction of more than five (5) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement of a stone wall, within a reasonable period of time, not to exceed six (6) months, at the same location with the same materials is permitted without Planning Board approval if the Town Highway Department is notified before the work

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begins. Repair of a stone wall not involving removal and/or destruction is not covered by this Bylaw.

TREES – A tree whose trunk has a diameter of four inches (4") or more as measured one-foot (1') above the ground. Nothing in this definition shall be construed to permit a person, other than the Tree Warden or his deputy, to trim, cut down or remove a public shade tree more than one and one-half inches (1½") in diameter one-foot (1') from the ground.

2.1 Designating a Road as a “Scenic Road”

The Planning Board, the Board of Selectman, Conservation Commission, Historical Commission, or Tree Warden may propose “Scenic Road” designation for any Ware Road or specific portion of a road other than a numbered route or state highway as a scenic road. A petition of at least ten (10) citizens who own property alongside a road that they wish to see designated may propose “Scenic Road” designation for their specific road, or a portion of said road, other than a numbered route or state highway as a scenic road.

The proposal must first get approval from the Planning Board. After the Planning Board has approved the proposal for Scenic Road designation, the Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a Scenic Road.

2.1.1 Public Hearing Before the Planning Board

The proponent(s) of a candidate road for “Scenic Road” designation must request a public hearing with the Planning Board.

2.1.1.1 Request for Public Hearing and Required Materials

If a proposal is brought forth by the Board of Selectman, Conservation Commission, Historical Commission, or Tree Warden, a signed letter addressed to the Planning Board accompanied with a written narrative, must be submitted to the Director of Planning & Community Development.

If a proposal is submitted to the Planning Board by a group of at least ten (10) citizens who own property alongside a proposed Scenic Road, the following documents must be submitted to the Director of Planning & Community Development:

- A petition with no less than ten (10) signatures of property owners who own land alongside the proposed Scenic Road.
- A written narrative describing the reason for this proposal and characteristics that qualify said road for Scenic Road designation.

Upon review by the Planning & Community Development Department, a public hearing will be scheduled with the Planning Board.

If the Planning Board proposes Scenic Road designation, they are not required to submit a written letter. The Board must, however, explain the reasoning and purpose for their proposal of Scenic Road designation.

2.1.1.2 Notice of Public Hearing

The notice shall contain a statement as to the time, date, place and purpose of the hearing with a description of the proposed road for Scenic Road designation. Copies of the notice shall be sent to: Town Clerk, Board of Selectman, the Tree Warden, the Department of Public Works, the Conservation Commission, the Historical Commission and owners of property alongside the proposed Scenic Road (or section thereof) no less than seven (7) days prior to the public hearing.

2.1.1.3 Decision by the Planning Board

In making its decision, the Planning Board shall consider the following criteria:

- Overall scenic beauty, rural character and view from roadside.
- Contribution of trees and/or stone walls to scenic beauty and rural character.
- Age and historic significance of roads, trees, and stone walls.

If the Planning Board approves a proposal for Scenic Road designation, the Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a Scenic Road.

A notice of the Planning Board's decision and recommendation to Town Meeting must be sent to all landowners who own property along the proposed Scenic Road no more than thirty (30) days after the Board's decision.

2.1.2 Town Meeting

2.1.2.1 Warrant for Town Meeting

In compliance with M.G.L. Chapter 39 Section 10, the Planning Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a Scenic Road.

2.1.2.2 Notice & Advertising

The notice of Town Meeting (with an article pertaining to Scenic Road designation) shall contain a statement as to the time, date, place and purpose of the Town Meeting with a reasonable description of the action and its location. Copies of the notice shall be sent to: Town Clerk, Board of Selectman, the Tree Warden, the Department of Public Works, the Planning Board, the Conservation Commission, the Historical Commission and all property owners who own land along the proposed the Scenic Road (or section thereof) at least seven (7) days before the annual Town Meeting or fourteen (14) days before a special Town Meeting.

2.1.2.3 Decision at Town Meeting

Following the Town Meeting, if a road is approved for Scenic Road designation the Planning Board shall take the following steps within thirty (30) days of such designation:

- Notify all municipal departments that may take any action with respect to such road;
- Notify the Massachusetts Department of Transportation;
- Indicate such designation on the Town Scenic Road Map;
- Notify all property owners who own property alongside the designated road;
- Notify major utility or cable companies or other such parties that may be working on such road.
- Update the Scenic Road list

Commented [WR2]: Don't think we need to include MassDOT, since they don't manage Town Roads.

