



SELECTBOARD AGENDA & MEETING NOTICE

July 13, 2026

***Indicates item added after the 48 hour posting
bold underlined time = invited guest or advertised hearing
 (all other times are approximate)

Location: Town Hall, 2nd floor meeting room, 325 Main Road, Gill

5:30 PM Call to Order (If the meeting is being videotaped, announce that fact. If remote participation will occur, announce member & reason, & need for roll call voting)

Old Business

- Review of Minutes: 2025: 3/24, 4/7, 4/22, 5/5, 5/20, 6/2, 6/16, 6/30, 8/11, 8/18, 9/8, 9/17, 10/6, 10/16, 10/20, 11/3, 11/17, 12/15, 12/29; 2026: 1/12, 1/26, 2/9, 3/9, 3/23, 4/6, 4/21, 5/4, 5/19, 6/29

New Business

- Discussion of duties of the elected Tree Warden - Joe Williams
- Farmland Protection Planning Advisory Committee – Tamsin Flanders, FRCOG
 - Pilot a model for developing municipal farmland protection plans, with final recommendations to Mass Dep’t of Ag Resources (MDAR) based on Gill’s and 5 other communities pilots.
 - Form advisory group with representatives from Ag Com, Conservation Commission, Planning Board, Selectboard, and 3 farmers
 - 5 meetings, start fall 2026, wrap up late summer 2027
- Energy Commission updates – recommendation to do Comprehensive Building Assessments (CBAs) of the Gill Elementary School and Public Safety Complex. Cost of CBA is fully covered by Eversource and/or MassSave. Provides info on electrification feasibility, custom recommendations of potential upgrades, cost estimates, and carbon reduction strategies
- Reappointment – Amy Gordon, 8 Setback Lane, to Cultural Council for term 7/17/26 - 7/17/29
- Other business as may arise after the agenda has been posted.
- Public Service Announcements, if any
- Warrants
 - FY26 #27 – Vendors (\$39,585.27) & Payroll (\$34,939.30) – reviewed/signed on 6/29
 - FY27 #01 – Vendors (\$115,977.44) & Payroll (\$3,402.37) – reviewed/signed on 6/29
 - FY26 #28 & FY27 #02 – review & sign

Adjournment

Other Invitations/Meetings:

Date	Time	Event	Location
Mon 7/27	5:00 PM	Selectboard meeting (Community discussion of RMB starts at 5:30 PM)	Riverside Municipal Bldg (RMB)
Mon 8/10	5:30 PM	Selectboard meeting	Town Hall
Mon 8/24	5:30 PM	Selectboard meeting	Town Hall

TOWN OF GILL

M A S S A C H U S E T T S



SELECTBOARD MEETING MINUTES

June 29, 2026

Called to Order: The meeting was called to order at 5:45 PM in the 2nd floor meeting room at the Gill Town Hall.

Members Present: John Ward, Charles Garbiel

Members Absent: Jenn Waldron

Others Present: Ray Purington, Town Administrator; Tim Batchelder, Kate Savage, Madison Schofield, Dan Flagg, Anthony DiPaolo, Bill Kimball, Olivia Ellis, and Matt Richman

Review of Minutes: Garbiel made a motion, seconded by Ward, to approve the minutes of June 15, 2026. The motion was approved by a 2-0 vote.

Leaf Joy Sale to Mello Gill: The Selectboard welcomed Matt Richman, CEO of Mello Cannabis, and Olivia Ellis, store manager of Leaf Joy, the cannabis dispensary located at 1 Main Road. Richman announced his company has proposed to purchase Leaf Joy, and if the necessary approvals are received from the state Cannabis Control Commission (CCC) and the Town, the store will become “mello” and be operated by Mello Gill, LLC. The Mello company has a dispensary in Haverhill and a growing facility in Amesbury. Richman has been the CEO of Mello since November 2024 and has 10+ years’ experience working in the cannabis industry in Colorado and Massachusetts. Ellis has been a Leaf Joy employee since it first opened in 2023 and noted they will hold a 3-year anniversary event on August 1st this year.

Mello has been managing the Leaf Joy location under a management agreement since January, and sales are up 40% since that time. Richman explained Mello will be applying to Gill’s Zoning Board of Appeals for all the zoning Special Permits currently held by Leaf Joy. They are considering painting a mural on the Main Road side of the store building and were cautioned during the meeting to review Gill’s sign regulations within the Zoning Bylaws to determine if a mural would be considered a “sign” requiring a Special Permit.

The CCC requires there to be a Host Community Agreement (HCA) between the host town and any cannabis business located in the town. There is an existing HCA between Gill and Leaf Joy, and it contains provisions to allow the HCA to be assigned to another entity. Purington recommended the HCA be assigned to Mello Gill, LLC. Richman suggested the assignment document be modified to extend the term of the HCA to be 3 years from the date of the sale from Leaf Joy to Mello Gill. Garbiel made a motion, seconded by Ward, to approve the HCA assignment document as presented and including an additional provision to extend the term of the HCA to 3 years from the date of the sale of Leaf Joy to Mello Gill, and further to authorize Purington to sign documents as necessary to effect and implement the HCA assignment. The motion was approved by a 2-0 vote.

Annual Reappointments: The Selectboard reviewed the list of annual reappointments to various Town boards, committees, and positions. Garbiel made a motion, seconded by Ward, to make the appointments as listed. The motion was approved by a 2-0 vote.

Adopt and Implement New Wage Scale: Purington provided a brief history of the two-year process to update the Town’s 20-25-year-old wage scale. The Town applied for and received a \$13,000 award from the State’s Community Compact Cabinet to hire the Collins Center for Public Management to perform a Classification and Compensation Study. This work was completed in 2025, but too late to be implemented in Fiscal Year 2026. The Personnel Committee has completed its review of the proposed wage scale, although it is continuing to work on fine-tuning and finalizing the job descriptions. The remaining work on the job descriptions is not believed to have an impact on positions’ placement on the new wage scale.

The current wage scale has 8 grades, and each grade has 6 steps. Typically, an employee will start on the first step, move up one step for every 2 years of employment, and reach the last step during their 11th year of employment. The new wage scale has 6 grades, and each grade has 10 steps. Employees will move up one step for each year of employment, reaching the last step during their 10th year of employment.

According to the Personnel Policy, it is the Selectboard's responsibility to adopt changes to the wage compensation plan. At the June 8th Town Meeting voters approved the funds required to implement the new wage scale. To determine the implementation cost, the current wage scale was used to determine each employee's wage rate effective on July 1, 2026, which is the start of Fiscal Year 2027. Then, from the appropriate grade level on the new wage scale, each employee was assigned a wage rate that is equal to or greater than the rate from the current wage scale (i.e. no employee will earn a lower rate because of the new wage scale). For current employees, the steps at which they are placed on the new wage scale will have no connection to their years of employment.

Garbiel made a motion, seconded by Ward, to adopt the new wage scale effective with Fiscal Year 2027 and including the 3% COLA as approved by Town Meeting, and to place employees on the wage scale in accordance with the list provided. The motion was approved by a 2-0 vote. Richman and Ellis left the meeting.

Firefighter Appointment: Garbiel made a motion, seconded by Ward, to appoint Logan Caron as a Firefighter through June 30, 2027, contingent upon receipt of satisfactory results from a recent medical examination, CORI check, and driving record check. The motion was approved by a 2-0 vote.

Fire Department Purchase Orders for FY26: Fire Chief Bill Kimball met with the Selectboard to discuss planned purchase orders using funds remaining in the Fire Department's Fiscal Year 2026 budget. All the purchase orders were approved by consensus.

1. \$6,120 for various pieces of technology, including a new server rack, repeaters for outdoor and indoor Wi-Fi, door access system, and VOIP telephone system.
2. \$1,660 for two kits to convert the Department's existing battery-powered chain saws to be able to cut through building roofs. The kits include a special chain saw bar and carbide bit chains.
3. \$2,800 for two iPads equipped with 5G cellular and Wi-Fi data for use with the Department's reporting program. The devices will be kept in the two primary response vehicles and will allow responders to review building- and location-specific information en route to calls, as well as be able to begin incident reports while still on scene.
4. \$3,000 for an MSA calibration station for the Department's two 4-gas gas detectors. The station will allow Department personnel to perform the monthly calibration of the devices, as is already being done with the existing 5-gas detectors using the 5-gas calibration station.
5. \$11,000 to replace all 20 sets of brush gear. Each set consists of a pair of Nomex pants (\$300) and a Nomex coat (\$250). The existing gear is over 10 years old and was acquired using a state wildfire equipment grant. Kimball explained our region has been experiencing drier conditions in recent years, especially in the spring and fall, and the brush gear gets more use than the turnout gear for structure fires.

Kimball reported the Fire Department is planning a community open house at the Fire Station on Sunday, August 2nd in the afternoon.

Resignations: Purington reported Richard French resigned from the Planning Board and the Agricultural Commission effective June 25, 2026. French served on the Planning Board for more than 20 years and on the Agricultural Commission for more than 15 years. He also previously served terms on the Historical Commission and the Building Committee. The Selectboard noted their appreciation for French's many years of service to the Town. Garbiel made a motion, seconded by Ward, to accept the resignations with regret. The motion was approved by a 2-0 vote.

