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Town of Ayer
CONSERVATION COMMISSION

Town Hall ♦ One Main Street ♦ Ayer, MA 01432
P: 978-772-8220 x 143

The Honorable Maura Healey
Office of the Massachusetts Attorney General
1 Ashburton Place
Boston, MA 02108

December 13, 2021

Dear Attorney General Healey,

The Ayer Conservation Commission's proposed Fertilizer Use Bylaw passed with a nearly unanimous vote of approval at our Fall Town Meeting on October 25, 2021. The Bylaw is now before your office for a final determination as to whether it can or cannot be put into effect. This letter is to respectfully request your Office's endorsement.

Background

We were made aware by our Town Counsel, shortly before our Commission held a Public Hearing in advance of Town Meeting, that a previous attempt to pass a similar fertilizer use bylaw was rejected under Attorney General Martha Coakley's tenure. Attached is a copy of that decision letter, of July 1, 2013, regarding the Town of Westwood. With the support of our Select Board, the Commission decided to move forward regardless, for reasons noted in the Arguments below.

The Acts of 2012 passed by the State Legislature included "An Act Relative to the Regulation of Plant Nutrients" (Chapter 262) which assigned the Massachusetts Department of Agricultural Resources (MDAR) controlling authority to regulate the application of these nutrients, including fertilizers, to *both* agricultural land and non-agricultural turf/lawn. MDAR would later, in 2015, enact its own specific regulations. An exception was also made for the Cape and Islands to adopt stricter regulations.

When Westwood attempted to pass a local bylaw, passage of the Acts was a very recent event. It would therefore make sense the following year, 2013, to make a decision not to potentially undercut MDAR and its newly-granted authority, and therefore the AG's office focused on the presumed "intent" demonstrated by the Legislature. Because the Legislature removed previous draft language allowing municipalities to "enact more stringent standards," the AG's office in 2013 inferred that its intent was "to allow regulation only by the Department [MDAR]" (p. 4).

Arguments

Our Bylaw focuses solely on non-agricultural lawn and turf uses of fertilizer in a town that has diverse wetlands accounting for 13.5 % of our topography, as well as three underground aquifers that supply drinking water to town residents and businesses. Ayer spends tens of thousands of dollars each year just to treat a small number of our ponds for invasive aquatic weeds as well as native plant overgrowth – for which fertilizer runoff is a known contributor.

Since 2012 and 2013, there have been State cutbacks and layoffs that have undoubtedly affected the ability of many State agencies, including MDAR, to completely fulfill their various mandates. Overstretched workloads and limited resources are also common at the municipal level, and the ongoing pandemic has not helped.

While professional lawn care companies and suppliers know about MDAR regulations, it became clear in the process of developing our Bylaw that average homeowners/laypersons are generally completely unaware that MDAR exists, much less that it has regulations that pertain to the care of non-agricultural yards and such. Indeed, a recent (9/28) newsletter from the MSMCP (Mass. Society of Municipal Conservation Professionals) highlighted the fact that so many average residents remain unaware of MDAR regulations.

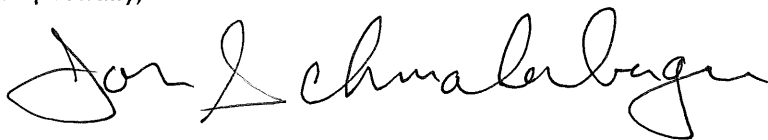
We therefore respectfully suggest that now, 9 years after the passage of the Acts of 2012 and 8 years after the AG's Westwood decision, it can be argued that there IS a role for municipalities to play in support of MDAR at the local/residential level, by enacting local bylaws and regulations pertaining to non-agricultural fertilizer use.

The Ayer Conservation Commission seeks authorization of this Bylaw primarily as an educational tool to increase public awareness. We have no interest in usurping the MDAR, and in fact, would regard the MDAR as the body to turn to for primary enforcement were there to be a case that was particularly egregious – for example, demonstrating clear “willfulness of violation,” significant degree of harm or injury, or a display of a “recurrent pattern” of violation, as noted in MDAR's regulations, 310 CMR 11:09 (2).

We believe that a local bylaw of this nature would give the Commission and related Town entities legal ‘standing’ to speak on behalf of already-existent MDAR regulations at the least, if not a little more broadly in terms of a small number of more stringent conditions. Our bylaw overlaps greatly with MDAR terms, with the exception of a stricter standard for buffer zones than MDAR, and a more extended no-use period over the winter. We would be happy to accept any adjustments that the AG's office would suggest.

We therefore ask the AG's office to reconsider its earlier Westwood decision in 2013 by acknowledging the important role local municipalities could take in supporting the shared intent to protect our environment. Please grant us the opportunity to be a kind of partner to the MDAR and its regulations, while at the same time allowing us the opportunity to, within reasonable limits, appropriately tailor local restrictions to the particular needs of our community's land and water resources.

Respectfully,

A handwritten signature in black ink, reading "Jon Schmalenberger". The signature is written in a cursive, flowing style with a large initial "J".

Jon Schmalenberger
Chair, Ayer Conservation Commission

Enclosure: Office of the Attorney General letter to Town of Westwood, July 1, 2013