

## **Bylaws Committee Minutes May 3, 2016**

Meeting Called to order at 8:00 p.m.

### **Members Present**

John Hadley, David Mercurio, Jonathan Meindersma, Marc Frieden and Kim D. Hopewell

### **Previous Minutes**

Minutes of the March 29, 2016 accepted

John Hadley, David Mercurio, Jon Meindersma, Marc Frieden Yes

Kim D. Hopewell abstained

Purpose of this meeting is to review proposed bylaw changes for the May 16, 2016 Semi-Annual Town Meeting.

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### ***Personnel Bylaw- Article 5***

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#### **Article 5 –**

Amend the Personnel Bylaw to provide Non-union Employees a Cost –Of- Living Pay Increase (1.5%)

#### **Discussion**

This is a routine Article that provides non-union employees with a COLA.

#### **Vote**

Duly motioned, seconded and unanimously voted that this article be recommended to Town Meeting Floor

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### ***Personnel Bylaw- Article 23***

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#### **Article 23-**

Amend Personnel Bylaws to create the position of Recreation Worker for the Recreation Department

#### **Existing Bylaw**

## AA- CLASSIFICATION AND COMPENSATION PLAN

### 1) Classification Plan

The official classification plan of the town is as follows:

#### Non-Exempt Employees -Wage Earning Employees

<b>Grade 1</b>	Casual Labor
	Clerk/Typist
	Custodian/Maintenance Worker
	Dining Room Manager
	Minutes Clerk <i>A24 May 21, 2001</i>

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### Town Meeting Action

To see if the town will vote to create the position of Recreation Worker for the Recreation Department to be classified at Grade 1 as a non-exempt and to amend Section 5, Part AA of Article XXI, of the Personnel Bylaw to read:

#### **Grade 1.**

- Casual Labor
- Clerk/Typist
- Custodian/Maintenance Worker
- Dining Room Manager
- Minutes Clerk
- Recreation Worker

or take any other action relative thereto.

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### Discussion

This adds the recreation workers to our Section 5, Part J (6) of Article XXI of the Personnel Bylaws. Currently these employees are considered seasonal employees. With the changes of additional Recreation programs, these employees will need to be hired as municipal employees. As such, this new employee status needs to be reflected in our Personnel Bylaws for non-exempt employees-wage earning employees.

Duly motioned, seconded and unanimously voted to recommend approval

Marc Frieden will state that the Bylaws Cmte. recommends approval of this article

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### Final Version

*If the proposed bylaw amendment is accepted*

## **AA- CLASSIFICATION AND COMPENSATION PLAN**

### **1) Classification Plan**

The official classification plan of the town is as follows:

#### **Non-Exempt Employees -Wage Earning Employees**

<b>Grade 1</b>	Casual Labor
	Clerk/Typist
	Custodian/Maintenance Worker
	Dining Room Manager
	Minutes Clerk <i>A24 May 21, 2001</i>
	Recreation Worker <i>A23 May 16, 2016</i>

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### ***Personnel Bylaw- Article 24***

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#### **Article 24-**

Authorization to Amend Personnel Bylaws to accept current year school physicals for Recreation Workers

#### **Existing Bylaw**

##### **Section 5, Part J (6) of Article XXI**

6) The hiring authority shall require that a prospective employee take a physical examination, including toxic/drug screening tests for safety sensitive and public safety positions, by a physician designated by the town at the town's expense to ensure that the prospective employee is able to perform the essential duties of the position. The physical examination shall take place prior to the effective date of employment.

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#### **Town Meeting Action**

To see if the town will vote to amend Section 5, Part J (6) of Article 21 of the Personnel Bylaw by adding the following sentence: 'The hiring authority may accept a current school year physical for prospective Recreation Department employees',

or take any other action relative thereto.

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#### **Discussion**

All town employees are required to have physicals before they start working for the Town. Currently the Town pays for each physical. This proposed amendment to Section 5, Part J (6) will save the Town money by allowing us to use the current school year physical instead of incurring the cost of something that is already valid.

Duly motioned, seconded and unanimously voted to recommend approval

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### Final Version

*If the proposed bylaw amendment is accepted*

### Section 5, Part J (6) of Article XXI

6) The hiring authority shall require that a prospective employee take a physical examination, including toxic/drug screening tests for safety sensitive and public safety positions, by a physician designated by the town at the town's expense to ensure that the prospective employee is able to perform the essential duties of the position. The physical examination shall take place prior to the effective date of employment. The hiring authority may accept a current school year physical for prospective Recreation Department employees. *A24 May 16, 2016*

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## General Bylaws- Article 25

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### Article 25-

Authorization to Amend General Bylaws- Wetlands Protection Bylaw XXXIX

### Existing Bylaw

#### New Bylaw

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### Town Meeting Action

To see if the town will vote to amend the General Bylaws of the town by adding Article XXXIX Wetlands Protection Bylaw to read as follows:

### ARTICLE XXXIX – WETLANDS PROTECTION BYLAW

#### 1. Purpose and Intent

The purpose of this bylaw is to protect the wetlands and related water resources in the Town of West Boylston by managing activities determined by the Conservation Commission to be likely to have a significant or cumulatively detrimental effect upon any wetland resource area of value protected by this bylaw, including but not limited to the following interests and values:

- A. Protection of public or private water supplies, especially the Wachusett Reservoir and its feeder streams;

- B. Groundwater;
- C. Flood control;
- D. Erosion and sedimentation control;
- E. Storm damage prevention;
- F. Water quality;
- G. Water pollution control;
- H. Fisheries and wildlife habitat;
- I. Habitat of rare plant and animal species;
- J. Agricultural and aquaculture;
- K. Recreation and aesthetic values

To this end, it is the intent of this local wetlands bylaw to protect wetland resource areas and interests, and to impose additional standards and procedures stricter than those of MGL c 131, §40, the Massachusetts Wetlands Protection Act.

## **2. Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the following areas without approval of the West Boylston Conservation Commission:

- A. Any freshwater wetlands, marsh, wet meadow, bog, swamp, flat, bank, or beach bordering any reservoir, lake, or pond; intermittent stream, river, or brook; and adjoining lands out to a distance of 100 feet known as the Buffer Zone;
- B. Any bank or land under the aforementioned waterways and water bodies;
- C. Any certified vernal pool and adjoining lands out to a distance of 100 feet known as Vernal Pool Habitat;
- D. Any perennial stream, river, or brook; the land thereunder; and adjoining lands out to distance of 200 feet known as the Riverfront Area, and;
- E. Any land subject to flooding.

