

Town of Medway, Massachusetts Planning Board Rules and Regulations

Chapter 400 – Scenic Roads

(Adopted Pursuant to the Scenic Roads Act, M.G.L. Chapter 40,
Section 15C)

Rules and Regulations for the Review and Issuance of Scenic Road Work Permits

Adopted: July 16, 2002

Revised:

Medway Planning and Economic Development Board

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ARTICLE I AUTHORITY

s. 401 – 1 STATUTORY AUTHORITY – The Medway Planning and Economic Development Board (the Board) hereby adopts these Rules and Regulations governing the administration of the Scenic Roads Act pursuant to a vote on Article 5 of the Medway Town Meeting on May 14, 2001 and M.G.L. Chapter 40, Section 15C:

ARTICLE II GENERAL PROVISIONS

s. 402 – 1 PURPOSE - These Rules and Regulations are for the purpose of further protecting the natural beauty that currently exists within the right-of-ways of select roads in the Town of Medway by:

- A. Providing criteria for Scenic Road designation within the Town;
- B. Creating and defining a Scenic Road Work Permit and providing a process for making a determination of need for such a permit;
- C. Outlining the considerations that guide the Planning and Economic Development Board (the Board) when acting on an accepted application for a Scenic Road Work Permit;
- D. Providing the Board with restoration processes, compensatory actions and enforcement mechanisms related to the review and issuance of Scenic Road Work Permits applications.

s. 402 – 2 DESIGNATED SCENIC ROADS - The twenty-four roads designated as Scenic Roads at the Town Meeting of December 30, 1975 and an additional one road designated as a Scenic Road at the Town Meeting of May 14, 2001 shall retain their status as Scenic for the purposes of these Rules and Regulations. See **Appendix A** for listing of Medway Scenic Roads.

s. 402 – 3 DEFINITIONS - In the absence of contrary meaning established through legislation or judicial action pursuant to M.G.L. Chapter 40, Sec. 15C, these terms contained in that statute shall be construed as follows:

Abutter: Owners of land sharing property lines to the proposed disturbance area land and owners of land directly opposite the proposed disturbance area land on any public or private street or way, as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town,.

Cutting or Removal of Trees: The removal of one or more trees, trimming of major branches, or cutting of roots sufficient in the Tree Warden's written opinion to cause eventual destruction of a tree. However, this shall not be construed to include clearing of nuisance growth, routine or emergency tree maintenance which removes only permanently diseased or damaged limbs, trunks or roots and dead whole trees, or thinning out of overcrowded trees as determined by the Tree Warden.

Disturbance Area: An area of land within the right-of-way of a Scenic Road where work is proposed or is currently occurring with or without the issuance of a Scenic Road Work Permit; such work may involve the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof.

Posting: The marking of a tree or stone wall on the right-of-way on a Scenic Road for the purpose of a Scenic Road public hearing. For trees, such marking as described in M.G.L. Chapter 87 Sec. 3. For stone walls, a ribbon or other appropriate "flagging" material temporarily affixed to the stone wall at issue in a Scenic Road hearing and viewable from the paved road.

Repair, Maintenance, Reconstruction, or Paving Work: Any such 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 also included to the extent such work takes place within the right of-way. Construction or alteration of water, sewer, electric, telephone, cable TV, or other utilities within the right-of-way is also included. Except as allowed in the definition of cutting or removal of trees as included herein, roadside cutting for clearance for vehicles or for improvement of line-of-sight is also included within this definition.

Right-of-way: The area on and within the boundaries of the public way.

Road: The entire right-of-way of a vehicular traveled way but not intersecting streets or driveways.

Scenic Road Work Permit: A document issued by the Board after a duly called Scenic Road public hearing. Such Permit may authorize and specify work allowed in a proposed disturbance area by an applicant on the right-of-way of a Scenic Road and include all required conditions and compensatory actions as outlined herein.

Stone Wall: A contiguous arrangement of stone, cut or otherwise, involving at least five square face feet (height x length of stone wall "face"). A stone wall shall include any of its appurtenances including but not limited to gates, terminuses, cut granite stone or large individual stones. All stone walls within the entire right-of-way of a Scenic Road or on the boundaries thereof shall be subject to these Rules and Regulations.