Batchelder, Flagg, DiPaolo, Kimball, Savage, and Schofield left the meeting at 6:40 PM.

Warrants: The Selectboard reviewed and signed the FY 2026 warrant # 27 with totals of \$39,585.27 for vendors and \$34,939.30 for payroll. The Selectboard reviewed and signed the FY 2027 warrant # 01 with totals of \$115,977.44 for vendors and \$3,402.37 for payroll.

The meeting adjourned at 7:30 PM.

Minutes respectfully submitted by Ray Purington, Town Administrator

Signed copy on file. Approved on 07/13/2026

Jenn Waldron, Selectboard Clerk

TOWN OF GILL

M A S S A C H U S E T T S



SELECTBOARD MEETING MINUTES

August 14, 2023

Called to Order: The meeting was called to order at 5:30 PM in the 2nd floor meeting room at Gill Town Hall.

Members Present: Charles Garbiel and Randy Crochier Members Absent: Greg Snedeker

Others Present: Ray Purington, Town Administrator; Tom Hodak, Rick King, Bill Kimball, Gene Beaubien, Joe Williams, Doreen Stevens, Chris Pelletier, Kate Savage, Julian Mendoza, Peter Conway, Maurice Dumas

Other Business – Fire Department Brush Truck: Fire Chief Gene Beaubien and Deputy Fire Chief Bill Kimball met with the Selectboard to provide an update on the new brush truck. A Ford F450 chassis has been on order since November 2022 and the vendor, MHQ, has still not received a firm commitment from Ford that the truck will even be built. If Ford cancels the order, the price will increase and the clock will start all over again. However, MHQ currently has the next model down, an F350, available on their lot.

Kimball reported he has spoken with officers from other fire departments, as well as with members of the Environmental Police, and there is a strong consensus the F350 is big enough to meet Gill's needs as a brush truck and a tow vehicle for a boat and trailer. The F350 has a 5,000 pound towing capacity, and a gross vehicle weight (GVW) of 18,000 pounds. Price-wise, the F450 chassis is \$83,606 and the F350 is \$78,209.

Charles made a motion, seconded by Randy, to authorize the Fire Department to change the vehicle on order from the Ford F450 to a Ford F350 while keeping the amount authorized for the purchase unchanged at \$83,606. The motion was approved by a vote of 2 in favor and 0 opposed. Kimball and Beaubien left the meeting at 5:35 PM.

Expanding Membership on Sewer Commission: Ray provided an update to the Selectboard and interested residents from the Riverside neighborhood regarding the process to expand the makeup of the Sewer Commission by adding two appointed members to serve with the three members of the Selectboard. Ray and Town Clerk Doreen Stevens reviewed town meeting minutes and town election results from 1973 to 1983 searching for votes related to the Sewer Commission, and found an August 3, 1976 special town meeting vote and a May 2, 1977 town election vote. Both votes authorized the Selectboard to act as the Sewer Commission. With the two votes the Town was essentially following the process outlined in Massachusetts General Laws chapter 41 section 21. Ray stated he believes a similar two vote process will be needed to add the two appointed members of the Sewer Commission, and he will confirm this with Town Counsel.

Chris Pelletier, reporting on behalf of Jeff Suprenant, informed the Selectboard that Suprenant had spoken with Chelsey Little, the Superintendent at Montague's Clean Water Facility (aka sewage treatment plant). Suprenant received information about a grant Montague received to purchase equipment. The same type of equipment may be useful for the Riverside sewer pump station to help deal with the pumps getting bound up by clothing and other fabric that is flushed into the sewer system. Pelletier will scan the information and send it to Ray. Pelletier, Conway, and Dumas left the meeting at 5:50 PM. King left the meeting at 5:50 PM.

Tree Warden Updates: Joe Williams, who was elected as Tree Warden in the May 15, 2023 town election, met with the Selectboard to discuss his statutory role in the process of selecting, cutting, and removing trees from within the Town-owned right-of-ways. It was noted since 1978, when Ernie Hastings was first elected Tree Warden, there has been significant overlap of tree-related duties and/or responsibilities between the Tree Warden, Highway Superintendent, and Highway Department. It was also tensely pointed out that while the Tree Warden is legally responsible for supervising municipal tree workers, the Town's Highway Department employees are not "municipal tree workers," and do not take direction from the Tree Warden. There will need to be further conversations about roles and responsibilities with respect to tree work.

Megan Bathory Peeler joined the meeting at 5:55 PM.

Williams informed the Selectboard of his desire to attend a 6-module course being offered this fall by the Massachusetts Tree Wardens and Foresters Association. Charles made a motion, seconded by Randy, to authorize

spending \$600 from the Trees & Forestry budget to cover the cost of the Massachusetts Qualified Tree Warden Course. The motion was approved by a vote of 2 in favor and 0 opposed. Williams left the meeting at 6:03 PM.

Use of ImageCast Tabulator: Town Clerk Doreen Stevens met with the Selectboard to request their approval of her plan to use the new ImageCast vote tabulator for all future state elections and continue to hand count all local elections. She explained the turnout for local elections tends to be low enough that hand counting is not a big deal and saves the Town the expense of programming the tabulator and printing special ballots for use with the tabulator. Charles made a motion, seconded by Randy, to authorize the use of the new tabulator for all future state elections and to hand count all local elections. The motion was approved by a vote of 2 in favor and 0 opposed. The Selectboard signed a notice to the State Elections Bureau informing the Bureau of the decision. Stevens left the meeting at 6:08 PM.

Joint Appointment of Library Trustee: Megan Bathory Peeler, one of the two elected Trustees of the Slate Memorial Library, met with the Selectboard and requested that Jake Morrow, of Gilder Way on the Northfield Mount Hermon campus, be appointed to the Trustee position that became vacant when Tara Savoie moved out of town. Vacancies in elected boards are filled by a joint vote of the Selectboard and the remaining members of the board. The appointments last until the next town election. Charles made a motion, seconded by Randy, to appoint Jake Morrow as a Library Trustee through May 20, 2024. Bathory Peeler voted with the Selectboard and the motion was approved by a vote of 3 in favor and 0 opposed.

An agenda item regarding the possible expansion of the number of Library Trustees from 3 to 5 was determined to be unnecessary. There had been some confusion regarding the number of Trustees who needed to be present in order to conduct a meeting. As only two of the three Trustees are required to form a quorum and hold a meeting, Bathory Peeler advised the Selectboard there was no longer a need to consider expanding the number of Trustees. Bathory Peeler left the meeting at 6:14 PM.

Review of Minutes: No minutes were ready for review.

Route 2 Updates: Randy reported the installation of safety barriers on the French King Bridge is complete, although some project wrap-up work still remains at the site. He remembered it was roughly 14 years ago when he started the quest to make it harder for people to commit suicide by jumping off the bridge, and thereby make it safer for the many first responders who respond. He specifically thanked former State Representative Denise Andrews and Gold Star Mother Stacey Hamel for their support, perseverance, and activism.

Repairs to the washed out section of Route 2 in Gill near Factory Hollow are moving along quickly, and it is reported the detour will be ended and the road returned to two-way traffic by week's end. Randy praised the Mass. Department of Transportation (MassDOT) for their fast response and dedicated efforts to making the repairs and reopening a roadway that is so vital to commuters, tourists, and commerce.

Purchase Order for Spare Pump and Impellers: The Selectboard reviewed a memo from Highway Superintendent John Miner detailing the need to purchase a spare pump and two impellers for the sewer pump station in Riverside. Charles made a motion, seconded by Randy, to authorize the purchase, with the cost of the purchase to be approved by Ray. The motion was approved by a vote of 2 in favor and 0 opposed.

Fire Department Appointment: Charles made a motion, seconded by Randy, to appoint Diane Pedrosa as a Firefighter through June 30, 2024. The motion was approved by a vote of 2 in favor and 0 opposed.

Sewer Abatements: Ray presented three sewer abatement applications for approval: Karen & Mark Timberlake, \$97.67 for water used to top off a swimming pool; Linda Welcome, \$43.92 for water used for the summer startup of a swimming pool; and Jeff Suprenant, \$16.39 for water used to fill a spa. Charles made a motion, seconded by Randy, to approve the abatements as presented. The motion was approved by a vote of 2 in favor and 0 opposed.

Mendoza and Savage left the meeting at 6:30 PM.

Warrant: The Selectboard reviewed and signed the FY 2024 warrant # 4 with totals of \$71,581.36 for vendors and \$38,125.02 for payroll.

The meeting adjourned at 7:20 PM.

Minutes respectfully submitted by Ray Purington, Town Administrator

Signed copy on file. Approved on 08/28/2023

Greg Snedeker, Selectboard Clerk

WHAT IS A TREE WARDEN?

Caring for the community's trees in the Commonwealth

A tree warden is the person in charge of shade trees in towns and cities. The word “warden” was a common title for natural resource officials in the late 1800s. Being a warden signified a unique legal responsibility: to guard public resources against destructive forces that might include persons, insects, or diseases.