## **3. Exemptions**

- A. The applications and permits required by this bylaw shall not be required for the following:
  - i. Any emergency project or agricultural emergency as defined in MGL C. 131, § 40, or regulations thereunder.
  - ii. Any maintenance, repair or replacement, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, sewer, water, telephone, or other telecommunications service, provided that written notice has been given to the Commission prior to commencement of work, and provided that all work conforms to performance standards and design specifications in the regulations adopted pursuant to this bylaw.

- iii. Routine mowing and maintenance of lawns, gardens, and landscaped areas (including tree pruning and fencing) in existence on the effective date of this bylaw or which are created after such date in accordance with the terms of this bylaw.
- iv. Work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations in 310 CMR 10.00; and
- v. Removal of dangerous dead and dying trees, without the use of machinery, excepting chainsaws.

#### **4. Definitions**

Except as otherwise provided in this bylaw or regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act, which terms, as used herein, shall include the provisions of MGL C. 131, § 40, and regulations thereunder at 310 CMR 10.00 et seq.

**25' No Alteration Zone** – The area located within 25' from the limit of Bordering Vegetated Wetlands, Banks, and Land Under Waterbodies and Waterways.

#### **5. Presumptions**

Buffer Zones are presumed significant to the protection of wetland resources and interests because activities undertaken in close proximity to resource areas have a high likelihood of adverse impacts upon wetlands and other water resources, either immediately, as a consequence of land disturbance and construction, or over time, as a consequence of daily operations or maintenance of such activities. Such adverse impacts include, without limitation: erosion, sedimentation, loss of groundwater recharge, degradation of water quality and loss of wildlife habitat.

#### **6. Limits on Activities within Buffer Zones**

- A. For the aforementioned reasons, the resource area within 200 feet of perennial rivers and streams (the 'riverfront area') Buffer Zones within 100 feet of a bordering vegetated wetland, bank, stream, pond, or land under waterbody or waterway are deemed valuable resources under this bylaw. This bylaw therefore limits disturbance within the Buffer Zones by establishing a 25' No Alteration Zone adjacent to the wetland resource area.
- B. For the application of this bylaw, Alteration is as defined in 310 CMR 10.04 and shall include, but not be limited to vegetation clearing, excavation, filling, placement of any materials (including sediment control barriers), and grading.
- C. The West Boylston Conservation Commission may reduce the following setbacks within the buffer zone in circumstances in which their strict application is infeasible due to special site and/or design considerations. Applicants shall specify the reasons for reducing this setback in the Notice of Intent issued for the pertinent project (such as unreasonable space limitations for the existing use or consideration of documentation that compliance will increase construction costs by more than 20%).
- D. The following are exceptions to the prohibitions within the 25' No Alteration Zone:

- i. Routine trash removal, maintenance, and/or repairs to legally pre-existing structures, driveways and parking lots, so long as there is no expansion of the structure or use;
- ii. Repair or replacement of an existing onsite sewage treatment system that is in compliance with 310 CMR 15.00 Title 5;
- iii. Continuation of a legally pre-existing use;
- iv. Construction and maintenance of publicly maintained unpaved trails that restrict the use of motorized vehicles.

## **7. Applications, Fees and Consultants**

- A. Written application shall be filed with the Commission on the approved form to perform activities affecting resource areas protected by this bylaw. The permit application (whether for a Notice of Intent, Request for Determination of Applicability or other permit) shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving, and complying, with a permit issued pursuant to this bylaw.
- B. The Commission may accept along with the permit application, plans and documents filed under the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).
- C. Any person owning an interest in a property who desires to know whether or not a proposed activity or an area is subject to this bylaw may, in writing, request a determination from the Commission. Such a Request for Determination (RDA) shall include information and plans as are deemed necessary by the Commission. When the person filing the request is other than the owner, a signed authorization of the owner is required on the request. The determination shall be sent by the Commission to the owner as well as to the person making the request.
- D. At the time of an application, the applicant shall pay a filing fee specified by the Conservation Commission, which may be amended from time to time after public hearing in any Regulations adopted by the Commission. This fee is in addition to that required by the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).
- E. Pursuant to G.L. Ch. 44, s.53G, and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants in order to aid in the review of proposed projects.

## **8. Notice and Hearings**

- A. Any person filing a Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation, or an amendment to any of the above permits with the Commission shall at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land within 100' directly

opposite on any public or private street or way, and abutters to the abutters within one-hundred (100') feet of the property line of the applicant, including any in another municipality or across a body of water. For work on lots larger than 25 acres, the notice shall be sent to abutters within 100' of the proposed activities. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall state where copies may be examined and obtained by abutters.

- B. The Commission shall conduct a public hearing on any permit application and a public meeting on the Request for Determination of Applicability, with written notice given at the expense of the applicant, at least ten (10) business days prior to the hearing, in a newspaper of general circulation in West Boylston. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information or plans required of the applicant or others as deemed necessary by the Commission. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.
  - i. In order to provide sufficient review time the Commission may continue a public hearing, with the consent of the applicant if new information is submitted by the applicant, or applicant's agent, less than seven (7) business days before the scheduled public hearing or public meeting.
  - ii. The Commission may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

## **9. Permits and Conditions**

- A. Decisions - If the Commission, after a public hearing and consideration of the general and specific factors set forth below, determines that the activities which are subject to the application, or the land and water uses which will result there from, are likely to have a significant individual or cumulative effect on the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, unless the applicant authorizes an extension in writing, shall issue or deny a permit for the activities requested. The decision shall be in writing.
- B. Basis of Decisions - In making such a determination, the Commission shall take into account the following factors:
  - i. the extent to which the applicant has avoided, minimized and mitigated any such effect;



- ii. any loss, degradation, isolation, and replacement or replication by the applicant of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt; and
  - iii. foreseeable future activities that may impact the wetland resources.
- C. Resource Area Loss - To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.
- D. Conditions - Upon the issuance of a permit, the Commission shall impose conditions it deems necessary or desirable to protect said wetland resource area values, and all activities shall be conducted in accordance with those conditions.
- E. Permit Denial - Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. The Commission may also deny a permit:
  - i. for failure to submit necessary information and plans requested by the Commission;
  - ii. for failure to comply with the procedures, design specifications, performance standards, and other requirements in this bylaw and/or any regulations of the Commission; or
  - iii. for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw.
- F. Waivers - The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its bylaw and regulations, provided that:
  - i. the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said bylaw or regulations;
  - ii. that avoidance, minimization and mitigation have been employed to the maximum extent feasible; AND either:
  - iii. the project, considered in its entirety, would result in a net benefit of resource area values; or

- iv. that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

## **10. Regulations**

- A. After public notice and public hearing, the Commission may promulgate regulations to effectuate the purposes of this bylaw, such as to define additional terms not inconsistent with the bylaw, to provide additional details on filing fees and procedures, to provide for consultant fees, and to specify enforcement procedures, as the Commission deems necessary or appropriate.
- B. Failure to promulgate such regulations, or the invalidation by a court of law of one or more of such regulations, shall not act to suspend or invalidate any provision of this bylaw.