2.2 Rescinding Designation of Scenic Roads

The Board of Selectman, Tree Warden, Conservation Commission, or Historical Commission may propose to the Planning Board for rescinding the designation of a Scenic Road for consideration at Town Meeting. Following the same process in section 2.1 of this bylaw, the proposal to rescind the designation of a Scenic Road shall go to the Planning Board for their approval, then the Planning Board shall make a recommendation to Town Meeting on the merits of rescinding the designation for the Scenic Road.

3.1 Shade Tree/Stone Wall Repair, Alteration or Removal

3.1.1 The Laws & Permitting Process

Two Massachusetts Laws – MLG Ch. 87 (Shade Tree Act) and MLG Ch. 40, Sec. 15C (Scenic Roads Act) – create overlapping responsibilities for the Tree Warden and the Planning Board in Ware.

The Shade Tree Act gives the Tree Warden jurisdiction over the planting or removal of any public shade trees in a public way or, in some circumstances, on a public property. In response to a proposal to remove public shade trees, the Tree Warden schedules a public hearing to solicit public input. Following the public hearing, the Warden decides whether or not the trees can be removed and, if so, whether conditions will be attached to that removal such as planting new trees.

The Scenic Roads Act, on the other hand, gives Planning Boards jurisdiction over the removal of any public shade trees or existing stone walls in a public way designated as a Scenic Road. The purpose of the Act is to protect the character of historic local roads by preventing the removal of key features-significant public shade trees and historic stone walls. To accomplish this, the Act requires that any proposal to remove public shade trees or stone walls must undergo a Planning Board public hearing to solicit public input, that the Board must then decide whether or not to allow the removal of the features, and, if so, to determine whether any conditions should be attached if removals are allowed.

Whenever there is a proposal to remove public shade trees on a Scenic Road, these two responsibilities overlap, and state law requires that a joint Planning Board/Tree Warden public hearing be held. The Planning Board and Tree Warden hear public input and then try to reach agreement on how to respond to the request. The public hearing process is the same as with any other permit application, and in some cases, the Tree Warden will be present to also provide information, receive public testimony, and be involved in the deliberations prior to reaching a decision. If a mutually agreeable decision can be reached, then the matter is concluded. When there is an irreconcilable dispute between the Planning Board and the Tree Warden, or if a written objection to a removal is filed by a citizen prior to or at a hearing, the matter of removal of the trees will go to the Select Board, which has jurisdiction over public ways, for final resolution.

3.1.2 Request for Public Hearing and Required Materials

Any person, organization, state or municipal agency seeking consent of the Planning Board regarding the cutting or removal of trees or the tearing down of stone walls or portions thereof, in connection with the repair, maintenance, reconstruction or paving work, including new

driveways on scenic roads, shall submit a request in writing to the Planning Board, together with the following:

- a plan showing the location and the nature of the proposed action and a description of the proposed changes to trees and stone walls;
- a statement of the purpose(s) for the change;
- Town of Ware Scenic Road – Shade Tree / Stone Wall Repair, Alteration or Removal Application;
- a list of owners of property (abutters) located within one-hundred (100') feet of the proposed action (this can be requested by the Assessor's Office for a fee);
- a deposit of \$300 to cover the costs of sending notices and advertising;
- any further explanatory information including proposed compensatory actions that may be useful to the Planning Board prior to the Public Hearing;

The Planning Board shall hold a public hearing within thirty (30) days of receipt of an application.

3.1.3 Notice & Advertising

The notice shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action and its location proposed by the applicant. Copies of the notice shall be sent to: Town Clerk, Board of Selectman, the Tree Warden, the Department of Public Works, the Conservation Commission, and the Historical Commission and owners of property within one-hundred (100') feet of the proposed action no less than seven (7) days prior to the public hearing.

The public hearing shall be advertised twice in a newspaper of general circulation, the first advertisement to appear no less than fourteen (14) days prior to the public hearing and the second no less than seven (7) days prior to the public hearing. The advertisement shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action and its location proposed by the applicant.

After the costs of advertising are taken out of the \$300 deposit paid by the applicant, **the remainder will be refunded back to the applicant.**

3.1.4 Decision of the Planning Board

The Planning Board shall approve, conditionally approve or deny an application within sixty (60) days after the close of the public hearing.

