

# NEW HAMPSHIRE MUNICIPAL ASSOCIATION (/)

## New Hampshire Town And City

### Seeing the Forest for the Trees

*New Hampshire Town and City, March 2007*

By

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Towns and cities have several options available to manage, conserve and protect town property in ways that best fit the needs of the municipality. Voters may establish a conservation commission to encourage the conservation of lands within their town by purchasing land or easements to protect a parcel from development and to conserve it for future generations. Voters may also vote to establish a town forest to ensure that particular attention is given to the management of a specific piece of town property. In this way, the town forest can be maintained as a healthy and productive forest.

**Q: A large tract of land has been owned by our town for years and has always been known as "Finnegan's Forest." Is it a town forest?**

**A.** It may be a forest (because it has lots and lots of trees), but unless the legislative body has voted to establish it as a town or city forest pursuant to RSA 31:110 (<http://gencourt.state.nh.us/rsa/html/III/31/31-110.htm>), it's a forest owned by the town, but not a town forest in a legal sense. In other words, absent a vote of town meeting establishing the property as a "town forest," the property known to everyone as Finnegan's Forest is no different than the town hall property, highway garage or any other town-owned property.

**Q: What's the difference between a town forest and other town property?**

**A.** Management. Generally, the selectmen have the authority to manage all real property owned by the town and to regulate its use. RSA 41:11-a (<http://gencourt.state.nh.us/rsa/html/III/41/41-11-a.htm>). However, the statute specifically exempts certain town property, including a town forest, from the selectmen's authority. Instead, the statute places management of town forests in the hands of either a forestry committee or, if the municipality has a conservation commission, the legislative body (town meeting) may place management of the town forest in the hands of the conservation commission. RSA 31:112 (<http://gencourt.state.nh.us/rsa/html/III/31/31-112.htm>).

**Q: Why vote to establish a town forest?**

**A.** The purpose of a town forest is to encourage the proper management of timber, firewood and other natural resources through planning, timber stand improvement, thinning, harvesting, reforestation and other multiple use programs consistent with the forest management program, deed restrictions and any pertinent local ordinances or regulations. RSA 31:111 (<http://gencourt.state.nh.us/rsa/html/III/31/31-111.htm>). With management of the property taken from the selectmen, who have many varied tasks to deal with on behalf of the town, the forestry committee (or conservation commission) can direct concentrated efforts in the management of a valuable town resource.

**Q: Is a town forest the same as conservation property?**

**A.** Not in a legal sense, but both serve to encourage proper management of town property. A town forest is established by a vote of the legislative body pursuant to RSA 31:110 (<http://gencourt.state.nh.us/rsa/html/III/31/31-110.htm>) and the purpose of so designating town property as a forest is to enable it to be managed by a special committee dedicated to ensuring its continued

viability as a forest. Lands controlled by the conservation commission pursuant to RSA Chapter 36-A (<http://gencourt.state.nh.us/rsa/html/III/36-A/36-A-mrg.htm>) may include forested properties as well as wetlands and fields, for the purpose of conservation and protection of the natural resources of the town. A municipality could have a town forest that is managed by a forestry committee and it could have other town-owned properties that have been acquired by the conservation commission that are managed and controlled by that body.

**Q: Who serves on the committee to manage a town forest?**

**A.** First, the legislative body decides whether the town forest will be managed by a forestry committee or, if the town has adopted RSA 36-A (<http://gencourt.state.nh.us/rsa/html/III/36-A/36-A-mrg.htm>) establishing a conservation commission, the voters may decide to have the conservation commission manage the town forest. If the town forest is managed by a forestry committee, the committee must have at least three members but no more than five members, who will be appointed by the selectmen and who shall serve without compensation. If there is a town or city tree warden, that person must be appointed to the forestry committee. At the formation of the forestry committee, appointment terms will be for one, two or three years so that terms of one-third of the members will expire each year. Thereafter, appointed terms will be three years each. RSA 31:112 (<http://gencourt.state.nh.us/rsa/html/III/31/31-112.htm>). If the legislative body decides to place management of the town forest in the hands of the conservation commission, it may also vote to include the tree warden, if any, as an ex-officio member of the conservation commission. The forestry committee shall make an annual report to the town and a copy must be sent to the state Department of Resources and Economic Development.