## **11. Enforcement**

- A. The Commission, its agents, officers, and employees shall have authority to enter upon privately-owned land, only within the jurisdiction of resource areas protected by this bylaw and only after obtaining permission from\_(giving 24-hour written notice to) the property owner or tenant thereof; for the purpose of performing, their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling, as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- B. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, non-criminal citations under G.L. Ch. 40 s. 21D, and civil and criminal court actions.
- C. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

## **12. Relationship to the Wetlands Protection Act**

This bylaw is adopted pursuant to the Town of West Boylston's Home Rule powers and is independent of MGL Ch. 131, § 40 and/or regulations thereunder. It is the intent of this bylaw to protect wetland resource areas, interests, definitions and performance standards that impose more stringent regulation than that imposed by MGL C. 131, § 40.

## **13. Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

## **14. Appeals**

A decision of the Commission shall be reviewable on the record of proceedings in Superior Court in accordance with MGL C. 249, § 4.

#### **15. Severability**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination issued hereunder.

Or take any other action relative thereto.

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#### **Discussion-**

Jonathan Meindersma will step down as Moderator for this article to speak on behalf of the Bylaws Committee. Kim D. Hopewell will create the mechanism used to follow proper protocol in appointing an interim Moderator. That procedure will be given to the Town Administrator and Town Counsel for review. The interim Moderator will be appointed and sworn in to perform duties on this article only. After the vote Moderator Meindersma will preside over the rest of the town meeting.

Chair of the Bylaws Committee - Jonathan Meindersma will give the following speech; The Bylaws Committee unanimously recommends that the town NOT adopt the proposed wetlands bylaw. We believe that the federal statutory and regulatory scheme, coupled with the Commonwealth's statutory provisions, including the Wetlands Protection Act, and related regulations found at 310 CMR Section 10, are sufficient protections for wetlands and we do not need another layer of regulations to restrict further what landowners within the town may or may not do with their property. We think these additional restrictions are unnecessary and unduly burdensome.

In addition to the restrictions imposed bylaw itself, the Conservation Commission would have the power to promulgate regulations upon notice and a hearing without any further vote by the townspeople. This creates a risk of further regulation without approval by the town. Even if the regulations are well intended and put forth in good faith by a diligent and responsible Commission, we think the town deserves the right to approve or disapprove any such regulations, just as it is doing tonight, and not merely a right to advise by means of comment at a public hearing. This risk is all the greater because future Commissions might not be as well-intentioned or as reasonable as the current Commission. Once the power is given, it is unlikely to be relinquished, and therefore, in our opinion, ought not to be granted as this bylaw would provide.

The Commission has noted that about 200 other municipalities within the Commonwealth have enacted bylaws such as this one. The Bylaws Committee did not find this a compelling reason to adopt such a bylaw; if 200 cities and towns have one, that means there are still about 150 other municipalities that do NOT have such a bylaw.

The Commission has also noted that it has spent a considerable amount of time and money to draft this bylaw, over two years at an expense of several thousand dollars paid to professionals in the industry of drafting such bylaws and advising Conservation Commissions in matters related thereto. We are grateful for the time and effort that has been put into this bylaw, and our advice to the town tonight is not intended as a lack of respect or appreciation for the Commission, it is just our collective best assessment of the bylaw that has been presented for your consideration. The Commission did articulate good reasons for having enforcement powers, and with that in mind, the Bylaws Committee in March suggested a shorter, more limited bylaw intended to give the Commission power to enforce existing laws and regulations without adding to the regulatory burden. The Commission declined to craft such a limited bylaw. While the

Commission's advisors may have advised it thusly, the Bylaws Committee wonders if there may be a way to craft a bylaw narrowly tailored to this objective of enforcement rather than creating an additional regulatory scheme and conveying additional rulemaking powers that evade accountability to and obtaining the approval of the voters of West Boylston.

To sum up, if the bylaw were all about enforcement of existing law and regulations, the case for approval would be far more compelling. But the bylaw presented for your consideration tonight goes beyond mere enforcement powers to the imposition of a new and additional regulatory scheme, to the grant of rulemaking authority, to the exclusion of further expression of the will of the voters. This bylaw reaches beyond what is truly necessary, and this makes the case for disapproval the far stronger case. The Bylaws Committee therefore recommends that the town NOT adopt this Wetlands Protection bylaw.

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David Mercurio stated that he has been serving on the Conservation Commission for 1 ½ years. The Conservation Commission wants to bring a mechanism in place for the ability to fine violators and to easily enforce the laws. The board hired Mark out of Neshoba to draw up this bylaw. We already follow the States Wetlands Protection Act along with other restrictions like the Cohen Bill. Marc Freiden was not familiar with this bill. David stated that the bill was passed in the early 90's and was passed for the environmental protection of water, and watershed protection. With these restrictions already in place I feel that the taxpayers, homeowners, and construction workers don't need more regulations.

The minutes of the March 29, 2016 joint meeting between the Bylaws Committee and the Conservation Commission showed that the Bylaw Committee was concerned with the long version of this bylaw and asked if a more limited bylaw that provided the ConCom which gives the ConCom the power to enforce the WPA and the Regulations without imposing additional restrictions on town residents and landowners would meet the ConCom's objectives.

Both Chase and Vignaly agreed that a shorter version would be sufficient. The committee therefore suggested that the ConCom draft a revised bylaw with this objective. Mr. Vignaly indicated he would draft a revised bylaw and circulate it for review.

Jonathan Meindersma received a revised draft of the bylaw submitted by Vincent Vignaly. That revised version of the bylaw as follows;

### **Town of West Boylston Local Wetlands Bylaw**

~~March 30~~ April 11, 2016 Draft

#### **1. Purpose and Intent**

The purpose of this bylaw is to protect the wetlands and related water resources in the Town of West Boylston by empowering the **West Boylston** Conservation Commission (**the "Commission"**) to enforce the existing Massachusetts Wetlands Protection Act.

