

TOWN OF EAST MONTPELIER  
TREE WARDEN

In the matter of:

Town of East Montpelier  
Request to Remove Ash Trees on U-32 Middle & High School Campus and  
along Gallison Hill, Wheeler, and Schoolhouse Roads

24 V.S.A. §§ 2508-2509 Review

Procedural History and Applicant Request

1. The Town of East Montpelier Resilient Roads Committee has applied for a grant from the U.S. Forest Service through the Vermont Urban & Community Forestry Program to remove ash trees on the U-32 Middle & High School campus and within the town road rights of way on Gallison Hill, Wheeler, and Schoolhouse Roads. The purpose of the project is to proactively remove trees that are susceptible to infestation by emerald ash borer (EAB) (*Agrilus planipennis*), an invasive, non-native beetle that is decimating ash tree populations throughout much of the eastern half of the United States. EAB was first identified in the town of Orange in Central Vermont in February 2018 and has subsequently been confirmed nearby to East Montpelier in Montpelier, Plainfield, and Barre Town.
2. The East Montpelier Selectboard voted in favor of supporting the grant application on January 6, 2020. By letter dated January 13, 2020, U-32 Middle & High School indicated its support of the project as well.
3. Public shade trees, including those within a public road right of way, are subject to preservation and management by town tree wardens under state law, 24 V.S.A. § 2502:

Shade and ornamental trees within the limits of public ways and places shall be under the control of the tree warden. The tree warden may plan and implement a town or community shade tree preservation program for the purpose of shading and beautifying public ways and places by planting new trees and shrubs; by maintaining the health, appearance, and safety of existing trees through feeding, pruning, and protecting them from noxious insect and disease pests and by removing diseased, dying, or dead trees which create a hazard to public safety or threaten the effectiveness of disease or insect control programs. (24 V.S.A. § 2502)

4. The Town requested a review by the Town Tree Warden under the provisions of state law, 24 V.S.A. § 2508, which authorizes tree wardens to determine the necessity of public shade tree removal:

Unless otherwise provided, a public shade tree shall not be cut or removed, in whole or in part, except by a tree warden or his or her deputy or by a person having the written permission of a tree warden. (24 V.S.A. § 2508)

On December 24, 2019, the Town duly noticed a hearing pursuant to 24 V.S.A. § 2509(a); the hearing was convened before the Tree Warden Paul Cate on January 13, 2020 at U-32 Middle & High School:

(a) 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. (24 V.S.A. § 2509)

5. During summer of 2019, as an initial step in developing a management plan for addressing the roadside ash tree threat, the Resilient Roads Committee completed an inventory of ash trees within the rights of way of all Class 2 and 3 roads in town. The inventory's GIS database contains over 2,600 ash trees 6-inch DBH (diameter at breast height, or 4.5 feet above the ground) and larger, and 85% of those trees are currently considered to be in good health. No occurrence of EAB was found, although it may be present; early stages of infestation are somewhat difficult to discern.
6. The project would constitute the Town's first preemptive, large-scale removal of ash trees and help the Town determine whether it will continue taking a proactive approach to remove the trees before they pose a threat to public safety or become more difficult and costlier to remove. Dying and dead ash trees are very brittle, and arborists typically need to use specialized equipment and measures to safely remove the trees.
7. The project contains several elements. With respect to tree removal, there are three areas. On U-32 Middle & High School property within, or immediately adjacent to, the Gallison Hill Road right of way, an estimated 21 trees, 6-inch DBH and larger, would be removed, with the exception of perhaps one or two exemplary trees that may be preserved through the use of insecticides. Use of insecticides to prevent EAB mortality is a common but expensive alternative; treatments must continue at 2- or 3-year intervals as long as EAB is present, and EAB extirpation is not presently seen as likely. Ash trees smaller than 6-inch DBH would also be removed. The Committee would remove invasive plant species, such as buckthorn and honeysuckle, within the right of way and plans to work with U-32 to develop a long-term management plan for the hedgerow to optimize its diversity, health and appearance.
8. The second area would extend the ash-tree removal to the remainder of Gallison Hill Road in town, as well as nearby Wheeler and Schoolhouse roads. The Town would work with individual landowners regarding contractor access, if needed; determination of the fate of logs and brush, such as leaving logs for use as firewood; and the landowner's option to preserve ash trees if willing to take on the responsibility of insecticide treatment. The full extent of tree removal will depend on contractor bids. At a minimum, high-risk ash trees, those dead or dying or leaning over the road, would be removed. One hazard ash tree was identified on Wheeler Road and 6 on Schoolhouse Road. Full removal would include 18 additional ash trees on Gallison Hill Road, 24 ash trees on Wheeler Road, and 72 ash trees on Schoolhouse Road. On Wheeler Road, an additional 26 ash trees (two hazard trees) were identified along the north side of the road within the telephone company

right of way, and the Town may approach the company about removing those trees in coordination with this project.