Since 1899, Massachusetts General Law has mandated that all cities and towns in the Commonwealth have a tree warden. The tree warden mandate is still in effect today under Massachusetts General Laws, Chapter 41, Section 1 and Section 106.

For a recent scholarly analysis on tree wardens, see Julie Steiner, J.D., *Guardians of Municipal Public Trees: Commonwealth of Massachusetts Tree Warden's Authority and Accountability*.

A tree warden may be either elected by the people or appointed by the city or town. In either case, the responsibility is the same – to oversee the care, maintenance, or removal of public shade trees. As both manager and advocate, the tree warden must protect the trees and protect the public from the trees.



Boston



Tree warden training

What Do Tree Wardens Do?

The scope of a tree warden's job is broad. In addition to having responsibility for trees along streets, a tree warden may have responsibility for all community trees – those in town commons, parks, schoolyards, and town forests. The position of tree warden requires qualified training in arboriculture, the science of tree care. A tree warden should also have good communication skills for dealing with the public, municipal departments and committees, and local politicians.

The job may be physically challenging as well. On a day-to-day basis, a tree warden must plan, organize, control, and be accountable for all authorized activities in the public community forest, including:

- Pruning trees
- Removing trees that are dead or dying (from storms, insects, disease, or old age)
- Identifying appropriate planting sites
- Planting new trees
- Creating, updating, or utilizing a tree inventory
- Assessing trees for risk
- Overseeing utility arboricultural operations
- Reviewing site plans
- Preparing budget presentations
- Supervising municipal tree workers
- Creating bid proposals for contract tree work
- Inspecting contracted tree work
- Planning, implementing, and overseeing tree protection related to construction activities
- Conducting public meetings and tree hearings
- Writing grant proposals
- Communicating and coordinating with the local tree committee or advocacy group



The Position of Tree Warden in a Community

The position of tree warden may be based in a public works, highway, parks, cemetery, or other department, or it may be completely separate. The position may be supported by salary or stipend. In some cases, tree warden duties may comprise only a portion of the duties of a position.

Qualifications for Tree Wardens

MGL Chapter 41, Section 106 requires that appointed tree wardens in towns and cities with populations greater than 10,000 “be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture [...]” The term of the appointment was set at three years. The license which is referred to above is a pesticide license. This license does not certify whether or not a person is “qualified by training and experience in the field of arboriculture.”

To help establish a standard for qualification in Massachusetts, the Massachusetts Tree Wardens’ and Foresters’ Association created an educational training program for tree wardens in 2017. The Massachusetts Qualified Tree Warden program is designed to provide a base of knowledge for tree wardens in Massachusetts, especially for those in smaller communities that may not be able to hire a tree warden with industry-standard qualifications. While not defined by law in Massachusetts, industry-standard qualifications may include ISA Certified Arborist, Massachusetts Certified Arborist, Associate or Bachelor’s Degree in Arboriculture, Urban Forestry, or a closely related field.

About MTWFA

Founded in 1913, the Massachusetts Tree Wardens’ and Foresters’ Association is a non-profit organization that serves tree wardens, municipal arborists, utility arborists, commercial arborists and companies, educational professionals, and citizen tree advocates in the care, management, and preservation of the urban and community forest. This text is adapted from ‘What is a Tree Warden?’ on the MTWFA website. Find out more at www.masstreewardens.org.

REFERENCES:

Mass. General Laws
<https://malegislature.gov/Laws/GeneralLaws>

Steiner, J.D. *Guardians of Municipal Public Trees*
<https://digitalcommons.law.wne.edu/facschol/321/>

Mass. Tree Wardens’ and Foresters’ Association
www.masstreewardens.org

Who is My Tree Warden?
<https://masstreewardens.org/who-is-my-tree-warden/>

What is a Public Shade Tree?

The Public Shade Tree Law, Massachusetts General Law (MGL) Ch. 87, defines public shade trees as “all trees within a public way or on the boundaries thereof,” including trees planted within 20 feet of the edge of the right of way, as defined in Section 7. The tree warden may also be responsible for trees in parks and other open spaces if designated under the provisions of Section 2 of Chapter 87. Tree wardens do not have jurisdiction over trees along state highways.

Bureau of Forestry

Urban & Community Forestry Program

Massachusetts Department of Conservation and Recreation

251 Causeway Street, Suite 600
Boston, MA 02114

www.mass.gov/dcr/ucf



In Partnership with the Massachusetts Tree Wardens’ & Foresters’ Association, this factsheet series is funded in part by a grant from the USDA Forest Service.

The Massachusetts Department of Conservation and Recreation prohibits discrimination in employment on the basis of race, color, creed, religion, national origin, ethnicity, gender, gender identity or expression, age, sexual orientation, Vietnam Era Veteran status, or disability.

Farmland protection planning invitation

From Tamsin Flanders <tflanders@frcog.org>

Date Tue 3/24/2026 1:17 PM

To thomascchalmers@gmail.com <thomascchalmers@gmail.com>

Cc Ray Purington/Gill Town Administrator <administrator@gillmass.org>; Allison Gage <AGage@frcog.org>;
Jessica Atwood <JAtwood@frcog.org>

Hello Tom and Ray,

I am a land use and environmental planner at the FRCOG—Tom, you may recognize my name from the recent Agricultural Commissions Round Table event in Northampton last month. FRCOG has a grant to work with two communities in Franklin County on Town-specific farmland protection planning funded through MDAR's new [Farmland Partnership Program](#) grant. Because of the amount and percentage of unprotected farmland in Gill, and the active Agricultural Committee, we have selected Gill as a first choice for potentially partnering on this project. I am writing to ask your thoughts on whether this seems like an appropriate and doable project for Gill and whether there is interest from both the Town and community's perspective.

About the project:

- The purpose of the project is to pilot a model for developing municipal farmland protection plans, which would include narrative, maps, and a prioritization exercise. This will be done in 5 other western MA towns simultaneously (PVPA and BRCP are partners) and we will finalize our recommendations to MDAR based on all 6 pilots. The ultimate goal of the project is to help facilitate and accelerate farmland protection across the state.
- The planning process would begin with the assembly of an advisory group that includes a) one or more agricultural commission members, b) representatives from other Town committee including but not limited to the Open Space Committee, Con Com, CPC, Planning Board, and Select Board, and 3) farmers, including at least one farmer meeting the [USDA definition](#) of a historically underserved farmer.
- The advisory group would meet up to five times.
- FRCOG, with the advisory group's help, would also hold a focus group with underserved farmers or liaisons to that community and a public forum.
- The group would advise on and contribute to topics such as farmland history, inventory, environmental analysis, threats to farms and farmland, municipal roles in farmland protection, prioritization of farmland parcels to protect, municipal strategies for farmland protection, recommendations, and more.
- The grant timeline is now through the end of October, 2027. We would hope to start meeting with the advisory group in the fall of 2026 and wrap up in late summer of 2027.

I look forward to hearing your perspective on the potential of doing this kind of project in Gill.

Sincerely,

Tamsin Flanders (*she/her*)

Senior Planner, Land Use & Natural Resources Planning Program



**Franklin Regional
Council of Governments**

12 Olive St., Greenfield, MA 01301
413-774-3167 X 157 | www.frcog.org

Municipal Farmland Protection Planning Project

FRCOG summary – 7/2/26

Overview

FRCOG received a Farmland Partnership Program grant (a new MDAR program as of 2025) to pilot a model *municipal farmland protection planning* process with two towns in Franklin County. The overarching goal of the grant program is to facilitate and accelerate the pace of farmland protection in MA by using statewide partnerships to tackle actions in the [Massachusetts Farmland Action Plan](#)). The other Western MA regional planning agencies are partners on this grant and we will finalize our recommendations to MDAR based on all six pilots.

This grant project ends October 31, 2027.

Goals of Project/Plan

- Identify farmland assets in town and their characteristics. This will hopefully include a full inventory of the farmed parcels and farms in town, identifying which lands are leased and which lands are owned by out-of-town farmers. It will also include underutilized lands. (See also the Draft List of Maps on the next page.)
- Act guide for the Town to better position itself to support land protection projects. The goal is NOT to force or example, by being a helpful resource if a farmer is interested in protecting land, or by clarifying the Town's role and procedure for the Chapter 61A right-of-first-refusal process. (See also the Draft Outline on the next page)
- Identify opportunities to support viability and access so that farmland can continue in agricultural production.

