

STATE VEGETATION MANAGEMENT TASK FORCE
MEETING #5 – FACILITATOR’S SUMMARY
July 17, 2012, 9:30 AM – 1:00 PM
Connecticut Forest & Park Association, Middlefield, CT

Members Present: Kim Barbieri, Timothy Bockus, Teri Brown, Mark Goetz, David Goodson, Jim Govoni, Eric Hammerling, Jane Harris, Mary Hogue, John Jasinski, Leslie Kane, Kevin Kelly, JoAnn Messina, John Mitchell, Karl Reichle, Bruce Villwock, Jeffrey Ward. Alternate: Ken Bullard.

Members Absent: John Parry.

Connecticut Department of Energy and Environment (DEEP) Participants/Ex Officio Members: Chris Donnelly, Susan Frechette.

Observers: Joe Aresco, Joseph Mingo Rich Skarzynski, Mikey Hirschhoff **Facilitator:** Bill Logue

Welcome, Introductions and Administrative Issues. The agenda and handouts were reviewed¹. Task Force Chair Eric Hammerling congratulated member Karl Reichle on his impending retirement. Bill Logue reviewed the format and process for participation for the Listening Sessions scheduled for August 13. The media announcement will be provided to members in the near future and members were asked to disseminate information about the sessions.

I. DEEP Legal Counsel Presentation.

DEEP Counsel Melinda Decker responded to a number of questions posed by the Task Force. At the outset she emphasized that she was *not providing legal advice* to the Task Force and that members should seek legal counsel if they desired a written opinion on a particular issue or statutory interpretation. This summary provides a very brief synopsis of the discussion and questions addressed during the meeting and so may not fully or exactly capture all the legal points raised during the presentation.

Authority of tree wardens for making decisions on private property. Tree warden authority is found in Conn. Gen. Stat. § 23-58 through 23-60, inclusive, and § 23-65. With notice and an opportunity for objection and appeal, a tree warden may prune or remove a tree at town expense for public safety purposes. The removal or pruning of trees or shrubs in the right of way without permission of the tree warden, or other entity with legal authority, can create civil liability for damages. No explicit trespass authority for tree wardens exists but the statutes grant broad discretionary authority and appear to implicitly allow tree wardens access to trees

¹ Most documents from the meeting are generally available at:
<http://www.ct.gov/dep/cwp/view.asp?a=2697&q=503040>

and shrubs whose roots, limbs or parts extend into the public right of way. Good relations and dialogue with the property owner will reduce conflict and governmental immunity protects tree wardens in their exercise of discretionary authority. (See below)

The Task Force members noted that the “care and control” language of the statute seems to set up two competing ideas. In one, the tree warden has care and control over the whole tree if any part of it falls within the limits of the public road or grounds; in the other, he or she only has care and control over that part that extends or overhangs public land. Ms. Decker indicated that if Conn. Gen. Stat. § 23-59 is adhered to, it would seem that if the entire tree or any part of it extends onto public property the tree warden would have the ability to take whatever action he deems appropriate to address the tree and, as noted above, this would seem to grant an implicit right of access. A member noted that zoning enforcement officers may enter private property but must leave if requested to do so. DEEP employees by statute have the ability to enter without trespass. A member noted that it is wise to have a survey crew determine the property bounds.

Potential liability of tree wardens following inspection or condemnation of a tree on private property when no follow up action is then taken. These types of situations are very fact dependent. In general terms, sovereign immunity and municipal immunity provides qualified immunity for municipal employees when they are exercising supervisory or discretionary authority but may not where the employee misperforms a ministerial act. Ms. Decker referred to several cases that provide possible guidance and exceptions to immunity in the performance of discretionary acts. (*Deconti v. McGlone*, 88 Conn. App. 270, 272 (2005); *McDermott v. Calvary Baptist Church*, 68 Conn. App. 284 (2001) and *Toomey v. State of Connecticut*, 1994 Conn. Super. LEXIS 539 (J.D. Litchfield, 1994)) There is very little precedent for plaintiffs prevailing in claims asserting individual liability against a municipal employee.

The group discussed the implications concerning liability if a **tree inventory** had been conducted by the municipality. Ms. Decker and several Task Force members suggested that municipal officials discuss the issue holistically to include not only the inventory but having a sensible management plan flowing from the inventory, noting that risk cannot be eliminated but can be managed. The group agreed that if greater clarity is desired about liability concerning tree inventories that a Task Force recommendation for legislation might be warranted. The case of *Toomey v. State of Connecticut* distinguishes between foreseeability in urban and more natural environments.

Possible private property owner liability for tree falling into roadway or wires and implications if the property owner had notice of the poor condition of the tree. Case law examples with trees in part on public property generally indicate that the adjoining property owner is not liable for accidental injury to people in the roadway. *Muratori v. Stiles & Reynolds*

Brick Co., 128 Conn. 674, 677-79 (1942); *Kondrat v. Town of Brookfield*, 97 Conn. App. 31 (2006) and *Watson v. Alpert*, 2002 Conn. Super. LEXIS 3204 (J.D. New Haven, 2002). A Task Force member noted the difficulty of making recommendations about tree owner responsibility in managing and maintaining healthy trees when they may not have a liability. A representative of the utilities noted that if a person damages a pole with a car they are liable to the company but if a tree falls from private property and damages wires no compensation is sought by the utility.

The role of private insurance carriers in requiring private property owners to remove high risk trees. (Similar to western states requiring fire breaks around homes.) This is a private contractual situation. Insurance carriers will write policies to reflect statutory requirements.

State designation, through DEEP, of the Tree Warden's Association of Connecticut as the entity to qualify/certify tree wardens. Such a designation would likely require legislative action and the Commissioner would need to assess policy implications of such a designation to a non-governmental entity. Ms. Decker suggested that the group look further into the potential consequences because establishing qualifications/certification might also increase the risk that some actions would be viewed as ministerial rather than discretionary. A member suggested that municipal insurers might see some benefit to certification. Currently towns are only required to appoint tree wardens in a timely fashion.

II. Discussion of Draft and Working Groups. Chair Eric Hammerling noted that he had assembled Working Group drafts into an initial set of draft recommendations with a suggested introduction and appendices to act as a way of focusing discussions and work. Task Force members concurred with the format and the initial introductory sections. The Task Force reviewed the status of each Working Group and made a number of suggestions for additions and edits. They agreed to email suggestions to Eric. Mark Goetz volunteered to draft a section on GIS/Inventories and Leslie Kane will continue drafting a statement on the desired future condition of the roadside forest and posed several questions for ongoing consideration. After further Working Group input a revised draft will be circulated and then reviewed at the next meeting before additional edits and being made available for public feedback.

III. Other Business. Deputy Commissioner Susan Frechette expressed appreciation for the amount of work and quality of the work to date and the thoughtfulness and dedication of the members. She remarked that the recommendations will be a help to those who love and manage trees. The work of the Task Force will also be a guide for stewardship and help the landscape for generations to come.

The Task Force agreed to reschedule its upcoming meeting to August 2 from 9:30 AM to 1:00 PM because state will be holding a make safe drill for several days including July 31 when the meeting had been scheduled.