



# *Town of Lexington*

Town Manager's Office

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## **MEMORANDUM**

TO: Select Board  
FROM: Jim Malloy, Town Manager  
DATE: April 5, 2022  
RE: Tree Removal at Center Recreation Area  
CC: Dave Pinsonneault, DPW Director  
Chris Filadoro, Tree Warden  
Gerry Paul, Chair, Tree Committee  
Mina Makarious, Town Counsel

As you are aware, certain residents abutting the Center Recreation Area have objected to the planned removal of pine trees located between the tennis courts and their homes.

### Background:

The residents of this area approached the Department of Public Works (DPW) due to a concern that the trucks used by the contractor to install new lights at the Center Recreation Area were damaging the pine trees. The DPW agreed to have a certified arborist review the trees and provide a report on the condition of the trees. That report concluded that the trees were in declining condition due to several factors, including impingement on the root zones, co-dominant stems that have weakened the trees structurally and vertical cracks in many of the trees as well as other weaknesses (see attached). The report concluded with a recommendation to remove the trees. The DPW Director and the Tree Warden concur with this assessment.

The DPW Director and Tree Warden met with the abutting residents and discussed a planned tree removal/replacement that would be phased in over time to reduce the overall impact of tree removal. The tree replacement program would be combined deciduous and coniferous trees that would provide a better overall condition for the trees and reduce sound from the tennis courts.

### Analysis:

The trees in question are "Town trees" under Section 120-3 of the Town's Tree Bylaw ("Any tree within a public park or open space under the jurisdiction of the Select Board acting as Park Commissioners, on public school grounds, or on any other Town-owned land."). Although the Tree Bylaw requires parties other than the Town to go through the process in the Tree Bylaw to request removal of a Town Tree (see § 120-7(b)), the Tree Bylaw does not require the same process for the Town's management of its own trees. Because the trees in question are Town Trees, rather than

“public shade trees” along a public way, the provisions of MGL Ch. 87, are also inapplicable. Further, the Tree Bylaw does not apply at all to trees determined to be hazardous by the Tree Warden. (§ 120-9(B)).

Accordingly, the remaining question is what obligation the Town has to remove trees deemed to be hazardous. Generally, once the Town is aware that there is a maintenance need on public property, as in this case where the Town has a certified Arborist’s report on the condition of large trees recommending removal, due to potential tree failure, the Town may be subject to legal claims that the Town had a duty to act on that report to ensure a tree failure does not result in injury, death or destruction of property.

Although the Massachusetts Tort Claims Act, MGL Ch. 258, limits the Town’s liability to some degree, the limitations of the Tort Claims Act are not absolute, and they are frequently litigated, especially in cases where an injured party believes the Town knew or had reason to know of the reason for their injury. Such litigation is often fact-intensive, time-consuming, and, potentially costly to the Town. More fundamentally, the potential for injury to any individual or property, when we know we have a duty to act to address a hazardous condition is unacceptable. That responsibility, coupled with the potential to place the Town in a position of unlimited financial liability is also not consistent with the fiduciary responsibility we have as Town staff and Town officials.

### Conclusion

While the Town has no desire to remove healthy trees, we do have an interest to protect the health, safety and welfare of residents, visitors and property and to limit the Town’s legal exposure. Residents abutting the Center Recreation Area voiced concern over the health of these trees and the DPW obtained an independent arborist’s opinion on the trees, which concluded they should be removed. The DPW Director and Director of Recreation and Community Services met with the residents and informed them of the decision to remove the trees in a phased manner and replace them with healthy trees, which would also dampen sound from the tennis courts. The Tree Warden will ultimately need to make a determination that the trees are a hazard (based on the report) before removal of the trees. No other bylaw or state law applies.

It would be irresponsible for the Town to leave hazardous trees in place and therefore these trees should be removed as the DPW Director has indicated and the DPW will work with the abutting property owners as stakeholders on the removal and replacement plan.

Should you have any questions or comments, please let me know. Thanks.