Project Process

- Town Administrator and Ag Com work together summer 2026 to convene a committee that would include, if possible,
 - agricultural commission members
 - representatives from other Town committee including but not limited to the Open Space Committee, Con Com, CPC, Planning Board, and Select Board, and
 - farmers, including at least one farmer meeting the [USDA definition \[nracs.usda.gov\]](#) of a historically underserved farmer.
- Five total committee meetings—four in fall 2026 – spring 2027 (e.g., October, December, February, April) and one wrap-up meeting in summer.
- One focus group and one public forum to collect feedback from the broader community.
- Committee members will contribute to the process by
 - Helping to structure the planning process

- Providing information for the plan, including farmer contacts, farming and land protection history, threats to farms and farmland, municipal roles and strategies, recommendations, and more.
- Putting FRCOG staff in touch with farmers for the farm and farmland inventory
- Reviewing plan and map drafts
- Going through a farmland prioritization exercise if the committee chooses to

DRAFT Outline of Municipal Farmland Protection Plan

- Introduction
- Regional Context
- Community Context
 - Farmland Inventory & Analysis
 - Farmland Environmental Analysis
 - Farmland Protection Prioritization Exercise
 - Local Farmland Protection Findings
 - Opportunities to Support Local Farmland Preservation
 - Goals & Strategies
 - Recommendations and Implementation Strategies Table

DRAFT List of Maps to be Included

- Context/Inventory:
 - Regional farmland
 - Active farmland w/ farm names and production type (protected & unprotected)
 - Active farmland leased vs. not leased
 - Potential & inactive farmland areas
- Environmental:
 - Agricultural soils (incl. which parcels have 50% ag soils)
 - Flood Zones/areas prone to flooding
 - Environmental restrictions
- Development pressure factors

SB agenda

From Vicky Jenkins <vjenkins01354@gmail.com>

Date Sun 6/28/2026 6:17 PM

To Ray Purington/Gill Town Administrator <administrator@gillmass.org>

Cc Claire Chang <claire@solargreenfield.com>

Hi Ray,

Claire and I had an excellent meeting at the elementary school with Tamsin Flanders, our FRCOG municipal energy manager, as well as Nick Petitpas and Tim Simmonds from Eversource.

Nick and Tim agreed that a Comprehensive Building Assessment (CBA) is the obvious next step for the building and would make sense to be done in conjunction with the Existing Building Commissioning (EBCx) program - both would allow us to get lots of ideas for energy improvement in the building. Previously Nick had said that Eversource might cover the full cost of these programs and the Selectboard decided we should not proceed. But after walking through the building Nick said that costs for these programs would be fully covered by Eversource.

Do I need to get back on the SB agenda to get them up to speed? If so, let me know what date works.

Also - who do I contact at GMRSD? Nick said the application would ask for the school district signature since they pay the bills, but he's happy to move ahead without their signature given that the Town is making efforts to improve their building.

After an hour at the elementary school, Nick and Tim said they had time to stop at the Police Station on their way home. They were quite overwhelmed by the condition the office - hot, stuffy, with a window AC unit and fan doing little to improve the situation. They felt certain that we could get ASHP into the police station without an increase in electric service. They would like to do a CBA on the PSC. It would allow us to get more details on what the current electric service could handle. Nick and Tim had other energy efficiency suggestions as well. Again - the CBA would be fully covered by Eversource.

We were so lucky to have Nick join us on Tuesday. He's based in eastern MA but was out here for another meeting and happy to get in some site visits. He had a much better understanding of our challenges having seen these buildings in person.

Claire - anything you want to add?

Thank you Ray,

Vicky

Western New England University

Digital Commons @ Western New England University

Faculty Scholarship

School of Law Faculty Scholarship

2016

Guardians of Municipal Public Trees: Commonwealth of Massachusetts Tree Wardens' Authority and Accountability

Julie E. Steiner

Western New England University School of Law, jsteiner@law.wne.edu

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GUARDIANS OF MUNICIPAL PUBLIC TREES:
COMMONWEALTH OF MASSACHUSETTS TREE WARDENS'
AUTHORITY AND ACCOUNTABILITY

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The Commonwealth of Massachusetts has been a pioneer in tree protection legislation. Among other things, Massachusetts enacted the first state legislation requiring a municipal tree warden. As guardians of the municipal landscape, tree wardens decide whether and when to plant new public shade trees, or to permit those that already exist to be cut, trimmed, or removed. Today's tree wardens are continually called upon to strike a balance between preservation of public trees and protection of the public from hazardous tree conditions. This Article describes the important historical role the Commonwealth of Massachusetts has played in protecting public trees, the legal basis for tree warden authority, and attendant liability issues. This Article also addresses the need to amend the Public Shade Tree Act to address current issues in arboriculture and forestry.

INTRODUCTION

Tree wardens are guardians of municipal public trees. Their decisions have impactful consequences on the character of the municipal landscape. Yet, the wardens' protective focus extends beyond tree preservation. Tree wardens are continually called upon to balance the needs of public tree preservation against the needs of the public to be protected from hazardous or obstructive trees. Tree wardens have the authority to decide when and where to plant new public trees, and whether to allow alteration of the current municipal landscape by permitting trimming, cutting, or outright removal of existing public shade trees.

Properly placed and spaced public trees provide a variety of public health, safety, and welfare benefits.¹ Among other things, they preserve and enhance the character and scenic beauty of the

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1. See generally Dan Burden, Senior Urban Designer, Walkable Communities, Inc., *22 Benefits of Urban Street Trees*, (Summer 2006), <http://www.walkable.org/library/Documents/22benefitsoftrees.pdf> [<https://perma.cc/V5FP-JEML>].

natural environment.² Trees are linked to cleaner air and greater protection for pedestrians from damaging ultraviolet rays.³ Research shows a link between the lack of proximity to trees and certain health effects, such as asthma, childhood obesity, and childhood diabetes.⁴ Trees also provide shade, produce oxygen, sequester carbon, and muffle noise.⁵

In Part I, this Article describes the important historical role the Commonwealth of Massachusetts has played in protecting public trees. In Part II, this Article addresses the state legislative basis for the tree wardens' authority. In Part III, this Article discusses municipal liability stemming from tree warden action or inaction. In Part IV, this Article discusses the need to amend the Public Shade Tree Act⁶ to align it with modern realities and arboriculture and forestry practices.

I. HISTORY

The Commonwealth of Massachusetts has long been a vanguard in pioneering tree protection legislation. The earliest legislation protecting public trees originated in Massachusetts. For example, in 1636, Boston enacted an ordinance preventing “trees planted in the settlement from being spoiled.”⁷ The first official public shade tree was planted in Massachusetts in 1646.⁸ Massachusetts honors another historically significant public shade tree—the “Liberty Tree”—each year on August fourteenth.⁹ Since 1886, Massachusetts has commemorated Arbor and Bird Day to

2. See *id.* at 7, 9.

3. See *id.* at 5–6.

4. See, e.g., Catherine Martineau, *Public Health Benefits of Urban Trees*, CANOPY 1–5 (Feb. 15, 2011) <http://www.canopy.org/wp-content/uploads/Public%20Health%20Benefits%20of%20Trees%20%202-15-11.pdf> [<https://perma.cc/VP9S-NPGG>].

5. See Burden, *supra* note 1.

6. MASS. GEN. LAWS ch. 87, §§ 1–14 (2016).

7. R.M. Ricard, *Tree Wardens and the Evolution of Urban Forestry in New England*, in PROCEEDINGS OF THE 1996 SOCIETY OF AMERICAN FORESTERS CONVENTION: DIVERSE FORESTS, ABUNDANT OPPORTUNITIES, AND EVOLVING REALITIES 80, 81 (1997), <http://clear.uconn.edu/outreach/treewardens/docs/CTTreeWardenLaws.pdf> [<https://perma.cc/7WLC-7LSU>].

8. MASS. GEN. LAWS ch. 6, § 15I (2016) (“The governor shall annually issue a proclamation setting apart August fourteenth as Liberty Tree day commemorating the first public shade tree planting in the new world . . .”).

9. *Id.* The Liberty Tree was planted in Massachusetts in 1765, and grew for a decade until its removal in 1775 by British soldiers. *Id.*

recognize the importance of planting trees, shrubs, and vines.¹⁰

In 1899, Massachusetts became the first state to enact legislation requiring that every municipality have a tree warden.¹¹ That legislation, known as the Public Shade Tree Act, vests the tree warden with nearly complete authority over public shade tree care, maintenance, trimming, and removal.¹² This legislation set a precedent that influenced other state legislation.¹³ Shortly after Massachusetts enacted its tree warden legislation, the five remaining New England states adopted similar legislation.¹⁴

Massachusetts is also home to the tree protection organization. The Massachusetts Tree Wardens' and Foresters' Association was founded by Dr. George E. Stone on March 27, 1913.¹⁵ The Massachusetts Tree Wardens' and Foresters' Association was established for the purpose of promoting scientific knowledge in the areas of arboriculture, community forestry, and related fields.¹⁶

Early tree warden legislation was enacted as a response to policies in the late 18th and early 19th centuries permitting widespread forest clearing.¹⁷ According to Professor Richard M.

10. MASS. GEN. LAWS ch. 6, § 15 (2016)

The governor shall annually issue a proclamation setting apart the last Friday in April as Arbor and Bird Day, recommending its observance by the public in the planting of trees, shrubs and vines, particularly those attractive to birds, in the promotion of forest growth and culture, [and] in the adornment of public and private grounds, places and ways

Id.

11. Ricard, *supra* note 7, at 81 (“In 1899 Massachusetts passed the first [t]ree [w]arden statute.”). Three key elements contributed to the development of tree warden statutes: the urban parks movement, the Village Improvement Movement, and the Forest Conservation Movement. *Id.* at 82. See generally MASS. GEN. LAWS ch. 87, § 2 (2005) (describing the powers given to tree wardens).