To this end, it is the intent of this local wetlands bylaw to protect wetland resource areas and interests, but impose no additional standards and procedures other than those of MGL c 131, §40, the Massachusetts Wetlands Protection Act (**the "Act"**). It will only allow the Conservation to issue fines

under the Town of West Boylston General Bylaw Article ~~XIV~~ XVI: - Penalties, and General Bylaw Article XXV- Non-Criminal Disposition of Bylaw Violations, *subject to the limitations herein contained.*

## 2. Presumptions

Violations of the ~~Wetlands Protection Act (M.G.L. Ch. 131 s. 40)~~ and ~~Regulations~~ the regulations related thereto (31 0 CMR 10.00 *et seq.*, referred to herein as the "Regulations") warrant swift action to provide protection of wetland resources and interests. Adverse impacts upon wetlands and other water resources, as a consequence of a violation include, without limitation: erosion, sedimentation, loss of groundwater recharge, degradation of water quality and loss of wildlife habitat.

## 3. Enforcement Authority

~~The 'Nest Boylston Conservation Commission shall enforce the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 s. 40) and Regulations (310 CMR 10.00) within the town~~

The Commission shall have authority to enforce the Act and the Regulations within the town. Violations of the Act or the Regulations shall be deemed violations of this bylaw (each, a "Violation"). This enforcement power is limited to the issuance of fines of up to \$100 per Violation. Notwithstanding any provision to the contrary in the Act, the Regulations, or elsewhere in these bylaws, each day on which the Commission serves a separate notice of a Violation shall constitute a separate Violation susceptible of enforcement hereunder.

## 4. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination issued hereunder.

## Vote

Upon a motion of John Hadley and second by David Mercurio, it was unanimously voted to approve the shorter version of the bylaw, and to oppose recommendation of the longer version.

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## Final Version

*If the proposed bylaw amendment is accepted*

## ARTICLE XXXIX – WETLANDS PROTECTION BYLAW

### 1. Purpose and Intent

The purpose of this bylaw is to protect the wetlands and related water resources in the Town of West Boylston by managing activities determined by the Conservation Commission to be likely to have a significant or cumulatively detrimental effect upon any wetland resource area of value protected by this bylaw, including but not limited to the following interests and values:

- A. Protection of public or private water supplies, especially the Wachusett Reservoir and its feeder streams;
- B. Groundwater;
- C. Flood control;

- D. Erosion and sedimentation control;
- E. Storm damage prevention;
- F. Water quality;
- G. Water pollution control;
- H. Fisheries and wildlife habitat;
- I. Habitat of rare plant and animal species;
- J. Agricultural and aquaculture;
- K. Recreation and aesthetic values

To this end, it is the intent of this local wetlands bylaw to protect wetland resource areas and interests, and to impose additional standards and procedures stricter than those of MGL c 131, §40, the Massachusetts Wetlands Protection Act.

## **2. Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the following areas without approval of the West Boylston Conservation Commission:

- A. Any freshwater wetlands, marsh, wet meadow, bog, swamp, flat, bank, or beach bordering any reservoir, lake, or pond; intermittent stream, river, or brook; and adjoining lands out to a distance of 100 feet known as the Buffer Zone;
- B. Any bank or land under the aforementioned waterways and water bodies;
- C. Any certified vernal pool and adjoining lands out to a distance of 100 feet known as Vernal Pool Habitat;
- D. Any perennial stream, river, or brook; the land thereunder; and adjoining lands out to distance of 200 feet known as the Riverfront Area, and;
- E. Any land subject to flooding.

## **3. Exemptions**

- A. The applications and permits required by this bylaw shall not be required for the following:
  - i. Any emergency project or agricultural emergency as defined in MGL C. 131, § 40, or regulations thereunder.
  - ii. Any maintenance, repair or replacement, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, sewer, water, telephone, or other telecommunications service, provided that written notice has been given to the Commission prior to commencement of work, and provided that all work conforms to performance standards and design specifications in the regulations adopted pursuant to this bylaw.
  - iii. Routine mowing and maintenance of lawns, gardens, and landscaped areas (including tree pruning and fencing) in existence on the effective date of this bylaw or which are created after such date in accordance with the terms of this bylaw.

- iv. Work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations in 310 CMR 10.00; and
- v. Removal of dangerous dead and dying trees, without the use of machinery, excepting chainsaws.

#### **4. Definitions**

Except as otherwise provided in this bylaw or regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act, which terms, as used herein, shall include the provisions of MGL C. 131, § 40, and regulations thereunder at 310 CMR 10.00 et seq.

**25' No Alteration Zone** – The area located within 25' from the limit of Bordering Vegetated Wetlands, Banks, and Land Under Waterbodies and Waterways.

#### **5. Presumptions**

Buffer Zones are presumed significant to the protection of wetland resources and interests because activities undertaken in close proximity to resource areas have a high likelihood of adverse impacts upon wetlands and other water resources, either immediately, as a consequence of land disturbance and construction, or over time, as a consequence of daily operations or maintenance of such activities. Such adverse impacts include, without limitation: erosion, sedimentation, loss of groundwater recharge, degradation of water quality and loss of wildlife habitat.

#### **6. Limits on Activities within Buffer Zones**

- A. For the aforementioned reasons, the resource area within 200 feet of perennial rivers and streams (the 'riverfront area') Buffer Zones within 100 feet of a bordering vegetated wetland, bank, stream, pond, or land under waterbody or waterway are deemed valuable resources under this bylaw. This bylaw therefore limits disturbance within the Buffer Zones by establishing a 25' No Alteration Zone adjacent to the wetland resource area.
- B. For the application of this bylaw, Alteration is as defined in 310 CMR 10.04 and shall include, but not be limited to vegetation clearing, excavation, filling, placement of any materials (including sediment control barriers), and grading.
- C. The West Boylston Conservation Commission may reduce the following setbacks within the buffer zone in circumstances in which their strict application is infeasible due to special site and/or design considerations. Applicants shall specify the reasons for reducing this setback in the Notice of Intent issued for the pertinent project (such as unreasonable space limitations for the existing use or consideration of documentation that compliance will increase construction costs by more than 20%).
- D. The following are exceptions to the prohibitions within the 25' No Alteration Zone:
  - i. Routine trash removal, maintenance, and/or repairs to legally pre-existing structures, driveways and parking lots, so long as there is no expansion of the structure or use;
  - ii. Repair or replacement of an existing onsite sewage treatment system that is in compliance with 310 CMR 15.00 Title 5;

- iii. Continuation of a legally pre-existing use;
- iv. Construction and maintenance of publicly maintained unpaved trails that restrict the use of motorized vehicles.