Tearing Down or Destruction of Stone Walls: The removal, physical covering (other than naturally occurring plant covering) or rearrangement of a stone wall. The temporary removal of a stone wall is permitted without Board approval if the Medway Department of Public Works (DPW) is notified before the work begins. The DPW may inspect the work upon completion of restoration to confirm proper replacement at the same location with the same materials in a contiguous and consistent arrangement to the adjoining stone walls. Repair of a stone wall, not involving the tearing down or destruction of the stone wall, is not covered by these Rules and Regulations.

Tree: For the purposes of these Scenic Road Rules and Regulations only, a living tree whose trunk has a diameter of four inches or more as measured one foot from the ground. All trees so defined within the right-of-way of a Scenic Road or on the boundaries thereof shall be subject to these Rules and Regulations. 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.

ARTICLE III PROCEDURE FOR DESIGNATING SCENIC ROADS

s. 403 – 1 TOWN MEETING WARRANT - The Board, , the Conservation Commission, the Historical Commission, or by petition of ten registered voters, in the case of the annual town meeting, and one-hundred registered voters in the case of a special town meeting, may propose Scenic Road designation for any Medway road other than a numbered route or state highway. The Board shall make a recommendation to the Town Meeting on the merits of designating a way as a Scenic Road.

s. 403 – 2 CRITERIA FOR DESIGNATION – One or more the following characteristics of the proposed Scenic Road may be included in the Board’s recommendation to the Town Meeting:

- A. Age and historic significance of affected roads, trees and stone walls;
- B. Contribution of trees and stone walls to scenic beauty;
- C. Exceptional qualities of trees in terms of age, spread, species or specimen;
- D. Protection of natural resources as well as scenic and aesthetic quality of area;
- E. Bordering land uses, nearby architectural features, present and prospective, and how they impact the importance of retaining trees and stone wall.

s. 403 – 3 REQUIRED VOTE - A majority vote of Town Meeting is required for Scenic Road designation. Such designation shall be effective as of the date of Town Meeting action. Any work on any portion of the right-of-way of which was not physically commenced at the time the road was designated as a Scenic Road shall conform to these Rules and Regulations.

s. 403 – 4 NOTIFICATION - Following the designation of any way as a Scenic Road by Town Meeting, the Board may notify all municipal departments that may take any action with respect to such Scenic Road and request that such Scenic Road designation be included on any town produced or sponsored maps.

ARTICLE IV – REVIEW PROCEDURE

s. 404 – 1 FILING INSTRUCTIONS –Any person, organization, state or municipal agency seeking the consent of the Board under M.G.L. Chapter 40, Sec. 15C regarding the cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof, in connection with the repair, maintenance, reconstruction or paving work on Scenic Roads shall submit a request for a Scenic Road Work Permit to the Board, on an application form supplied by the Board, together with the following:

- A. A written description and plans or drawings showing the location and the nature of the proposed disturbance area. The location description should enable readers to locate it with reasonable specificity on the ground without the need for additional plans or references;

- B. A statement explaining the purpose and need for the cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof, in the proposed disturbance area;
- C. A statement outlining possible alternatives, proposed compensatory actions, and mitigation measures including restoration, to the proposed cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof;
- D. A list, certified by the Assessor's office, of abutters, as defined herein;
- E. Except in the case of town agencies, a Scenic Road Work Permit fee as specified in the Board's Fee and Bond Schedule made payable to the Town of Medway;
- F. Photographs of all stone walls and trees within and adjacent to the proposed disturbance area prior to any work;
- G. Any other explanatory material useful to adequately inform the Board and Tree Warden prior to the public hearing.

s. 404 - 2 POSTING OF TREE(S) AND STONE WALLS - A posting, as outlined in M.G.L. Chapter 87, Sec.3, by the Tree Warden on the tree(s) in the proposed disturbance area, or a posting by the applicant on the stone wall in the proposed disturbance area, or both, is required at least seven days prior to a Scenic Road public hearing.

