

TOWN OF WAYLAND

**WARRANT for
SPECIAL
TOWN MEETING**



PLEASE NOTE:

**The location of the Special Town Meeting
will be the**

WAYLAND HIGH SCHOOL

DOORS OPEN AT 6:00 P.M.

Wednesday, October 3, 2012 7:30 P.M.

www.wayland.ma.us

NOTICE

The Town of Wayland does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Wayland does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 (ADA).

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to Wayland's designated ADA Compliance Coordinator.

Name:	John Senchyshyn
Title:	Assistant Town Administrator/HR Director
Office Address:	41 Cochituate Road, Wayland MA 01778
Phone Number:	(508) 358-3623
Fax Number:	(508) 358-3627
TDD:	(508) 358-0194 or 911
Days/Hours Available:	Monday, 8:00 a.m. to 7:00 p.m. Tuesday to Thursday, 8:00 a.m. to 4:00 p.m. Friday, 8:00 a.m. to 12:30 p.m.

Individuals who need assistance in seating for more effective communication are invited to make their needs and preferences known to the ADA Compliance Coordinator. Notification prior to Special Town Meeting would be helpful.

**This notice is available in large print and on audio tape
from the ADA Compliance Coordinator.**



TOWN OF WAYLAND

2012 SPECIAL TOWN MEETING WARRANT

Special Town Meeting
will start at 7:30 p.m.

In the WAYLAND HIGH SCHOOL FIELD HOUSE
on Wednesday, October 3, 2012

Doors will open at 6:00 p.m.

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ADJOURNED MEETINGS

It is anticipated that if an adjourned meeting is necessary to complete action on this warrant, it will be held on Thursday, October 4, 2012, subject to Special Town Meeting approval.

If you have any questions about the Articles, please attend the **Warrant Hearing on Thursday, September 27, 2012, at 7:00 P.M.** at the Town Building. You may also call the Town Administrator's office at (508) 358-7755 before Special Town Meeting.

NOTICE REGARDING MOTIONS

This Warrant for Wayland Special Town Meeting is issued by the Board of Selectmen and is served upon all residents by mail and by posting at the Town Building, the Wayland Public Library, the Cochituate Fire Station or the Cochituate Post Office, and at Happy Hollow School. It contains the agenda of subjects to be acted upon; i.e., the articles.

By state law, no action at the special town meeting is valid unless the subject matter is contained in the warrant. This requirement means only that the subjects to be acted upon must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action that the meeting will take upon those subjects. A valid motion may differ from the underlying article, but it must be within the scope of that article.

If you are in doubt about the action Town Meeting might take under an article, you should plan to attend the Town Meeting.

TOWN MEETING PROCEDURES

Town Meeting functions best when all voters are familiar with its rules of procedure. A summary of those rules appears in the document, "The Moderator's Rules and Regulations Governing Wayland's Town Meetings" prepared by the Moderator and included as part of this warrant booklet (Appendix A). Copies of the pamphlet, "The Moderator's Handbook for Wayland Town Meetings," are available online at http://www.wayland.ma.us/Pages/WaylandMA_BComm/Moderator/Handbook.pdf.

NO SMOKING NOTICE

Voters are reminded that no smoking is permitted on school grounds.

QUANTUM OF VOTE

The quantum of vote is specified in the warrant for each article.

For those articles involving appropriations which are anticipated to be provided by taxation or from available funds or transferred funds previously appropriated for another purpose, a majority quantum of vote is indicated. For articles which are anticipated to be funded by borrowing, a two-thirds quantum of vote is indicated.

Certain articles request the action of Town Meeting under its general legislative powers (i.e., to hear and accept reports, to appoint a committee, to adopt a resolution or "sense of the meeting" vote, etc.), and in such cases no particular statute is referenced. Town Counsel has advised that, as a matter of common law precedent in Massachusetts, such matters are decided by a majority vote.

HOW TO VOTE ELECTRONICALLY

At last April's Annual Town Meeting, Wayland's citizens approved a resolution endorsing the use of wireless electronic voting for all sessions of all town meetings through fiscal year 2015. Instead of shouting out *Aye* or *No*, raising our hands, or standing to be counted, we'll use electronic handsets to register our votes quickly, accurately, and privately during the upcoming Special Town Meeting.

The handsets look a bit like a TV remote control, but instead of pushing buttons to change channels, we push buttons to vote: the 1 button for *Yes*, or the 2 button for *No*. Your vote is displayed on your handset's screen and wirelessly transmitted to a computer that counts votes and displays results for the Moderator to announce. Nothing but these totals is permanently recorded, so your vote will remain private.

This year's Special Town Meeting will be held in the High School Field House. As in past Town Meetings, check-in will be organized alphabetically by last name. As you're checking in, you'll be issued a handset for your use during that session.



Before each vote, the Moderator will summarize the motion or amendment being decided. He'll then announce the beginning of a 30 second interval during which you can convey your vote, and a "voting light" near the Moderator will be illuminated. To vote *Yes*, push your handset's 1 button. To vote *No*, push your handset's 2 button. If you accidentally push the wrong button, you can change your vote by pushing the correct button. If you don't want to participate in a particular vote, don't push any buttons during the 30 second voting interval; if you don't want to participate but accidentally push the 1 button or the 2 button, you can clear your unintentional vote by pushing the 3 button. When the 30 second interval is over, the "voting light" will be extinguished, and the Moderator will announce that the vote is

complete; shortly thereafter, the Moderator will announce the results.



If you inadvertently turn your handset off by pushing the power button in its lower-right corner; push this button again to turn your handset back on. Pushing any of your handset's other buttons during the voting interval will not change your vote, but for peace of mind, your handset will encourage you to *Re-Vote*; push the 1 button for *Yes* or the 2 button for *No*.

If you temporarily leave your seat during the meeting, please keep your handset with you. When you leave the Field House – either during a session or at the close of a session – please place your handset in one of the boxes at

each of the Field House exits. If you forget to turn in your handset, we'll give you a call the next day and ask you to return it.

Every handset will be tested before each session of Town Meeting, so the probability of a handset failing is very low. That said, if pushing your handset's 1 button or 2 button during a vote does not produce an *Yes* or *No* on its display, please go to the Help desk at the back of the room; you'll be provided with a paper ballot to record your vote, and you'll be issued a new handset. We don't expect this to happen, but like the Boy Scouts, we'll be prepared.

If you're physically unable to use a handset to vote, inform the person who checks you in, and you'll be seated in an area where your votes will be manually counted by Tellers. If you're wondering how much radio energy is used by a handset to convey your vote wirelessly, it's less than 1% that of a typical cell phone and only for brief instants, employing the same frequencies used for Wi-Fi wireless internet access.

ELVIS: Wayland's Electronic Voting Implementation Subcommittee

COMMONWEALTH OF MASSACHUSETTS

*Middlesex, ss.**Town of Wayland****** WARRANT *****

To any of the Constables of the Town of Wayland, Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify all such residents of Wayland to meet in the Field House of the Wayland High School on

WEDNESDAY, OCTOBER 3, 2012, AT 7:30 P.M.

to act on the following Articles:

**ARTICLE 1: ADOPT BYLAW RE: CLEARING, GRADING AND PROTECTION
 OF SPECIMEN TREES**

Sponsored by: Petitioners

To determine whether the Town will vote to adopt a bylaw, in substantially the following form based on the Model Land Clearing, Grading and Protection of Specimen Trees Bylaw from the Cape Cod Commission Model Bylaws and Regulations, setting forth the protocol which shall apply when anyone seeks to clear land of an area greater than 20,000 square feet, requiring the party to obtain a special permit from the Planning Board, and outlining the review standards to be applied in that permitting process, in an effort to balance the rights of utility companies and others to maintain rights of way in juxtaposition of the need to minimize loss of natural vegetation and to protect specimen trees and wildlife habitat.

01.0 Purposes: Pursuant to M.G.L. c. 87, § 14, and otherwise, the purposes of this bylaw are to seek to balance the rights of utilities and others to maintain and utilize their easements and rights of way while at the same time striving to:

01.1 Protect the health, safety and property of the residents of the Town of Wayland, Massachusetts by regulating clearing, grading and maintenance activities associated with land development and ROW maintenance. It's goals include preserving existing trees and vegetation, preventing erosion and sedimentation of wetlands, ponds and other water bodies, controlling stormwater runoff, minimizing fragmentation of wildlife habitat and loss of vegetation, preventing chemical poisoning of the environment;

01.2 Limit land clearing and alteration of natural topography prior to development review;

01.3 Protect specimen trees and significant forest communities from damage or removal during site development and maintenance;

01.4 Protect water quality of adjacent wetlands, wellheads and surface water bodies;

01.5 Encourage the use of Best Management Practices that prevent and reduce nonpoint sources of pollutants;

0.1.6 Encourage the use of Best Practices with respect to Vegetation Management programs;

01.7 Promote land development and site planning practices that are responsive to the town's scenic character without preventing the reasonable development and maintenance of land and utility rights-of-way;

01.8 Protect archaeological and/or historic resources.

02.0 Definitions: In this bylaw, the following words have the meanings indicated:

02.1 Applicant - Any person proposing to engage in or engaged in any non-exempt clearing of trees or understory vegetation within the Town.

02.2 Best Management Practices (BMPs) - A structural, nonstructural, or managerial technique recognized to be the most effective and practical means to prevent and reduce nonpoint source pollutants. BMPs should be compatible with the productive use of the resource to which they are applied, and should be cost-effective.

02.3 Caliper - American Association of Nurserymen standard for measurement of trunk size of nursery stock. Caliper of the trunk shall be taken 6" above the ground up to and including 4" caliper trees, and 12" above the ground for larger sizes.

02.4 Certified arborist - A professional who possesses the technical competence through experience and related training to provide for or supervise the maintenance of trees and other woody plants in the residential, commercial, and public landscape.

02.5 Clearing - Removal or causing to be removed, through either direct or indirect actions, trees, shrubs and/or topsoil from a site, or any material change in the use or appearance of the land. Actions considered to be clearing include, but are not limited to: causing irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage.

02.6 Dripline - An area encircling the base of a tree which is delineated by a vertical line extending from the outer limit of a tree's branch tips down to the ground.

02.7 Essential Root Zone - An area located on the ground between the tree trunk and 10 feet beyond the dripline of a tree which is required for protection of a tree's root system.

02.8 Diameter/diameter-breast-height (dbh) - The diameter of any tree trunk, measured at 4.5 feet above existing grade.

02.9 Filling - The act of transporting or placing (by any manner or mechanism) material from, to, or on any soil surface or natural vegetation.

02.10 Grading - Any excavating, filling, clearing, or the creation of impervious surface, or any combination thereof, which alters the existing surface of the land.

02.11 Hazardous tree - A tree with a structural defect or disease, or which impedes safe sight distance or traffic flow, or otherwise currently poses a threat to life or property.

02.12 Landscape architect - A person licensed by the Commonwealth of Massachusetts to engage in the practice of landscape architecture.

02.13 Protected tree/vegetation - A tree or area of understory vegetation identified on an approved landscape plan to be retained and protected during construction.

02.14 Right-Of-Way Maintenance - Removal or causing to be removed, through either direct or indirect actions, trees, shrubs and/or topsoil from a site, or any material change in the use or appearance of the land. Actions considered to be clearing include, but are not limited to: causing

irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage including the application of herbicides or other chemical agents.

02.15 Specimen tree - A native, introduced or naturalized tree which is important because of its impact on community character, its significance in the historic/cultural landscape or its value in enhancing the effects of wildlife habitat. Any tree with a dbh of 6" or larger is eligible to be considered a specimen tree. Trees that have a small height at maturity or are slow growing, such as flowering dogwood or american holly with a dbh of 4" or larger are eligible to be considered specimen trees.

02.16 Significant forest community - Unfragmented forests including forest types that provide habitat for rare species, unusual ecological processes, highly diverse forest communities, rare forest types, and those forest types which maintain connections between similar or different habitat patches.

02.17 Site Alteration Special Permit - A special permit issued by the Planning Board authorizing land clearing and grading activities in the town of Wayland, Massachusetts.

02.18 Understory vegetation - Small trees, shrubs, and groundcover plants, growing beneath and shaded by the canopy of trees.

02.19 Wellhead Protection Plan - Wellhead Protection Plan, June 2011, Prepared by the Wellhead Protection Committee, et al.

03.0 Applicability: No person or corporation shall undertake land clearing/grading activities of an area greater than a total of 20,000 square feet within the Town of Wayland in any year without first obtaining a Site Alteration Special Permit from the Planning Board, unless specifically exempted under Section 05.0 of this bylaw.

04.0 Review and Decision: Within ten (1) days of receipt of a completed application and required plans as described in Section 06.0 below, the Planning Board shall transmit one copy each to the Board of Health, Conservation Commission, Building Inspector, Department of Public Works and abutters to the properties. Within 45 days of receipt of completed application/plans, these agencies and optionally the abutters shall submit recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G.L. c. 40A, 09.

05.0 Exemptions: The provisions of this bylaw shall not apply to the following activities:

05.1 Removal of hazardous trees, as defined herein;

05.2 Routine maintenance of vegetation and removal of dead or diseased limbs and/or trees necessary to maintain the health of cultivated plants, to contain noxious weeds and/or vines in accordance with a Department of Environmental Management (DEM) - approved Forest Management Plan, or to remedy a potential fire or health hazard or an imminent threat to public safety;

05.3 Construction and maintenance of public and private streets and utilities within town-approved roadway layouts and easements;

05.4 Work conducted in accordance with a valid earth removal permit issued by the Town of Wayland, Massachusetts;

05.5 Agricultural activities in existence at the time a bylaw is adopted, work conducted in accordance with an approved Natural Resource Conservation Service Agricultural Plan or agricultural uses on parcels of land of more than five acres as specified in MGL c. 40A Section 3.

05.6 Construction of roadways and associated infrastructure for subdivisions approved in accordance with the Town Subdivision Rules and Regulations.

05.7 Construction of any state or town agency project approved by the town manager, town council, or town selectmen.

06.0 Application Requirements: Unless determined otherwise by the Planning Board the following submittals are required at the time of application:

06.1 Survey of existing vegetation conducted by an individual qualified through appropriate academic credentials and field experience. A statement of credentials should be submitted with the survey.

The survey of existing vegetation shall include the following information:

06.1.1 major upland vegetational communities located on the site, including trees, shrub layer, ground cover and herbaceous vegetation;

06.1.2 size and height of trees, noting specimen trees and/or forest communities;

06.1.3 location of any rare and endangered species;

06.2 Submission of a locus map at a scale of 1" = 500' showing the proposed site in relation to the surrounding area.

06.3 Submission of a plan at a scale of 1" = 40' of the project site showing existing and proposed contour lines at intervals of not more than 2 feet prepared by a registered civil engineer or land surveyor.

06.4 Soil survey or soil logs indicating predominant soil types on the project site, including information on erosion potential from the Natural Resources Conservation Service.

06.5 Delineation of all bodies of water, including wetlands, vernal pools, streams, ponds, and public wells within 100 feet of the project site/limit of work and delineation of the 100-year floodplain and the capture zones of Wayland's wells (as defined and described in the Wellhead Protection Plan) within said area.

06.6 Submission of a plan at a scale of 1" = 40' indicating the limit of work. The limit of work shall include all building, parking, and vehicular use areas, and any grading associated with the proposed development. The plan or accompanying narrative shall document the species and quantities of specimen trees and/or other vegetation to be removed or relocated within the project area.

06.7 Construction schedule which describes the timing of vegetation removal, transplanting or replacement in relation to other construction activities.

06.8 Plans and/or description of Best Management Practices and Best Practices for Vegetation Management to be employed in development of the project site.

06.9 For each tree in excess of two inches in diameter to be removed, a statement of the precise reasons that such tree can not be trimmed rather than removed.

06.10 Submission of an erosion and sedimentation control plan at a scale of 1" = 40'. This plan shall include BMPs for erosion and sediment control (vegetative and/or structural) to prevent surface water from eroding cut and fill side slopes, road shoulders and other areas and measures to avoid sedimentation of nearby wetlands and ponds. The following information shall be submitted on erosion control and sedimentation plans submitted with the project application:

06.10.1 A description of the sequence of construction activities which specifies the time frame for soil stabilization and completion and any necessary winter stabilization measures.

07.0 Review Standards:

The applicant shall demonstrate that the following measures are employed in development of the site or maintenance of the ROW:

07.1 Minimize site alteration/land clearing:

07.1.1 Site/building/maintenance design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage channels on the site.

07.1.2 Clearing of vegetation and alteration of topography shall be limited to a percentage (%) of the site with native vegetation planted in disturbed areas as needed to enhance or restore wildlife habitat.

Land Use % Clearing Allowed:

Agriculture 50%, Residential 25%, Institutional, Commercial, Industrial 40%, ROW maintenance in residential areas 25%, ROW maintenance in open areas 50%, within a Significant Natural Resource Area (SNRA) 35%

07.1.3 Clearing for utility access and trenching shall be limited to the minimum area necessary to deliver equipment to the site and thereafter to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees.

07.1.4 Protect hilltops and/or scenic views within the town of Wayland, Massachusetts:

07.1.4.1 Placement of buildings, structures, access roads or parking facilities shall not detract from the site's scenic qualities and shall blend with the natural landscape. Building sites shall be directed away from the crest of hills, and foundations shall be constructed to reflect the natural terrain.