In making its decision, the Planning Board shall consider the following criteria:

- Preservation of natural resources;
- Preservation of historic resources;
- Preservations of scenic and aesthetic quality of the area;

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- Protection of environmental systems;
- Public safety;
- Traffic volume, congestion and posted speed limits;
- Compensatory actions proposed, such as replacement of trees or walls;
- Existing or absence of reasonable alternatives;
- Compatibility with the surrounding neighborhood;
- Other planning considerations.

A notice indicating the Planning Board's decision shall be sent to the applicant and owners of property within one hundred (100) feet of the proposed action no more than three (3) weeks after the Planning Board's decision is made.

Any decision not carried out within two (2) years of issue shall be void and shall require a new filing.

4.1 Rules & Regulations

4.1.1 Public Shade Tree Act

Whenever both the Scenic Road Act and the Public Tree Act (M.G.L. Ch. 87) apply, notice shall be given and the Planning Board hearing shall be held in conjunction with the those held by the Tree Warden acting under M.G.L. Ch. 87. The consent of the Planning Board to a proposed action shall not be regarded as implying consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work shall take place until all applicable provisions of M.G.L. Ch. 87 have been complied with.

4.1.2 Compensatory Actions

In making its decision, the Planning Board may grant an approval that otherwise would be denied if the overall effect of the proposed alteration, including compensatory action, such as the planting of new trees or the reconstruction of stone walls, is to maintain or improve the scenic quality or historical character of the road.

4.1.3 When Permits Are Not Required

No permit is required to:

- Cut or remove trees or branches that the Tree Warden certifies in writing as diseased, dying or dead;
- Renovate a stone wall so long as it is renovated using the same type of materials, it is in the same location, and it has the same general character as the original wall.
- Conduct emergency work. If a stone wall is destroyed during an emergency, it must be repaired as soon as practicable and no longer than six (6) months.

4.1.4 Emergency Repair

This Bylaw shall not apply when the Tree Warden acts in an emergency in accordance with the Law. In the event that the Board of Selectmen determine that emergency conditions require that work otherwise requiring Planning Board approval must proceed before such approval can be obtained, the Selectmen may authorize the work to proceed before Planning Board approval is obtained to the extent which the Selectmen deem necessary to protect public health and safety. In such cases, the Planning Board must be notified within five (5) business days of any action, which had the threat not existed, would be a violation of the Bylaw.

4.1.5 Driveways

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At a minimum, driveways shall be consistent with Ware regulations for residential driveways and curb-cuts and shall comply with this Bylaw.

Only one driveway cut per lot onto any designated scenic road shall be allowed. A new driveway onto a designated scenic road shall not exceed twenty-five (25') feet in width.

Stone wall removal limitations:

- Where stone walls exist the maximum amount of stone wall to be removed shall be the width of the driveway or new road at the location of the stone wall plus three (3') feet on each side.
- Unless otherwise waived, removed stone shall be used to repair other sections of the wall along the road.
- No wall shall be cut without construction of an appropriate terminus. Appropriate end points shall consist of stone piers, granite posts, stone walls with tapered ends turning back onto the lot along the drive, or wooden posts with or without a gate.

Tree removal limitations:

- No tree with a trunk exceeding eight (8") inches in diameter four (4') feet above ground level shall be cut (for a driveway or new road) unless the curb-cut cannot be safely located otherwise.
- Unless waived, whenever trees are removed, the applicant will plant equivalent native species elsewhere along the road right-of-way.

4.1.6 Large Solar Energy Facilities

New Large Solar Energy Facilities must adhere to section 4.8.3 subsection C.6.c of the Ware Zoning Bylaw. This section states that:

Any Large Solar Energy Facilities property along a designated Scenic Road shall have a setback of two-hundred 200' feet. The Planning Board may require additional buffering along such roads that is consistent with the rural New England character of said roads.

Large Solar Energy Facilities that previously existed alongside a road before said road gained scenic road status, are exempt from the 200' foot setback requirement of this Scenic Road Bylaw.

Small Solar Energy Facilities (as defined in section 2.2 of the Zoning Bylaw) are not subject to section 4.8.3 of the Zoning Bylaw, and therefore are not subject to this section of the Scenic Road Bylaw.

The Planning Board may require additional trees to be planted in order to decrease the visibility of Large Solar Energy Facilities from the Scenic Road at ground level.