## **7. Applications, Fees and Consultants**

- A. Written application shall be filed with the Commission on the approved form to perform activities affecting resource areas protected by this bylaw. The permit application (whether for a Notice of Intent, Request for Determination of Applicability or other permit) shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving, and complying, with a permit issued pursuant to this bylaw.
- B. The Commission may accept along with the permit application, plans and documents filed under the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).
- C. Any person owning an interest in a property who desires to know whether or not a proposed activity or an area is subject to this bylaw may, in writing, request a determination from the Commission. Such a Request for Determination (RDA) shall include information and plans as are deemed necessary by the Commission. When the person filing the request is other than the owner, a signed authorization of the owner is required on the request. The determination shall be sent by the Commission to the owner as well as to the person making the request.
- D. At the time of an application, the applicant shall pay a filing fee specified by the Conservation Commission, which may be amended from time to time after public hearing in any Regulations adopted by the Commission. This fee is in addition to that required by the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).
- E. Pursuant to G.L. Ch. 44, s.53G, and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants in order to aid in the review of proposed projects.

## **8. Notice and Hearings**

- A. Any person filing a Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation, or an amendment to any of the above permits with the Commission shall at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land within 100' directly opposite on any public or private street or way, and abutters to the abutters within one-hundred (100') feet of the property line of the applicant, including any in another municipality or across a body of water. For work on lots larger than 25 acres, the notice shall be sent to abutters within 100' of the proposed activities. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if



known. The notice to abutters also shall state where copies may be examined and obtained by abutters.

- B. The Commission shall conduct a public hearing on any permit application and a public meeting on the Request for Determination of Applicability, with written notice given at the expense of the applicant, at least ten (10) business days prior to the hearing, in a newspaper of general circulation in West Boylston. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information or plans required of the applicant or others as deemed necessary by the Commission. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.
  - i. In order to provide sufficient review time the Commission may continue a public hearing, with the consent of the applicant if new information is submitted by the applicant, or applicant's agent, less than seven (7) business days before the scheduled public hearing or public meeting.
  - ii. The Commission may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

## **9. Permits and Conditions**

- A. Decisions - If the Commission, after a public hearing and consideration of the general and specific factors set forth below, determines that the activities which are subject to the application, or the land and water uses which will result there from, are likely to have a significant individual or cumulative effect on the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, unless the applicant authorizes an extension in writing, shall issue or deny a permit for the activities requested. The decision shall be in writing.
- B. Basis of Decisions - In making such a determination, the Commission shall take into account the following factors:
  - i. the extent to which the applicant has avoided, minimized and mitigated any such effect;
  - ii. any loss, degradation, isolation, and replacement or replication by the applicant of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt; and
  - iii. foreseeable future activities that may impact the wetland resources.

- C. Resource Area Loss - To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.
- D. Conditions - Upon the issuance of a permit, the Commission shall impose conditions it deems necessary or desirable to protect said wetland resource area values, and all activities shall be conducted in accordance with those conditions.
- E. Permit Denial - Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. The Commission may also deny a permit:
  - i. for failure to submit necessary information and plans requested by the Commission;
  - ii. for failure to comply with the procedures, design specifications, performance standards, and other requirements in this bylaw and/or any regulations of the Commission; or
  - iii. for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw.
- F. Waivers - The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its bylaw and regulations, provided that:
  - i. the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said bylaw or regulations;
  - ii. that avoidance, minimization and mitigation have been employed to the maximum extent feasible; AND either:
  - iii. the project, considered in its entirety, would result in a net benefit of resource area values; or
  - iv. that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

## **10. Regulations**

- A. After public notice and public hearing, the Commission may promulgate regulations to effectuate the purposes of this bylaw, such as to define additional terms not inconsistent with the bylaw, to provide additional details on filing fees and procedures, to provide for

consultant fees, and to specify enforcement procedures, as the Commission deems necessary or appropriate.

- B. Failure to promulgate such regulations, or the invalidation by a court of law of one or more of such regulations, shall not act to suspend or invalidate any provision of this bylaw.

#### **11. Enforcement**

- A. The Commission, its agents, officers, and employees shall have authority to enter upon privately-owned land, only within the jurisdiction of resource areas protected by this bylaw and only after obtaining permission from\_(giving 24-hour written notice to) the property owner or tenant thereof; for the purpose of performing, their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling, as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- B. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, non-criminal citations under G.L. Ch. 40 s. 21D, and civil and criminal court actions.
- C. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

#### **12. Relationship to the Wetlands Protection Act**

This bylaw is adopted pursuant to the Town of West Boylston's Home Rule powers and is independent of MGL Ch. 131, § 40 and/or regulations thereunder. It is the intent of this bylaw to protect wetland resource areas, interests, definitions and performance standards that impose more stringent regulation than that imposed by MGL C. 131, § 40.

#### **13. Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

#### **14. Appeals**

A decision of the Commission shall be reviewable on the record of proceedings in Superior Court in accordance with MGL C. 249, § 4.

#### **15. Severability**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination issued hereunder.

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## ***Zoning Bylaws- Article 26***

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### **Article 26-**

Authorization to Amend the Zoning Bylaws Section 5.6 – Signs and Billboards

- 5.6 C.2- Sign Schedule
- 5.6 D 3.1.e.i.- Duration
- 5.6 D 3.1.e.vi- Residential Districts
- 5.6 E 2- Business Centers

### **Existing Bylaw**

#### **Section 5.6 C.2- Sign Schedule**

Standing Sign  
Business Center (3 or more businesses)  
1 per lot

For identification of business center, shopping center, industrial park and/or business therein: not to exceed 64 square feet in area.

OR

Portion identifying business center, shopping center or industrial park not to exceed 20 square feet and portion identifying individual business or industrial units not to exceed 8 square feet per unit and not to exceed 80 square feet in total.

Height: not to exceed height of highest building or 20 feet whichever is less.

Location: at least 10 feet from property line.

#### **5.6 D 3.1 e i- Duration**

The full digital image or portion thereof may change no more than once per minute. No portion of the image may scroll, swirl, change color, imitate movement in any manner, or meet the characteristics of a flashing sign.

#### **5.6. D .3.1 e vi- Residential Districts**

*New Section added to bylaws*

#### **5.6. E .2- Business Centers**

Standing signs identifying retail, business centers, or office/industrial/technical parks or centers shall contain the name, address and logo or trademarks of the office park or center. Such signs may include the name of not more than 12 of the tenants therein, with said names to be integrated into the overall design of the sign.

The name of the center must utilize at least 20% of the sign area. Minimum letter height for tenant names shall be eight inches for signs up to 32 square feet and 10 inches for signs up to 64 square feet. No part of the sign shall exceed the height of the building or 20 feet, whichever is less; and be located at least 10 feet from the property line.