07.1.5 Protect wildlife habitat:

07.1.5.1 Sites shall be designed in such a way as to avoid impacts to rare and endangered species and wildlife habitat on a site, and to maintain contiguous forested areas.

07.1.6 Avoid impacts to archaeological resources:

07.1.6.1 Applicants shall submit a response from the Massachusetts Historical Commission (MHC) regarding the potential for archaeological or historical resources on the site.

07.1.7 Preserve open space and specimen trees on the site:

07.1.7.1 In the design of a development or the proposal for ROW maintenance, priority shall be given to retention of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees.

07.1.8 Understory vegetation beneath the dripline of preserved trees shall also be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained and abutting properties that may be affected shall be surrounded by temporary protective fencing or other measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential root zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state.

07.1.9 Forested areas shall be preserved if they are associated with:

07.1.9.1 significant forest communities as defined herein;

07.1.9.2 wetlands, waterbodies and their buffers;

07.1.9.3 critical wildlife habitat areas;

07.1.9.4 slopes over 25 percent.

07.1.10 Minimize cut and fill in site development:

07.1.10.1 Development envelopes for structures, driveways, wastewater disposal, lawn areas and utility work shall be designated to limit clearing and grading.

07.1.10.2 Other efforts to minimize the clearing and grading on a site associated with construction activities shall be employed, such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, etc. in areas already planned for permanent structures. Topsoil shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.

07.1.10.3 Finished grades should be limited to no greater than a 2:1 slope, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible.

07.1.10.4 Employ proper site management techniques during construction:

(a) BMPs shall be employed to avoid detrimental impacts to existing vegetation, soil compaction, and damage to root systems.

(b) The extent of a site exposed at any one time shall be limited through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

07.1.10.5 Protect the site during construction through adequate erosion and sedimentation controls:

(a) Temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes or such other mechanical measures as are necessary may be required by the Board to intercept and divert surface water runoff. Runoff flow shall not be routed through areas of protected vegetation or revegetated slopes and other areas. Temporary runoff from erosion and sedimentation controls shall be directed to BMPs such as vegetated swales. Retaining walls may be required where side slopes are steeper than a ratio of 2:1.

(b) Erosion and sedimentation controls shall be constructed in accordance with the DEP Stormwater Guidance manual.

(c) Erosion control measures shall include the use of erosion control matting, mulches and/or temporary or permanent cover crops. Mulch areas damaged from heavy rainfalls, severe storms and construction activity shall be repaired immediately.

(d) Erosion control matting or mulch shall be anchored where plantings are on areas subject to mulch removal by wind or water flows or where side slopes are steeper than 2:1 or exceed 10 feet in height. During the months of October through March when seeding and sodding may be impractical, anchored mulch may be applied at the Board's discretion.

(e) Runoff from impervious surfaces shall be recharged on the site by storm water infiltration basins, vegetated swales, constructed wetlands or similar systems covered with natural vegetation. Runoff shall not be discharged directly to rivers, streams, or other surface water bodies. Dry wells shall be used only where other methods are not feasible. All such basins and wells shall be preceded by oil, grease, and sediment traps. The mouths of all catch basins shall be fitted with filter fabric during the entire construction process to minimize siltation or such basins shall be designed as temporary siltation basins with provisions made for final cleaning.

(f) The applicant shall be required to conduct weekly inspections of all erosion and sedimentation control measures on the site to ensure that they are properly functioning as well as to conduct inspections after severe storm events.

07.1.10.6 Revegetate the site immediately after grading:

(a) Proper revegetation techniques shall be employed using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Revegetation shall occur on cleared sites within 7 (seven) calendar days of final grading and shall occur during the planting season appropriate to the selected plant species.

(b) A minimum of 4" of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.

(c) Finished grade shall be no higher than the trunk flare(s) of trees to be retained. If a grade change of 6" or more at the base of the tree is proposed, a retaining wall or tree well may be required.

07.2 Protection of wetlands, endangered species and other environmental issues, as required by the Conservation Commission. (Not sure what specific sub-paragraphs we should add here)

07.3 Protection of drinking water, as required by the Board of Public Works pursuant to the Wellhead Protection Plan.

08.0 Required Security: The Planning Board may require a performance guarantee in a form acceptable to the town to cover the costs associated with compliance with this bylaw under a Site Alteration Special Permit.

08.1 The required performance guarantee in the amount of 150% of the cost of site restoration shall be posted prior to the issuance of a Site Alteration Special Permit for the proposed project.

08.2 The performance guarantee shall be held for the duration of any prescribed maintenance period required by the Site Plan Review Committee/Planning Board to ensure establishment and rooting of all new plantings, and may be reduced from time to time to reflect completed work. Plantings which die within the prescribed maintenance period shall be replaced. Securities shall not be fully released without a final inspection and approval of vegetation replacement by the town.

09.0 Monitoring and Inspections:

09.1 Prior to commencement of construction or maintenance, the applicant, land owner, contractor and construction crew, town engineer and site engineer shall conduct a meeting to review the proposed construction phasing and number and timing of site inspections.

09.2 Initial site inspection of erosion and sedimentation controls and placement of tree protection measures shall occur after installation of barriers around preserved areas and construction of all structural erosion and sedimentation controls, but before any clearing or grading has begun.

09.3 Routine inspections of preserved areas and erosion and sedimentation controls shall be made at varying intervals depending on the extent of site alteration and the frequency and intensity of rainfall.

09.4 Effective stabilization of revegetated areas must be approved by the town before erosion and sedimentation controls are removed. The town shall complete an inspection prior to removal of temporary erosion and sedimentation controls.

10.0 Enforcement: The town of Wayland, Massachusetts may take any or all of the enforcement actions prescribed in this bylaw to ensure compliance with, and/or remedy a violation of this bylaw; and/or when immediate danger exists to the public or adjacent property, as determined by the Building Inspector or Town Engineer. Securities described in Section 07.0 above may be used by the town in carrying out any necessary enforcement actions.

10.1 The Town of Wayland Building Inspector may post the site with a Stop Work order directing that all vegetation clearing not authorized under a Site Alteration Permit cease immediately. The issuance of a Stop Work order may include remediation or other requirements which must be met before clearing activities may resume.

10.2 The Town of Wayland may, after written notice is provided to the applicant, or after the site has been posted with a Stop Work order, suspend or revoke any Site Alteration Special Permit issued by the Town.

10.3 No person shall continue clearing in an area covered by a Stop Work order, or during the suspension or revocation of a Site Alteration Special Permit except work required to correct an imminent safety hazard as prescribed by the Town.

0.11 Severability:

0.11.1 If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

PETITIONERS' COMMENTS: Forty foot trees or bare earth covered with bark chips? Forty foot trees, we had. Bare earth and bark chips, we have. That change, courtesy of NStar, is the genesis of the present article designed to protect our native trees. Trees which provide beauty for all who see them, trees which pull carbon dioxide from the air and replace it with oxygen, helping to regulate green house gases. Trees which provide food, shelter and homes for wildlife. The article would require anyone (other than those engaged in agriculture) who is planning to clear trees on more than 20,000 square feet (a little less than ½ acre) to obtain a permit from the Planning Board following a hearing in which the proponent would have to justify removal, rather than pruning, of the trees, and provide plans for tree replacement, if called for.

FINANCE COMMITTEE COMMENTS: The proposed language needs clarification and may have unintended consequences on homeowners, the Town and other stakeholders. Further public education is required.

RECOMMENDATION: The Finance Committee voted to take no position on this article. Vote: 4-0.

QUANTUM OF VOTE: Two-thirds – see Massachusetts General Laws Chapter 40A, Section 5.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with federal and Massachusetts law.

For more information about this article, contact petitioner Scott Machanic at smachanic@cmlaw.net.

ARTICLE 2: ADOPT BYLAW RE: UTILITY HERBICIDE APPLICATION

Sponsored by: Petitioners

To determine whether the Town will vote to adopt a bylaw, in substantially the form of the following Bylaw of the Town of Wayland Concerning Utility Herbicide Application, providing that, upon receipt of notification from a utility company of intended application of any herbicide as provided by M.G.L. c. 132B, the Board of Health shall schedule a hearing, within 21 days or on or before the date

indicated for the herbicide application, whichever is early, at which hearing the utility company must provided, as a condition of receiving an order of permission, that the contemplated herbicide application conforms to the requirements of state and federal law. Application of herbicides without the order of permission is prohibited, and subject to a fine.

Bylaw of the Town of Wayland Concerning Utility Herbicide Application

Article 1. Purpose

It is the purpose of this bylaw to establish the procedures by which the Board of Health may determine whether a proposed application of herbicide by a utility upon its rights of way within Wayland is to be conducted in accordance with applicable state and federal requirements, for the purpose of protecting the health, environment and safety of the citizens of the Town of Wayland and the purity of its drinking water supply.

Article 2. Prohibited Distribution

No utility company shall distribute, apply, handle, dispose of, discard or store any herbicide upon any utility right of way, unless and until it has received an order of approval from the Wayland Board of Health, pursuant to the procedures outlined below.

Article 3. Hearing Procedure

Upon the receipt of notification, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of herbicide on any right of way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of receipt of notice or on or before the date indicated for herbicide application, whichever is later, a hearing at which the utility shall appear and present evidence that it has complied with applicable state and federal law applicable to herbicide application, including but not limited to providing the following:

- a. Written identification of all persons who will be applying any herbicide, and information demonstrating that each such person is properly certified and/or licensed to apply herbicides;
- b. Written identification of herbicides which are intended to be used, and an outline of the exact location where each is expected to be applied;
- c. Written demonstration that all herbicide use is in accordance with the approved Vegetation Management Plans and Yearly Operational Plans.
- d. Written plans or procedures to assure that herbicide concentrates shall not be handled, mixed or loaded within 100 feet of a sensitive area (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction);
- e. Written documentation of efforts to locate all sensitive areas (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction) within the areas where pesticides are to be applied;
- f. Depiction of the boundaries of each and all located sensitive areas (as that term is defined in

the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction) on a plan of land of the area where pesticides are to be applied;

- g. Written description of steps to be taken to mark sensitive area boundaries (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction) in the field and/or, for any boundary which is believed to be readily identifiable, the basis for that belief.
- h. Written documentation that wetland boundaries have been delineated and that verification from the Wayland Conservation Commission has been sought by filing of one or more Requests for Determination of Applicability (as referenced in 310 CMR 10.00 et seq or such other regulations which may in the future augment or supplant those regulations)
- i. For each sensitive area, written description of application steps and techniques which will be taken within that sensitive area;
- j. Written documentation identifying vegetation greater than 12 feet in height, and written confirmation that foliar herbicide applications will not be made to any vegetation greater than 12 feet in height except for side trimming;
- k. Written confirmation that herbicide applications will not be made when wind may cause drift, and written description and documentation of the circumstances in which wind drift may occur.
- l. Written confirmation that no aerial application will occur; and
- m. Documentation which shows the consideration, if any, given to alternative other than herbicide application which might achieve the goals sought by the herbicide application

Article 4. Determination by Board of Health

Upon the conclusion of the submission of evidence by the utility, and any evidence submitted by any resident of the Town of Wayland or other interested party, the introduction of which evidence shall be within the discretion of the Board of Health, the Board of Health shall determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides only as permitted by law. The burden of proof shall rest with the applicant to prove determines that the proposed application complies with all legal requirements imposed by state and federal law, and the applicant must present affirmative evidence on that issue, and may not rest on mere conclusory statements that it does so comply. If the Board determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue an order permitting the application to proceed. If the Board determines that the proposed application does not comply with all legal requirements imposed by state and federal law, the Board shall issue an order denying permission to make the application, which order shall outline the deficiencies which much be remedied before the application may proceed.

Article 5. Remediation of Deficiencies.

Upon issuance by the Board of Health of an order denying permission to apply herbicide, the affected utility may request a further hearing at which it may present further evidence, either that has met the requirements of applicable state and federal law, or that it has remedied the deficiencies outlined by the Board order. Upon receipt of such a request, the Board of Health, shall, within 14 days of receipt of the request, schedule a hearing upon such request. At the conclusion of that second hearing, the Board of Health shall again determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides only as permitted by law. If the Board determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue an order permitting the application to proceed. If the Board determines that the proposed application does not comply with all legal requirements imposed by state and federal law, the Board shall issue an order denying permission to make the application, which order shall outline the deficiencies which must be remedied. No further hearings shall be held, but the affected utility may begin the process anew, by issuing a new notice of intent to utilize herbicides.

Upon the receipt of notification, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of herbicide on any right of way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of receipt of notice or on or before the date indicated for herbicide application, whichever is later, a hearing at which the utility shall appear and present

Article 6. Penalty for Application without Order of Permission

An application of any herbicide without prior receipt of an order of permission from the Board of Health issued pursuant to this Bylaw shall be punishable by a fine in the amount of \$ 5,000.00. Each date upon which herbicides are applied shall constitute a separate application for purposes of this Bylaw. Each location separated by more than 500 feet upon which herbicides are applied shall constitute a separate application for purposes of this Bylaw. In addition, Town Counsel may seek injunctive relief seeking to stop such application until the utility has complied with this Bylaw. If the Court finds that the Bylaw has been violated, the utility shall also be liable to pay the court costs and attorneys' fee incurred by the Town to enforce this Bylaw.

Article 7. Definitions

"Utility company", any person or entity which owns or operates a privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public.

PETITIONERS' COMMENTS: Protect our drinking water, our children, and our health. That is the purpose of the proposed article. The method is simple. Because our courts have ruled that pesticides and herbicides are governed exclusively by state and federal law and that cities and town can not regulate them, but that cities and towns can assure that utilities are following the letter of state and federal law when they apply these chemicals. The proposed bylaw will require every utility to appear before the Board of Health and affirmatively demonstrate with concrete evidence, that the chemicals they are using are appropriate for the job, that they are to be applied properly, and that appropriate, required steps have been taken to protect environmentally sensitive areas, especially our drinking water (the Meadowview well is directly within an NStar right of way).

FINANCE COMMITTEE COMMENTS: The proposed language needs clarification and may have unintended consequences on homeowners, the Town and other stakeholders. Further public education is required.

RECOMMENDATION: The Finance Committee voted to take no position on this article. Vote: 4-0.

QUANTUM OF VOTE: Majority – see Massachusetts General Laws Chapter 40, Section 21.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with Massachusetts law in the following respects:

- (i) it regulates the methods and means of the application of pesticides. Municipal regulation of such methods and means is preempted by state law and state regulations.
- (ii) it impermissibly authorizes the Town's Board of Health to deny permission to apply pesticides. Pursuant to Massachusetts General Laws Chapter 132B, Section 10, the authority to issue certifications and licenses to use pesticides is vested exclusively in the Massachusetts Department of Food and Agriculture Pesticide Board.
- (iii) it provides for a \$5,000.00 fine as a penalty for violations which fine is in excess of the amount authorized by state law. Under Massachusetts General Law Chapter 40, Section 21, fines not exceeding three hundred dollars for each offense may be imposed for the violation of a bylaw adopted by a town. Additionally, it mandates that violators pay the Town's court costs and attorney's fees incurred to enforce the bylaw. Such payments cannot be required by a municipal bylaw. However, a court has the discretion to award them.

In all other respects, the foregoing bylaw amendment is inconsistent with federal and Massachusetts law.

The petitioners are working with Town Counsel to draft a motion which proposes the adoption of a modified version of the foregoing bylaw which will be consistent with state law and within the scope of the petitioners' warrant article.

For more information about this article, contact petitioner Scott Machanic at smachanic@cmlaw.net.

**ARTICLE 3: RESOLUTION SEEKING FEDERAL AND STATE LEGISLATION
TO REQUIRE PUBLIC HEARING AND APPROVAL BY BOARD OF
HEALTH FOR APPLICATION OF CHEMICALS**

Sponsored by: Petitioners

To determine whether the Towns will vote to request that their Federal and State Representatives and Senators file legislation that will require anyone including the Utilities to: only place on theirs and/or anyone else's property chemicals approve by the Board of Health and/or the Towns Health Officer, but only after a public hearing and written approval from said authority to use such chemical. If any chemicals have been used in the past then the Utility or whoever placed said chemicals on any real estate property must clean up said site to the approval of the Board of Health and/or the Towns Health Officer.

PETITIONERS' COMMENTS: The national concern can be best shown via an article in the

Natural News on Monday March 1, 2010 by David Gutierrez staff writer. Herbicide Chemical in drinking water could pose greater danger than previously thought. We have backup material from experts on Cape Cod.

The Environmental Protection Agency (EPA) monitors average yearly levels of the popular herbicide atrazine in drinking water supplies based on four tests per year. The nonprofit environment organization; Natural Resources Defense Council (NRDC) notes that the level of herbicide atrazine in drinking water regularly spike after heavy rains or during the spring when it is widely applied and that the four yearly testing may miss such spikes. The organization researchers have found several spikes in their own water supplies.

The bottom line is that ground water flows to the wells and it carries the chemicals with it. We must protect our private and public wells.

FINANCE COMMITTEE COMMENTS: There is no significant financial impact from passage of this resolution now. Further vetting and improved public education is required.

