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BOARD OF SELECTMAN
FAIRHAVEN MASS

THOMAS P. CROTTY

SHELLEY D. COELHO
MATTHEW W. SCHUYLER

July 7, 2016

Mr. Mark Rees
Town Administrator
Town of Fairhaven
40 Center Street
Fairhaven, Massachusetts 02719

Dear Mr. Rees:

This will follow up on my earlier email summarizing the standard procedures for removal of trees by the tree warden, and is the result of subsequent information provided by the Board of Public Works with specific reference to the road work being performed on Green Street.

As I stated in my earlier correspondence the procedures for tree removal which generally govern the tree warden do not apply with respect to the removal of trees which constitute a danger to travelers. See G.L. c. 87 § 5.

Interpreting that statute the state Supreme Judicial Court has held that:

“If a tree is within the limits of a highway, and is dangerous or an obstruction to public travel, it is the duty of the mayor, selectmen, road commissioner or highway surveyor to order the warden to trim cut down or remove that tree and of the warden to carry out the order. G. L. c. 87, § 5. The statute requires neither notice nor hearing to precede the action of the named public officer in this respect.” Jones v. Town of Great Barrington, 269 Mass 202 (1929)

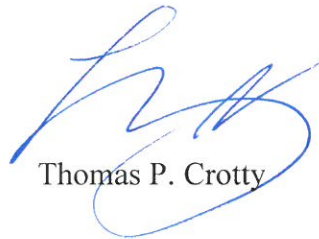
For this particular project the public works department, acting as the town’s road commissioners, requires the removal of specific trees because once the street is dug up and the tree’s root system is compromised, the tree foundation is weakened and the tree would have the potential to fall. No public hearing is required for the public works department to make that determination.

Mr. Mark Rees

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Once the public works department directs the removal of a tree under G. L. c. 87, § 5, there is no statutory provision for review of that decision within the town. (In other words the selectmen would not have authority to overturn that decision, and the tree warden is required to follow the direction of the public works department.) Any appeal would have to be taken to the courts. And the courts would defer to the public officer or department unless the decision was determined to be arbitrary or capricious, which means generally that there is no factual basis to support that decision.

Please let me know if you have any other questions in this regard.



Thomas P. Crotty