s. 404 - 3 NOTIFICATION OF OTHER TOWN DEPARTMENTS - Notice of submittal of an application for a Scenic Road Work Permit shall be filed by the Board with the Town Clerk and a copy of the submittal transmitted to the Tree Warden. The Board may also forward the submittal to other town departments and request their comments as appropriate, such as the Building Commissioner, the Department of Public Works, the Historical Commission, the Police Department, the Fire Department, and the Conservation Commission.

s. 404 - 4 PUBLIC HEARING - The Board shall hold a public hearing as soon as practical but in no event later than forty-five days from the date on which the application for a Scenic Road Work Permit is received by the Board unless a longer time is agreed to by the applicant. The public hearing may be continued.

s. 404 - 5 COORDINATION WITH TREE WARDEN - As stated in the Scenic Road Act, the Board hearing shall be held in conjunction with that held by the Tree Warden acting under M.G.L. Chapter 87, the Public Shade Tree Act. In the event that the Board holds a joint hearing with the Tree Warden, the advertisement shall be made as required by state law.. Consent to an action by the Board shall not be construed as inferring consent by the Tree Warden or the reverse.

s. 404 - 6 LEGAL NOTICE

A. The Board shall, as required by statute, give notice of the Scenic Road public hearing by advertising twice in a newspaper of general circulation in the area, the last publication at least seven days prior to the public hearing.

B. The notice shall contain a statement as to the time, date, place and purpose of the hearing with a description of the proposed cutting or removal of a tree(s) and/or the tearing down or destruction of stone walls, or portions thereof, by the applicant in the proposed disturbance area. The Board shall provide copies of this notice by mail to the applicant and all abutters as defined herein.

C. All expenses relating to the advertising notification shall be borne by the applicant unless otherwise waived.

s. 404 – 7 CONSIDERATIONS In acting on an application for a Scenic Road Work Permit and upon a Scenic Road public hearing, the Board shall consider the following in making its determination:

- A. Public safety including accident history;
- B. Scenic and aesthetic characteristics and quality of the area;
- C. Quality and extent of shade and tree canopy;
- E. Commentary contributed by the Tree Warden, town agencies, abutters and other interested parties;
- F. Preservation of natural resources and environmental systems;
- G. Preservation of historical and cultural resources values;
- H. Compatibility with surrounding neighborhood;
- K. Adequacy and value of compensatory actions proposed, such as replacement of trees or stone walls or restoration of the same;
- N. Feasibility for avoiding disturbance to trees or stone walls by proposing a safe location for a walkway, driveway or road elsewhere; and
- O. Other sound planning principles and considerations.

s. 404 – 8 RESTORATION

A. Stone Walls – Unless waived, restoration shall consist of replacing the stone wall on a square face foot per square face foot basis, as and where necessary, within one year of issuance of a Scenic Road Work Permit. Stone walls shall be replaced so as to reconnect in a consistent manner with undisturbed walls wherever physically possible. Where feasible and appropriate, any unused removed stones from such stone walls shall be used to repair other sections of the stone wall along the right-of-way of the Scenic Road.

B. Trees – Unless waived, restoration shall consist of replacing the removed trees with nursery grade trees on a one square inch per two square inch replacement basis, at locations specified by the Board and the Tree Warden, within one year after a Scenic Road Work Permit has been issued. A one square inch per two square inch replacement is calculated by finding the diameter of a tree in question at one foot above the ground and determining its trunk area ($3.14 \times \text{tree radius squared}$). The resulting figure is halved and that square inch total becomes the equal to the square inch total of the replacement tree(s). The restoration shall be verified by the Tree Warden as fully and skillfully performed. The species of replacement tree(s) will be determined by the Tree Warden, or otherwise will be consistent with the species of the removed tree(s). The Tree Warden may determine a compensatory value for which the applicant shall be responsible, in lieu of replacement tree plantings, which is equal to the value for nursery grade tree stock and installation. Such value and subsequent payment due the Town of Medway shall be outlined in the final Scenic Road Work Permit.

s. 404- 9 DECISION

A. The Board shall make a decision to issue or deny a Scenic Road Work Permit as soon as practical but in no event later than sixty days after receipt of a properly filed application for a Scenic Road Work Permit.