12. MASS. GEN. LAWS ch. 87, §§ 3–5; (2016); Valvoline Oil Co. v. Inhabitants of Winthrop, 126 N.E 895 (Mass. 1920) (“The result of the legislation on this subject has been to place practically the entire control of such trees in tree wardens”).

13. Ricard, *supra* note 7, at 81.

14. *Id.*

15. MASS. TREE WARDENS' & FORESTERS' ASS'N, MASSACHUSETTS TREE WARDENS' & FORESTERS' HANDBOOK 9 (8th ed. 2003); Ricard, *supra* note 7, at 81.

16. *Constitution / Bylaws*, MASS. TREE WARDENS' & FORESTERS' ASS'N., (Jan. 13, 2015), <http://masstreewardens.org/constitution-bylaws/> [https://perma.cc/3F3R-G7GF] (“Purpose: The Association is established for the promotion of scientific tree knowledge and the dissemination of information among those engaged in arboriculture, community forestry and related fields.”).

17. Ricard, *supra* note 7, at 80.

Pushed by conservation leaders, the new laws provided for the protection of public trees, specifically those along streets and rural roads. At this time, the eastern deciduous forest was recovering from clearing and heavy

Ricard, the tree warden's role has evolved over time as a result of a shifting cultural climate and changing municipal landscape conditions.¹⁸ Early after the passage of tree warden legislation, the balance between protection of public trees and protection of the public from hazardous or obstructive trees was easily struck in favor of tree preservation. At that time, population density was low, widespread policies involving land clearing had taken a toll on the municipal landscape, and many trees were either cleared or relatively immature.¹⁹

However, the subsequent decades resulted in a changing cultural climate and dramatic growth and densification of the existing municipal landscape.²⁰ The tree wardens' role has evolved from tree conservation towards hazardous tree removal and other tasks unrelated to tree conservation.²¹

Today's tree wardens are still called upon to balance competing interests relating to tree preservation. However, issues relating to protection of the public from well-developed municipal tree canopies, pest control, and invasive and other obstructive growth, creates real-world considerations for tree wardens that may weigh heavily when considering the balance of factors.

cutting. As a result, the forest was young, often in pole stands, as were trees along streets and rural roads.

Id. at 80.

18. *Id.* at 80–81, 84.

Legislated at the turn of the century when cultural and forest conditions were very different from today, they served to conserve public trees well for several decades. But today, dramatically different cultural and forest conditions have forced the Tree Warden into a role that requires tree removal rather than tree conservation.

Id. at 84.

19. *Id.* at 80 (“Having been passed in an era when the population density was low, obviously the laws were not designed to address the array of problems associated with extensive road and highway systems and heavy vehicular traffic.”).

20. *Id.*

Today however, the New England landscape is crisscrossed by roads and highways (even in more remote northern regions). Trees along these roads and highways are often over mature, and having suffered from various environmental stress (road salt, air pollution, mechanical injury), are in decline. Often, they are public hazards.

Id.

21. *Id.* at 80–81 (“The role of the tree warden has changed. Yesterday the tree wardens' role was to protect the tree from unnecessary pruning, damage, or removal. Today, the tree warden's primary role is to protect the public safety by pruning or removal of the tree.”).

II. STATUTORY AUTHORITY

In Massachusetts, state law governs tree wardens.²² Tree wardens may also be governed by municipal law in jurisdictions that have enacted local ordinances.²³

A. *The Public Shade Tree Act*

On the state level, tree warden authority derives primarily from the Public Shade Tree Act.²⁴ As the name suggests, the act controls “public shade trees,” defined as trees situated along a public way, which includes town, city, and country highways.²⁵ The Public Shade Tree Act applies to all public shade trees, shrubs, and vegetative growths within the municipal boundary except (i) those along state highways and (ii) those in public parks under the jurisdiction of the park commissioners unless the park commissioner grants the tree warden control in writing.²⁶ If the highway boundaries are unclear because the boundaries between public and private land cannot be made certain by land records or

22. Public Shade Tree Act, MASS. GEN. LAWS ch. 87, §§ 1–14 (2016); Scenic Roads Act, MASS. GEN. LAWS ch. 40, § 15(c) (2016).

23. Because of the substantive variation that exists among municipal regulatory approaches, this Article restricts its focus to state, not municipal, level regulation.

24. MASS. GEN. LAWS ch. 87, §§ 1–14 (2016).

25. *Id.* § 1. See generally F. Sydney Smithers, *Massachusetts Streets and Ways for Surveyors*, CAIN, HIBBARD & MYERS (2011), <http://cainhibbard.com/wp-content/uploads/2011/03/Streets-Ways-May-2011.pdf> [<https://perma.cc/UU58-WZ9A>].

“Public ways” as a generic term includes state highways, county highways, town ways and statutory private ways. Generally speaking an existing way in a city or town in the Commonwealth is not a “public way” - that is, one which a city or town has the duty to maintain free from defects . . . unless it has become public in character by one of three ways: (i) a laying out by public authority in the manner prescribed by statute (for example, M.G.L. c. 82, §§1-32); (ii) prescription; and (iii) prior to 1846, a dedication by the owner to public use, permanent and unequivocal . . . coupled with an express or implied acceptance by the public.

Id. at 1. Notwithstanding the broad definition of the generic term “public way,” the Public Shade Tree Law excludes state highways from the jurisdictional scope of “public way” under the authority of the tree warden. See MASS. GEN. LAWS ch. 87 §§ 2, 8 (2016).

26. MASS. GEN. LAWS ch. 87, § 2 (2016).

He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners.

Id.

monuments, there is a presumption the tree is public.²⁷

In Massachusetts, authority over the care, maintenance, trimming, planting and removal of shade trees is vested in the tree wardens, except where city charter, other legislative enactments or town ordinances vest that authority in other public officials.²⁸ In cities, the tree warden powers and duties are exercised by “the officers charged with the care of shade trees within the limits of the highways.”²⁹

Tree wardens are either elected or appointed. By default, the tree warden is an elected position unless the town by vote or bylaw has made it an appointed position.³⁰ If elected, tree wardens serve for a term of at least one year.³¹ If appointed, tree wardens serve for a term of three years.³²

There is a distinction between appointed tree wardens in towns with populations of less than 10,000 individuals and towns with populations of more than 10,000 individuals. On September 28, 1996, Governor William Weld amended the Public Shade Tree Act to require that tree wardens in towns and cities with populations greater than 10,000 individuals be (i) appointed by the mayor with approval of the city council and (ii) qualified by training and experience in the field of arboriculture and licensed by the Department of Food and Agriculture.³³ Licensure by the Department of Food and Agriculture refers to a pesticide license.³⁴

27. MASS. GEN. LAWS ch. 87, § 1 (2016).

[W]hen it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.

Id.

28. MASS. GEN. LAWS ch. 87, §§ 2–7 (2016); *see also* Valvoline Oil Co. v. Inhabitants of Winthrop, 126 N.E. 895, 896 (Mass. 1920).

29. MASS. GEN. LAWS ch. 87, § 13 (2016).

30. MASS. GEN. LAWS ch. 41, § 1 (2016) (“Every town at its annual meeting shall . . . choose by ballot . . . the following town officers . . . [:] A tree warden for the term of one or more years, unless the town by vote or by-law provides that he shall be appointed.”).

31. MASS. GEN. LAWS ch. 41, § 1 (2016).

32. MASS. GEN. LAWS ch. 41, § 106 (2016) (“If the town provides by vote or by-law that the tree warden shall be appointed . . . [t]he term of such appointment shall be for three years.”).

33. MASS. GEN. LAWS ch. 41, § 106 (2016).

34. *See Tree Wardens, Laws*, MASS. TREE WARDENS’ & FORESTERS’ ASS’N.

In municipalities with populations of less than 10,000 individuals, however, appointment is by the board of selectmen and there are no licensure requirements.³⁵

Tree wardens carry out a number of specific functions. First, tree wardens are responsible for planting new shade trees for the purpose of improving, protecting, shading, or ornamenting the public way.³⁶ Cities and towns may appropriate, and tree wardens may spend, money to fund the acquisition and planting of new shade trees.³⁷ Under the statute, the tree warden or a private organization acting with the written consent of the tree warden, may plant shade trees in either (i) a public way or (ii) on adjoining land within twenty feet of the public way provided that the owner of the adjoining land gives written consent.³⁸

Second, tree wardens have the authority to decide whether to permit any manmade alteration to public shade trees. Section 3 of the Public Shade Tree Act states that, with limited exception, no public shade tree shall be cut, trimmed, or removed by anyone other than the tree warden without a permit from the tree warden.³⁹ This is true even if the individual seeking to alter the tree is the owner in fee.⁴⁰

Third, tree wardens notify the public of, and oversee, public shade tree hearings. Even when a tree warden grants permission to trim, cut, or remove a tree, and subject to limited exceptions, public trees cannot be altered by anyone, including the tree warden, without a public hearing.⁴¹ Thus, the tree warden must make an

(last visited Apr. 7, 2016), <http://masstreewardens.org/laws/> [<https://perma.cc/92NN-BFEN>] (explaining “licensed by the Department of Food and Agriculture” means a pesticide license). As discussed more fully in Part IV, *infra*, this provision had resulted in confusion about the appropriate level of experience and training necessary and led experts to assemble recommended qualifications for tree wardens based on population served.

