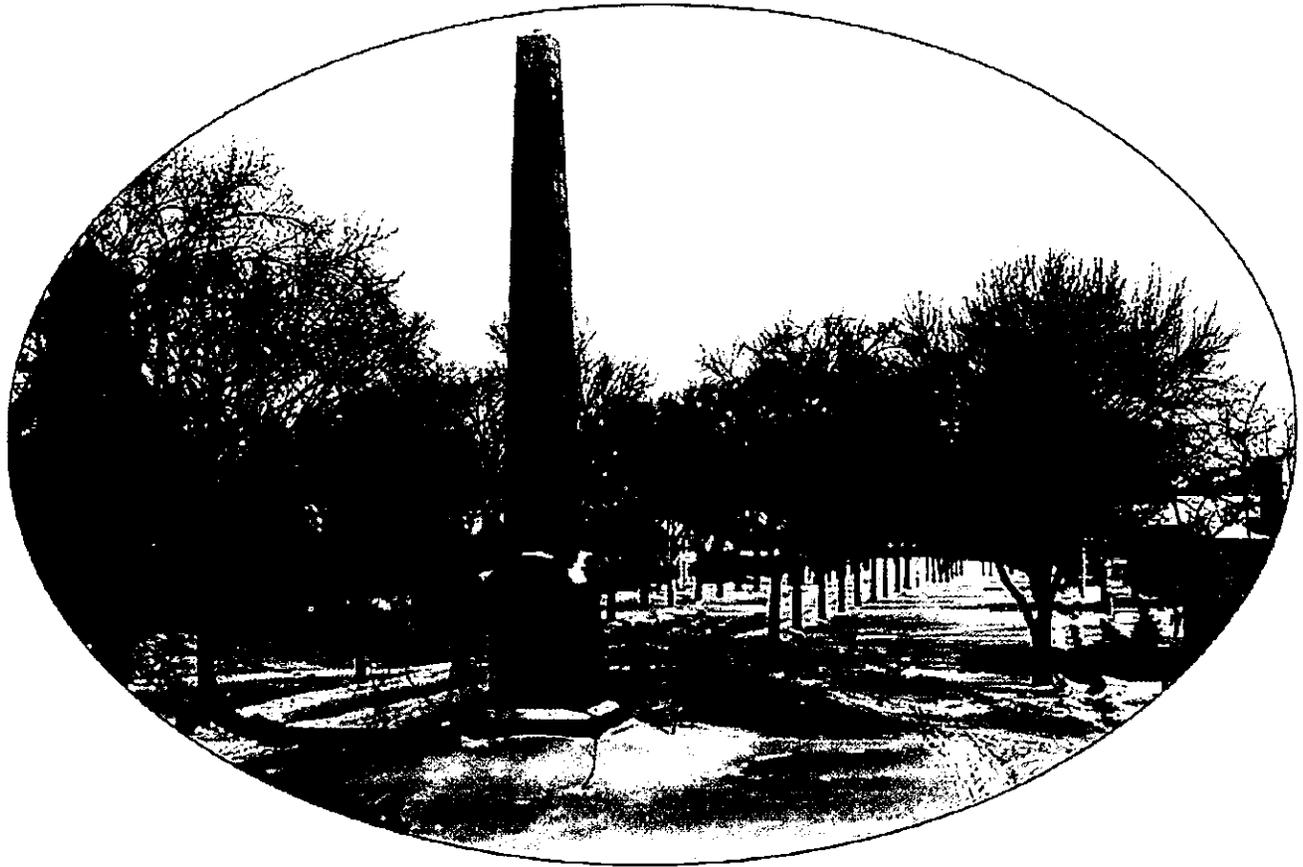


**RESTORATION OF HISTORIC STREETS CAPES  
THROUGH PLANTING OF PUBLIC SHADE TREES IN  
ACTON'S HISTORIC DISTRICTS**



**Acton Community Preservation Committee Application**

**November, 2012**

**Submitted by: Town of Acton Municipal Properties Department**

## PROJECT APPLICATION FORM – 2013

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**Applicant:** Acton Municipal Properties Department **Submission Date:** 11/12/12

**Applicant's Address, Phone Number and Email Purpose: (Please select all that apply)**

472 Main Street, Acton, Ma  Open Space  
Contact: Dean Charter  Community Housing  
978-929-7744, dcharter@acton-ma.gov  Historic Preservation  
 Recreation

**Town Committee (if applicable):** \_\_\_\_\_

**Project Name:** Restoration of Historic Streetscapes

**Project Location / Address:** Center, West, and South Historic Districts

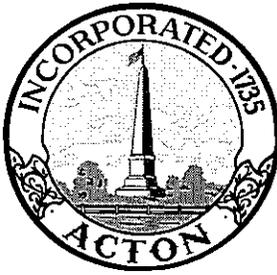
**Amount Requested:** \$ \$10,000

**Project Summary:**

Restoration of the historic streetscapes of the Acton Center, South Acton, and West Acton Historic Districts through the replanting of Public Shade Trees; all work to be performed on publically owned lands, road rights of way, or adjacent properties as allowed by Massachusetts General Law Chapter 87. Approximately 25 new specimen trees will be planted under this proposal. This is a follow along project similar to the application funded in FY 2010, which resulted in 24 new trees. It is expected that on average 8 new trees will be planted each year.