RECOMMENDATION: The Finance Committee voted to take no position on this article. Vote: 4-0.

QUANTUM OF VOTE: Majority.

For more information about this article, contact petitioner Steven Haker at hakar4@hotmail.com.

ARTICLE 4: RESOLUTION TO PROVIDE MORE FISCAL CONTROL THROUGH THE VOTED BUDGET

Sponsored by: Petitioners

To determine whether the Town will vote the following –

Whereas, in recent years, Wayland's operating budget to be voted on by town meeting has been reduced to one or two generic line items per department or function - Salaries and Total Expenses;

Whereas that budget lacks specifics to inform voters of the services carried out by department/function and the amount to be expended for each service;

Whereas the budget offered to voters lacks sufficient controls to assure that appropriations are expended on expected and necessary services;

Now, therefore, be it resolved:

- 1) That, in order to provide greater clarity to voters and a stronger fiscal management process, the operating budget to be voted on by town meeting shall contain the following: a) more detailed, numbered subsidiary line item categories of expenditure; and b) a head count budget presented by department or function providing staffing levels on a full-time equivalent basis;
- 2) That the Other Post-Employment Benefits ("OPEB") Trust Fund shall be funded only through specific Town Meeting appropriation made solely for that purpose;

- 3) That the operating budget shall be presented in a format that compares the proposed budget to: a) actual expenditures and staffing levels for at least the prior two fiscal years; and b) the appropriations and staffing levels for the current fiscal year.

And that Town Meeting pass any vote or take any action relative thereto.

PETITIONERS' COMMENTS: Beginning with April 2006 Town Meeting, the format of the operating budget presented to voters changed significantly from past practice. Rather than appropriating funds for clearly defined purposes, funds for each of the town's departments are now appropriated to just two categories – "Total Personnel Services" and "Total Expenses," leaving voters with insufficient detail to understand how the appropriations will be expended.

In order to make informed decisions, taxpayers need to understand the key services being delivered by each department and the associated cost of the service. We also need information on costs to operate facilities, expenditures for outside services, and critical obligations such as health care for current employees and retirees. And, to better manage for the Town's needs, funds should be appropriated for delivery of the specific service/obligation.

This resolution asks the Finance Committee to restore more line item specificity in the voted budget to provide increased fiscal accountability.

FINANCE COMMITTEE COMMENTS: The Finance Committee shall provide comments and recommendation pertaining to this Article prior to Town Meeting.

QUANTUM OF VOTE: Majority.

For more information about this article, contact petitioner Anette Lewis at aslewis33@verizon.net.

ARTICLE 5: ADOPT BYLAW: FUNDING OPEB THROUGH AN INDIVIDUAL WARRANT ARTICLE

Sponsored by: Petitioners

To determine whether the Town will vote to amend Chapter 19, Finances of the Code of the Town of Wayland by adding the following new underlined paragraph to Section 19-5 and providing paragraph lettering as follows (Note: Only the underlined letters and words are being amended):

§ 19-5. Warrant articles involving appropriations or expenditures.

- A. Any person presenting an article for insertion in the warrant for any Town meeting which involves the appropriation or expenditure of money by the Town shall also submit an estimate of the expected amount of money to be expended or appropriated to carry out the purpose of the article. Said estimate, together with the name of the person or persons submitting such article, shall be transmitted by the Board of Selectmen to the Finance Committee.
- B. In order for funds to be made available by the Town for contribution to the Other Postemployment Benefits Trust Fund ("OPEB Trust Fund"), such funds must be appropriated by town meeting pursuant to a specific town meeting warrant article other than the omnibus budget article.

PETITIONERS' COMMENTS: OPEB, or "other post-employment benefits," refers to the Town's retirement benefits liability, other than pensions. Retiree health insurance historically has been funded on a pay-as-you-go basis, that is, year by year. Until recently, the Town had not funded the future obligation created by health insurance benefits promised to current employees when they become retirees.

According to the Finance Committee, **"The State has not mandated that communities begin payments toward OPEB; however, as part of our financial management plan, the Town has been making payments of approximately \$1 million per year since FY2009."**

Nevertheless, through some inexplicable process, OPEB funds have grown to nearly \$10 million at taxpayer expense.

OPEB is a significant component of our tax rate. It's important that taxpayers understand OPEB and its impact on the budget. This liability is best addressed as a separate warrant article to ensure that the funding proposal is clearly explained and transparent.

FINANCE COMMITTEE COMMENTS: Background: The purpose of the OPEB trust is to fund current and future post-employment non-pension benefits, primarily healthcare. GASB Statement 45, *Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions*, requires governments to account for OPEB on an accrual basis. Wayland adopted GASB Statement 45 in Fiscal Year 2009.

The State has not mandated that communities with OPEB trusts make a contribution each year. Nevertheless, the Town thought it prudent to fund the OPEB trust and started annual payments in FY2008. This proposed appropriation has been reported to Town Meeting within the "Insurance 32B" line item within the Unclassified category. The Insurance 32B line item includes current health care and other current benefit expenses as well as the OPEB contribution.

Comments: If Article 5 is approved, the bylaws of the Town of Wayland would be amended to require the Town to consider and vote two separate articles at each Annual Town Meeting to approve the annual town budget. One budget article would cover only contributions to the OPEB Trust Fund and the other budget article would cover the rest of the budget. If Article 5 is not approved, the bylaws of the Town of Wayland will not be amended and the existing process of having one budget article to consider and vote at Annual Town Meeting will continue.

Article 5 is not a discussion of the merits of funding OPEB. Article 5 is solely focused on changing the Town's bylaws. The question to be debated and discussed at Special Town Meeting is whether or not the Town's bylaws should be changed to require a separate warrant article to discuss and vote one specific line in the annual operating budget.

Given the magnitude and importance of OPEB to the Town, the Finance Committee commits to present the proposed OPEB contribution (if any) as a separate line item in the budget article at Annual Town Meeting, even if this article fails or is passed over at Special Town Meeting.

ARGUMENTS IN FAVOR: Please see the petitioners' comments above.

ARGUMENTS OPPOSED: The last two Town Meetings have had substantial discussion on the Town's finances generally and on certain line items, including OPEB, specifically. Last Town Meeting voted to remove the proposed OPEB contribution from the budget. If the purpose of Article 5

is to “ensure that the funding proposal is clearly explained and transparent,” it is clear from the last two Town Meetings that a separate warrant article is not needed or necessary. Petitioners’ desire for more transparency is being addressed at multiple points in the budget process, including a commitment by the Finance Committee to work with petitioners and others to improve the process for the benefit of the Town. The objective of Article 5 can be accomplished within the existing budget process.

A second perspective is that the Town already has line item veto within the existing Town Meeting process. The single budget article is presented to Town Meeting by the Moderator line by line, with debate and amendments proposed and considered at each step of the process. Amending the Town’s bylaws does not change or improve that process; it merely makes more work for everyone. On the one hand, Petitioners ask the Town to be more efficient in its operations, but Article 5, on the other hand, creates structural inefficiencies in the process. Approving Article 5 is counterproductive to improving the efficiency of Town operations and is inconsistent with the stated objectives of Petitioners.

RECOMMENDATION: The Finance Committee recommends against approval. Vote: 0-4.

QUANTUM OF VOTE: Majority - see Massachusetts General Laws Chapter 40, Section 21.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with federal and Massachusetts law.

For more information about this article, contact petitioner Donna Bouchard at donnabouchard@lfusa.com.

ARTICLE 6: AMEND ZONING BYLAW ARTICLE 18: CONSERVATION CLUSTER DEVELOPMENT DISTRICT TO PERMIT DETACHED UNITS

Sponsored by: Planning Board

To determine whether the town will vote to amend Chapter 198 of the Zoning Code of the Town of Wayland by making the following deletions (indicated in strikethrough lettering) and insertions (indicated in underlined lettering) indicted in the following paragraph.

ARTICLE 1

ARTICLE 18 Conservation Cluster Development District [Amended 5-2-1983 ATM by Art. 12]

§ 198-1803. Public hearing; general requirements.

1803.1. After notice and public hearing in accordance with law, which public hearing shall be held within 65 days after the filing of the application with the Planning Board, the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission and the Board of Health, grant such a special permit, provided that:

- 1803.1.1. It finds that the proposed plan is in harmony with the purposes and intent of this Zoning Bylaw and this article.
- 1803.1.2. The area of the tract of land is not less than 5 acres. [Amended 5-5-2005 ATM by Art. 27]
- 1803.1.3. The number of lots on which there is to be a single dwelling unit does not exceed the larger of the following: [Amended 5-5-2005 ATM by Art. 29]

- 1803.1.3.1. The number of building lots that could be created in the tract shown on such plan without a special permit hereunder, plus one lot for each 10 of such building lots that could otherwise be created; or
- 1803.1.3.2. The number of building lots obtained by dividing 90% of the total area of the tract, exclusive of land situated within the floodplain or designated as wetlands by the Conservation Commission, by the minimum lot size permitted in the district within which the tract is located, plus one lot for each 10 lots so arrived at from such division.
- 1803.1.3.3. Within the Residence Districts, the Planning Board ~~shall~~ may permit by special permit structures to be constructed containing more than one dwelling unit, but not more than four dwelling units per structure. The number of dwelling units for attached buildings shall not exceed the total that is allowed under § 198-1805.1.1.
- 1803.1.3.4. Notwithstanding any provision of this zoning bylaw to the contrary, the Planning Board may permit by Special Permit attached and detached dwelling units to be erected on single lot(s). Such approval may modify required setbacks.
- 1803.1.4. Each of the building lots shown on the plan has adequate frontage, but no less than 50 feet, on a public or private way.
- 1803.1.5. Each of the building lots shown on the plan is of a size and shape as shall provide a building site that shall be in harmony with the natural terrain and other features of the tract, but no such lot shall have an area of less than 20,000 square feet as shown on the plan.
- 1803.1.6. The front, side and rear yards of each lot shall be shown on the plan by dashed lines indicating the area within which a building may be built, provided that all dwellings and accessory buildings shall be set back at least 15 feet from the perimeter of the tract and 15 feet from any open land.
- 1803.1.7. For Conservation Cluster Developments consisting of single-family detached dwellings. At least 35% of the land area of the tract, exclusive of land set aside for road area, shall be open land, and the open land shall include all land not dedicated to roads or building lots. For Conservation Cluster Developments consisting of attached single-family dwellings, at least 50% of the land area of the tract, exclusive of land set aside for road area, shall be open land, and the open land shall include all land not dedicated to roads or building lots. For the purpose of this article, "open land" is defined as a parcel or parcels of land, or an area of water, or a combination of land and water, not including roads or ways, whether public or private, to be used for open space, conservation, agriculture, outdoor recreation, park purposes or some combination of the foregoing. [Amended 5-5-2005 ATM by Art. 29]
- 1803.1.8. Conveyance of open land.
 - 1803.1.8.1. Open land shall be conveyed either:

- 1803.1.8.1.1. To the Town, which shall accept it for park or open space use;
 - 1803.1.8.1.2. To the Sudbury Valley Trustees, Inc., and its successors or to another nonprofit conservation organization approved by the Planning Board, the principal purpose of which is the conservation of open space; or
 - 1803.1.8.1.3. To a corporation, trust or association owned, or to be owned, by the owners of lots or residential units within the tract, provided that if such a corporation, trust or association holds title, ownership thereof shall pass with conveyance of the lots or residential units.
- 1803.1.8.2. If ownership is in an entity other than the Town, there shall be sufficient rights in the Town to provide that such land shall be kept in an open or natural state, and provision shall be made so that the Town can enforce any other restrictions or easements imposed upon the open land by the Planning Board as conditions of its special permit grant.
- 1803.1.9. Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit the open land to be used for subsurface waste disposal where the Planning Board finds that such use will not be detrimental to the character or quality of the open land.
- 1803.1.10. If the land shown on the plan includes land in two residence zones, all of the land shall, for all purposes of this article, be considered as lying entirely within the zone having the largest area and frontage requirements, except that if 75% or more of the total area shown as building lots lies within one residence zone, all of the land shall be considered as lying within that zone. [Amended 5-5-2005 ATM by Art. 29 Editor's Note: This article also repealed former § 198-1803.1.10, which required that all dwelling units be in detached buildings and that there be only one dwelling unit in a building, and redesignated former § 198-1803.1.11 and § 198-1803.1.12 as § 198-1803.1.10 and 198-1803.1.11, respectively.]
- 1803.1.11. No lot shown on the plan for which a permit is granted under this article may be further subdivided, and a notation to this effect shall be shown on the plan. [Amended 5-5-2005 ATM by Art. 29]

FINANCE COMMITTEE COMMENTS: The financial impact to the Town of this proposed change is minimal. The Planning Board hearing will be held on September 24, 2012, at 7:30 pm at the Wayland Town Building.

RECOMMENDATION: The Finance Committee voted to take no position on this article. Vote: 4-0.

QUANTUM OF VOTE: Two-thirds – see Massachusetts General Laws Chapter 40A, Section 5.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with federal and Massachusetts law.

For more information about this article, contact Sarkis Sarkisian, Town Planner, at (508) 358-3778, or email ssarkisian@wayland.ma.us.

**ARTICLE 7: RESOLUTION SEEKING FEDERAL AND STATE LEGISLATION TO
END UNFUNDED MANDATES**

Sponsored by: Petitioners

To determine whether the Town will vote to request that their Federal and State Representatives and Senators file legislation that will eliminate all unfunded State & Federal mandates. Further, the Town Meeting instructs the Moderator to notify all Massachusetts communities of Wayland's action.

PETITIONERS' COMMENTS: FRAMINGHAM ACTED: *STEVEN HAKAR* is very proud to have been the one who filed for both Special Town meetings, one on April 26, 2007 that voted 130 to 3 and one on May 5, 2011 that voted 113 to 13, to start the effort to encourage all communities to have the State & Federal Governments fund the unfunded mandates.

WRENTHAM: The Wrentham Board of Selectmen voted to support Framingham and wrote letters to Senators and Representatives in support.

MILLVILLE, WILMINGTON & ACUSHNET ACTED: The Towns of Wrentham, Millville, Wilmington & Acushnet acted to support the effort begun by the Town of Framingham Town Meeting to obtain legislation to eliminate unfunded federal and state mandates there are backup material from these communities.

**A SPECIAL THANKS TO U. S. SENATOR JOHN KERRY AND HIS POLICY ADVISOR
KATHY AHEARN.**

IT'S TIME TO ACT to protect our drinking water.

FINANCE COMMITTEE COMMENTS: There is no significant financial impact from passage of this resolution now. Further vetting and improved public education is required.

RECOMMENDATION: The Finance Committee voted to take no position on this article. Vote: 4-0.

QUANTUM OF VOTE: Majority.

For more information about this article, contact petitioner Steven Haker at hakar4@hotmail.com.

APPENDIX A**THE MODERATOR'S RULES AND REGULATIONS
GOVERNING WAYLAND'S TOWN MEETINGS**

The following information may help you to participate fully in Wayland's town meetings, which have been held each year since 1639:

I. THE WARRANT

This booklet, which includes the Warrant for Wayland's Town Meeting, was compiled by the Selectmen and served upon all residents by mail and by posting in accordance with applicable provisions of the Code of the Town of Wayland. It contains the agenda of the subjects to be acted upon (articles), including the omnibus budget proposed (if this is an annual meeting), the report and recommendations of the Finance Committee upon each article, and additional information concerning the finances and administration of the Town to help us formulate our votes.

No action of this Town Meeting will be valid unless it shall have been taken under an article set forth in the Warrant.

Each article will be considered in the order in which it appears on the Warrant, unless the meeting shall have voted to do otherwise by a TWO-THIRDS vote.

II. THE VOTERS

A. All residents of Wayland, who have been duly registered as voters, are urged to attend, participate, debate and vote at all annual and special town meetings subject to laws of the Commonwealth of Massachusetts, the Bylaws of the Town and these rules and regulations.

B. The Town Administrator, Assistant Town Administrator, Police Chief, Fire Chief, Finance Director, Director of Public Works, and Superintendent of Schools, shall have the right to attend and sit on the floor of town meetings, but they shall not be considered in determining the presence of a quorum unless they are registered voters of the Town.

C. All other persons, including members of the press, may attend and observe Wayland's town meetings so long as they remain seated in the special section reserved for non-residents, unless the Moderator shall have authorized them to sit among the registered voters. And see paragraph IV.B.3 below.

D. A registered voter may bring his or her child(ren) to sit among the voters so long as the child(ren) sit(s) quietly beside his or her parent at all times.

III. THE MODERATOR

The Moderator is elected by ballot for a three year term at the annual election of town officers to preside at all Town meetings during his or her term of office and is authorized by state law to regulate the proceedings, decide all questions of order and make public declaration of all votes, subject to the Bylaws that Wayland has enacted to regulate the proceedings of town meetings. All rulings of the Moderator are final.

IV. THE MEETING**A. The Call to Order**

1. The Moderator will call each session of town meeting to order at 7:30 p.m., or as soon thereafter as the Town Clerk has determined that a quorum of one hundred (100) registered voters has

been checked into the hall.

2. The Moderator will announce the number of each article about to be considered and invite a motion thereunder; the Moderator will omit the reading of the articles, unless a MAJORITY of the meeting shall vote otherwise.