35. MASS. GEN. LAWS ch. 41, § 106 (2016).

36. MASS. GEN. LAWS ch. 87, §§ 2, 7 (2016).

37. *Id.* §§ 2, 7.

38. *Id.* § 2.

39. MASS. GEN. LAWS ch. 87, § 3 (2016); *see also* Medford v. Metro. Dist. Comm’n, 22 N.E.2d 110, 111 (1939); Jones v. Inhabitants of Great Barrington, 174 N.E. 118, 119 (1931).

40. MASS. GEN. LAWS ch. 87, § 3 (2016).

41. *Id.* § 3 (discussing the hearing requirement); MASS. GEN. LAWS ch. 87, §§ 4–5 (2016) (explaining the exceptions, which includes the removal of trees that create dangerous road conditions); *see also* Jones v. Inhabitants of Great Barrington, 174 N.E. 118, 120 (273 Mass. 483, 487 (1931)) (“[The tree wardens’] power to remove a public shade tree is somewhat limited and prescribed by the provisions of G. L. c. 87, § 3,

initial determination about whether the situation falls within one of the statutory exceptions to the public shade tree hearing requirements.

There are six exceptions that permit public shade tree alteration without a hearing.⁴² First, trees may be trimmed, cut, or removed if they endanger persons traveling on a highway.⁴³ Second, trees may be removed if so ordered by the proper officers, for the purpose of widening a highway.⁴⁴ Third, trees may be trimmed, cut down, or removed for the purpose of suppressing pests declared to be public nuisances under section 11 of chapter 132,⁴⁵ including Dutch elm disease.⁴⁶ Fourth, tree wardens or their deputies may trim, cut down, or remove trees less than 1.5 inch in diameter as measured one foot from the ground, and any bushes.⁴⁷ Fifth, tree wardens or their deputies may, if ordered by the mayor, selectmen, road commissioner or highway surveyor, trim or cut down trees and bushes if they obstruct, hinder, or incommode persons traveling on highways.⁴⁸ Sixth, tree wardens or their deputies may, if ordered by the mayor, selectmen, road commissioner or highway surveyor, trim or cut down trees and bushes if they obstruct buildings being moved pursuant to section 18 of chapter 85.⁴⁹ As evidenced by the first and fifth exceptions,

requiring a public hearing before he acts or authorizes action in the matter.”).

42. MASS. GEN. LAWS ch. 87, § 5 (2016) (explicating six exceptions to the public shade tree hearing requirement).

43. *Id.*

44. *Id.* This exception has been narrowly construed by at least one court to mean changing the property boundaries to acquire additional land through eminent domain, and not merely to widen already travelled portions. See *Graham v. Bd. of Pub. Works of Pittsfield*, 189 N.E. 820, 822 (1934) (“It requires the exercise of eminent domain. It is different in nature from a construction of a wider traveled or paved surface within the limits of the highway as already laid out.”); see also MASS. FOREST AND FARMLAND LAW, ENV. MA.-CLE 9-1, § 9.1.3 (2014).

[After *Graham*], [w]idening of a highway was thus seen as different in nature from constructing a wider traveled or paved surface. . . . Because of this decision, the exception for widening the road will apply only if the road officials named in G.L. c. 87, § 5 find that the trees will obstruct, endanger, hinder, or incommode persons traveling on the road after it has been widened or if the right-of-way is to be widened.

Id.

45. MASS. GEN. LAWS ch. 87, § 5 (2016); see MASS. GEN. LAWS ch. 132, § 11 (2016).

46. MASS. GEN. LAWS ch. 87, § 5 (2016).

47. *Id.*

48. *Id.*

49. *Id.*; see also MASS. GEN. LAWS ch. 85, § 18 (2016).

there is a difference between trees that are dangerous to persons that may be removed without a hearing, and trees that are inconvenient to travelers that may only be removed without a hearing if the warden is ordered to do so by a designated town official.

If the tree warden decides that the situation does not fall within one of the six exceptions, then a public hearing is required before the tree can be altered. The tree warden is responsible for proper public notice and participation at the hearing.⁵⁰ Prior to the hearing, the tree warden must provide effective public notice that apprises the public about the size, type, and location of the shade tree to be cut down or removed, and ensure it is posted (i) in two or more public places in the town, (ii) upon the tree at least seven days before the hearing, and (iii) in a town newspaper of general circulation in each of two successive weeks, the first publication at least seven days before the date of the hearing.⁵¹ If no such local newspaper exists, then notice must be published in accordance with the provision of section 6 of chapter 4.⁵² Note that when a public hearing must be held on a public shade tree that is also on a scenic road, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, selectmen, or city counsel.⁵³ This requirement is discussed more fully in Part II.B, *infra*.

The tree wardens' authority is not absolute. If there is a written objection to a tree warden's decision to permit alteration of a public shade tree by any member of the public, a public shade tree cannot be cut down or removed without the selectmen's or mayor's approval.⁵⁴ The written objection must be made at or

Moving of Buildings in a Public Way: No person shall move a building in a public way without written permission from the selectmen or road commissioners, to be granted upon such terms as in their opinion the public safety may require; and the superior court shall have jurisdiction in equity to enforce this section.

Id.

50. MASS. GEN. LAWS ch. 87, § 3 (2016).

51. *Id.*

52. *Id.*; see MASS. GEN. LAWS ch. 4, § 6 (2016).

53. MASS. GEN. LAWS ch. 40, § 15(c) (2016).

54. MASS. GEN. LAWS ch. 87, § 4 (2016).

Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or

before the public hearing.⁵⁵

Fourth, tree wardens routinely communicate with and oversee utilities, which need to ensure adequate safety, access, and maintenance of utility wires along public roads. In 2011, Governor Deval Patrick approved an amendment to the Public Shade Tree Act designed to streamline the process for approving tree maintenance and removal work and to facilitate enhanced lines of communication between electric utilities and tree wardens.⁵⁶

Pursuant to section 14, the utility may, or the tree warden might require the utility to, submit two documents: (1) an annual vegetation management plan describing the proposed maintenance work to be performed,⁵⁷ and (2) an annual hazardous tree removal plan describing hazardous trees to be removed.⁵⁸ Approval of these plans exempts the utility from the statutory public hearing requirements.⁵⁹ The utility submits the plan no later than ninety days before the proposed work begins, and the tree warden notifies the utility within sixty days whether or not the plan has been approved.⁶⁰ The tree warden may approve the plan with modifications agreed to by both parties.⁶¹ If a tree warden fails to approve or deny the plans within sixty days from receipt, “the utility may request a decision from the selectmen, mayor, or chief administrative officer of the municipality.”⁶²

Utilities must always notify a tree warden in writing no less than fourteen days prior to maintenance or removal work, or such longer period if required by local ordinance or regulation, irrespective of whether the work is conducted in accordance with an approved plan.⁶³ Utilities must also submit a copy of any

remove is approved by the selectmen or by the mayor.

Id.; see also *Medford v. Metro. Dist. Comm'n*, 22 N.E.2d 110, 111 (Mass. 1939).

55. MASS. GEN. LAWS ch. 87, § 4 (2016).

56. MASS. GEN. LAWS ch. 87, § 14 (2016).

57. MASS. GEN. LAWS ch. 87, § 14(b) (2016). The plan must comply with applicable local ordinances and regulations and at a minimum include a map of the circuits where the maintenance work will be performed and identify the tree maintenance standards to be followed. *Id.*

58. MASS. GEN. LAWS ch. 87, § 14(c) (2016). The plan must comply with applicable local ordinances and regulations and at a minimum identify the hazardous trees proposed for removal. *Id.*

59. MASS. GEN. LAWS ch. 87, § 14(b) (2016).

60. *Id.*

61. *Id.*

62. MASS. GEN. LAWS ch. 87, § 14(d) (2016).

63. MASS. GEN. LAWS ch. 87, § 14(e) (2016). The notice must include the date

vegetation management or hazardous tree removal plans to the state forester or other entity designated by the Secretary of Energy and Environmental Affairs, which shall acknowledge receipt and any determinations about the plan.⁶⁴ The utility must also comply with tree maintenance standards and specifications.⁶⁵ Fifth, tree wardens have the power to make regulations for public shade tree care and protection.⁶⁶ When those regulations are posted in one or more public places and in towns upon approval by the selectmen, those regulations acquire the force and effect of town bylaws.⁶⁷ Tree wardens also have statutory authority to appoint and remove deputy tree wardens.⁶⁸

Sixth, tree wardens have the authority to establish fines in amounts not to exceed twenty dollars.⁶⁹ There are additional statutory penalties for violations of the Public Shade Tree Act. First, if any person illegally removes or trims a public shade tree not located on a state highway in violation of the act, they can be penalized by a fine of up to five-hundred dollars to the use of the city or town.⁷⁰ Second, any person who defaces a public shade tree by placing upon it a notice, sign, advertisement, or other thing, or cuts, paints, or marks a tree for a purpose other than protecting the tree and without a permit, shall be punished by a fine of not more than fifty dollars.⁷¹ Third, trimming, cutting down, or removing a tree, shrub, or growth located on a state highway or any malicious injury, defacement, or destruction of a state highway tree shall be punished by imprisonment of no more than six months, or by a fine of no more than five-hundred dollars to the use of the Commonwealth.⁷² Fourth, willful, malicious, or wanton cutting, destruction, or injury of a tree, shrub, or growth of another person,

on which the work will begin and contact telephone number for the work supervisor.
Id.