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## Town Meeting Action

### 5.6. C. 2- Sign Schedule

Standing Sign  
Business Center (3 or more businesses)  
1 per lot

~~For identification of business center, shopping center, industrial park and/or business therein: not to exceed 64 square feet in area.~~  
~~—OR~~

The portion identifying business center, shopping center or industrial park ~~not to exceed 20 square feet~~ **must be at least 20% of total sign area** and portion identifying individual business or industrial units not to ~~exceed 8 square feet per unit and not to exceed 80 square feet in total~~ **80% of total sign area**, and the total sign area is not to exceed 100 square feet.

AND

### 5.6 D 3.1 e i- Duration

The full digital image or portion thereof may change ~~no more than once per minute, but no~~ **No** portion of the image may scroll, twirl, change color, imitate movement in any manner, or meet the characteristics of a flashing sign.

AND

**Add a new Section**

### 5.6. D .3.1 e vi- Residential Districts

Digital display signs are not permitted within any Residential District, except at the West Boylston Middle High School.

AND

### 5.6. E .2- Business Centers

Standing signs identifying retail, business centers, or office/industrial/technical parks or centers shall contain the name, and address ~~and logo or trademarks~~ of the office park or center. ~~Such signs may include the name of not more than 12 of the tenants therein, with said names to be integrated into the overall design of the sign.~~ The name and address of the center must utilize at least 20% of the **total** sign area. ~~Minimum letter heights for tenant names shall be eight inches for signs up to 32 square feet and 10 inches for signs up to 64~~

~~square feet.~~ No part of the sign shall exceed the height of the building or 20 feet, whichever is less; and be located at least 10 feet from the property line.

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## Discussion

Marc Frieden- The Planning Board had received a request from the Economic development Task Force for changes in the sign bylaw because the current bylaw at that time was unclear and contradictory in some places and difficult to enforce. In an effort for definitions and clarity the bylaw was restructured, as to make it easier for changes in the future. As a result Section 5.6 of the Zoning Bylaws was amended by Article 21 at the May 20, 2013 Semi-Annual Town Meeting. The entire section was deleted and replaced.

The Planning Board members to further redefine certain sections of the sign and billboard bylaw to be brought forth for town meeting approval;

Sections 5.6 C.2- Sign Schedule, 5.6 D 3.1 e. i- Duration, Adding section 5.6 D 3.1 e. vi- Residential Districts and 5.6 E2- Business Districts.

He stated that it was the intent of the board to make these sections of the bylaws more user friendly.

## Vote

Duly motioned, seconded and unanimously voted to recommend approval

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## Final Version

*If the proposed bylaw amendment is accepted*

### 5.6. C. 2- Sign Schedule

Standing Sign  
Business Center (3 or more businesses)  
1 per lot

The portion identifying business center, shopping center or industrial park must be at least 20% of total sign area and portion identifying individual business or industrial units not to exceed 80% of total sign area, and the total sign area is not to exceed 100 square feet.

AND

### 5.6 D 3.1 e i- Duration

The full digital image or portion thereof may change but no portion of the image may scroll, twirl, change color, imitate movement in any manner, or meet the characteristics of a flashing sign.

AND

### Add a new Section

#### 5.6. D .3.1 e vi- Residential Districts

Digital display signs are not permitted within any Residential District, except at the West Boylston Middle High School.

AND

#### 5.6. E 2- Business Centers

Standing signs identifying retail, business centers, or office/industrial/technical parks or centers shall contain the name, and address of the office park or center. The name and address of the center must utilize at least 20% of the total sign area. No part of the sign shall exceed the height of the building or 20 feet, whichever is less; and be located at least 10 feet from the property line.

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### ***Ten-Taxpayer Petition***

### ***General Bylaws***

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#### **Article 30 –**

Authorization to amend Article XXIX of the General Bylaws Department of Public Works

#### **Existing Bylaw**

#### **Article XXIX Department of Public Works Paragraph 3**

The Director of Public Works shall be selected on the basis of merit and qualifications, and have a bachelor's degree in civil engineering or other appropriate discipline, and preferably be registered as a professional civil engineer, and possess a minimum of eight years of relevant professional experience in public works construction and management; and further, such appointment shall be subject to confirmation by vote of a majority of the Board of Selectmen.

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#### **Town Meeting Action**

To see if the town will vote to amend Article XXIX – DEPARTMENT OF PUBLIC WORKS.

#### **Third paragraph which currently reads:**

"The Director of Public Works shall be selected on the basis of merit and qualifications, and have a bachelor's degree in civil engineering or other appropriate discipline, and preferably be registered as a professional civil engineer, and possess a minimum of eight years of relevant professional experience in public works construction and management; and further, such appointment shall be subject to confirmation by vote of a majority of the Board of Selectmen."

### To change to read:

"The Director of Public Works shall be selected on the basis of merit and qualifications. The preferred candidate will have a bachelor's degree in civil engineering or other appropriate discipline, and be registered as a professional civil engineer, and possess a minimum of eight years of relevant professional experience in public works construction and management; and further, such appointment shall be subject to confirmation by vote of a majority of the Board of Selectmen."

Or take any other action relative thereto.

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### Discussion

Kim D. Hopewell stated that this is a ten-taxpayer petition to amend the General Bylaws regarding the qualifications of candidates being considered for the position of the Department of Public Works Director. Being a petitioned article, if it is timely received and certified by the Town Clerk's Office the Board of Selectmen must place it on the warrant. The petition has to go on "as is" and is not reviewed or endorsed by the Board of Selectmen or town counsel.

This Bylaw was created by a special act and can only be changed by petitioning the state legislature. The Clerk will follow-up on the validity of this article.

Attached is a copy of Chapter 77 of the Acts of 2001, An Act authorizing the Town of West Boylston to Establish a Department of Public Works.

### Vote

Duly motioned, seconded and unanimously voted to approve this article if it is legal to submit it in its current format. If not, then we recommend to pass it over.

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### Final Version

*If the proposed bylaw amendment is accepted*

The Director of Public Works shall be selected on the basis of merit and qualifications. The preferred candidate will have a bachelor's degree in civil engineering or other appropriate discipline, and be registered as a professional civil engineer, and possess a minimum of eight years of relevant professional experience in public works construction and management; and further, such appointment shall be subject to confirmation by vote of a majority of the Board of Selectmen.