**Estimated Date for Commencement of Project:** June 2013

**Estimated Date for Completion of Project:** August 2016



**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 929-7744  
Fax (978) 929-6346

## **Municipal Properties Department**

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### **RESTORATION OF HISTORIC STREETSCAPES**

"Our earliest citizens could reach Boston Town by land only by walking on a narrow peninsula, where robbers could hide behind trees. So in the 1630s officials cut down all trees along that peninsula. But soon the ocean began to erode that treeless stretch...and travelers arrived exhausted by the sun's heat.

Hence, in what may be the earliest recorded public shade tree planting of the western hemisphere all residents of Boston Town gathered one day in 1646 and planted a double row of Elm trees down the whole length of that peninsula.....

Massachusetts set a standard for the nation by its early laws protecting trees, and has continued to be an example for all other states in its wise decision to require that every city and town have a public tree officer, to stand as advocate for the public shade trees and to give them proper care."

*Excerpts from the handbook of the Massachusetts Tree Wardens' and Foresters' Association, Seventh Edition, 1993, Francis W. Holmes ed.*

### **PROJECT NARRATIVE**

The proposed project would result in the planting of approximately 25 trees in the various Historic Districts. All plantings would be done on public land or adjacent properties as permitted by MGL. Chapter 87, section 7.

### **SITE CONTROL**

As noted above, the majority of the trees will be planted on public land. However, Massachusetts law does permit the expenditure of public funds to plant trees up to twenty (20) feet back from the edge of the public way, with landowner permission (see attached). This was the case with several thousand trees planted between 1940 and the early 1980s, when the general tree planting program was suspended under Proposition 2 ½. The new trees will be Public Shade Trees, as legally defined (see attached), and are therefore given a degree of protection from removal, unless they are deemed to be hazardous by the Tree Warden.

## **PROJECT SCOPE**

New trees, with a minimum height of ten (10) feet will be planted in appropriate locations in the Historic Districts as replacements for removed trees. The attached historic photos illustrate some of the tree cover that was common in the public areas in the years past.

## **FEASIBILITY**

As noted on the attached excerpts, planting trees in these areas is legally permissible. Exact choice of tree will be made by the Tree Warden, who will keep in mind various constraints such as soil type, proximity to road salt, overhead wires, etc. and the need for diversity of plantings to avoid tree cover loss due to attack from alien invasives. In the recent past, considerable tree death was caused by Chestnut Blight, Dutch Elm Disease, and Gypsy Moth, and we are now threatened by Asian Longhorned Beetle.

The previous project, funded in FY 2010 with \$10,000, was quite well received and resulted in 24 new trees planted; 13 in the West Acton District, 9 in the Acton Center District, and 2 in the South Acton District. A number of possible planting sites have been identified in all three districts if the program is funded in FY 2014.