4.1.7 Pollarding of Trees

Pollarding of trees along Scenic Roads is prohibited. The practice of pollarding effects the shade and canopy coverage that the trees provide as well as decreasing biological activity. Several benefits including health and temperature control are associated with increased shade and canopy coverage. Pollarding negates these aspects.

4.1.8 Work on Trees in the Public Right-of-Way

Both the Scenic Road Bylaw and the Public Shade Tree Law control work on trees in the public right-of-way.

These are key elements of the Public Shade Tree Law:

- All trees within the public way are defined as public shade trees. If there is any question about whether a tree is in a public way, it is considered in the public way until the contrary is shown.
- The Tree Warden and the Town of Ware are responsible for the care, control, protection and maintenance of all public shade trees, except those within a state highway, and enforces all the provisions of the Law for the preservation of public shade trees.
- No other person may plant, trim, cut or remove a public shade tree without the permission of the Tree Warden or the Planning and Community Development Department.
- No person, including the Tree Warden, may cut, trim or remove any tree greater than one and one-half (1½") inches in diameter without a public hearing.
- Public notice of such a hearing must be posted at least seven (7) days prior to the hearing on the trees in question, in town or more public places in town, and in a newspaper of general circulation for the town, in each of two successive weeks.
- The Tree Warden shall not cut or remove a public shade tree if, at or before the public hearing, objection is made by one or more persons, unless such cutting or removal is approved by the Board of Selectmen.

Commented [WR3]: Maybe revisit this. Which trees would this apply to?

Nothing contained in M.G.L. Chapter 87 shall prevent the trimming, cutting or removal of any tree that endangers persons travelling on a highway, or the removal of any tree, if so ordered by the proper officer, for the purpose of widening the highway.

4.1.9 Road Construction Aid

In accordance with M.G.L. Chapter 40, Section 15C, designation of a road as a Scenic Road shall not affect the eligibility of the Town of Ware to receive construction or reconstruction aid for such road pursuant to the provisions of M.G.L. Chapter 90.

5.1 Enforcement; Violations and Penalties

The Planning Board and Tree Warden will enforce the Scenic Road Bylaw. Anyone who violates the Bylaw is subject to a fine. Removal of each tree and each linear foot of stone wall are considered separate violations.

- Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within any designated scenic road will require an immediate filing as detailed above, the applicant shall be required to restore features. This restoration shall consist of replacing the stone wall as necessary and replacing the trees cut on a square-inch-per-square-inch basis (combined area of the replacement trees measured one (1') foot above ground level to equal total area of the original tree trunk as measured at the stump) at locations specified by the Planning Board.
- Failure to comply with a duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures that the Planning Board deems necessary. Any decision not carried out within two (2) years of issue shall be void and shall require a new filing.
- The Planning Board and the Tree Warden shall have the authority to enforce the provisions of this Bylaw.
- Any violations of this Bylaw, M.G.L Ch. 40, Sec. 15C or a Planning Board decision issued under this Bylaw shall be punishable by a fine not to exceed \$300.00.

(End of Bylaw)

Appendix A – List of Scenic Roads (Proposed)

Note: this section cannot include state owned roads, i.e. Route 9 and Route 32.

Babcock Tavern Road

Bacon Road

Campbell Road

Church Street

Doane Road

Fisherdick Road

Greenwich Plains Road

Greenwich Road

Hardwick Pond Road

Malbeouf Road

Monson Turnpike Road

Old Gilbertville Road

Old Greenwich Plains Road

River Road

Sczygiel Road

Stage Coach Road

Warren Road

Webster Road

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Appendix B – Map of Scenic Roads

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Town of Ware Planning & Community Development
126 Main Street, Ware, MA 01082
413-967-9648 x120



Town of Ware
Planning Board / Tree Warden

Scenic Road – Shade Tree / Stone Wall Repair, Alteration or Removal Application

Applicant Name _____ Date _____
Mailing Address _____
Phone Number _____ Cell _____
Email _____

PROJECT INFORMATION:

Property Address: _____

Assessor's Parcel ID: _____

Description of location of trees and/or stone wall to be removed: _____

List the Species of Tree(s) to be Removed & Quantity & Size(s): _____

How will you replace the trees and/or stone wall removed? _____

Reason / Request for Removal: _____

Signature of Applicant: _____ Date: _____

Board Use Only:

Filing Date: _____ Deposit: \$300
Public Hearing Date: _____ Board Decision: _____
Date of Decision: _____ Tree Warden Notified Date: _____
Conditions: _____