B. To Address the Town Meeting

1. No person may address a town meeting until and unless he or she shall have been recognized by the Moderator. All persons shall, at the request of the Moderator, be silent.

2. All persons, who wish to be recognized, shall approach one of the three microphones placed at the front of the room, which most closely reflects the purpose for which they seek recognition:

- a. The Procedural Microphone (in the middle) will be available to those who have been recognized by the Moderator and wish to offer:
 - 1) The main motion under the article being considered and a presentation in support thereof;
 - 2) The principal presentation in opposition to the main motion. See paragraph IV.C.2.a, below;
 - 3) An amendment to a main motion;
 - 4) A question seeking information concerning the motion or other matter then under discussion, or guidance from the Moderator as to procedure, including a point of order;
 - 5) An answer to a question seeking information; and
 - 6) A point of order or procedural motion, such as:
 - a) a motion to terminate debate;
 - b) a motion challenging the Moderator's declaration of a vote;
 - c) a motion questioning the presence of a quorum; and
 - d) a motion to adjourn.
- b. The "Pro" Microphone will be available to those persons recognized by the Moderator who wish to speak in support of a motion on the floor.
- c. The "Con" Microphone will be available to those persons recognized by the Moderator who wish to speak in opposition to a motion on the floor.

The Moderator will normally recognize those persons, who are standing behind or seated near each microphone in a single file, in the order of their entry into that file, alternating between the Pro and the Con mikes; but reserves the right to recognize any person at any time, including a person who has not approached a mike, a person who is handicapped or a person who has risen to a point of order. Any person whose remarks are not consistent with the purpose of the microphone that he has been permitted to use, shall yield the floor upon request of the Moderator.

3. The Town Administrator, Assistant Town Administrator, Police Chief, Fire Chief, Finance Director, Director of Public Works and Superintendent of Schools have the right to answer questions, but they do not have the right to vote unless they are registered voters of the Town.

4. If a person, who has not registered to vote, seeks permission to address the meeting, the Moderator will ask whether there are any objections. If there are any, he will immediately call for a voice vote. If the majority shall vote to hear the non-resident, the Moderator will give him/her the floor.

C. The Debate

1. When you have been recognized by the Moderator, address the Chair as follows: "Mr. Moderator, I am (Name) of (Street Address)." Then proceed as follows:

- a. "I move that . . .";
- b. "May I ask you . . ."; or
"May I ask through you (then state the question which you want a board, official, or previous speaker to answer);
- c. "I rise to a point of order"; or

2. Once you have been recognized, you may offer any motion, amendment, argument, comment, suggestion or question relevant to the article then under consideration, unless the Moderator shall have authorized debate or invited comments upon subjects not listed in the Warrant; but

a. Any person who wishes to offer the principal presentation in support of the main motion under an article, must so notify the Moderator and complete the same within ten (10) minutes, or less, and yield the floor. A light will warn you to conclude your remarks and yield the floor during the final minute.

b. Any person wishing to offer a presentation in opposition to the main motion under an article must so notify the Moderator and complete the same within the time used by the proponent, or within three (3) minutes, whichever is longer, and yield the floor. The same one (1) minute warning light will warn you to conclude your remarks.

c. All other persons who wish to address the Town Meeting shall, when recognized, complete their remarks in three (3) minutes, or less, and yield the floor. The same one (1) minute warning light will be turned on when you have used up the first two (2) minutes.

d. You may be interrupted only by a question of privilege, a point of order, a request that you speak more distinctly or by the Moderator.

e. When you have completed your motion, question, or remarks, you relinquish your claim to the floor; and you must yield the floor upon request of the Moderator.

3. Abbreviated Presentation Procedure. With notice to and leave of the Moderator any person making a main motion under an article may present that motion under the Abbreviated Presentation Procedure. Under this procedure:

a. The motion must be presented in or be substantially consistent with the words of the Article as printed in the Warrant, and without making further presentation in support of that article. The Moderator may allow minor or editorial variation from the words of the Article as printed in the Warrant.

- b. The Moderator will ask if anyone wishes to speak in opposition to the motion or if anyone has a question regarding the motion.
- c. Should there be a question, the questioner will be permitted to state his or her question and the presenter of the motion will be permitted to answer that question.
- d. Should any individual state that he or she is opposed to the motion, the presentation and debate will continue in the normal course as set forth in these Rules.

4. If you have a question concerning the legality or propriety of the proceedings, you may approach the Procedural Microphone and address the Moderator without waiting to be recognized, saying: "Mr. Moderator, I rise to a point of order." When you have been recognized, you must state the reason for your point, which may include that a motion is beyond the scope of the article under consideration, that the person who has the floor is not addressing the merits of the motion or that a quorum is not present. The Moderator will then rule on the point and his ruling is final.

5. If you wish to offer a motion within the scope of the article under consideration, follow the procedure outlined under paragraph IV. B. and C., above.

- a. If your motion is the main motion, you must then declare that it is identical word-for-word with the substantive portion of the article printed in the warrant which is then under consideration, or describe all of the substantive differences in wording between the article and the motion; otherwise the Moderator will permit no debate or action upon your motion.
- b. If you plan to offer a main motion that contains more than twenty-five (25) words and differs significantly from the article printed in the Warrant, you must first print and distribute a copy thereof to those attending the session of town meeting at which said motion is presented.
- c. No motion or amendment of a motion that exceeds ten (10) words in length will be accepted, unless it shall have been offered to the Moderator in writing.
- d. A motion that is not identical word-for-word with the substantive portion of the article printed in the warrant then under consideration will not be accepted, unless the Moderator shall determine that said motion is within the scope of the article; i.e., that it does not change the substantial character of the proposal described in that article or would not further restrict, if passed, the liberties of the residents of Wayland than the proposal set forth in the article.
- e. The Moderator will accept no motion proposing a layout, taking, purchase, sale, lease or rezoning of land, unless the article under which the motion is offered contains a running description of the land in question, a description by metes and bounds or a reference to a plan suitable for recording that is available for public inspection at the office of the Town Clerk, the Town Surveyor, the Planning Board or another place to which the public has access during normal business hours.
- f. The Moderator will accept no motion to appropriate and/or expend a sum of money, which exceeds the estimated cost set forth in the article then under consideration by fifteen (15%) percent, except for motions under the omnibus budget article and motions under a supplementary budget article that contemplates the appropriation of additional money for the current fiscal year to augment moneys previously appropriated and proposes to fund such appropriations by transfer from unappropriated funds, funds appropriated for another purpose or from funds received by the Town as grants or gifts.
- g. The Moderator may rule on your motion, even if no one has risen to challenge that motion by way of a point of order.

6. You will not be recognized to speak on the merits of a motion if you have already spoken three times on its merits, but you may be recognized to answer a question put by another or to

raise a procedural issue with respect to that motion.

7. Wayland's practice with respect to some common subsidiary motions is generally as follows:

- a. You may amend a motion by moving to add and/or delete words to and/or from the main motion or by substituting a new motion therefor; but the Moderator permits no more than two amendments to a main motion *at a time*. A motion to amend is debatable and requires only a MAJORITY vote, even though the main motion may require a TWO-THIRDS vote.
- b. You may move to refer a matter for further study, if your motion identifies the official or committee who shall conduct such study, how it shall report, when and to whom. In the event that you wish to establish a new committee for this purpose, the motion must specify the number of members who shall serve and who shall appoint them. A motion to refer is debatable and may be amended and requires a MAJORITY vote.
- c. You may move to advance or postpone consideration of an article listed in the Warrant. Such a motion is debatable, may be amended and requires a TWO-THIRDS vote.
- d. You may move to lay an article on the table ("table"). Such a motion is NOT debatable or amendable and requires a TWO-THIRDS vote. A motion to remove such article from the table is also NOT debatable or amendable and requires a TWO-THIRDS vote.
- e. You may ask the Meeting to take no action under an article by moving "that the article be passed over." Such a motion may be deemed a substitute for the main motion, is debatable, may not be amended, requires a MAJORITY vote and serves to dispose of the article under consideration.

8. Upon the expiration of sixty (60) minutes after the main motion under any article shall have been seconded, the Moderator will terminate debate thereon, unless the Town Meeting shall have voted to extend the time available for further debate. The time needed to count the vote(s) upon the motion(s) under the article will not be included in the sixty (60) minutes. The aforesaid sixty (60) minute limit does not apply to debate under the omnibus budget article.

9. Although the Moderator has absolute authority to regulate the proceedings at town meetings, debate under a motion can be terminated by a TWO-THIRDS vote of the Town Meeting. Therefore, if you believe that debate under a motion has gone on long enough, approach the Procedural Microphone, and, when you have been recognized, "move the previous question". If your motion receives a second, the Moderator will ask if anyone, who has not spoken to the motion under consideration, wishes to be recognized. If no one expresses such a wish by raising his or her hand, the Moderator will immediately terminate debate and take a vote upon your motion without permitting any amendment or debate; but if one or more persons, who have not spoken to said motion, raise their hand, the Moderator may, but need not, defer the termination of debate for a reasonable time to permit both sides of the issue to be heard. If a motion to terminate debate carries by a TWO-THIRDS vote, the Moderator will put the previous motion under consideration to a vote without further debate; but if said motion does not carry by a TWO-THIRDS vote, the Moderator will permit debate to continue.

10. If an article of the Warrant has once been acted upon and disposed of, a motion to return to the article may be made at any time if the person offering the motion discloses significant new information to the Meeting concerning said article, which had not been disclosed or made available to the Meeting when the motion under that article was debated; provided, however, that debate and action on said motion shall be deferred until all other articles shall have been disposed of and shall occur in the numerical order of each such article. In any event, a motion to reconsider is debatable, may not be amended and requires a TWO-THIRDS vote, unless it shall have been made before the article has been disposed of; in which event it requires a vote equal to the quantum of the vote that was required to pass the motion under the article to be

reconsidered. If such motion carries, the Moderator will ask whether there is a new motion under the article to be reconsidered.

D. The Vote

Before calling for a vote, the Moderator will usually repeat the motion under consideration (as the same may have been amended), unless it is substantially identical to the article:

1. In the event that electronic handset voting equipment shall have been made available for use by voters at any Annual or Special Town Meeting, all votes shall be taken by secret ballot using such equipment, unless the Moderator shall decide otherwise for reasons he/she shall state publicly. When calling for an electronic vote, the Moderator will ask voters to press the number “1” if they wish to register an “aye” or the number “2” if they wish to vote “no”. In the event that a voter wishes to abstain, he or she may (but need not) press “3”. Voters may change their mind as many times as they wish, but the last vote recorded upon the expiration of thirty seconds will count. Any voter who believes that his or her key pad is not functioning properly or failing to record his or her vote accurately, should raise his or her hand, or proceed to the designated help desk. If a hand is raised and seen by the Moderator, the Moderator will dispatch two tellers to examine the handset for any defect. If it is determined, either by the dispatched Tellers or at the Help Desk, that the handset is defective, they will offer the voter a paper ballot and pen to record his or her vote and provide the voter with another handset for the next vote. Such paper vote shall be promptly relayed to the Moderator.

a. If a voter cannot use the electronic handset offered by the Checkers, he or she will be provided with a colored piece of paper or cardboard and directed to sit in a special section reserved for those who will not be using an electronic handset to vote. Whenever the Moderator shall call for a vote, tellers will provide a ballot to each voter in the special section(s), who has such a colored paper or cardboard, collect those ballots within thirty seconds and deliver them to the Moderator, who will add the total of the ballots to the vote received electronically and declare the vote on the motion before the meeting.

b. Each person receiving a handset must retain and use only that handset until turned in at the Help Desk, given to a Teller or turned in at the end of the session. No person may lend or give that handset to another person, nor may any person vote with a handset originally given to another.

Voters with handsets may retain them if they wish to leave the room for any reason, but they must hand their handset to an exit attendant if they plan to leave the building.

2. In the event that electronic voting is for any reason not to be employed, the Moderator will first ask all those in favor to say, “Aye”. He will then invite those opposed to say, “No”. If the Moderator is in doubt as to whether the motion has carried, he or she may call for another voice vote; or may ask those in favor to stand, before he asks those opposed to stand. Sometimes, the Moderator will reverse this procedure before declaring the vote.

3. If the Moderator is still in doubt, or if seven (7) or more voters shall immediately question a voice or an uncounted vote taken by non-electronic means, he will call for the tellers to help him take a standing counted vote – two tellers for each section of the hall so that they may check each other’s results. The Moderator will then repeat the motion and say, “All those in favor will rise and remain standing until counted.” When the count has been completed, the Moderator will ask those who are opposed to stand and be counted. As soon as each team of tellers has agreed upon the count in their section, they will be asked to report the number of voters they have counted from the Procedural Microphone. When all of the tellers have reported, the Moderator will declare the vote and his declaration of the vote is final, unless clear and convincing evidence shall have been submitted to the Moderator that fraud, errors by of one or more tellers or some other irregularity has infected the accuracy of the vote count just completed; in which event the Moderator

will repeat the standing counted vote procedure outlined above.

4. If a vote taken by electronic means is questioned by seven (7) or more voters, the Moderator will call for a Teller's Audit. All Tellers having previously identified electronic voting handsets will come forward and compare their vote to a print out showing the identification number of their electric voting handset and the vote recorded for that handset. If the correlation is less than fully accurate, the moderator shall discard the electronic vote and call for a standing counted non-electronic vote under the previously set out procedures.

5. In the event that the law requires a vote of TWO-THIRDS or more to carry a motion acted on by non-electronic means the Moderator will normally ask whether there is unanimous support for the motion; but if there is not such support, he will take a standing counted vote. If the Moderator shall have perceived that more than TWO-THIRDS of the voters voted in the affirmative the Moderator may by hand vote determine that the TWO-THIRDS majority was met.

6. If a TWO-THIRDS vote is required to carry a subsidiary or procedural motion, such as a motion to terminate debate ("move the previous question"), the Moderator need not take a count, even though the voice vote upon such motion was not unanimous, if the Moderator shall have perceived that more than TWO-THIRDS of the voters voted in the affirmative. The Moderator shall then declare that such motion has carried and the Clerk shall record such declaration together with a note that there was "a scattering of nos."

7. In the event that a majority shall have voted that the vote on a particular motion shall be by secret ballot, the Moderator will ask the Tellers to come forward and take their places at the ballot boxes that will be placed at the front of the Hall by the Town Clerk. The Moderator will then direct the attention of each section of voters to their respective ballot box. The voters will then rise and proceed row-by-row to their box, tear their ballots into two parts, deposit one half in the box, the other half in the discard box and return to their seat. In order to assure the security of all secret ballots:

- a. No one will be allowed to vote without a ballot.
- b. No one will be permitted to cast a ballot until he or she shall have discarded the other half of the ballot into the discard box in the custody of the Teller.
- c. No one will be permitted to leave the hall until after the meeting has adjourned, unless he or she shall have turned all of the ballots that have not actually been used during a vote to the Checkers at the door.

When all of the ballots shall have been cast, the Tellers will open the ballot boxes and count the ballots at the tables situated at the front of the Hall in front of the podium.

The Moderator will then ask for the consent of the meeting (a TWO-THIRDS vote is required) to proceed to consideration of another Article. When the Tellers have completed their count, they shall report their count to the Moderator, the Moderator will declare the vote upon disposition of the Article then under debate. The declaration of the Moderator is final.

The Moderator will then ask for the consent of the meeting to return to the Article (a TWO-THIRDS vote is required) under which the secret ballot has been taken and if there is no other business under that article, will declare that article disposed of.

E. Adjournment

1. If you wish to adjourn a session of the Town Meeting before all of the articles have been disposed of, you must specify the date and time when the Meeting shall resume. Such motion may be made at any time, is debatable, may be amended and requires a MAJORITY vote, provided, however,

that the Moderator will permit no such motion if it shall be offered after debate shall have been terminated upon a pending motion until the final declaration of the vote taken upon the motion then under consideration.

2. Each session of a Town Meeting shall be adjourned by the Moderator (a) at 10:30 p.m., or as soon thereafter as the Meeting has disposed of the article then under consideration or postponed action thereunder, or (b) voted to adjourn at a different time.

3. No motion to dissolve the Town Meeting (to adjourn *sine die*) is in order until every article shall have been duly considered, acted upon and declared as disposed of.

V. QUESTIONS

In the event that you have a question concerning the conduct of the meeting, you need further information to cast your vote, or the status of any motion being considered, you are invited to approach the Procedural Microphone and to address your question to the Moderator as soon as you have been recognized.

VI. MISCELLANEOUS RULES

Residents of the Town of Wayland may, with the prior permission of the Moderator, place and/or post documents intended and designed to inform and influence the action of voters at town meetings on the tables and wooden walls located behind and on either side of the tables occupied by the checkers at the entrance of the Field House and each other venue where town meetings are conducted, so long as said documents are germane to any of the articles set forth in the warrant.

The Selectmen, the Chief of Police and the Chief of the Fire Department and other town officers and employees may also be permitted by the Moderator to post and place documents pertaining to the safety of the public in the aforesaid locations.

Thank you for joining us to do the Town's business.