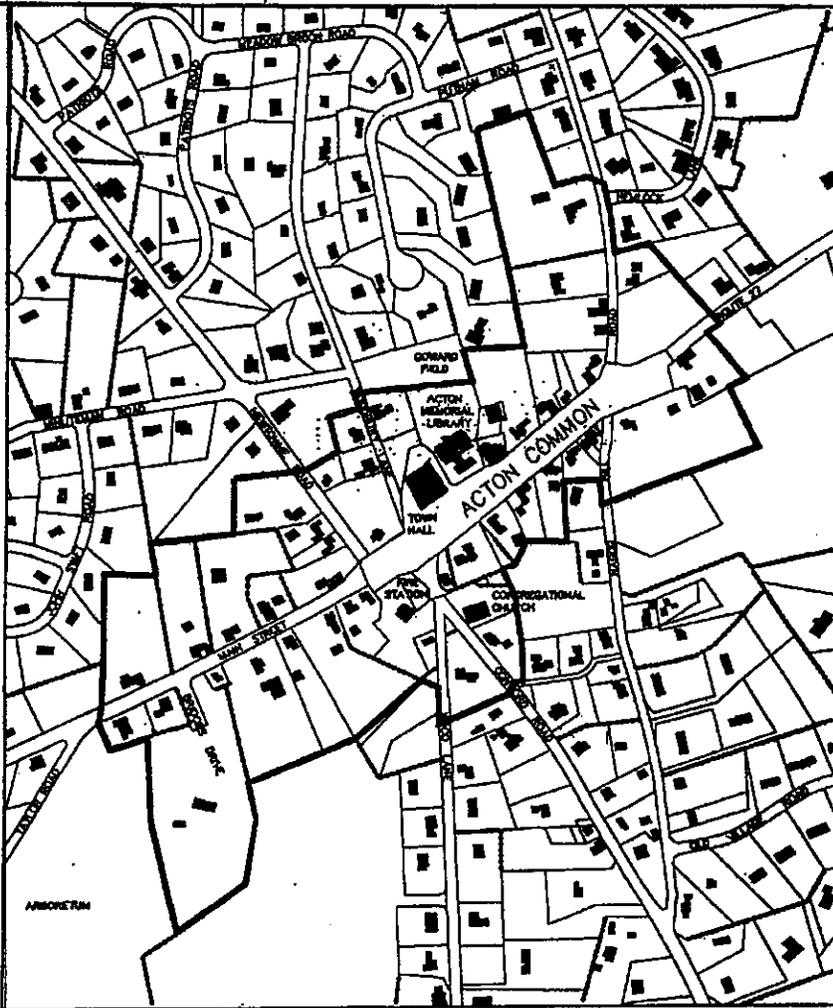
The project will be managed by Dean A. Charter, who has served as Tree Warden in Acton for twenty-eight years. Mr. Charter holds Certified Arborist designations from the Massachusetts Arborists Association and the International Society of Arboriculture. He is Past President of both the Massachusetts Tree Wardens' and Foresters' Association and the New England Chapter, International Society of Arboriculture.





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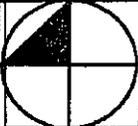
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*Local Historic District Map of the Town of Acton, Sheet 2 - 1990*  
Adopted:  
Nov. 28, 1990  
Effective:

-  Buildings
-  Stone Walls
-  Streets
-  Lot Lines
-  Acton Centre Local Historic District Boundary

Scale: 1"=400'



Town of Acton  
Planning Department  
1992

# West Acton Historic District



Local Historic District  
Map of the  
Town of Acton,  
Sheet 3 - 1990  
Adopted: Nov. 28, 1990  
Effective:

 Buildings

 Stone Walls

 Streets

 Private  
Ways

 Lot Lines

 West Acton  
Local  
Historic  
District  
Boundary



Scale  
1" = 350'

Town of Acton  
Planning Department  
1992



## STATUTES - TREE WARDEN SPECIFIC

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### CHAPTER 87. SHADE TREES

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#### **Chapter 87: Section 1. Public shade trees; definition.**

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Section 1. All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of Section 7 shall be public shade trees; and when 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. (Added in 1899; last amended in 1998)

*Editorial notes: Underlined language added in 1998.*

*Please see G.L. c.86, Section 1 (trees within highway boundaries).*

*The definition of a public shade tree is statutory and the discretion and judgment of an officer appointed by a local authority controls wholly their care, preservation and removal. Donahue v. City of Newburyport, 211 Mass. 561 (1912)*

*Public shade trees are trees within public way, other than those on a state highway. City of Medford v. Metropolitan District Commission, 303 Mass. 537 (1939).*

*Local officers, rather than cities and towns, have control of public shade trees [on state highways] within cities and towns. City of Medford v. Metropolitan District Commission, 303 Mass. 537 (1939).*

*Evidence that public shade trees have suffered to stand more than 20 years where they were planted raises the presumption that they were planted under lawful authority. Bliss v. Ball, 99 Mass. 597 (1868)*

#### **Chapter 87: Section 2. Powers of tree wardens.**

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Section 2. The tree warden of a town may appoint and remove deputy tree wardens. He and they shall receive such compensation as the town determines or, in default thereof, as the selectmen allow. 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, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths. He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefor has been obtained from the selectmen or road commissioners. He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws. (Added in 1896; last amended in 1915)

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*Editorial notes: Please see G.L. Chapter 132, Section 25 (foliage pests); Chapter 41, Section 1(election); Chapter 92, Section 33 (parks commissions); Chapter 41, Sections 21, 23 and 106 (selectman appoint).*

*Municipal tree wardens appointed under Chapters 363, 53 (Sections 12 and 13) and 296 (Sections 2 and 3) are public officers and not "servants" or "agents" within Chapter 171, Section 2, Chapter 375 (which authorizes recovery for negligent death caused by a person or corporation or their "agents" or "servants." *Donahue v. Town of Newburyport*, 211 Mass. 561 (1912).*

