

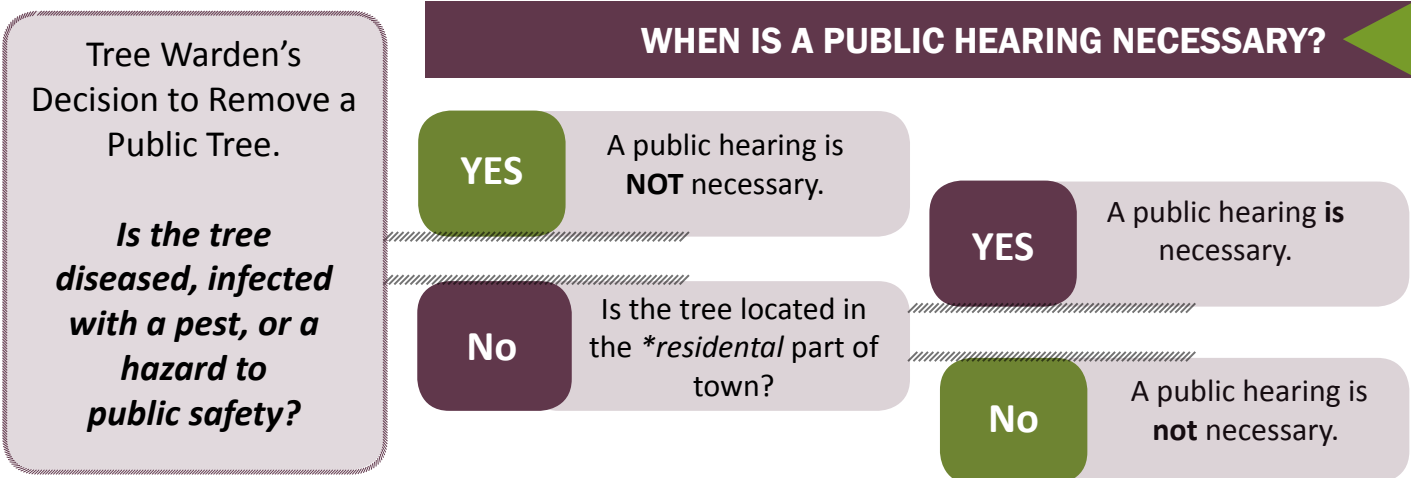


Guidelines for Public Hearings for Tree Removals

In each Vermont town, a tree warden shall be appointed by the selectboard to be responsible for the protection, care, planting, and removal of public shade and ornamental trees on town property and along the public right-of-ways. Tree wardens evaluate whether and when aging or damaged trees need to be removed, and also approve requests for removal of trees on town property by town officials. The public has the right to appeal tree warden decisions for public tree removal. According to the Vermont Tree Warden Statutes:

A public shade tree within the residential part of a municipality shall not be felled without a public hearing by the tree warden, except that when it is infested with or infected by a recognized tree pest, or when it constitutes a hazard to public safety, no hearing shall be required. In all cases the decision of the tree warden shall be final except that when the tree warden is an interested party or when a party in nterest so requests in writing, such final decision shall be made by the legislative body of the municipality.
 (Amended 1969, No. 238 (Adj. Sess.), § 6.)

It is therefore the responsibility of the tree warden to hold a public hearing prior to the removal of a public ornamental or shade tree, unless the tree is diseased or dying or constitutes a hazard to public safety. Failure to hold a public hearing means that the tree warden acted outside the scope of their authority and, as seen in the example of the Holland Case below, could lead to legal action if pursued by landowners.



THE LAW IN ACTION: The Holland Case



In 2001, the Town of Holland sought to widen a Class 3 Town Highway in a residential area to accommodate large vehicles. The plan for the road expansion called for removal of approximately 30 trees and additional tree cutting, among other things.

Before the work began, an adjoining landowner brought suit in Orleans Superior Court to prevent the Town from cutting down the trees. The Town filed for summary judgment, arguing that the tree warden was not required to hold a public hearing prior to felling the trees because they contributed to the narrowness of the road, and thus created a public safety hazard.

In the end, the Court agreed with the landowner. The tree warden had no authority to remove the trees without first holding a public hearing. The public hearing must be warned by the tree warden for the discrete purposes of considering the removal of the tree.

EIGHT STEPS TO HOLDING PUBLIC HEARING FOR TREE REMOVAL*

Step 1: Determine where and when the public hearing will take place. The tree warden should provide direct notification by mail to the affected property owner(s), as well as posting a public notice in a minimum of three public places in town, at least 15 days before the hearing. The public notice should include the time, date, location, and purpose of the hearing.

Step 2: Before the hearing begins, make sure that someone is designated to take good notes and, if possible, record the proceedings of the hearing.

Step 3: At the beginning of the hearing, identify the parties that will be involved in the proceedings. Only those affected are parties: i.e., the landowner, the neighbors, town officials. Inform others in attendance that they have no official role in the hearing.

Step 4: At the public hearing, a notary, clerk, assistant clerk, of Justice of the Peace affirms everyone who will speak before the evidence is taken. An example of an affirmation used is : “Do you solemnly affirm, in the cause now under consideration before the tree warden, to tell the whole truth and nothing but the truth under the pains and penalties of perjury?”

WHAT DOES A WRITTEN DECISION LOOK LIKE?

After the public hearing, the tree warden needs to write up a brief decision along these lines and send a copy to each of the parties who attended the hearing:

On _____, 2014, at __ p.m., I, _____, Tree Warden for the Town of _____, held a hearing at the _____ Town Office to consider removal of trees from a portion of the right-of-way for Town Highway No. __, also known as _____ Road. Present at the hearing were _____, Road Foreman for the Town of _____. Also present were _____, and _____ (list all attendees).

The parties offered the following testimony: _____

Based on the testimony provided at the hearing, authority is (or is not) granted to _____, Road Foreman for the Town of _____ to remove trees from the following portion of the right-of-way for Town Highway No. __: _____ for the following reasons: _____

In accordance with 24 V.S.A. 2509, Persons interested in this decision may appeal the decision in writing within ___ days from the date of the decision to the _____ select board.

Signed,
_____, Tree Warden for the Town of _____

Step 5: Ask the party requesting that the tree be removed to speak first and to describe the details and their views on the removal, in as logical an order as possible. Make sure everyone who speaks gives his or her name first, every time, to make a clean transcript later on if one is needed.

Step 6: Allow the other parties to ask questions of the first speaker and those called to assist the first speaker.

Step 7: Repeat steps 5 and 6 for the other parties, one at a time, allowing them to give their reasons, and allowing them to be questioned by the other parties.

Step 8. Adjourn, and then issue a written decision (see example at left) within a reasonable period of time, starting with findings of fact, then applying the facts to the law, then a decision, and finally a notice of a right to appeal. Send copies by certified mail to each party, and have one copy for the town clerk for public record.

ADDITIONAL RESOURCES

Vermont Urban & Community Forestry Program’s Tree Warden Resources: www.vtfrp.org/urban/tree_wardens.cfm
Vermont League of Cities & Towns, Municipal Assistance Center: www.vlct.org/municipal-assistance-center/overview/
The Law of Trees, compiled by Paul Gillies, Vermont Attorney: www.uvm.edu/crs/resources/citizens/trees.pdf

* Based on recommendations provided by Vermont Attorney Paul Gilles.