Dennis J. Berry, Moderator
September 1, 2012

★ ★ ★ ★ ★ ★ ★ ★

You are required to serve this Warrant by posting copies thereof, attested by you, at the Town Building, at the Public Library in Wayland Center, at the Cochituate Fire Station or the Cochituate Post Office, and at the Happy Hollow School, and by mailing or delivering a copy thereof addressed to each residence in the Town fourteen (14) days, at least, before the time appointed for the Special Town Meeting.

Hereof, fail not and deliver this Warrant with your return thereon to the Town Clerk on or before September 19th, 2012.

Given under our hands and seals this 19th day of September, 2012.

John Bladon, Chair
Steven J. Correia, Vice Chair
Edward J. Collins
Douglas J. Leard
Joseph F. Nolan

Selectmen of the Town of Wayland

Bill Steinberg, Chair
Thomas Greenaway, Vice Chair
David J. Gutschenritter
Cherry C. Karlson
Carol B. Martin
Sam H. Peper

Finance Committee



TOWN OF WAYLAND
SPECIAL TOWN MEETING
October 3, 2012
ERRATA SHEET

ARTICLE 2, "ADOPT BYLAW RE: UTILITY HERBICIDE APPLICATION," page 16, Middle of Page:

Deletions noted with ~~striketroughs~~; insertions noted by underline.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is ~~consistent~~ inconsistent with Massachusetts law in the following respects:

- (i) it regulates the methods and means of the application of pesticides. Municipal regulation of such methods and means is preempted by state law and state regulations.
- (ii) it impermissibly authorizes the Town's Board of Health to deny permission to apply pesticides. Pursuant to Massachusetts General Laws Chapter 132B, Section 10, the authority to issue certifications and licenses to use pesticides is vested exclusively in the Massachusetts Department of Food and Agriculture Pesticide Board.
- (iii) it provides for a \$5,000.00 fine as a penalty for violations which fine is in excess of the amount authorized by state law. Under Massachusetts General Law Chapter 40, Section 21, fines not exceeding three hundred dollars for each offense may be imposed for the violation of a bylaw adopted by a town. Additionally, it mandates that violators pay the Town's court costs and attorney's fees incurred to enforce the bylaw. Such payments cannot be required by a ~~municipal~~ municipal bylaw. However, a court has the discretion to award them.

In all other respects, the foregoing bylaw amendment is ~~inconsistent~~ consistent with federal and Massachusetts law.



TOWN OF WAYLAND
SPECIAL TOWN MEETING
October 3, 2012
FINANCE COMMITTEE REPORT

ARTICLE 4: RESOLUTION TO PROVIDE MORE FISCAL CONTROL THROUGH THE VOTED BUDGET

Sponsored by: Petitioners

FINANCE COMMITTEE COMMENTS: This Article is presented at a time when many citizens are requesting more detailed information regarding the Town's operating budget in order to be more fully informed and to obtain greater controls over the Town's operating expenses. In response to this sentiment, the Finance Committee has provided increased information within the Annual Town Meeting Warrant and has significantly increased the amount of financial information available to residents on the Town's website, including access to reports, with five year's worth of history, memorandum regarding frequently asked questions and requests for more detailed reports from Town departments regarding their budgets. This article would pertain to the Town budgets and not the School budget, as in the Commonwealth of Massachusetts, by statute, schools are budgeted in a different manner than Town departments.

The Finance Committee has received some criticism in recent years that the Town Warrant has become too long, with too much information (Wayland's ATM Warrant is longer and more detailed than many of its neighbors). In spite of this concern, there is agreement among Finance Committee members that providing additional information within the budget, such as budgets for "significant" line-items within departmental budgets, would answer many of the questions of residents who do not take the time to review or do not have the access to the information on the Town website. In addition, there has been some discussion of providing detailed departmental budgets within the Warrant, as either an appendix or as part of the write-up for the budget portion of the warrant. This would likely add to an already lengthy document to be read by residents and this information is already available on line.

There are a couple of major concerns with detailed line item voting, as suggested in this resolution. The first is that in municipal government, there is not the flexibility to allow transfers between line items, as there might be in the budgets of private businesses; therefore voting a budget that is too tight can significantly impact the ability of departments to carry out their normal functions. The Finance Committee believes that there is a good middle ground alternative to the manner by which the line-item budget is currently voted and the proposal set forth by the petitioner.

Second, the Article proposes that specific information regarding salaries, including the number of employees, should be set forth within the portion of the budget to be voted upon at Town Meeting. Some might argue that this provides residents with more control over the staffing levels and salaries paid to Town employees. Others would argue that such discussions need to take place within departmental meetings, that are open to the public, and that voting upon the number of employees and the salaries is unfair to employees and could be in violation of their rights and their employment contracts.

Given the short time-period for preparation of the STM Warrant, it was not possible to fully vet these possibilities, and the Finance Committee will work with residents regarding the budget to create a revised budget format that might achieve the desires for greater resident control with the needs of departments to be able to reasonably function and one that will protect the employees of the Town.

ARGUMENTS IN FAVOR: See comments by the petitioner in the Special Town Meeting Warrant. The Finance Committee concurs that some addition to the number of line items to be voted upon by residents, including a separate line item for Other Post-Employment Benefits (OPEB) would be an improvement to the current budget process.

ARGUMENTS OPPOSED: The **two** principal arguments opposed to this Article are:

- 1) A line-item budget that is too detailed will create operating problems for departments that may have minor overruns in smaller line items, and therefore might be required to constantly petition the Finance Committee for fund transfers, or to return to Town Meeting, in order to operate in a manner that is efficient and provides the services desired by residents. This might either require budgeting a significant account for future transfers by the Finance Committee, or it might require incurring the cost and time of multiple Town Meetings. Finally, if departmental budgets are too tight, or if departments fund some extra monies to avoid shortfalls, there is the possibility that a significant amount of excess funds may be returned to free cash, at a time when there is a focus on trying to provide better controls over the amounts turned back to departments, which are a major reason for the growth of free cash over the past few years; and
- 2) Allowing residents to vote on the number of employees within departments and/or the salaries paid to such individual employees could have multiple detrimental impacts upon the Town's operations, including: i) votes to modify the number employees of or the amount of employee compensation could be in conflict with existing employment contracts; ii) discussing employment issues of particular employees in a public forum may be in conflict with employment laws; iii) residents would be making decisions about staffing for departments without having the benefit of the knowledge that went into these decisions, in multiple meetings over many weeks or months of consideration; and iv) public discussion about Town employees could have a significantly deleterious impact upon employee morale across Town departments.

RECOMMENDATION: The Finance Committee is in accord with the spirit of this resolution and will be working with residents to provide a budget that incorporates more detail for fiscal year 2014 than the budgets provided in recent years. This process will be the basis for an ongoing evaluation of the budget presentation in future years.

QUANTUM OF VOTE: The Finance Committee voted in favor of this resolution, per the recommendation above, by a vote of 5-0.



Sarkis Sarkisian
Town Planner

TOWN OF WAYLAND PLANNING DEPARTMENT

Town Building
41 Cochituate Road
Wayland MA 01778
Telephone (508) 358-3615
FAX (508) 358-4036

Planning Board Report Special Town Meeting October 3, 2012

Pursuant to Massachusetts General Laws Chapter 40A, Section 5, the Planning Board held a public hearing on September 24, 2012, on proposed amendments to the Town's Zoning bylaws for the Special Town Meeting on Wednesday, October 3, 2012.

Article 1: ADOPT BYLAW RE: CLEARING, GRADING AND PROTECTION OF SPECIMEN TREES

The Planning Board is sensitive to the destruction that took place in the Wayland neighborhoods affected by the NSTAR tree clearing, yet this is a complicated issue and the proposed bylaw may not be enforceable. The law provides public utilities the rights to remove or trim trees if they interfere with the necessary and reasonable operation of their services. NSTAR holds easements for its rights of way and is required by federal regulations to have a vegetation management plan to prevent power outages along transmission lines.

The Planning Board recommends that the bylaw be referred to the Planning Board for further review and study.

The Planning Board recommends that a committee be formed to include members of the Planning Board, Tree Warden, Board of Public Works, Conservation Commission, Building Commissioner and the Board of Health to review the proposed language and determine whether a bylaw is the right step for the town.

Planning Board voted against the bylaw adoption: 5-0.

The following version of Article 2 is the result of discussions between petitioners and Town Counsel. It is consistent with state and federal law. Petitioners intend to offer this version as the main motion at Special Town Meeting.

As such, amendments, if necessary or desired, will be made against the “clean version” that appears on page 6 of this handout. The red-lined version which follows is provided to allow voters to compare the revised article against the version contained in the warrant.

I move that the Town amend the Code of the Town of Wayland by adding thereto the following new chapter:

Chapter 118. HERBICIDE APPLICATION

By Law of the Town of Wayland Concerning Utility Herbicide Application

§118-1. ~~Article 1.~~ Purpose

It is the purpose of this by-law to establish the procedures by which the Board of Health may determine whether a proposed application of a pesticide, plant regulator, or herbicide by a utility upon or within its rights of way within Wayland is to be conducted in accordance with applicable state and federal requirements, for the purpose of protecting the health, environment and safety of the citizens of the Town of Wayland and the purity of its drinking water supply.

§118-2. ~~Article 2.~~ Prohibited Distribution

No person shall distribute, apply, handle, dispose of, discard or store any pesticide, as defined in ~~Massachusetts General Laws: Chapter. 132B, Section § 2~~ , ~~(to include~~ ing plant regulators), or herbicide, as defined and described in 333 CMR § § 11.02 and 11.04, upon any utility right- of- way, unless and until it has received an notice~~order~~ of determination~~approval~~ from the Wayland Board of Health, pursuant to the procedures set forth~~outlined~~ below.

§118-3. ~~Article 3.~~ Hearing Procedure

Upon the receipt by the Chair of the Board of Selectmen and the Conservation Commission of notifications, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of a pesticide, plant regulator, or herbicide on any right- of- way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of the receipt of such notice by the Chair of the Board of Selectmen or within 21 days before the date indicated by the utility company for beginning the application of such pesticide, plant regulator, or herbicide, whichever is later, a hearing at which the utility shall appear and present evidence that it has complied and will comply with applicable state and federal law pertaining applicable to the

application of pesticides, plant regulators, or herbicides, including but not limited to providing the following to the Board of Health at the time of such notification to the Chair of the Board of Selectmen:

a. Submission of a plan at a scale of 1" = 40' of the project site showing delineation of all bodies of water, including wetlands, vernal pools, streams, ponds, public wells, the 100-year floodplain, the capture zones of Wayland's wells (as defined and described in the Wellhead Protection Plan **dated June, 2011, Prepared by the Wayland Wellhead Protection Committee, et al, a copy of which plan is on file in the Office of the Town Clerk,** ~~*~~), and depiction of the boundaries of each and all located sensitive areas (as that term is defined and described in the **Massachusetts Department of Food and Agriculture Pesticide Board (the "Pesticide Board")** regulations, 333 CMR 11.02, 11.04) in the areas where such pesticides, plant regulators, or herbicides are proposed to be applied and within the 100 feet of the boundaries of such areas.

***Wellhead Protection Plan, June 2011, Prepared by the Wellhead Protection Committee, et al. (URL: <http://www.waylandwells.com/>).**

b. Written identification of all persons who will be applying any pesticide, plant regulator, or herbicide, and information demonstrating that each such person is properly certified and/or licensed to apply such pesticide, plant regulator, or herbicide;

c. Written identification of any pesticide, plant regulator, or herbicide ~~which are intended~~ to be used, and a **descriptionn outline** of the exact location where each is expected to be applied;

d. Written demonstration that all ~~proposed~~ pesticide, plant regulator, or herbicide use is in accordance with the **approved** Vegetation Management Plans and Yearly Operational Plans **approved by the Massachusetts Department of Agricultural Resources.**

e. Written plans or procedures to assure that pesticide, plant regulator, or herbicide concentrates shall not be handled, mixed or loaded within 100 feet of a sensitive area ~~or those issued by any analogous body if the Pesticide Board no longer has jurisdiction~~;

f. Written documentation of efforts to locate all sensitive areas ~~as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction~~ within the locations ~~areas~~ where pesticides, plant regulators, or herbicides are to be applied;

g. Depiction of the boundaries of each and all located sensitive areas ~~as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction~~ on a plan of land of the area where pesticides, plant regulators, or herbicides are to be applied;

hg. Written description of steps to be taken to mark sensitive area boundaries ~~(as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction)~~

~~hi~~ in the field and/or, for any boundary which is believed to be readily identifiable, the basis for that belief.

~~hi~~. Written documentation that wetland boundaries have been delineated and that verification from the Wayland Conservation Commission has been sought by filing of one or more Requests for Determination of Applicability (as referenced in 310 CMR 10.00 et seq or such other regulations which may in the future augment or supplant those regulations); ~~and~~

~~ji~~. For each sensitive area, written description of application steps and ~~techniques~~ which will be taken within that sensitive area.

~~k. j.~~ Written documentation identifying vegetation greater than 12 feet in height, and written confirmation that foliar pesticide, plant regulator, or herbicide applications will not be made to any vegetation greater than 12 feet in height except for side trimming;

~~lk~~. Written confirmation that pesticide, plant regulator, or herbicide applications will not be made when wind may cause drift, and written description and documentation of the circumstances in which wind drift may occur.

~~ml~~. Written confirmation that no aerial application of pesticides, plant regulators, or herbicides will occur; and

~~n m.~~ Documentation which shows the consideration, if any, given to alternatives other than pesticide, plant regulator, or herbicide application which might achieve the goals sought by said pesticide, plant regulator, or herbicide application

The foregoing documentation and information shall be submitted to enable the Board of Health to determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Department of Food and Agriculture .

§118-4. Article 4. Determination by Board of Health

Upon the conclusion of the submission of evidence by the utility, and any evidence submitted by any resident of the Town of Wayland or other interested party, the introduction of which evidence shall be within the discretion of the Board of Health, the Board of Health shall determine whether the proposed application of pesticides, plant regulators, or herbicides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board or its subcommittees and whether the applicant is proposing to use particular pesticides, plant regulators, or herbicides only as permitted by law. If the Board of Health determines that the proposed application complies with all legal requirements imposed by state and federal law,

the Board of Health shall issue a ~~written # order~~ notice of determination to the utility company to that effect permitting the application to proceed. If the Board of Health determines that the proposed application does not comply with the product's labeling and all legal requirements imposed by state and federal law, the Board ~~it~~ shall issue written notice of determination to the utility company specifying an order denying permission to make the application, which order shall outline the deficiencies in the proposed application, which much be remedied before the application of any pesticide, plant regulator, or herbicide may proceed. A copy of such notice of determination of deficiencies shall be sent to the Massachusetts Department of Agricultural Resources.

§118-5. Article 5. Remediation of Deficiencies.

Upon issuance by the Board of Health of a notice of determination to the utility company specifying deficiencies in the proposed application an order denying permission to apply a proposed pesticide, plant regulator, or herbicide, the affected utility company may request a further hearing before the Board of Health at which it may present further evidence, either that has met the product's labeling specifications and the requirements of applicable state and federal law, or that it has remedied the deficiencies outlined by the Board of Health's notice order. Upon receipt of such a request, the Board of Health, shall, within 14 days of receipt of the request, schedule a hearing upon such request. At the conclusion of the ~~cat~~ second hearing, the Board of Health shall again determine whether the proposed application of pesticides, plant regulators, or herbicides in particular locations is would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides, plant regulators, or herbicides only as permitted by law. If the Board of Health determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue a written notice of determination to that effect, an order permitting the application to proceed. If the Board determines that the proposed application does not comply with the product's labeling specifications and all legal requirements imposed by state and federal law, the Board shall issue a ~~written notice to the utility company a~~ written notice to the utility company a ~~order denying permission to make the application, which order shall outline specifying~~ the deficiencies found by the Board of Health ~~which much be remedied.~~ A copy of such notice of determination of deficiencies shall be sent to the Massachusetts Department of Agricultural Resources.

No further hearings shall be held, but the affected utility may begin the process anew, by issuing a new notice of intent to utilize pesticides or plant regulators.

§118-6. Article 6. Enforcement and Penalties for Violationsy for Application without Order of Permission

§118-6.1. Enforcement. The Board of Health or its designated agent or agents shall be responsible for the enforcement of this chapter.

§118-6.2. Penalties. The penalty for each violation of this chapter shall be \$300.00. Each day that a violation continues shall constitute a separate offense. Fines for violations of this Chapter shall be recovered by indictment or on crimnial complaint before a district court, or by noncriminal disposition in accordance with Massachusetts General Laws Chpater 40, Section 21D.

§118-6.3. Other Penalties and Remedies. In addition to, or as an alternative to the

penalties in §118-6.2, the Town, acting through the Board of Health, may petition or request that the Commonwealth seek the penalties and remedies for violations of Massachusetts General Laws Chapter 132B set forth in Section 14 thereof. Nothing in this subsection shall prohibit the Town from seeking any other remedies available to it for violations of this Chapter or said Chapter 132B. .