64. MASS. GEN. LAWS ch. 87, § 14(f) (2016).

65. MASS. GEN. LAWS ch. 87, § 14 (2016). The standards must conform with American National Standard Institute A-300; American National Standard Institute Z-133; and National Electric Safety Code 218 Tree Trimming and OSHA 29 CFR Part 1910 Line Clearance Tree Trimming Operations, and annually the utility must submit evidence of compliance with these standards. *Id.*

66. *Id.* § 2.

67. *Id.*

68. *Id.*

69. *Id.*

70. MASS. GEN. LAWS ch. 87, §§ 3, 6 (2016).

71. MASS. GEN. LAWS ch. 87, § 9 (2016).

72. MASS. GEN. LAWS ch. 87, § 10 (2016).

shall be punishable by imprisonment of not more than six months or by a fine of not more than five-hundred dollars.⁷³ Fifth, wanton injury, defacement, or destruction of a shrub, plant, or tree, or an ornamental or utilitarian fixture, in a public way or place of any public enclosure; or negligently or willfully permitting an animal to injure, deface, or destroy such a shrub, plant, tree, or fixture shall be punished by fine of not more than five-hundred dollars in addition to damages to the town or person for their shrub, plant, tree, or fixture.⁷⁴ Sixth, negligent or willful injury, defacement, or destruction shall result in liability to the town for all damages to its interest in the shrub, plant, tree, or fixture.⁷⁵

B. *The Scenic Roads Act*

The Scenic Roads Act is another statute that applies to public trees. Enacted in 1973, the Scenic Roads Act protects the aesthetic, environmental, and historical values of Massachusetts' rural roads by preserving bordering trees and stone walls.⁷⁶ The Scenic Roads Act sets forth a procedure for municipalities to designate roads as scenic.⁷⁷ In accordance with the Scenic Roads Act, trees along designated scenic roads shall not be cut or removed without a public hearing except with the prior written consent of the town planning board.⁷⁸ In jurisdictions with no planning board, Scenic Roads Act authority lies with the selectmen or city council.⁷⁹

The Scenic Roads Act and the Public Shade Tree Act complement each other, and create overlapping responsibilities for the tree warden and the planning board. Whenever there is a

73. MASS. GEN. LAWS ch. 87, § 11 (2016).

74. MASS. GEN. LAWS ch. 87, § 12 (2016).

75. *Id.*

76. MASS. GEN. LAWS ch. 40, § 15C (2016).

77. *Id.* ("Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway, as a scenic road . . .").

78. *Id.*

After a road has been designated as a scenic road any . . . work done with respect thereto shall not involve or include the cutting or removal of trees, . . . except with the prior written consent of the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city. . . .

Id.

79. *Id.*

proposal to cut or remove public shade trees located on scenic roads, these two responsibilities overlap and state law requires a joint public hearing between the planning board under the Scenic Roads Act and the tree warden under the Public Shade Tree Act.⁸⁰ When there is such a consolidated hearing, the tree warden is responsible for providing notice of the joint Scenic Roads Act and Public Shade Tree Act hearing in accordance with Section 3 of the Public Shade Tree Act.⁸¹

Ideally, the planning board and the tree warden hear public input and then agree about how to respond to the request. Where there is a dispute between the planning board and the tree warden, however, the issue can be submitted for resolution to the selectmen or mayor. These are the same entities with authority over public ways, and with statutory jurisdiction to make a final resolution in the event of a conflict between a member of the public and the tree warden if a written objection is made at or before a hearing.⁸²

III. MUNICIPAL LIABILITY AND ACCOUNTABILITY

The potential exists for municipal liability from certain acts or omissions of tree wardens. The tree warden is a public officer.⁸³

First, there is statutory liability for damage to property caused by trimming, cutting, removal or retention of public shade trees. Under the Public Shade Tree Act, “any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover

80. MASS. GEN. LAWS ch. 40, § 15C (2016).

[W]hen a public hearing must be held under the provisions of this section and under section three of chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city.

Id.; see also MASS. GEN. LAWS ch. 87, § 3 (2016) (discussing the procedure for notice of joint hearing by the tree warden).

81. MASS. GEN. LAWS ch. 40, § 15C (2016) (“[N]otice of such consolidated public hearing shall be given by the tree warden or his deputy as provided in said section three of chapter eighty-seven.”); see also MASS. GEN. LAWS ch. 87, § 3 (2016) (notice requirements for hearing).

82. See, e.g., MASS. GEN. LAWS ch. 87, § 4 (2016); see also *Boards & Committees, Planning Board, Scenic Roads*, AMHERST, MASS., [amherstma.gov/1253/Scenic-Roads](https://perma.cc/2BGY-6GRB) [https://perma.cc/2BGY-6GRB] (adopting the approach discussed in section four of chapter eighty-seven).

83. *Donahue v. Newburyport*, 98 N.E. 1081, 1082 (Mass. 1912); *Jones v. Great Barrington*, 174 N.E. 118, 119 (Mass. 1930).

the damages . . . sustained . . . from the town under chapter seventy-nine,” relating to compensation in situations of eminent domain.⁸⁴

Second, the town has a duty to keep its highways reasonably safe and convenient for travelers.⁸⁵ A failure to do so will result in municipal liability where the town or tree warden had “such means of knowledge as would charge [it] with the duty either of ordering the tree trimmed or removed, or of giving warning or otherwise protecting travelers from injury”⁸⁶ Anything in the state or condition of a highway that renders it unsafe for ordinary travel is a defect or want of repair.⁸⁷

Municipalities are liable to travelers who are injured by trees that are in otherwise sound condition but which, over time, grow onto the highway.⁸⁸ Municipalities are also liable to travelers injured by old, decayed or diseased trees.⁸⁹ Liability exists because the municipality permitted public shade trees to obstruct and hinder traffic, thereby making the condition of the way defective.⁹⁰

This liability only applies to travelers on a public way.⁹¹ Courts have defined this broadly, holding that it was a jury question whether persons using the highways for travel who stopped momentarily for some other purpose could be found to be travelers

84. MASS. GEN. LAWS ch. 87, § 3 (2016).

85. *Valvoline Oil Co. v. Inhabitants of Winthrop*, 126 N.E. 895, 897 (Mass. 1920) (“Although a tree warden is the only official who may trim or remove shade trees in a highway, that circumstance does not relieve a city or town from the statutory duty of keeping its highways reasonably safe and convenient for travelers.”).

86. *Id.*

87. *Id.*; see also *Chase v. Lowell*, 24 N.E. 212, 212 (Mass. 1890).

The cases do not go upon the ground that notice to one or more inhabitants of a town constitutes notice to the town, but that such a state of facts may be shown as will warrant an inference that the authorities either knew, or by the exercise of reasonable diligence might have known, of the defect.

Id.; *Wright v. Chelsea*, 93 N.E. 840, 842–43 (Mass. 1911).

88. *Valvoline Oil Co.*, 126 N.E. at 897; see also *Wershba v. Lynn*, 86 N.E.2d 511, 513 (Mass. 1949); *Wright*, 93 N.E. at 842–43; *Donahue*, 98 N.E. at 1084.

89. *Valvoline Oil Co.*, 126 N.E. at 897; see also *Nester v. Fall River*, 67 N.E. 248 (Mass. 1903); *Donahue*, 98 N.E. at 1084.

90. *Jones v. Great Barrington*, 174 N.E. 118, 119 (Mass. 1930).

91. *Wershba*, 86 N.E.2d at 513.

[T]he duty imposed on a city or town under these sections is to maintain the highways “so that they may be reasonably safe and convenient for travelers.” Consequently, to recover under the statute a plaintiff must prove that he was a traveler on the way at the time of his injury.

Id.

on a highway.⁹² Courts, however, find that the injured parties' purpose for being on the highway must in some way be related to the purpose of travel.⁹³ Thus, courts have held that persons using a highway solely for play,⁹⁴ or to take shelter from a storm, were not travelers on a highway.⁹⁵

Third, the town has a duty to keep public shade trees from becoming nuisances, and the failure to do so will result in municipal liability.⁹⁶ Because of its title to the land within the limits of the public street, the town owed the public a duty not to maintain a nuisance.⁹⁷ A public shade tree may become a nuisance by disease or decay.⁹⁸

Fourth, the town may be liable for trespass.⁹⁹ A condition becomes a trespass when it involves a direct invasion of another's property.¹⁰⁰

92. See, e.g., *Hunt v. Salem*, 121 Mass. 294 (1876) (discussing how to interpret a person's use status when stopping to look at toys in store window); *Gulline v. Lowell*, 11 N.E. 723 (Mass. 1887) (determining that playful act by child while travelling does not necessarily indicate a lack of due care by the child or his guardian); *Bliss v. South Hadley*, 13 N.E. 352 (Mass. 1887) (holding that stopping to watch boys at play while using the highway for air and exercise constituted an ordinary use of the highway).