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### Article 30 – Chapter 77 of the Acts of 2001

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**AN ACT AUTHORIZING THE TOWN OF WEST BOYLSTON TO ESTABLISH A DEPARTMENT OF PUBLIC WORKS.**

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*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** Notwithstanding any general or special law or by-law to the contrary, there shall be established in the town of West Boylston a department of public works under the direction of a board of public works. The board of public works shall consist of 5 members to be appointed by the board of selectmen for a term of 1 year. Members shall serve until their successors are appointed and qualified. The board of public works shall, annually, elect a chairman and a clerk. The town administrator shall be a member of the board of public works. Other than the administrator, all appointees to the board of public works shall be registered voters of the town. One member of the board of selectmen shall be appointed to serve on the board of public works. Members of the board of public works may be removed for just cause by a majority vote of the board of selectmen.

**SECTION 2.** Unless noted otherwise in this act, the board of public works shall have all the power and duties now and from time to time vested by general or special law or town by-law in the following boards, departments and offices to wit: the West Boylston water district commissioners, the highway superintendent and the sewer commissioners, and such boards, departments and offices shall be abolished in conformity with section 7. No contracts or liabilities in force on the effective date of this act shall be affected, but the board of public works shall be the lawful successor of the boards, departments and offices so abolished. The department of public works shall assume the responsibility for the operations of the streets and parks department. All equipment, property, facilities, funds, assets and liabilities under the care, custody and control of the abolished boards, departments, and offices shall, as of the effective date of this act, be under the care, custody and control of the board of public works.

The board of public works shall have such additional powers with respect to collection and disposal of garbage and refuse, the maintenance and repair of town buildings and property, with the exception of buildings and property under control of the school committee, the board of cemetery trustees, the board of fire engineers, or the board of library trustees, and the performance of such duties of any other boards, departments, and offices of the town as may be reasonably related to the duties of a board of public works, as the town may from time to time, by by-law provide, any other provisions of law notwithstanding.

On or before December 15 each year, the board of public works shall submit to the town administrator a proposed annual budget for the ensuing fiscal year. This budget shall contain a detailed estimate of anticipated expenditures of the department of public works for the ensuing fiscal year, an estimate of the expenditures for the current year, and a statement of actual expenditures for the preceding 2 years. This budget shall show anticipated and historical expenditures for each department, office, and activity within the department of public works. The board of public works, with the assistance of the finance director or town accountant, shall also submit to the town administrator a statement of revenues received by the town from public works activities. This statement shall contain a detailed estimate of anticipated revenue of the department of public works for the ensuing fiscal year, an estimate of the revenues for the current year, and a statement of actual revenues for the preceding 2 years.

On or before December 15 each year, the board of public works shall submit to the board of selectmen a proposed schedule of rates and fees for public works services. Each year the board of selectmen shall hold a public hearing for the purpose of establishing a schedule of public works rates and fees. Such rates and fees shall be adopted by a majority vote of the board of selectmen.

The board of public works may establish and dissolve subcommittees, citizen advisory committees, and ad hoc committees as the board deems appropriate in the discharge of its duties.

**SECTION 3.** The board of public works shall appoint, with board of selectmen concurrence, a director of public works. A majority vote of each board shall be required to approve the appointment. The director may be appointed for a term of 1, 2 or 3 years. The director shall exercise and perform, in conformity with the policies of the board of public works, such powers, rights, and duties conferred upon the board under the provisions of section 2 as said board may from time to time delegate. The director of public works shall assume the authority and responsibilities of the tree warden. The director of public works shall have full charge and authority over the employees, equipment, and facilities within the department of public works, subject to the requirements of law, by-laws, regulations, and such direction and such policies.

The director shall hold at a minimum a Bachelor's degree in civil engineering or other appropriate discipline, and shall have a minimum of 8 years of relevant professional experience in public works construction and management. The board of public works may establish other requirements such as registration as a professional civil engineer within the commonwealth. During his tenure, the director shall hold no other elective or appointive office, nor shall the director engage in any other business or occupation. The director shall give the town a bond with a surety company authorized to transact business in the commonwealth as surety for the faithful performance of his duties in such sum and upon such conditions as the board of public works may require. The town will pay the premium for said bond.

The director shall be responsible for the efficient exercise and performance of such powers, rights and duties and may be removed from office for just cause only by a majority vote of the board of public works. The director shall be given a written notice at least 14 days prior to the date of removal, which shall specify the reasons for such removal, and at the request of the director, a public hearing shall be held within 7 days on the charges brought against him.

The director may designate, by letter approved by a vote of the board of public works and filed with the town clerk, a qualified officer of the town to perform the director's duties in the case of absence or disability. Pending the appointment of a director, the filling of any vacancy, the failure of the director to designate a temporary director, or during the suspension of the director, the board of public works shall appoint, with concurrence of the board of selectmen, a suitable person to perform the duties of the director's office.

**SECTION 4.** The director of public works shall appoint, remove and supervise employees of the department of public works in accordance with the town's personnel by-law and any applicable collective bargaining agreements. The director shall appoint and remove such employees as the director deems necessary, subject to town meeting appropriation and approval of the board of public works. The director shall supervise, direct and be responsible for the efficient administration of all departments, offices, boards and committees appointed by the director.

The director shall keep full and complete records of the department of public works. Such director shall render to the board of public works, as often as may be required by said board but at least quarterly, a full report of all the operations under his control during the period reported upon, and annually shall render to the board and file with the town clerk a report of all the operations under his control, including, but not limited to: a full financial report of all accounts, funds and grants, a work plan with related finance plan for the subsequent fiscal year, and a report on the accomplishments and progress made under the work plan from the preceding fiscal year. Such director from time to time, as required by said board, shall make a synopsis of such reports for publication. The director shall have access to all town books, records and documents necessary for the proper performance of the assigned duties and responsibilities.

The director shall keep the board of public works fully advised as to the needs of the town within the scope of his duties, and shall annually, in conformity with the requirements established by said board, furnish to the board a carefully prepared and detailed budget and work plan in writing, including estimates of the appropriations and revenue for department of public works enterprise funds established under [section 53F1½](#)

[of chapter 44](#) of the General Laws required during the next fiscal year for the proper exercise and performance of all said rights and duties.

The director shall be responsible for the maintenance and repair of all town property not under care, custody, or control of the school committee, the board of cemetery trustees, the board of fire engineers, or the board of library trustees unless said committee or board confers such responsibility. The director shall be responsible for the preparation of plans and the supervision of work on all construction, reconstruction, alterations, improvements, and other such projects authorized by the town. Upon written consent and authorization from the school committee, the board of cemetery trustees, the board of fire engineers, or the board of library trustees, the director may assume, with approval noted by a majority vote of the board of public works, responsibility for construction or improvements of school, cemetery, public safety or library facilities. The director shall be available to offer professional engineering services to other town boards, committees and offices as may be requested. The board of public works must authorize, by a majority vote of said board, any such professional services provided by the director.