~~An application of any pesticide, plant regulator, or herbicide without prior receipt of an order of permission from the Board of Health issued pursuant to this Bylaw shall be punishable by a fine in the amount of \$ 5,000.00. Each date upon which any pesticide, plant regulator, or herbicide is are applied without prior receipt of an order of permission from the Board of Health issued pursuant to this Bylaw shall constitute a separate application for purposes of this Bylaw. Each location separated by more than 500 feet upon which a pesticide, plant regulator, or herbicide is are applied shall constitute a separate application for purposes of this Bylaw. In addition, Town Counsel at the request of the Board of Health may seek injunctive relief seeking to stop such application until the utility has complied with this Bylaw. If the Court finds that the Bylaw has been violated, the utility shall also be liable to pay the court costs and attorneys' fee incurred by the Board of Health Town to enforce this Bylaw.~~

ARTICLE 2: ADOPT BYLAW RE: UTILITY HERBICIDE APPLICATION

I move that the Town amend the Code of the Town of Wayland by adding thereto the following new chapter:

Chapter 118. HERBICIDE APPLICATION

§118-1. Purpose

It is the purpose of this by-law to establish the procedures by which the Board of Health may determine whether a proposed application of a pesticide, plant regulator, or herbicide by a utility upon or within its rights of way within Wayland is to be conducted in accordance with applicable state and federal requirements, for the purpose of protecting the health, environment and safety of the citizens of the Town of Wayland and the purity of its drinking water supply.

§118-2. Prohibited Distribution

No person shall distribute, apply, handle, dispose of, discard or store any pesticide, as defined in Massachusetts General Laws Chapter. 132B, Section 2, including plant regulators, or herbicide, as defined and described in 333 CMR § § 11.02 and 11.04, upon any utility right- of- way, unless and until it has received an notice of determination from the Wayland Board of Health, pursuant to the procedures set forth below.

§118-3. Hearing Procedure

Upon the receipt by the Chair of the Board of Selectmen and the Conservation Commission of notifications, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of a pesticide, plant regulator, or herbicide on any right- of- way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of the receipt of such notice by the Chair of the Board of Selectmen or within 21 days before the date indicated by the utility company for beginning the application of such pesticide, plant regulator, or herbicide, whichever is later, a hearing at which the utility shall appear and present evidence that it has complied and will comply with applicable state and federal law pertaining applicable to the application of pesticides, plant regulators, or herbicides, including but not limited to providing the following to the Board of Health at the time of such notification to the Chair of the Board of Selectmen:

- a. Submission of a plan at a scale of 1" = 40' of the project site showing delineation of all bodies of water, including wetlands, vernal pools, streams, ponds, public wells, the 100-year floodplain, the capture zones of Wayland's wells (as defined and described in the Wellhead Protection Plan dated June, 2011, Prepared by the Wayland Wellhead Protection Committee, et al, a copy of which plan is on file in the Office of the Town Clerk, , and depiction of the boundaries of each and all located sensitive areas (as that term is defined and described in the Massachusetts Department of Food and Agriculture Pesticide Board (the "Pesticide Board") regulations, 333 CMR 11.02, 11.04) in the areas where such pesticides, plant regulators, or herbicides are proposed to be applied and within the 100 feet of the of the boundaries of such areas.
- b. Written identification of all persons who will be applying any pesticide, plant regulator, or herbicide, and information demonstrating that each such person is properly certified and/or licensed to apply such pesticide, plant regulator, or herbicide;

- c. Written identification of any pesticide, plant regulator, or herbicide to be used, and a description of the exact location where each is expected to be applied;
- d. Written demonstration that all proposed pesticide, plant regulator, or herbicide use is in accordance with the Vegetation Management Plans and Yearly Operational Plans approved by the Massachusetts Department of Agricultural Resources.
- e. Written plans or procedures to assure that pesticide, plant regulator, or herbicide concentrates shall not be handled, mixed or loaded within 100 feet of a sensitive area;
- f. Written documentation of efforts to locate all sensitive areas within the locations where pesticides, plant regulators, or herbicides are to be applied;
- g. Depiction of the boundaries of each and all located sensitive areas on a plan of land of the area where pesticides, plant regulators, or herbicides are to be applied;
- h. Written description of steps to be taken to mark sensitive area boundaries in the field and/or, for any boundary which is believed to be readily identifiable, the basis for that belief.
- i. Written documentation that wetland boundaries have been delineated and that verification from the Wayland Conservation Commission has been sought by filing of one or more Requests for Determination of Applicability (as referenced in 310 CMR 10.00 et seq or such other regulations which may in the future augment or supplant those regulations);
- j. For each sensitive area, written description of application steps and techniques which will be taken within that sensitive area.
- k. Written documentation identifying vegetation greater than 12 feet in height, and written confirmation that foliar pesticide, plant regulator, or herbicide applications will not be made to any vegetation greater than 12 feet in height except for side trimming;
- l. Written confirmation that pesticide, plant regulator, or herbicide applications will not be made when wind may cause drift, and written description and documentation of the circumstances in which wind drift may occur.
- m. Written confirmation that no aerial application of pesticides, plant regulators, or herbicides will occur; and
- n. Documentation which shows the consideration, if any, given to alternatives other than pesticide, plant regulator, or herbicide application which might achieve the goals sought by said pesticide, plant regulator, or herbicide application

§118-4. Determination by Board of Health

Upon the conclusion of the submission of evidence by the utility, and any evidence submitted by any resident of the Town of Wayland or other interested party, the introduction of which evidence shall be within the discretion of the Board of Health, the Board of Health shall determine whether the proposed application of pesticides, plant regulators, or herbicides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board or its subcommittees and whether the applicant is proposing to use particular pesticides,

plant regulators, or herbicides only as permitted by law. If the Board of Health determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board of Health shall issue a written notice of determination to the utility company to that effect. If the Board of Health determines that the proposed application does not comply with the product's labeling and all legal requirements imposed by state and federal law, the Board shall issue written notice of determination to the utility company specifying the deficiencies in the proposed application. A copy of such notice of determination of deficiencies shall be sent to the Massachusetts Department of Agricultural Resources.

§118-5. Remediation of Deficiencies.

Upon issuance by the Board of Health of a notice of determination to the utility company specifying deficiencies in the proposed application the affected utility company may request a further hearing before the Board of Health at which it may present further evidence, either that has met the product's labeling specifications and the requirements of applicable state and federal law, or that it has remedied the deficiencies outlined by the Board of Health's notice. Upon receipt of such a request, the Board of Health, shall, within 14 days of receipt of the request, schedule a hearing upon such request. At the conclusion of the second hearing, the Board of Health shall again determine whether the proposed application of pesticides, plant regulators, or herbicides in particular locations is consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides, plant regulators, or herbicides only as permitted by law. If the Board of Health determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue a written notice of determination to that effect. . If the Board determines that the proposed application does not comply with the product's labeling specifications and all legal requirements imposed by state and federal law, the Board shall issue a written notice to the utility company, specifying the deficiencies found by the Board of Health. A copy of such notice of determination of deficiencies shall be sent to the Massachusetts Department of Agricultural Resources. No further hearings shall be held, but the affected utility may begin the process anew, by issuing a new notice of intent to utilize pesticides or plant regulators.

§118-6. Enforcement and Penalties for Violations

§118-6.1. Enforcement. The Board of Health or its designated agent or agents shall be responsible for the enforcement of this chapter.

§118-6.2. Penalties. The penalty for each violation of this chapter shall be \$300.00. Each day that a violation continues shall constitute a separate offense. Fines for violations of this Chapter shall be recovered by indictment or on criminal complaint before a district court, or by noncriminal disposition in accordance with Massachusetts General Laws Chapter 40, Section 21D.

§118-6.3. Other Penalties and Remedies. In addition to, or as an alternative to the penalties in §118-6.2, the Town, acting through the Board of Health, may petition or request that the Commonwealth seek the penalties and remedies for violations of Massachusetts General Laws Chapter 132B set forth in Section 14 thereof. Nothing in this subsection shall prohibit the Town from seeking any other remedies available to it for violations of this Chapter or said Chapter 132B.



TOWN OF WAYLAND

41 COCHITUATE ROAD
WAYLAND, MASSACHUSETTS 01778

Julia Junghanns, R.S., C.H.O.
Director of Public Health
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September 27, 2012

Special Town Meeting - October 3, 2012

Board of Health Statements on Warrant Articles

In principle, the Board of Health supports any article that encourages utilities to demonstrate compliance with state regulations before the Town. The Wayland Board of Health recommends that a utility be required to present all information, as required by state regulations, to the Board no less than 60 days prior to the application of herbicides or pesticides.

The Board of Health does not support Warrant Article 3. This article as written would present an undue hardship on Health Department staff, a burden to residents of the town and an enforcement nightmare. Under this interpretation, the regulation would require the town to scrutinize not only how a corporate entity uses chemicals, but also homeowners on their own properties. To enforce this article would cost the town significant financial resources and Health Department staff time away from their routine responsibilities.



ARTICLES SUBMITTED FOR ADMISSION TO WARRANT FOR SPECIAL TOWN MEETING

October 3, 2012

The following articles have been received and will be discussed at the Finance Committee Article Hearing on Wednesday, September 5, 2012, at 7:15 p.m. The text of some articles may be revised prior to the printing of the Warrant; there may be additional changes within the original scope proposed by petitioners or town boards prior to the Special Town Meeting on October 3, 2012.

ARTICLE A: RESOLUTION SEEKING FEDERAL AND STATE LEGISLATION TO REQUIRE PUBLIC HEARING AND APPROVAL BY BOARD OF HEALTH FOR APPLICATION OF CHEMICALS

Sponsored by: Petitioners

To determine whether the Towns will vote to request that their Federal and State Representatives and Senators file legislation that will require anyone including the Utilities to: only place on theirs and/or anyone else's property chemicals approve by the Board of Health and/or the Towns Health Officer, but only after a public hearing and written approval from said authority to use such chemical. If any chemicals have been used in the past then the Utility or whoever placed said chemicals on any real estate property must clean up said site to the approval of the Board of Health and/or the Towns Health Officer.

ARTICLE B: RESOLUTION SEEKING FEDERAL AND STATE LEGISLATION TO END UNFUNDED MANDATES

Sponsored by: Petitioners

To determine whether the Town will vote to request that their Federal and State Representatives and Senators file legislation that will eliminate all unfunded State & Federal mandates. Further, the Town Meeting instructs the Moderator to notify all Massachusetts communities of Wayland's action.

ARTICLE C: AMEND TOWN OF WAYLAND ZONING BYLAWS

Sponsored by: Planning Board

To determine whether the town will vote to amend Chapter 198 of the Zoning Code of the Town of Wayland by making the following deletions (indicated in strikethrough lettering) and insertions (indicated in underlined lettering) indicated in the following paragraph.

ARTICLE 1

ARTICLE 18 Conservation Cluster Development District [Amended 5-2-1983 ATM by Art. 12]

§ 198-1801. Purpose; special permit required.

1801.1. For the purpose of promoting the more efficient use of land in harmony with its natural features; encouraging the preservation of open land for conservation, agriculture, open space and recreational use; preserving historical and archaeological resources; and protecting

existing or potential municipal water supplies, all in accordance with the general intent of this Zoning Bylaw to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town of Wayland, an owner or owners of a tract of land within a Single Residence District, or an authorized agent or agents of such owner or owners, may submit an application for a special permit exempting such land from the lot area and frontage, yard, setback and width of lot requirements of Article 7.

- 1801.2. The Planning Board is hereby designated as the special permit granting authority for all purposes under this article and shall adopt rules and regulations with respect to the administration of applications for special permits under this article. Editor's Note: See Ch. 301, Conservation Cluster Development.

§ 198-1802. Site plan.

- 1802.1. In addition to any other documents or information required by the Planning Board pursuant to its rules and regulations adopted hereunder, application for a special permit pursuant to this article shall be accompanied by a site plan (the "plan"), which plan shall show all of the information required for a definitive subdivision plan as specified in the Planning Board Subdivision Regulations, Editor's Note: See Ch. 303, Subdivision of Land. such additional information required by § 198-601 through 605 of this Zoning Bylaw, as the Planning Board deems necessary, and, to the extent applicable, all proposed instruments to be recorded with the plan.

§ 198-1803. Public hearing; general requirements.

- 1803.1. After notice and public hearing in accordance with law, which public hearing shall be held within 65 days after the filing of the application with the Planning Board, the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission and the Board of Health, grant such a special permit, provided that:

- 1803.1.1. It finds that the proposed plan is in harmony with the purposes and intent of this Zoning Bylaw and this article.
- 1803.1.2. The area of the tract of land is not less than 5 acres. [Amended 5-5-2005 ATM by Art. 27]
- 1803.1.3. The number of lots on which there is to be a single dwelling unit does not exceed the larger of the following: [Amended 5-5-2005 ATM by Art. 29]
 - 1803.1.3.1. The number of building lots that could be created in the tract shown on such plan without a special permit hereunder, plus one lot for each 10 of such building lots that could otherwise be created; or
 - 1803.1.3.2. The number of building lots obtained by dividing 90% of the total area of the tract, exclusive of land situated within the floodplain or designated as wetlands by the Conservation Commission, by the minimum lot size permitted in the district within which the tract is located, plus one lot for each 10 lots so arrived at from such division.

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- 1803.1.3.3. Within the Residence Districts, the Planning Board ~~shall~~ may permit by special permit structures to be constructed containing more than one dwelling unit, but not more than four dwelling units per structure. The number of dwelling units for attached buildings shall not exceed the total that is allowed under § 198-1805.1.1.
- 1803.1.3.4 Notwithstanding any provision of this zoning bylaw to the contrary, the Planning Board may permit by Special Permit attached and detached dwelling units to be erected on single lot(s). Such approval may modify required setbacks.
- 1803.1.4. Each of the building lots shown on the plan has adequate frontage, but no less than 50 feet, on a public or private way.
- 1803.1.5. Each of the building lots shown on the plan is of a size and shape as shall provide a building site that shall be in harmony with the natural terrain and other features of the tract, but no such lot shall have an area of less than 20,000 square feet as shown on the plan.
- 1803.1.6. The front, side and rear yards of each lot shall be shown on the plan by dashed lines indicating the area within which a building may be built, provided that all dwellings and accessory buildings shall be set back at least 15 feet from the perimeter of the tract and 15 feet from any open land.
- 1803.1.7. For Conservation Cluster Developments consisting of single-family detached dwellings. At least 35% of the land area of the tract, exclusive of land set aside for road area, shall be open land, and the open land shall include all land not dedicated to roads or building lots. For Conservation Cluster Developments consisting of attached single-family dwellings, at least 50% of the land area of the tract, exclusive of land set aside for road area, shall be open land, and the open land shall include all land not dedicated to roads or building lots. For the purpose of this article, "open land" is defined as a parcel or parcels of land, or an area of water, or a combination of land and water, not including roads or ways, whether public or private, to be used for open space, conservation, agriculture, outdoor recreation, park purposes or some combination of the foregoing. [Amended 5-5-2005 ATM by Art. 29]
- 1803.1.8. Conveyance of open land.
- 1803.1.8.1. Open land shall be conveyed either:
- 1803.1.8.1.1. To the Town, which shall accept it for park or open space use;
- 1803.1.8.1.2. To the Sudbury Valley Trustees, Inc., and its successors or to another nonprofit conservation organization approved by the Planning Board, the principal purpose of which is the conservation of open space; or

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1803.1.8.1.3. To a corporation, trust or association owned, or to be owned, by the owners of lots or residential units within the tract, provided that if such a corporation, trust or association holds title, ownership thereof shall pass with conveyance of the lots or residential units.

1803.1.8.2. If ownership is in an entity other than the Town, there shall be sufficient rights in the Town to provide that such land shall be kept in an open or natural state, and provision shall be made so that the Town can enforce any other restrictions or easements imposed upon the open land by the Planning Board as conditions of its special permit grant.

1803.1.9. Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit the open land to be used for subsurface waste disposal where the Planning Board finds that such use will not be detrimental to the character or quality of the open land.

1803.1.10. If the land shown on the plan includes land in two residence zones, all of the land shall, for all purposes of this article, be considered as lying entirely within the zone having the largest area and frontage requirements, except that if 75% or more of the total area shown as building lots lies within one residence zone, all of the land shall be considered as lying within that zone. [Amended 5-5-2005 ATM by Art. 29 Editor's Note: This article also repealed former § 198-1803.1.10, which required that all dwelling units be in detached buildings and that there be only one dwelling unit in a building, and redesignated former § 198-1803.1.11 and § 198-1803.1.12 as § 198-1803.1.10 and 198-1803.1.11, respectively.]

1803.1.11. No lot shown on the plan for which a permit is granted under this article may be further subdivided, and a notation to this effect shall be shown on the plan. [Amended 5-5-2005 ATM by Art. 29]

§ 198-1804. Conditions.

1804.1. The Planning Board may, in appropriate cases, impose as a condition of the special permit further restrictions, conditions and safeguards upon the tract, or parts thereof, to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town of Wayland.

§ 198-1805. Decision.

1805.1. In connection with the granting or denying of a special permit under this article, the Planning Board shall issue to the applicant and shall file with the Town Clerk a written decision that shall include, at a minimum:

1805.1.1. A determination of the maximum number of lots upon which dwellings could be

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constructed without a special permit hereunder and a determination of the area of the tract usable for residential construction in accordance with § 198-1803.1.3 herein.