**Q: What does management of the town forest actually mean?**

**A.** The statute isn't specific as to what "management" means. The purpose of the town forest designation is to encourage the proper management of the natural resources of the forest consistent with a forest management program. Therefore, decisions and actions on the part of a forestry committee to further those goals are appropriate. For example, the forestry committee may decide that harvesting the timber is advisable or that plantings of certain species of trees is in order. The committee has the ability, by a majority vote, to engage in these activities, subject to the Municipal Budget Act with regard to budgeted expenditures.

However, the forestry committee does not have authority to manage property that is not included within the town forest as established by a vote of the legislative body. For example, if the road leading to the town forest is outside the boundaries of the established town forest, the forestry committee has no authority to make decisions about the road, even if the road affects the committee's ability to manage the forest. In this case, the forestry committee should work with the selectmen, who have the authority to regulate the use of town roads pursuant to RSA 41:11 (<http://gencourt.state.nh.us/rsa/html/III/41/41-11.htm>), to address issues that concern both boards' management responsibilities.

**Q: Is the forestry committee subject to the Right to Know Law?**

**A.** Yes, as a committee of the town, the forestry committee is subject to the provisions of RSA 91-A (<http://gencourt.state.nh.us/rsa/html/VI/91-A/91-A-mrg.htm>). This means that meetings of the committee must be posted at least 24 hours in advance (unless an emergency exists), the meeting must be open to the public and minutes of the proceedings must be made available for public inspection within 144 hours. RSA 91-A:2 (<http://gencourt.state.nh.us/rsa/html/VI/91-A/91-A-2.htm>).

**Q: Can the selectmen decide to harvest the timber in the town forest or decide that no hunting will be allowed in the town forest?**

**A.** No. RSA 41:11-a (<http://gencourt.state.nh.us/rsa/html/III/41/41-11-a.htm>) specifically excludes town forests from the selectmen's authority to regulate and manage. Thus, the selectmen have no authority with regard to management of the town forest—that authority is delegated to either a forestry committee or the

conservation commission by the legislative body when it establishes the town forest. By voting to establish a town forest, the voters are bypassing selectmen and placing the authority to manage a specific piece of town property with another town committee. However, the selectman can, and should, communicate with the forestry committee about ideas and concerns they may have about the town forest.

**Q: Does the forestry committee get a budget to carry out its duties?**

**A.** The legislative body can raise and appropriate the funds it deems necessary to establish or maintain a town forest. RSA 31:113 (<http://gencourt.state.nh.us/rsa/html/III/31/31-113.htm>). Maintenance expenses might include such things as preparing a forestry plan, purchasing and planting trees and other activities related to the maintenance of the town forest. The authority to spend such appropriations lapses at the end of the town's fiscal year as required by RSA 32:7 (<http://gencourt.state.nh.us/rsa/html/III/32/32-7.htm>).

In addition to funds that may be appropriated by the legislative body, any proceeds from the town forest, for example, money received from a timber harvest, must be deposited into a special forest maintenance fund. This fund is allowed to accumulate from year to year and does not lapse, unless the legislative body votes otherwise.

**Q: Can the forestry committee use the money in the special forest maintenance fund to purchase land to establish a town forest?**

**A.** No. Unlike the conservation commission, which has the authority to acquire in the name of the town (subject to the approval of the selectmen) interests in real property, there is no similar provision in the town and city forest statute. However, the legislative body could vote to purchase additional land to establish another town forest or to enlarge an existing town forest.

**Q: Do the selectmen have any impact at all on the town forest?**

**A.** Yes. First, the selectmen appoint the members to the forestry committee and the conservation commission. Second, the selectmen have a strong role in managing the town's financial affairs and in recommending various appropriations to town meeting via the proposed operating budget and proposed warrant articles. Thus, it is important the selectmen and the committee managing the town forest work together effectively to serve the best interests of the town.

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