The director shall, when any payroll, bill, or other claim against the town is presented, if the same is deemed by the director to be of doubtful validity, excessive in amount, or otherwise contrary to the interests of the town, refer it to the board of public works who shall immediately investigate and determine what, if any, payment should be made. Pending such investigation and determination by the board of public works, any payment will be withheld.

Warrants for the payment of town funds prepared by the town accountant, in accordance with the provisions of [section 56 of chapter 41](#) of the General Laws, shall be submitted to the board of selectmen for approval. The board of public works shall approve public works warrants prior to submittal to the board of selectmen. The approval of any such warrant by the board of selectmen shall be necessary and sufficient authority to authorize payment by the town treasurer.

The aggregate compensation of each town officer or employee appointed by the director shall be limited to the amounts established in accordance with the budgeting provisions of this act noted in section 2. All fees or other funds received in accordance with the provisions of this act or any applicable General Laws, by-laws, or special laws shall be paid into the treasury of the town.

The director shall perform such other duties consistent with the office as may be required by the by-laws of the town, by vote of town meeting, or by majority vote of the board of public works.

**SECTION 5.** Revenue generated by the operations of the department of public works shall be maintained as enterprise funds in accordance with [section 53F½ of chapter 44](#) of the General Laws. Separate enterprise funds shall be maintained for sewer operations and water operations.

**SECTION 6.** The board of selectmen shall retain certain public works powers, duties and responsibilities traditionally vested in said board. The board of selectmen shall set user fees and rates on behalf of the department of public works. The board of selectmen shall retain all powers, duties and responsibilities associated with negotiating and executing contracts. The board of selectmen may delegate the duties associated with negotiating a particular contract to another board, committee or official. The board of selectmen shall retain all powers, duties and responsibilities associated with incurring debt.

**SECTION 7.** No contracts or liabilities then in force by any department, board, committee, or official abolished in conformance with this act shall be affected by such abolition. The board of public works shall, in all respects, be the lawful successor of said abolished departments, boards, committees, or officials.

Within 30 days from the effective date of this act, the board of selectmen shall appoint a board of public works. Upon the appointment and qualification of a board of public works, all property, powers, duties and responsibilities of the road commissioners and sewer commissioners shall be transferred to the board of public works. Upon appointment of a director of public works, the positions of superintendent of streets and parks and superintendent of sewers are hereby abolished and all powers, duties and responsibilities of these positions shall be transferred to the director of public works. The existing department of streets and parks and the office of the superintendent of sewers shall be transferred to the department of public works.

Upon approval by independent majority votes of the board of public works and the board of parks commissioners, the property, powers, duties and responsibilities of the parks commission may be transferred to the department of public works. Until such votes are taken, the responsibilities, duties and powers of the parks commission shall not be changed by this act. Current members of the parks commission shall continue to serve until successors are appointed.

Upon approval by the tree warden and a majority vote of the board of public works, the property, powers, duties and responsibilities of the tree warden may be transferred to the department of public works. Until such votes are taken, the responsibilities, duties and powers of the tree warden shall not be changed by this act. The current tree warden shall continue to serve until a successor is appointed.

Upon approval by independent majority votes of the board of public works and the board of cemetery trustees, the property, powers, duties and responsibilities of the cemetery department may be transferred to the department of public works. Until such votes are taken, the responsibilities, duties and powers of the cemetery trustees shall not be changed by this act. If and when such a vote is taken: (1) the cemetery trustees shall continue to control the care and expenditure of perpetual care funds, (2) the labor force of the cemetery department shall be integrated into the department of public works, and (3) the cemetery trustees shall continue to be elected in the manner in which the cemetery trustees, currently in effect prior to the acceptance of this act, is elected. Current members of the board of cemetery trustees shall continue to serve until successors are elected.

The town shall recognize the years of service of all employees integrated into the department of public works and provide to such employee's rights, compensation and benefits as allowed under the town personnel by-law or appropriate collective bargaining agreement at levels equivalent to those provided to such employees on the date of this transfer.

**SECTION 8.** Upon approval of the board of public works and the board of selectmen the property, powers, duties and responsibilities of the West Boylston Water District shall be transferred to the department of public works. The water district is thereby dissolved, and without further conveyance or other act, all the assets, liabilities, obligations and indebtedness as well as the powers and duties of the water district shall be transferred to the department of public works on the effective date of this act; and further, that the board of water commissioners of the water district is hereby abolished, and the tenure of the incumbent members of said board shall terminate on the date of said transfer. The position of superintendent of the water district is hereby abolished and all powers, duties and responsibilities of that position shall be transferred to the director of public works.

The town shall recognize the years of service of all employees of the water district integrated into the department of public works and provide to such employee's rights, compensation and benefits as allowed under the town personnel by-law or appropriate collective bargaining agreement at levels equivalent to those provided to such employees by the water district on the date of this transfer.

The treasurer of the town of West Boylston shall place any reserve funds for water distribution system reconstruction, construction and improvement and any reserve funds for capital expenditure of the water district, and as soon as possible, any other surplus funds of said water district in a separate reserve fund for the water enterprise of the town to be used in conformity with [section 53F½ of chapter 44](#) of the General Laws.

The town through the department of public works shall be able to take up to 2,000,000 gallons of water daily from the Wachusett Reservoir in conformity with the provisions of section 22 of chapter 488 of the acts of 1895, as amended by chapter 456 of the acts of 1897, and chapter 352 of the acts of 1933.

**SECTION 9.** Once established, the town of West Boylston may modify the duties, powers and responsibilities of the department of public works. Integration of agencies, departments, or districts not described in this act requires approval by a majority vote at a town election. Public works functions, once integrated, may be constituted as independent organizations or departments by a majority vote at a town election. The structure and other attributes of the department of public works as defined in this act may be modified by a 2/3 vote of a town meeting.

**SECTION 10.** This act shall be submitted to the voters of the town of West Boylston for acceptance at a special town election in the form of the following question, which shall be placed on the official ballot at said election:

"Shall an act passed by the general court entitled, 'An Act Authorizing the Town of West Boylston to Establish a Department of Public Works', be accepted?"

If the majority of the votes cast in answer to this question is in the affirmative, this act shall take effect, but not otherwise. *Approved August 24, 2001.*

True Copy Attest  
Kim D. Hopewell, Town Clerk