

Reader's Page

Scenic Roads, Stonewalls, Tree Removal, and Right of Ways

Lately, we've noticed some confusion when workshop participants talk about "scenic roads" and "right of ways" and what each term means. We thought we might make an effort to explain these terms for the Reader's Page. When thinking about scenic roads and right of ways, one must also consider stone walls and tree removal because they are all related.

A "scenic road" is officially designated as such at a town meeting or by a city council. The classification can be rescinded in the same manner.

The scenic road designation was established when the state worked on town roads. According to Bernie Waugh, New Hampshire Municipal Association Legal Council "scenic roads were adopted because the town wanted to protect itself from the state. Scenic roads gave the town 'home rule.'" Today, as you know, the state does not work on town roads but the designation still exists.

Scenic roads protect the appearance of the road for the public but "shall not affect the rights of any landowner with respect to work on his own property." Even a landowner, however, may not remove a stone wall if it serves as a boundary.

Scenic roads restrict the municipalities authority to cut or damage trees which are larger than 15" in circumference at a point four feet above the ground (RSA 472:6). The scenic road designation allows for "any repair, maintenance, reconstruction, or paving work" but doesn't permit for removal of trees or stone walls without the prior written consent of the planning board, or if there isn't a planning board, the selectmen (after a public hearing). Prior written consent is also needed to remove trees that are considered a public nuisance or poses an imminent threat to safety or property and by a utility company in order to restore services.

A town may also adopt its own provisions for scenic roads. "These provisions may include, but are not limited to, criteria the planning board must use when deciding whether to grant permission to cut, or protection of trees smaller than the statutory dimension." The town of Hanover, for example, added a provision that a scenic road must be kept "suitable for travel as required by State Law," in a manner that "maintain(s) and preserves(s) the esthetic qualities of

the scenic roads and unique flora and natural and historical landmarks." The statement describes maintenance and removal of "brush and tree limbs that impair the sight distance in the traveled way or impair the effectiveness of the ditching process; and the replacement of culverts and removal of dead trees where necessary."

A right of way is the area which upon the town has the legal right to do maintenance. There is not a legal, across the board, definition of what this measurement is. Generally, people seem to believe a roadway is fifty feet wide (or three rods) but the right of way may also be defined in many ways, such as by the presence of property pins, fences or a stonewall (another reason not to touch those walls). Historically, the court system has relied on stone walls as evidence of right of way. A record of land layout will usually indicate the boundaries of the right of way.

State highways have different rules governing right of ways. When newer highways were built, land was often purchased beyond stone walls. Therefore, on state road, stone walls are not reliable evidence of right of ways.

Source: Town Official's Handbook, Municipal Association, c. January 1992 p. 232-233.

With special thanks to Bernie Waugh



A typical tree-lined Scenic Road.