9. The third area involves green ash trees that were used for landscaping during the most recent school renovation project. The Committee obtained a copy of the landscape plan from the school. The plan indicates that 17 ash trees were planted; the Committee determined that 14 remain. The Committee envisions planting at least 4-8 replacement trees not in the *Fraxinus* family; that would necessitate removal of a minimum of one of the existing ash trees, and potentially 8 trees. Further, more trees may be replaced if the school chooses to participate financially or if the planting costs are lower than expected. Green ash trees are particularly susceptible to EAB infestation compared to white ash, which is the dominant roadside ash species in town.

### Findings and Conclusions

Pursuant to the requirements of state law as enumerated above, the proposed removal of healthy, non-infested shade trees is subject to the jurisdiction of the Town Tree Warden, who must determine whether it is in the public interest. There are no specific criteria set forth in the law.

As Town Tree Warden, I have considered the January 13, 2020, grant application, the testimony received at the January 13, 2020, hearing, and one post-hearing filing received (email of Nona Estrin, landowner on Schoolhouse Road, January 14, 2020). I have a specific knowledge of ash tree structural characteristics when dead or in decline and background knowledge of tree diseases and insect infestation, including EAB.

Testimony received at the hearing was generally supportive. Before the hearing, a presentation on ash trees and EAB was provided by Joanne Garton, a staff member of the Vermont Community and Urban Forestry Program at the Department of Forests, Parks, and Recreation. This was followed by a presentation by the Resilient Roads Committee to explain the project under consideration. A questions-and-answers session followed both presentations.

Comments and testimony included 1) whether replacement planting in the hedgerows should be undertaken, possibly transplanting trees from nearby forested properties or as a cooperative project between the landowners and the Town; 2) whether sub 6-inch-DBH ash trees could be retained and managed by the landowner if beneficial for screening of homes; and 3) beneficial alternate uses of the wood for firewood or landscape wood chips, for example. Ms. Estrin stated that the forested area on her property to the west of Schoolhouse Road:

...is a very sensitive natural area with highly unusual lime loving ferns and other plants including showy orchis, both Goldies fern and narrow leafed spleenwort. This rich remnant of hardwood Cobble has been documented by the upper Winooski Valley naturalists, and the field naturalist graduate program at University of Vermont. It resembles Walter Smith's in many ways, but is steeper and therefore more fragile.

Any cutting on the west side should not extend beyond the easement and should be done in winter to prevent irreparable damage. I will be happy to help in whatever way I can marking the sensitive areas, and will be in touch when we return February 1.

Proactive removal of live ash trees, based on the experience of other states, like Michigan, which have had EAB infestations back to at least 2002, is prudent and reasonable, and therefore in the public interest. Ash trees decline rapidly once infested with EAB, and removal of dead and dying trees becomes much more dangerous and expensive. Removal at a scheduled pace, as currently envisioned by the Town, also provides a more manageable approach compared to having to remove many ash trees over a shorter period when the decline becomes widespread in East Montpelier and regionally. The trees at the school along the roadway represent a particularly significant risk to public safety due to the facts that the road is heavily travelled and that the property is a school property.

State law provides landowners with the option of treating healthy right-of-way shade trees for preservation as an alternative to removal, assuming, of course, that the tree's location does not constitute an undue public safety risk:

The tree warden may remove or cause to be removed from the public ways or places all trees and other plants upon which noxious insects or tree diseases naturally breed. However, where an owner or lessee of abutting real estate shall annually, to the satisfaction of such warden, control all insect pests or tree diseases upon the trees and other plants within the limits of a highway or place abutting such real estate, such trees and plants shall not be removed. (24 V.S.A. § 2504)

I am conditioning my decision to explicitly provide for this treatment option, which would be at the landowner's burden.

With respect to Ms. Estrin's concerns, I expect that the work can be kept within the road right of way and outside of the sensitive area. Nonetheless, I am conditioning my decision on the Town and contractor coordinating the work with Ms. Estrin and asking that Ms. Estrin delineate the area prior to initiating work so that the contractor can take special precautions to avoid disturbance. Given that, I do not believe that it necessary to schedule work to occur during the winter.

## DECISION

I hereby authorize this project to proceed as proposed conditional on the Town:

- 1) providing landowners with reasonable advanced notice of the work schedule and an opportunity to enter into a written agreement on the conduct of the work, including special access, disposal of logs and brush, and cleanup of the work site;
- 2) where necessary, measuring a tree's offset from the road centerline to assure that the tree is actually within the right of way;
- 3) giving landowners the option of long-term insecticide treatment for EAB at that landowner's expense if preferred as an alternative to tree removal, with no responsibility on the Town's part to arrange for the

treatments and potentially an obligation on the part of the landowner to demonstrate to the Town that the treatments are being made;

4) making specific prior arrangement with Ms. Estrin to a) delineate the mentioned sensitive area for the contractor in order to help avoid disturbance outside the right of way and b) arrange for a meeting between the contractor, Town, and Ms. Estrin prior to the tree removal; and

5) insuring that the contractor takes reasonable precautions to avoid damage to existing trees that are nearby.

Dated this 11th day of February 2020.

By: Paul Cate  
Paul Cate, Tree Warden  
Town of East Montpelier

NOTICE OF RIGHT TO APPEAL: In accordance with 24 V.S.A. § 2509(b), interested parties may appeal this decision to the East Montpelier Selectboard. Appeals must be filed, in writing, within 14 days of the date of this decision.