93. See, e.g., *Hunt*, 121 Mass. at 296; *Gulline*, 11 N.E. at 726; *Bliss*, 13 N.E. at 354.

94. *Blodgett v. Boston*, 90 Mass. 237, 237 (1864); *Tighe v. Lowell*, 119 Mass. 472, 472 (1876).

95. *Wershba v. Lynn*, 86 N.E.2d 511 (Mass. 1949).

96. *Jones v. Great Barrington*, 174 N.E. 118, 120 (Mass. 1930).

This liability of a town as an owner or in control of real estate does not rest upon the allegations of negligence, and counts one and four do not set out a cause of action. Its liability must rest upon the maintenance by it, upon land within its control, of a decayed and dangerous tree which at any time was likely to fall and for a substantial period of time had been so located as to expose the persons and property of others to the chance of instantaneous injury, and thereby became a "constant menace to the safety of the immediate community, and hence constituted a nuisance [W]hen direct injury to an individual results, a private action can be sustained for damages suffered."

Id.

97. *Wershba*, 86 N.E.2d at 514–15 ("[A] municipality owning or controlling real estate [may] be liable at common law for the consequences of a nuisance maintained thereon"). The town has to own the land in order to maintain an action for an easement. *Id.* at 515.

98. *Jones*, 174 N.E. at 120.

99. *Id.* at 121.

100. See *Id.*; see also *Hennessy v. Boston*, 164 N.E. 470, 471 (Mass. 1929).

The acts which the testimony shows caused substantial injury to the premises of the plaintiff were acts of trespass in so far as they were direct invasions of the property; and they were a nuisance, when not a trespass, because the consequence of them was to deprive the plaintiff of the

IV. AREAS FOR LEGISLATIVE REFORM

As discussed in Part I, Massachusetts has been an early pioneer in tree protection legislation. Massachusetts led the way in planting, commemorating and protecting public shade trees. Notably, Massachusetts was the first state to legislatively require a municipal tree warden.¹⁰¹

During the initial decades after its passage, the Public Shade Tree Act was effective, and its approach aligned with then-existing scientific knowledge, business methods, and tree valuation methodology.¹⁰² There have since been major changes in the composition, size and canopy of the community forest and the way the community interacts with trees.¹⁰³ Moreover, there have also been major advances in both tree science and tree care practice.¹⁰⁴

Notwithstanding these changes, the Public Shade Tree Act has not kept pace with modern day realities and advances in the tree warden and forestry industry.¹⁰⁵ As a result, there is a need for legislative reform to align the Public Shade Tree Act with modern day realities and to keep pace with industry standards and scientific knowledge. The need for legislative reform has been recognized and supported by numerous commentators and members of the legislature, tree warden, and forestry communities.¹⁰⁶

Certain issues are ripe for legislative amendment. First, the legislature should clarify what authority controls in the event of a conflict between a tree warden under the Public Shade Tree Act and a planning board under the Scenic Roads Act. As discussed in Part II.B, while it makes sense that any irreconcilable conflict between the tree warden and the planning board be submitted to the selectmen or mayor in the same fashion that a written objection to a tree wardens' decision would under section four, that approach

exclusive right to enjoy the use of her premises free from material disturbance and annoyance.

Id.

101. See discussion, *supra* Part I.

102. See *Tree Wardens, Chapter 87 Proposed Revisions*, MASS. TREE WARDENS' & FORESTERS' ASS'N., <http://masstreewardens.org/ch-87-proposed-revisions/> [<https://perma.cc/TV6C-RZJ9>] (last visited Apr. 7, 2016); see also, H.R. 1840, H.D. 390, 189th Gen. Ct. (Mass. 2015) (proposing a bill regulating the powers of tree wardens in Massachusetts).

103. *Tree Wardens*, *supra* note 102.

104. *Id.*

105. *Id.*

106. Legislation supported by the MTWFA is pending before the Massachusetts Legislature. See sources cited *supra* note 102.

to resolving authority conflicts is not expressly set forth in either of the statutes. At present, the potential for a conflict of coextensive statutory authorities under the Public Shade Tree Act and the Scenic Roads Act exists.

Second, the legislature should clarify, as a matter of public and energy policy, whether public shade trees may be cut, trimmed, or removed in order to provide surrounding landowners access to light to support the efficiency of home energy systems such as solar arrays or solar-gain architectural designs. This issue presents a contemporary challenge for tree wardens, who are increasingly called upon to strike a balance between public tree preservation and the solar exposure needs of landowners. In current practice, tree wardens likely take approaches that are idiosyncratic to the particular tree warden, with some wardens permitting alteration on a case-by-case basis and some wardens denying landowners the ability to alter public shade trees for solar efficiency purposes. Whether, and to what extent, tree wardens should be permitting tree alteration in favor of solar exposure involves important public and energy policy questions that are appropriately resolved in the legislative branch.

Third, the legislature should clarify the appropriate level of training and experience for all tree wardens. As discussed in Part II.A, currently there is a requirement that appointed tree wardens in municipalities with populations of over 10,000 individuals “be qualified by training and experience in the field of arboriculture and licensed with the [D]epartment of [F]ood and Agriculture”¹⁰⁷ However, tree wardens in municipalities with populations of less than 10,000 individuals and elected tree wardens do not have any statutory licensure or experience requirements.¹⁰⁸ The legislature should (i) require a threshold level of experience and licensure requirements and (ii) clarify the experience standards for all tree wardens.¹⁰⁹

107. MASS. GEN. LAWS ch. 41, § 106 (2016).

108. *Id.*

109. This confusion led to a 1999 effort by a consortium of arboriculture experts to assemble a set of recommended qualifications for tree wardens based on population served. See *Tree Wardens, Qualifications*, MASS. TREE WARDENS’ & FORESTERS’ ASS’N., <http://masstreewardens.org/qualifications/> [<https://perma.cc/S3YD-6WYL>] (last visited Apr. 7, 2016). Massachusetts House Bill H1840 proposes:

A qualified tree warden shall be defined as a person who has completed a degree in a forestry or natural resource management field, has attained certification from the International Society of Arboriculture or through the Massachusetts Certified Arborist Program of the Massachusetts Arborists

Fourth, a number of tree wardens find the current exception excluding trees of 1.5 inches in diameter measured one foot from the ground from the public shade tree hearing requirement to be unreasonably restrictive. As a result, there have been industry calls to increase the tree diameter exemption to provide greater flexibility for tree wardens to remove small trees and maintain the public landscape.¹¹⁰

Finally, where the current legislation is simply outdated, it should be updated to reflect current real-world experience. For example, the statute currently permits recovery for tree damage caused by a horse or other animal.¹¹¹ While this approach was certainly understandable in the early 1900s, it is outdated and there is a pending call to amend this section to include recovery for damage by an automobile.¹¹² Additionally, fine amounts should be updated to more accurately reflect tree values.¹¹³

CONCLUSION

The Commonwealth of Massachusetts has been a pioneer in tree protection legislation. Among other things, Massachusetts enacted the first state legislation requiring a municipal tree warden. As guardians of the municipal landscape, tree wardens decide whether and when to plant new public shade trees, or to permit those that already exist to be cut, trimmed, or removed. Today's tree wardens are continually called upon to strike a balance between preservation of public trees and protection from hazardous tree conditions. In light of the vintage of the well-intentioned but dated Public Shade Tree Act, the legislature should

Association or other equivalent professional certification or, for communities with less than 10,000 residents, completed a series of Professional Development courses offered by the Massachusetts Tree Wardens and Foresters Association or equivalent training.

H.R. 1840, H.D. 390, 189th Gen. Ct. (Mass. 2015); *see also Tree Wardens*, *supra* note 102.

110. Bill H1840 contains a proposal to increase the size of a tree exempt from the public shade tree hearing requirement from its current 1.5-inch diameter to a 4-inch diameter. H.R. 1840, H.D. 390, 189th Gen. Ct. (Mass. 2015); *see also Tree Wardens*, *supra* note 102.

111. MASS. GEN. LAWS ch. 87 § 12 (2016) (“Whoever . . . negligently or willfully suffers an animal driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished . . .”).

112. H.R. 1840, H.D. 390, 189th Gen. Ct. (Mass. 2015); *see also Tree Wardens*, *supra* note 102.

113. *See* H.R. 1840, H.D. 390, 189TH GEN. CT. (MASS. 2015); *and Tree Wardens*, *supra* note 102 (providing one approach regarding how to update the fine amounts).

amend the act to address current issues and modernize arboriculture and forestry practices.