**A & B Tree and Landscape  
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February 18, 2022

Christopher Filadoro, Public Grounds Superintendent  
Lexington Department of Public Works  
Samuel Hadley Public Services Building  
201 Bedford St.  
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Re: Tree assessment

Thank you for taking the time to have a discussion regarding some trees of concern. The trees in question are mature White Pine (*Pinus strobus*) trees that are located behind several private properties on Parker Street and adjacent to the Town owned tennis courts. The reason for concern with this particular row of trees is due to the some recent failures of the trees.

On January 8<sup>th</sup> of this year I conducted a site visit, spent a few hours, and undertook a visual survey and assessment of these trees. My purpose was to conduct an inspection of the root zone, stem, and canopy of the trees as a tool to assess overall health, structure, and stability.

There are thirty seven trees in this grouping. They range in approximate size from 12-49" in DBH. The overwhelming majority of were the trees were planted at the same time, and are significant in size, with the DBH's heavily weighted to the 36-38" DBH size class. These trees average 70-90' in height are mature, and have large, wide, dense canopies in the upper reaches of the crowns. It was noted there are several stumps of significant size within the row where trees had been removed in the recent past.

It is clear these trees, as with many trees in suburban environments, have been impacted by intrusions into the root zone. Science tells us that the root zone of trees will, when unobstructed in their growth, extend two to three times the height of a tree. Which in this situation would mean roots extending two to three hundred feet in all directions from the base of the tree. On the Northern side of these trees there are active yard spaces, gardens, houses, garages, and driveways which extend well under the trees and up to within a foot of the stems. On the Southern side of the row is an active recreation facility, which has tennis courts, walking paths, structures, and other facilities in close proximity to these trees.

The stems of these trees revealed many reasons for concern. Of the thirty seven trees I assessed, 24 had co-dominant stems. Based on the age of these trees it is clear these co-dominant stems first developed decades ago as the trees were beginning to establish, and likely caused by damage to the central stem. This damage to the central stem at a young age leads to poor branch attachment, structural weak points, and likely areas of poor branch unions. Closer inspection revealed evidence of vertical cracks in many of the trees, with a few showing signs of seepage from the vertical cracks, indicating some level of branch union failure in progress. Additionally many of the trees had poor callus growth over old wounds, which had led to some instances of significant decay in the main stem.

The canopies of the trees did have a bit more deadwood than I would like to see in White Pines of this size and age. There are multiple instances of crossed and rubbing leaders, irregular growth patterns, and a few examples of broken hangers hung up in crowns. The upper third of the canopies is dense and broad. The broad sail at the top with a lack of foliage for the lower portions of the tree increases the "sail" effect in high wind and increases the torque on the stem during wind events.

In this situation we have a stand of trees that is of the same species, the same age, with the same structural defects. The entire stand is located in an area where structural failure of moderate size could have a significant impact. One of the options we consider when assessing large mature trees that show signs of decline is to remove or relocate targets thereby by reducing the risk if and when failures do occur. In this case it is neither possible nor practical to relocate entire houses and yards and/or entire recreational facilities. When removing the target of a tree is not possible we then look to possible mitigation strategies for the trees themselves such as crown reduction, or cabling and bracing. It is my opinion given the size, age, and species of the trees in the questions such mitigation strategies would not be effective in this case. Finally, it must be noted there have been previous failures within the row of trees, and these failures were structural in nature, meaning the stem of the tree failed, rather than a wind throw concern.

It is clear these trees have stood and served many generations of Lexington residents. Unfortunately given the results of my site visit, the history of the previous failures, the consistency in the age and condition of the tree community in question, the inability to implement arboricultural practices to reduce risk in the trees themselves, combined with no clear path to reduce the targets in the area, we are led to a difficult conclusion. It would be my professional opinion strong consideration be given to the removal of the trees in question. I would be happy to answer any questions or clarifications you may have upon review of this proposal.

Sincerely,

*Thomas D. Brady*

Thomas D. Brady, MCA