- 1805.1.2. A general description of the neighborhood in which the tract lies and the effect of the plan on the area.
 - 1805.1.3. The relation of the proposed development to long-range plans of the Town, if any.
 - 1805.1.4. The extent to which the proposed development is designed to take advantage of the natural terrain of the tract.
 - 1805.1.5. The extent to which the proposed open land is of such a size, shape and location and has such adequate access so as to benefit the Town.
 - 1805.1.6. If the Planning Board grants the special permit, the finding required by § 198-1803.1.1 above.
 - 1805.1.7. If the Planning Board denies the special permit, its reasons for so doing.
 - 1805.1.8. If the Planning Board disagrees with the recommendations of the Conservation Commission or the Board of Health, it shall state its reasons therefor in writing.
 - 1805.1.9. If, by the terms of the special permit, the Planning Board permits the open land to be used for subsurface waste disposal, the finding required by § 198-1803.1.9 above.
- 1805.2. Such decision must be reached, filed with the Town Clerk and sent or delivered to the applicant within 90 days after the public hearing held on the application for the special permit, unless said ninety-day deadline is extended in accordance with law. Failure to so act shall be deemed approval in accordance with law.

§ 198-1806. Common land.

- 1806.1. If a special permit is granted, the Planning Board shall impose as a condition that the common land shall be conveyed, free of any mortgage interest or security interest and subject to a perpetual restriction of the type described above, prior to the Planning Board's release of any lots from the subdivision restriction covenant or, if there is no such covenant, prior to the Building Commissioner's issuance of a building permit for any lot. The petitioner shall provide satisfactory assurance of said conveyance and recording, in the form of copies of the recorded instruments bearing the recording stamp, and of such freedom from encumbrances.

§ 198-1807. Duration of special permit.

- 1807.1. A special permit granted under this article shall lapse within 18 months if substantial construction has not begun by such date, except for a good cause shown and approved by the Planning Board.

§ 198-1808. Amendments.

- 1808.1. Following the granting by the Planning Board of a permit under this article, it may, upon application and for good cause shown, after notice and a public hearing as required for

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granting a special permit, amend the plan solely to make changes in lot lines shown on the plan; provided, however, that no such amendment shall:

1808.1.1. Grant any reduction in the size of the open land as provided in the permit;

1808.1.2. Grant any change in the layout of the ways as provided in the permit;

1808.1.3. Increase the number of building lots as provided in the permit; or

1808.1.4. Decrease the dimensional requirements of any building lot below the minimal required by this Zoning Bylaw.

ARTICLE D: ADOPT BYLAW RE: UTILITY HERBICIDE APPLICATION

Sponsored by: Petitioners

To determine whether the Town will vote to adopt a bylaw, in substantially the form of the following Bylaw of the Town of Wayland Concerning Utility Herbicide Application, providing that, upon receipt of notification from a utility company of intended application of any herbicide as provided by M.G.L. c. 132B, the Board of Health shall schedule a hearing, within 21 days or on or before the date indicated for the herbicide application, whichever is early, at which hearing the utility company must provided, as a condition of receiving an order of permission, that the contemplated herbicide application conforms to the requirements of state and federal law. Application of herbicides without the order of permission is prohibited, and subject to a fine.

Bylaw of the Town of Wayland Concerning Utility Herbicide Application

Article 1. Purpose

It is the purpose of this by-law to establish the procedures by which the Board of Health may determine whether a proposed application of herbicide by a utility upon its rights of way within Wayland is to be conducted in accordance with applicable state and federal requirements, for the purpose of protecting the health, environment and safety of the citizens of the Town of Wayland and the purity of its drinking water supply.

Article 2. Prohibited Distribution

No utility company shall distribute, apply, handle, dispose of, discard or store any herbicide upon any utility right of way, unless and until it has received an order of approval from the Wayland Board of Health, pursuant to the procedures outlined below.

Article 3. Hearing Procedure

Upon the receipt of notification, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of herbicide on any right of way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of receipt of notice or on or before the date indicated for herbicide application, whichever is later, a hearing at which the utility shall appear and present

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evidence that it has complied with applicable state and federal law applicable to herbicide application, including but not limited to providing the following:

- a. Written identification of all persons who will be applying any herbicide, and information demonstrating that each such person is properly certified and/or licensed to apply herbicides;
- b. Written identification of herbicides which are intended to be used, and an outline of the exact location where each is expected to be applied;
- c. Written demonstration that all herbicide use is in accordance with the approved Vegetation Management Plans and Yearly Operational Plans.
- d. Written plans or procedures to assure that herbicide concentrates shall not be handled, mixed or loaded within 100 feet of a sensitive area (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction);
- e. Written documentation of efforts to locate all sensitive areas (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction) within the areas where pesticides are to be applied;
- f. Depiction of the boundaries of each and all located sensitive areas (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction) on a plan of land of the area where pesticides are to be applied;
- g. Written description of steps to be taken to mark sensitive area boundaries (as that term is defined in the applicable Pesticide Board regulations, or those issued by any analogous body if the Pesticide Board no longer has jurisdiction) in the field and/or, for any boundary which is believed to be readily identifiable, the basis for that belief.
- h. Written documentation that wetland boundaries have been delineated and that verification from the Wayland Conservation Commission has been sought by filing of one or more Requests for Determination of Applicability (as referenced in 310 CMR 10.00 et seq or such other regulations which may in the future augment or supplant those regulations)
- i. For each sensitive area, written description of application steps and techniques which will be taken within that sensitive area;
- j. Written documentation identifying vegetation greater than 12 feet in height, and written confirmation that foliar herbicide applications will not be made to any vegetation greater than 12 feet in height except for side trimming;

These articles were accepted for admission to the Warrant for the Wayland Special Town Meeting to be held on Wednesday, October 3, 2012. Please note these articles are not in their final order, and are subject to nonsubstantive revisions between now and the time the Warrant is finalized.

- k. Written confirmation that herbicide applications will not be made when wind may cause drift, and written description and documentation of the circumstances in which wind drift may occur.
- l. Written confirmation that no aerial application will occur; and
- m. Documentation which shows the consideration, if any, given to alternative other than herbicide application which might achieve the goals sought by the herbicide application

Article 4. Determination by Board of Health

Upon the conclusion of the submission of evidence by the utility, and any evidence submitted by any resident of the Town of Wayland or other interested party, the introduction of which evidence shall be within the discretion of the Board of Health, the Board of Health shall determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides only as permitted by law. The burden of proof shall rest with the applicant to prove determines that the proposed application complies with all legal requirements imposed by state and federal law, and the applicant must present affirmative evidence on that issue, and may not rest on mere conclusory statements that it does so comply. If the Board determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue an order permitting the application to proceed. If the Board determines that the proposed application does not comply with all legal requirements imposed by state and federal law, the Board shall issue an order denying permission to make the application, which order shall outline the deficiencies which much be remedied before the application may proceed.

Article 5. Remediation of Deficiencies.

Upon issuance by the Board of Health of an order denying permission to apply herbicide, the affected utility may request a further hearing at which it may present further evidence, either that has met the requirements of applicable state and federal law, or that it has remedied the deficiencies outlined by the Board order. Upon receipt of such a request, the Board of Health, shall, within 14 days of receipt of the request, schedule a hearing upon such request. At the conclusion of that second hearing, the Board of Health shall again determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides only as permitted by law. If the Board determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue an order permitting the application to proceed. If the Board determines that the proposed application does not comply with all legal requirements imposed by state and federal law, the Board shall issue an order denying permission to make the application, which order shall outline the deficiencies which much be remedied. No further hearings shall be held, but the affected utility may begin the process anew, by issuing a new notice of intent to utilize herbicides.

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Upon the receipt of notification, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of herbicide on any right of way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of receipt of notice or on or before the date indicated for herbicide application, whichever is later, a hearing at which the utility shall appear and present

Article 6. Penalty for Application without Order of Permission

An application of any herbicide without prior receipt of an order of permission from the Board of Health issued pursuant to this Bylaw shall be punishable by a fine in the amount of \$ 5,000.00. Each date upon which herbicides are applied shall constitute a separate application for purposes of this Bylaw. Each location separated by more than 500 feet upon which herbicides are applied shall constitute a separate application for purposes of this Bylaw. In addition, Town Counsel may seek injunctive relief seeking to stop such application until the utility has complied with this Bylaw. If the Court finds that the Bylaw has been violated, the utility shall also be liable to pay the court costs and attorneys' fee incurred by the Town to enforce this Bylaw.

Article 7. Definitions

"Utility company", any person or entity which owns or operates a privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public.

ARTICLE E: ADOPT BYLAW RE: CLEARING, GRADING AND PROTECTION OF SPECIMEN TREES

Sponsored by: Petitioners

To determine whether the Town will vote to adopt a bylaw, in substantially the following form based on the Model Land Clearing, Grading and Protection of Specimen Trees Bylaw from the Cape Cod Commission Model Bylaws and Regulations, setting forth the protocol which shall apply when anyone seeks to clear land of an area greater than 20,000 square feet, requiring the party to obtain a special permit from the Planning Board, and outlining the review standards to be applied in that permitting process, in a n effort to balance the rights of utility companies and others to maintain rights of way in juxtaposition of the need to minimize loss of natural vegetation and to protect specimen trees and wildlife habitat

01.0 Purposes: Pursuant to M.G.L. c. 87, § 14, and otherwise, the purposes of this bylaw are to seek to balance the rights of utilities and others to maintain and utilize their easements and rights of way while at the same time striving to:

01.1 Protect the health, safety and property of the residents of the Town of Wayland, Massachusetts by regulating clearing, grading and maintenance activities associated with land development and ROW

<p>These articles were accepted for admission to the Warrant for the Wayland Special Town Meeting to be held on Wednesday, October 3, 2012. Please note these articles are not in their final order, and are subject to nonsubstantive revisions between now and the time the Warrant is finalized.</p>

maintenance. It's goals include preserving existing trees and vegetation, preventing erosion and sedimentation of wetlands, ponds and other water bodies, controlling stormwater runoff, minimizing fragmentation of wildlife habitat and loss of vegetation, preventing chemical poisoning of the environment;

01.2 Limit land clearing and alteration of natural topography prior to development review;

01.3 Protect specimen trees and significant forest communities from damage or removal during site development and maintenance;

01.4 Protect water quality of adjacent wetlands, wellheads and surface water bodies;

01.5 Encourage the use of Best Management Practices that prevent and reduce nonpoint sources of pollutants;

01.6 Encourage the use of Best Practices with respect to Vegetation Management programs;

01.7 Promote land development and site planning practices that are responsive to the town's scenic character without preventing the reasonable development and maintenance of land and utility rights-of-way;

01.8 Protect archaeological and/or historic resources.

02.0 Definitions: In this bylaw, the following words have the meanings indicated:

02.1 Applicant - Any person proposing to engage in or engaged in any non-exempt clearing of trees or understory vegetation within the Town.

02.2 Best Management Practices (BMPs) - A structural, nonstructural, or managerial technique recognized to be the most effective and practical means to prevent and reduce nonpoint source pollutants. BMPs should be compatible with the productive use of the resource to which they are applied, and should be cost-effective.

02.3 Caliper - American Association of Nurserymen standard for measurement of trunk size of nursery stock. Caliper of the trunk shall be taken 6" above the ground up to and including 4" caliper trees, and 12" above the ground for larger sizes.

02.4 Certified arborist - A professional who possesses the technical competence through experience and related training to provide for or supervise the maintenance of trees and other woody plants in the residential, commercial, and public landscape.

02.5 Clearing - Removal or causing to be removed, through either direct or indirect actions, trees, shrubs and/or topsoil from a site, or any material change in the use or appearance of the land. Actions considered to be clearing include, but are not limited to: causing irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage.

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02.6 Dripline - An area encircling the base of a tree which is delineated by a vertical line extending from the outer limit of a tree's branch tips down to the ground.

02.7 Essential Root Zone - An area located on the ground between the tree trunk and 10 feet beyond the dripline of a tree which is required for protection of a tree's root system.

02.8 Diameter/diameter-breast-height (dbh) - The diameter of any tree trunk, measured at 4.5 feet above existing grade.

02.9 Filling - The act of transporting or placing (by any manner or mechanism) material from, to, or on any soil surface or natural vegetation.

02.10 Grading - Any excavating, filling, clearing, or the creation of impervious surface, or any combination thereof, which alters the existing surface of the land.

02.11 Hazardous tree - A tree with a structural defect or disease, or which impedes safe sight distance or traffic flow, or otherwise currently poses a threat to life or property.

02.12 Landscape architect - A person licensed by the Commonwealth of Massachusetts to engage in the practice of landscape architecture.

02.13 Protected tree/vegetation - A tree or area of understory vegetation identified on an approved landscape plan to be retained and protected during construction.

02.14 Right-Of-Way Maintenance - Removal or causing to be removed, through either direct or indirect actions, trees, shrubs and/or topsoil from a site, or any material change in the use or appearance of the land. Actions considered to be clearing include, but are not limited to: causing irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage including the application of herbicides or other chemical agents.

02.15 Specimen tree - A native, introduced or naturalized tree which is important because of its impact on community character, its significance in the historic/cultural landscape or its value in enhancing the effects of wildlife habitat. Any tree with a dbh of 6" or larger is eligible to be considered a specimen tree. Trees that have a small height at maturity or are slow growing, such as flowering dogwood or american holly with a dbh of 4" or larger are eligible to be considered specimen trees.

02.16 Significant forest community - Unfragmented forests including forest types that provide habitat for rare species, unusual ecological processes, highly diverse forest communities, rare forest types, and those forest types which maintain connections between similar or different habitat patches.

02.17 Site Alteration Special Permit - A special permit issued by the Planning Board authorizing land clearing and grading activities in the town of Wayland, Massachusetts.

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02.18 Understory vegetation - Small trees, shrubs, and groundcover plants, growing beneath and shaded by the canopy of trees.

02.19 Wellhead Protection Plan - Wellhead Protection Plan, June 2011, Prepared by the Wellhead Protection Committee, et al.

03.0 Applicability: No person or corporation shall undertake land clearing/grading activities of an area greater than a total of 20,000 square feet within the Town of Wayland in any year without first obtaining a Site Alteration Special Permit from the Planning Board, unless specifically exempted under Section 05.0 of this bylaw.

04.0 Review and Decision: Within ten (1) days of receipt of a completed application and required plans as described in Section 06.0 below, the Planning Board shall transmit one copy each to the Board of Health, Conservation Commission, Building Inspector, Department of Public Works and abutters to the properties. Within 45 days of receipt of completed application/plans, these agencies and optionally the abutters shall submit recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G.L. c. 40A, 09.

05.0 Exemptions: The provisions of this bylaw shall not apply to the following activities:

05.1 Removal of hazardous trees, as defined herein;

05.2 Routine maintenance of vegetation and removal of dead or diseased limbs and/or trees necessary to maintain the health of cultivated plants, to contain noxious weeds and/or vines in accordance with a Department of Environmental Management (DEM) - approved Forest Management Plan, or to remedy a potential fire or health hazard or an imminent threat to public safety;

05.3 Construction and maintenance of public and private streets and utilities within town-approved roadway layouts and easements;

05.4 Work conducted in accordance with a valid earth removal permit issued by the Town of Wayland, Massachusetts;

05.5 Agricultural activities in existence at the time a bylaw is adopted, work conducted in accordance with an approved Natural Resource Conservation Service Agricultural Plan or agricultural uses on parcels of land of more than five acres as specified in MGL c. 40A Section 3.

05.6 Construction of roadways and associated infrastructure for subdivisions approved in accordance with the Town Subdivision Rules and Regulations.

05.7 Construction of any state or town agency project approved by the town manager, town council, or town selectmen.

06.0 Application Requirements: Unless determined otherwise by the Planning Board the following submittals are required at the time of application:

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06.1 Survey of existing vegetation conducted by an individual qualified through appropriate academic credentials and field experience. A statement of credentials should be submitted with the survey.

The survey of existing vegetation shall include the following information:

06.1.1 major upland vegetational communities located on the site, including trees, shrub layer, ground cover and herbaceous vegetation;

06.1.2 size and height of trees, noting specimen trees and/or forest communities;

06.1.3 location of any rare and endangered species;

06.2 Submission of a locus map at a scale of 1" = 500' showing the proposed site in relation to the surrounding area.

06.3 Submission of a plan at a scale of 1" = 40' of the project site showing existing and proposed contour lines at intervals of not more than 2 feet prepared by a registered civil engineer or land surveyor.

06.4 Soil survey or soil logs indicating predominant soil types on the project site, including information on erosion potential from the Natural Resources Conservation Service.

06.5 Delineation of all bodies of water, including wetlands, vernal pools, streams, ponds, and public wells within 100 feet of the project site/limit of work and delineation of the 100-year floodplain and the capture zones of Wayland's wells (as defined and described in the Wellhead Protection Plan) within said area.

06.6 Submission of a plan at a scale of 1" = 40' indicating the limit of work. The limit of work shall include all building, parking, and vehicular use areas, and any grading associated with the proposed development. The plan or accompanying narrative shall document the species and quantities of specimen trees and/or other vegetation to be removed or relocated within the project area.

06.7 Construction schedule which describes the timing of vegetation removal, transplanting or replacement in relation to other construction activities.

06.8 Plans and/or description of Best Management Practices and Best Practices for Vegetation Management to be employed in development of the project site.