*These two sections (Sections 1 and 2 of this chapter) confer upon the tree warden absolute power respecting the setting out, care, maintenance and removal of shade trees and the enforcement of all provisions of law for their preservation, with the exception of trees under the jurisdiction of park commissioners, but of those also on request of the park commissioners, and with the further exception that no shade trees shall be planted within the public way without license from the Selectman or road commissioners where such authority has been vested in them. These sections define the power and authority of the tree warden respecting shade trees. They leave substantially nothing in this regard for the municipal action of such cities and towns as have no special charter provision touching the subject. *Donahue v. City of Newburyport*, 211 Mass. 561 (1912).*

### **Chapter 87: Section 3. Cutting of public shade trees; public hearing; damages to fee owner.**

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Section 3. Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty 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, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein. 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 the damages, if any, which he has sustained, from the town under chapter seventy-nine. (Added in 1867; last amended in 1978)

*Editorial notes: Public shade trees may generally be removed only by the tree warden, and not by him without a public hearing, and not by him without approval by the selectman or mayor if written objection has been made. *City of Medford v. Metropolitan District Commission*, 303 Mass. 537 (1939).*

*[The tree wardens] power to remove a public shade tree is somewhat limited and prescribed by the provisions of Chapter 87, Section 3, requiring a public hearing before he acts or authorizes action in the matter. *Jones v. Inhabitants of the Town of Great Barrington*, 273 Mass. 483 (1931).*

*Recovery of damages resulting from public shade tree falling upon dwelling cannot be predicated upon town's negligent failure to keep public way in repair. *Jones v. Inhabitants of the Town of Great Barrington*, 273 Mass. 483 (1931).*



*If a shade tree endangers travelers on a public way, it may be trimmed, cut or removed by a tree warden or his deputy without notice and hearing; no other person is authorized to so act. The power of selectman, mayor and alderman, road commissioners and highway surveyor is limited to ordering removal of a tree by the tree warden.. Valvoline Oil Co. v. Town of Winthrop, 235 Mass. 515 (1920).*

*Where the limb of a tree over a highway grew so low as to obstruct public travel, it was the duty of some official [selectman, mayor and alderman, road commissioners and highway surveyor] to order the tree trimmed or removed by the tree warden or deputy and in the meantime, the town was required to do what it reasonable could protect travelers. Valvoline Oil Co. v. Town of Winthrop, 235 Mass. 515 (1920).*

*Failure of the town officials named in Chapter 87, Section 5 to cause the tree warden to remove a tree within the public highway or the limbs of such a tree, which tree or limbs obstruct, endanger, hinder or incommode travelers, will render the town liable in an action of tort for such failure. Jones v. Inhabitants of the Town of Great Barrington, 273 Mass. 483 (1931).*

#### **Chapter 87: Section 6. Penalty for violation of secs. 3, 4 and 5.**

Section 6. Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than five hundred dollars to the use of the city or town. (Added in 1915; no amendments enacted since that time)

#### **Chapter 87: Section 7. Planting of shade trees.**

Section 7. Cities and towns may appropriate money for the purpose of acquiring and planting shade trees in public ways. The tree warden, or a private organization acting with the written consent of the tree warden, may plant shade trees acquired with public or private funds in a public way, or if he deems it expedient, upon adjoining land at a distance not exceeding 20 feet from the layout of such public way for the purpose of improving, protecting, shading or ornamenting the same; provided, however, that the written consent of the owner of such adjoining land shall first be obtained. (Added in 1915; last amended in 1998)

*Editorial note: This provision was modified in 1998 to expand the ability of a tree warden and municipality to effectuate the planting of trees to benefit the public and public spaces. The prior language required the tree warden to purchase and plant the tree while the new language allows for private organizations to purchase and plant trees with the written permission of the tree warden.*

*Please see G.L. Chapter 40, Section 5, paragraph 10 (appropriations); Chapter 180, Section 4, paragraph 1(charitable corporations); and Chapter 167D (shade tree accounts).*

#### **Chapter 87: Section 8. Trees on state highways**

Section 8. The department of highways, in this chapter called the department, shall have the care and control of all trees, shrubs and growths within state highways, and may trim, cut or remove such trees, shrubs and growths, or license the trimming, cutting or removal thereof. No such tree, shrub or other growth shall be trimmed, cut or removed by any person other than an agent or employee of the department, even if he be the owner of the fee in the land on which such tree, shrub or growth is situated, except upon a permit in writing from the department. Any person injured in his property by the action of the department as to the trimming, cutting, removal or retention of any such tree, shrub or other growth, may recover the damages, if any, which he has sustained, from the commonwealth under chapter seventy-nine. (Added in 1905; last amended in 1991)