B. In rendering its decision, the Board shall consider the application based on compliance with the Scenic Roads Act and the considerations listed in s. 404 - 7 of these Rules and Regulations.

C. Since the purpose of these Rules and Regulations is to protect the scenic quality and character of Medway's Scenic Roads, the Board shall approve the proposed cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof, only upon finding that adequate compensatory actions (restoration, etc.) have been included in the applicant's proposed plan

D. The decision of the Board shall be filed with the Town Clerk. Copies of the decision shall be sent to the applicant and the Tree Warden

E. The approval of a Scenic Road Work Permit by the Board under these Rules and Regulations shall be valid for one year. Any work outlined in the issuance of a Scenic Road Work Permit not completed within one year after issuance will necessitate a new and separate filing for a Scenic Road Work Permit.

ARTICLE V – ENFORCEMENT

s. 406 – 1 REMEDY FOR FAILURE TO FILE – A person's failure to file with the Board for a Scenic Road Work Permit for the cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof within the right-of-way on a Scenic Road will necessitate that person's immediate filing as detailed above. Restoration measures, as determined by the Board after a Scenic Road public hearing, may be required.

s. 406 – 2 COMPLIANCE – The failure by an applicant to comply with the duly issued decision of the Board in a Scenic Road Work Permit after one year from issuance may necessitate the enforcement of remedial measures which the Board deems necessary, including,

but not limited to enforcement through non criminal disposition and additional restoration measures.

s. 406 – 3 ENFORCEMENT – The Building Commissioner, the Tree Warden, the Director of the Department of Public Works or his/her designee may issue a citation for the violation of these Rules and Regulations.

s. 406 – 4 PENALTIES- Anyone who violates the provisions of these Rules and Regulations may be subject to a fine of not more than \$300.00 per violation. As an alternative means of enforcement, the violator may be subject to non criminal disposition in accordance with M.G.L., Chapter 40, Section 21D, as follows:

- A. First offense: \$100 per violation;
- B. Second offense: \$200 per violation;
- C. Third and all subsequent offenses: \$300 per violation;
- D. Each day's failure to comply shall constitute a separate and distinct offense.

ARTICLE VI – VALIDITY

If, in any respect, any provision of these Rules and Regulations, in whole or in part, shall prove to be invalid for any reason, such invalidity shall only affect the part of such provision which shall be held invalid and in all other respects, these Rules and Regulations shall stand.

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ADOPTED: Medway Planning Board - July 16, 2002
Revised:

APPENDIX A

Town of Medway Scenic Roads Rules & Regulations

Town of Medway Scenic Roads

The following ways were designated as Scenic Roads at the Annual Town Meetings held on December 20, 1975 and May 14, 2001:

1. Adams Street from Winthrop to Summer Street
2. Brigham Lane (now Country Lane) from Main Street to Village Street
3. Causeway Street from Holliston Street to the Millis town line
4. Charles River Road from Village Street to the Charles River
5. Ellis Street from Coffee Street to Holliston Street
6. Elm Street from Main Street to Evergreen Street
7. Evergreen Street from Main Street to Elm Street
8. Farm Street from Village Street to the Millis town line
9. Fisher Street from West Street to the Holliston town line
10. Franklin Street from Main Street to Village Street
11. Granite Street from West Street to the end
12. Guernsey Street from Cottage Street to Lincoln Street
13. High Street from Main Street to Village Street
14. Highland Street from Main Street to Summer Street
15. Hill Street from Winthrop Street to the Holliston town line
16. Lincoln Street from Main Street to Village Street
17. Lovering Street from Winthrop Street to Summer Street
18. Oakland Street from Main Street to Village Street
19. Partridge Street from Ward's Lane to Winthrop Street
20. Pearl Street from Walker Street to the end
21. Populatic Street from Village Street to the Franklin town line
22. Village Street in its entirety
23. Walker Street from Populatic Street to the Franklin town line
24. Wellington Street from Cottage Street to High Street
25. Winthrop Street from Main Street to the Holliston Town line