06.9 For each tree in excess of two inches in diameter to be removed, a statement of the precise reasons that such tree cannot be trimmed rather than removed.

06.10 Submission of an erosion and sedimentation control plan at a scale of 1" = 40'. This plan shall include BMPs for erosion and sediment control (vegetative and/or structural) to prevent surface water from eroding cut and fill side slopes, road shoulders and other areas and measures to avoid sedimentation of nearby wetlands and ponds. The following information shall be submitted on erosion control and sedimentation plans submitted with the project application:

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06.10.1 A description of the sequence of construction activities which specifies the time frame for soil stabilization and completion and any necessary winter stabilization measures.

07.0 Review Standards:

The applicant shall demonstrate that the following measures are employed in development of the site or maintenance of the ROW:

07.1 Minimize site alteration/land clearing:

07.1.1 Site/building/maintenance design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage channels on the site.

07.1.2 Clearing of vegetation and alteration of topography shall be limited to a percentage (%) of the site with native vegetation planted in disturbed areas as needed to enhance or restore wildlife habitat.

Land Use % Clearing Allowed:

Agriculture 50%, Residential 25%, Institutional, Commercial, Industrial 40%, ROW maintenance in residential areas 25%, ROW maintenance in open areas 50%, within a Significant Natural Resource Area (SNRA) 35%

07.1.3 Clearing for utility access and trenching shall be limited to the minimum area necessary to deliver equipment to the site and thereafter to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees.

07.1.4 Protect hilltops and/or scenic views within the town of Wayland, Massachusetts:

07.1.4.1 Placement of buildings, structures, access roads or parking facilities shall not detract from the site's scenic qualities and shall blend with the natural landscape. Building sites shall be directed away from the crest of hills, and foundations shall be constructed to reflect the natural terrain.

07.1.5 Protect wildlife habitat:

07.1.5.1 Sites shall be designed in such a way as to avoid impacts to rare and endangered species and wildlife habitat on a site, and to maintain contiguous forested areas.

07.1.6 Avoid impacts to archaeological resources:

07.1.6.1 Applicants shall submit a response from the Massachusetts Historical Commission (MHC) regarding the potential for archaeological or historical resources on the site.

07.1.7 Preserve open space and specimen trees on the site:

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07.1.7.1 In the design of a development or the proposal for ROW maintenance, priority shall be given to retention of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees.

07.1.8 Understory vegetation beneath the dripline of preserved trees shall also be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained and abutting properties that may be affected shall be surrounded by temporary protective fencing or other measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential root zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state.

07.1.9 Forested areas shall be preserved if they are associated with:

07.1.9.1 significant forest communities as defined herein;

07.1.9.2 wetlands, waterbodies and their buffers;

07.1.9.3 critical wildlife habitat areas;

07.1.9.4 slopes over 25 percent.

07.1.10 Minimize cut and fill in site development:

07.1.10.1 Development envelopes for structures, driveways, wastewater disposal, lawn areas and utility work shall be designated to limit clearing and grading.

07.1.10.2 Other efforts to minimize the clearing and grading on a site associated with construction activities shall be employed, such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, etc. in areas already planned for permanent structures. Topsoil shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.

07.1.10.3 Finished grades should be limited to no greater than a 2:1 slope, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible.

07.1.10.4 Employ proper site management techniques during construction:

(a) BMPs shall be employed to avoid detrimental impacts to existing vegetation, soil compaction, and damage to root systems.

(b) The extent of a site exposed at any one time shall be limited through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

07.1.10.5 Protect the site during construction through adequate erosion and sedimentation controls:

(a) Temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes or such other mechanical measures as are necessary may be required by the Board to intercept and divert

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surface water runoff. Runoff flow shall not be routed through areas of protected vegetation or revegetated slopes and other areas. Temporary runoff from erosion and sedimentation controls shall be directed to BMPs such as vegetated swales. Retaining walls may be required where side slopes are steeper than a ratio of 2:1.

(b) Erosion and sedimentation controls shall be constructed in accordance with the DEP Stormwater Guidance manual.

(c) Erosion control measures shall include the use of erosion control matting, mulches and/or temporary or permanent cover crops. Mulch areas damaged from heavy rainfalls, severe storms and construction activity shall be repaired immediately.

(d) Erosion control matting or mulch shall be anchored where plantings are on areas subject to mulch removal by wind or water flows or where side slopes are steeper than 2:1 or exceed 10 feet in height. During the months of October through March when seeding and sodding may be impractical, anchored mulch may be applied at the Board's discretion.

(e) Runoff from impervious surfaces shall be recharged on the site by storm water infiltration basins, vegetated swales, constructed wetlands or similar systems covered with natural vegetation. Runoff shall not be discharged directly to rivers, streams, or other surface water bodies. Dry wells shall be used only where other methods are not feasible. All such basins and wells shall be preceded by oil, grease, and sediment traps. The mouths of all catch basins shall be fitted with filter fabric during the entire construction process to minimize siltation or such basins shall be designed as temporary siltation basins with provisions made for final cleaning.

(f) The applicant shall be required to conduct weekly inspections of all erosion and sedimentation control measures on the site to ensure that they are properly functioning as well as to conduct inspections after severe storm events.

07.1.10.6 Revegetate the site immediately after grading:

(a) Proper revegetation techniques shall be employed using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Revegetation shall occur on cleared sites within 7 (seven) calendar days of final grading and shall occur during the planting season appropriate to the selected plant species.

(b) A minimum of 4" of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.

(c) Finished grade shall be no higher than the trunk flare(s) of trees to be retained. If a grade change of 6" or more at the base of the tree is proposed, a retaining wall or tree well may be required.

07.2 Protection of wetlands, endangered species and other environmental issues, as required by the Conservation Commission. (Not sure what specific sub-paragraphs we should add here)

07.3 Protection of drinking water, as required by the Board of Public Works pursuant to the Wellhead Protection Plan.

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08.0 Required Security: The Planning Board may require a performance guarantee in a form acceptable to the town to cover the costs associated with compliance with this bylaw under a Site Alteration Special Permit.

08.1 The required performance guarantee in the amount of 150% of the cost of site restoration shall be posted prior to the issuance of a Site Alteration Special Permit for the proposed project.

08.2 The performance guarantee shall be held for the duration of any prescribed maintenance period required by the Site Plan Review Committee/Planning Board to ensure establishment and rooting of all new plantings, and may be reduced from time to time to reflect completed work. Plantings which die within the prescribed maintenance period shall be replaced. Securities shall not be fully released without a final inspection and approval of vegetation replacement by the town.

09.0 Monitoring and Inspections:

09.1 Prior to commencement of construction or maintenance, the applicant, land owner, contractor and construction crew, town engineer and site engineer shall conduct a meeting to review the proposed construction phasing and number and timing of site inspections.

09.2 Initial site inspection of erosion and sedimentation controls and placement of tree protection measures shall occur after installation of barriers around preserved areas and construction of all structural erosion and sedimentation controls, but before any clearing or grading has begun.

09.3 Routine inspections of preserved areas and erosion and sedimentation controls shall be made at varying intervals depending on the extent of site alteration and the frequency and intensity of rainfall.

09.4 Effective stabilization of revegetated areas must be approved by the town before erosion and sedimentation controls are removed. The town shall complete an inspection prior to removal of temporary erosion and sedimentation controls.

10.0 Enforcement: The town of Wayland, Massachusetts may take any or all of the enforcement actions prescribed in this bylaw to ensure compliance with, and/or remedy a violation of this bylaw; and/or when immediate danger exists to the public or adjacent property, as determined by the Building Inspector or Town Engineer. Securities described in Section 07.0 above may be used by the town in carrying out any necessary enforcement actions.

10.1 The Town of Wayland Building Inspector may post the site with a Stop Work order directing that all vegetation clearing not authorized under a Site Alteration Permit cease immediately. The issuance of a Stop Work order may include remediation or other requirements which must be met before clearing activities may resume.

10.2 The Town of Wayland may, after written notice is provided to the applicant, or after the site has been posted with a Stop Work order, suspend or revoke any Site Alteration Special Permit issued by the Town.

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10.3 No person shall continue clearing in an area covered by a Stop Work order, or during the suspension or revocation of a Site Alteration Special Permit except work required to correct an imminent safety hazard as prescribed by the Town.

0.11 Severability:

0.11.1 If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

Based on the

Model Land Clearing, Grading and Protection of Specimen Trees Bylaw
by the
Cape Cod Commission Model Bylaws and Regulations

ARTICLE F: FUNDING OPEB THROUGH AN INDIVIDUAL WARRANT ARTICLE

Sponsored by: Petitioners

To determine whether the Town will vote to amend Chapter 19. Finances of the Code of the Town of Wayland by adding the following new underlined paragraph to Section 19-5 and providing paragraph lettering as follows (Note: Only the underlined letters and words are being amended):

§ 19-5. Warrant articles involving appropriations or expenditures.

A. Any person presenting an article for insertion in the warrant for any Town meeting which involves the appropriation or expenditure of money by the Town shall also submit an estimate of the expected amount of money to be expended or appropriated to carry out the purpose of the article. Said estimate, together with the name of the person or persons submitting such article, shall be transmitted by the Board of Selectmen to the Finance Committee.

B. In order for funds to be made available by the Town for contribution to the Other Postemployment Benefits Trust Fund ("OPEB Trust Fund"), such funds must be appropriated by town meeting pursuant to a specific town meeting warrant article other than the omnibus budget article.

ARTICLE G: PROVIDE MORE FISCAL CONTROL THROUGH THE VOTED BUDGET

Sponsored by: Petitioners

To determine whether the Town will vote the following –

Whereas, in recent years, Wayland's operating budget to be voted on by town meeting has been reduced to one or two generic line items per department or function - Salaries and Total Expenses;

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Whereas that budget lacks specifics to inform voters of the services carried out by department/function and the amount to be expended for each service;

Whereas the budget offered to voters lacks sufficient controls to assure that appropriations are expended on expected and necessary services;

Now, therefore, be it resolved:

- 1) That, in order to provide greater clarity to voters and a stronger fiscal management process, the operating budget to be voted on by town meeting shall contain the following: a) more detailed, numbered subsidiary line item categories of expenditure; and b) a head count budget presented by department or function providing staffing levels on a full-time equivalent basis;
- 2) That the Other Post-Employment Benefits (“OPEB”) Trust Fund shall be funded only through specific Town Meeting appropriation made solely for that purpose;
- 3) That the operating budget shall be presented in a format that compares the proposed budget to: a) actual expenditures and staffing levels for at least the prior two fiscal years; and b) the appropriations and staffing levels for the current fiscal year.

And that Town Meeting pass any vote or take any action relative thereto.

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Preliminary SPECIAL TOWN MEETING SCHEDULE

Proposed Date: Wednesday, October 3, 2012

2012

August 22	Petition filed for Special Town Meeting
August 27	Selectmen vote to set date of Special Town Meeting and open warrant from Tuesday, August 28 at 8:30 a.m. through Tuesday, September 4, 2012 at 4:30 p.m.
September 3	Town facilities closed – Labor Day
September 4	Last day to submit articles for Special Town Meeting at 4:30 p.m. Articles must be submitted to the Selectmen’s office with at least 100 signatures
September 5	Finance Committee Special Town Meeting article hearing
September 7	Deadline for submission of petitioner’s comments on STM articles
September 10	Selectmen review and order Special Town Meeting articles for insertion in the Warrant
September 11 by 10 a.m.	Deadline for submission of preliminary Special Town Meeting article comments from Finance Committee (and Planning Board, if necessary)
September 11 by 2p.m.	Compilation of Warrant completed and all changes made
September 11 by 2p.m.	Warrant to printer
September 12	Final Warrant copied and delivered to Selectmen, Moderator, Finance Committee, Town Clerk, Town Counsel and Finance Director
September 19	Selectmen meet at 8:00 a.m. to sign Warrant; Town Clerk post warrants (Town Building, Library, Happy Hollow School, Cochrane Post Office) per MGL c. 39, sec. 10 (at least 14 days prior to Special Town Meeting)
September 19	Postal delivery of warrants (Town Code 36-2A, MGL c. 39, s10)
September 24	Motions for articles submitted by Town Counsel and provided to Moderator and Town Clerk
September 25	Deadline for submission of final Special Town Meeting article comments from Finance Committee (and Planning Board, if necessary); post on website and provide copies in Town Building and distribute at Special Town Meeting

September 27	Selectmen conduct Special Town Meeting Warrant Hearing, 7:00 p.m. Large Hearing Room, Town Building
September 27	Selectmen review proposed motions and vote positions on Special Town Meeting Warrant articles at special Selectmen's meeting
October 2	Prepare and print final errata sheets, Moderator's instructions to tellers, and Planning Board reports (if necessary) for distribution at Town Meeting
October 3	Warrants and lists delivered to Town Meeting site. List of non-resident employees provided to Moderator and Town Clerk.
OCTOBER 3	SPECIAL TOWN MEETING, 7:30 p.m., Wayland High School – Auditorium
October 4	Adjourned session of special town meeting (as necessary)

WARRANT ARTICLE PROCESS: Guide for Petitioners

Citizens have the right to submit articles for consideration by the Town meeting. Such articles must be in writing and signed by ten or more registered voters for Annual Town Meeting (ATM) or 100 or more registered voters for Special Town Meeting (STM), using the attached form. All petitioners' articles must be submitted in accordance with the law on or before January 15 or such earlier time as may be fixed by the Board of Selectmen, and all such articles for Special Town Meeting must be so presented on or before the date fixed by the Selectmen for closing of the warrant for such meeting. All petitioners' articles having the required number of qualified signatures must be included in the Town Meeting Warrant by state statute.

The Board of Selectmen and the Finance Committee encourage citizens to work with appropriate Town boards to achieve their goals whenever possible before submitting petitioners' articles.

ATM Time Line and Process

Date	Action	Responsibility
December	<i>Hold a workshop for citizens interested in submitting petition for Annual Town Meeting.</i> Potential articles and the submission process may be discussed with the Selectmen and experienced volunteers.	Board of Selectmen
On or before January 15 or such earlier time as may be fixed by the Board of Selectmen	<i>Submit petitioners' articles for Annual Town Meeting both on paper with signatures and by email in Microsoft Word.</i> Articles are collected and numbered, and copies are given to the Board of Selectmen, Finance Committee, Moderator, and Town Counsel. Petitioners are encouraged to provide comments, arguments in favor, and arguments against their articles at the time of submission.	Town Administrator
January - March	<i>Review articles, determine their order, vote positions on most articles; may meet with petitioners</i> The Board may discuss substantive articles with petitioners or attend the Finance Committee's meeting with petitioners.	Board of Selectmen
January - March	<i>Study each petitioner's article and prepare a report for the Warrant</i> The Committee meets with petitioners to discuss their article. They may explore alternative means for accomplishing the article's objective. A member of the Committee is assigned to the article to prepare a report for the Warrant, including pro and con arguments and the Committee's recommendation.	Finance Committee
January - March	<i>Meet with Finance Committee and/or Board of Selectmen to discuss article; write report of no more than 150 words to be printed in the warrant if desired and if the Finance Committee prepares a report.</i> Such discussions help to identify issues that require further work on the part of the petitioner as well as to identify arguments for and against passage.	Petitioners
February	<i>Review articles for form and legal correctness, add required legal citation(s), indicating the quantum of vote required for Passage</i>	Town Counsel
Approximately 7 days prior to ATM	<i>Attend a warrant article hearing.</i> Petitioners should attend this hearing to review their warrant articles.	Selectmen with Moderator and Finance Committee
ATM	<i>Move the article and make a brief presentation on the merits of the article</i> Movers of articles have a limited amount of time to explain and present arguments in favor of passage of the article (currently 10 minutes). This presentation is made at the procedural (center) microphone. Petitioners may prepare handouts and slides. If the motion differs substantially from the article printed in the warrant, printed copies should be prepared for the moderator and made available for people attending Town Meeting.	Lead Petitioner or Sponsoring Board or Committee
ATM	<i>Consider each article at Annual Town Meeting</i> Citizens are encouraged to debate the merits of articles, ask questions, and make amendments when appropriate. Amendments should be legibly written for submission to the moderator and made available to people attending Town Meeting.	Town Meeting attendees

INSTRUCTIONS FOR COMPLETING PETITIONERS ARTICLE FORM

Lead Petitioner: The lead petitioner will serve as spokesperson for the article and will be the contact for the Finance Committee and the Board of Selectmen, and by the Planning Board if the petition is a zoning issue.

Date Received: The date received will be stamped on the petition when it is received by the Town Administrator and forwarded to the Town Clerk for certification.

PETITIONERS ARTICLE FOR WAYLAND TOWN MEETING

LEAD PETITIONER_____ DATE RECEIVED_____

DAY PHONE_____ EVENING PHONE_____

TITLE_____

TOWN BOARD/DEPARTMENT AFFECTED BY ARTICLE_____

ESTIMATED COST_____

ARTICLE: To determine whether the Town will vote to

Add comments and pro and con arguments on the next page. Thank you.

#	Print Name Legibly	Signature	Print Street Address
1			
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PETITIONERS ARTICLE FOR WAYLAND TOWN MEETING

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COMMENTS

PRO ARGUMENTS

CON ARGUMENTS