

Role of Property Owners in Responsible Tree Stewardship

Responsible planting and maintenance of trees are critical to the well-being of our state and communities. Private property owners play an important role in both activities, since their land and trees abut most of the public right of way in Connecticut.

It is important to acknowledge that trees are a major feature not only of the urban and rural landscapes, but also of the individual landscapes that surround our houses, apartments, condominiums and businesses.

At the same time that trees represent beauty and health, they can also present a danger to life and property if not cared for properly. Although the property owner may not have a legal obligation to be a responsible tree steward, we encourage property owners to help ensure that their tree (or trees) is cared for such that its roots will not lift up the sidewalk, nor its branches or entire trunk fall on pedestrians, cars, utility wires or the roadway itself.

Caring for trees starts with planting the right tree in the right place. A list of suggested trees and shrubs for planting near or under utility wires is provided in the Right Tree, Right Place section of this Report. Planting a tree that won't grow into wires and then require pruning will save money and resources. A tree planted in the right place can grow into its natural form and will become an amenity both for the property and the community.

Depending upon the site and community goals, larger trees can be planted as set-backs farther from the right of way. In all cases, it is important for the property owner to be aware that trees are not maintenance-free. Proper early pruning will pay huge benefits in the longer life of the tree, as well as avoiding later, more expensive pruning which often is harmful to the tree's vitality and long-term structural stability.

Trees with roots below or branches above the right of way may become the responsibility of the local tree warden who is charged with the care and control of "town trees" within the urban forest. This care and control does not negate the responsibility of the property owner to ensure the safety of his or her trees.

The Task Force recommends that property owners visually inspect all their trees on at least an annual basis, especially those that could present a danger to pedestrians, traffic or the right of way. When property owners have questions about a tree's health or growth habits, a licensed arborist should be called in for a consultation. By Connecticut statute, any work done for hire to improve the condition of a tree, including pruning, must be performed by a licensed arborist. A list of Connecticut licensed arborists is available at www.kellysolutions.com/ct.

Older and larger trees can have hazards that are not obvious to the untrained eye, so it is part of the property owner's responsibility to have such trees inspected regularly. Pruning of dangerous branches or cabling of leaders can prolong the life of the tree, helping to keep the benefits of a healthy tree in the roadside forest.

Property owners are encouraged to maintain their existing trees and to plant new ones within the guidelines of this report for the overall health and beauty of their landscapes and of our state.

Roadside Trees on Private Property: Legal Considerations

The Task Force did consider the role of property owners with regards to trees on private property alongside roads, and the responsibility of those private property owners with respect to those trees. Unfortunately, as a full consideration of this issue entails detailed interpretation of State Statutes [see Appendix 6] and of case law, the Task Force was not able to come up with a clear answer with respect to what the role of these private property owners should be. There is agreement that the issues involved need further consideration and, possibly, additional action.

The Task Force discovered the following:

- State Statute, through CGS 23-59, appears to put the responsibility for the maintenance of many of the trees located along roads that would normally be considered as belonging to the private property owner on the municipal tree warden. Normally, ownership of a tree is determined by where the base of the tree lies. However, the Statute states that "care and control" of roadside trees belongs to the tree warden when that tree extends "in whole or in part" into the public right of way.
- Additional interpretation of State Statute further suggests that, not only does the tree warden have care and control of these trees, but that the property owner should not maintain or remove these trees, as their action might be determined to be interfering with the tree warden's care and control.
- The Task Force heard references to existing Connecticut case law that support an interpretation of Statute that, at a minimum, places all responsibility for any damage caused by roadside trees on the tree warden and the municipality, even when that tree is owned by a private property owner, if parts of that tree extend into the public right of way. It should be noted that tree roots can extend a considerable distance beyond the edge of a tree's crown.
- The Task Force saw this as a disincentive for private property to care for or remove roadside trees, due both to the understanding that, under this interpretation, the private property owner may not have the authority to care for these trees, despite their ownership of these trees, and also due to the understanding that, should the tree fail and cause damage, the private owner of the tree would not bear any financial responsibility for those damages.
- The Task Force found this interpretation discouraging. It finds that this places an additional burden on municipalities and on the tree wardens, who are already overburdened and under-resourced with respect to the care, control and maintenance of those trees that are clearly municipally owned.
- At the same time, the Task Forces recognized that placing the full burden of responsibility for maintenance of roadside trees owned by private property owners is

also very likely to be an ineffective solution, for a variety of reasons. It gave thorough consideration to the many reasons why it is good for the tree warden to have the right and responsibility to inspect trees outside of municipal ownership, when the tree warden does have care and control of these trees. It is also good for the tree warden to have the authority to make determinations as to what should be done so as to mitigate the risk to the public when such risks are discovered from those trees.

- The Task Force, however, was unable to decide upon a mechanism by which this should occur. Difficulties included giving the tree warden clear authority to enter onto private property and inspect private trees, and determining a reasonable means for follow-up activity that would lead to mitigation of the concern. In this discussion, the Task Force also encountered questions regarding funding limitations, the rights of private property owners, and potential liability concerns with respect to the tree warden and the municipality should the municipality be unable to effect action when it is determined that action is needed.
- The Task Force did find that there may be circumstances where there are trees on private property that do not extend into the public right of way and hence are not under the care and control of the tree warden, but that would nonetheless have the potential to fail and impact the public safety. These trees should be maintained as a part of responsible stewardship by the owners of those trees. Examples might include tall conifers set back sufficiently from the road such that no limbs extend over the right of way, but which are tall enough that, should they fail, they could contact the traveled portion of the road or nearby utility infrastructure.
- In general, the Task Force reached agreement that it would favor a system that would:
 - Encourage private property owner responsibility for privately owned trees.
 - Encourage public oversight, through the tree wardens, over trees on private property that pose risks to the public, the public right-of-way and utility infrastructure.
 - Foster public-private collaboration in a way that encourages proactive tree management, such that risks to the public would be mitigated before they became severe and that the municipality would also have the clear authority to intervene once risks are determined to have become severe.
- Examples by which such public-private collaboration could occur might include:
 - Educational campaigns emphasizing the responsibilities of tree owners for their trees, along with clearly outlined parameters by which the owners of roadside trees could act without interfering with the tree warden's "care and control" when it applies to these trees.

- Funding sources, such as that proposed by the Two Storm Panel (Recommendation #22) that could allow for financial assistance to both municipalities and private property owners in circumstances such as these.