



Town of Ayer

SPECIAL ANNUAL FALL TOWN MEETING WARRANT

Ayer Shirley Regional High School Auditorium
141 Washington Street, Ayer, MA 01432
October 25, 2021 @ 7:00 P.M.

Commonwealth of Massachusetts
Middlesex, ss.

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Ayer qualified to vote in Town Elections and Affairs to meet at the Auditorium in the Ayer Shirley Regional High School located at 141 Washington Street, Ayer, Massachusetts on Monday, the Twenty-fifth (25th) day of October, 2021, at seven o'clock in the evening (7:00 p.m.) then and there to act on the following articles:

Hereof fail not and make due return of this warrant with your doings thereof to the Town Clerk before the date appointed for said meeting.

Given under our hands this 5th day of October AD 2021.

Shaun C. Copeland, Chair

Scott A. Houde, Vice Chair

Jannice L. Livingston, Clerk

AYER SELECT BOARD

Any persons needing disability related assistance (such as signing, etc.) at the Town Meeting please contact the Select Board Office at 978-772-8220 x100 before October 22, 2021. We shall make every reasonable effort to assist you. Large print version of the text of this warrant is available upon request.

ARTICLE 1: TRANSFER OF THE WOODLAWN CEMETERY

To see if the Town will vote to acquire and accept, by donation, from the Woodlawn Cemetery Company, or the current owner of said property, all of the real property known as the Woodlawn Cemetery, located at Harvard Road, Ayer, being two parcels, together containing 10.5 acres, more or less, and shown as Parcel 35-20, described in a deed recorded with the Middlesex South Registry of Deeds in Book 1438, Page 459 and Parcel 35-51, described in a deed recorded with the Middlesex South Registry of Deeds in Book 4708, Page 1; and further, to acquire and accept, by donation, all of the personal property, funds and accounts of said Woodlawn Cemetery Company owned, maintained and used in connection with the ownership and operation of the Woodlawn Cemetery; and to authorize the Select Board to take all actions and execute all documents necessary and appropriate for said acquisition and acceptance; or take any action thereon or in relation thereto.

Explanatory Note: This Article would authorize the Select Board to acquire the Woodlawn Cemetery by donation from the Woodlawn Cemetery Company to include all personal property, funds, and accounts. This is the second step in the transfer process. Town Meeting passed Article 27 at the 2021 Annual Town Meeting on April 26, 2021, which authorized the Town to conduct its due diligence with respect to the transfer and to return to the Fall Special Town Meeting on October 25, 2021, with a formal recommendation and presentation. The formal recommendation is to proceed with the transfer of the Woodlawn Cemetery to the Town. Presentation to be made at Town Meeting.

Sponsor: Select Board

Simple Majority Vote Required

ARTICLE 2: FUNDING FOR OPERATIONS OF THE WOODLAWN CEMETERY

To see if the Town will vote to raise and appropriate or transfer from other available funds the sum of \$41,000 to fund the operations of the Woodlawn Cemetery, including any incidental or related costs and expenses; or take any action thereon or in relation thereto.

Explanatory Note: This Article would authorize the funding in the amount of \$41,000 for the Town to operate the Woodlawn Cemetery for the balance of Fiscal Year 2022.

Sponsor: Select Board

Simple Majority Vote Required

ARTICLE 3: ESTABLISHMENT OF AN APPOINTED CEMETERY COMMISSION

To see if the Town will vote pursuant to the provisions of G.L. c. 114, sec. 27 to authorize the creation of a three-member Cemetery Commission to be appointed by the Select Board, which Commission shall be responsible to maintain the public cemeteries in the Town, each member of said Commission to be appointed for a three-year term; and further authorize the placement of a ballot question to this effect before the voters at the Annual Town Election to be held on May 10, 2022 in accordance with the provision of G.L. c. 41, sec. 21 in the form as stated in the statute; or take any action thereon or in relation thereto.

Explanatory Note: This Article would authorize the creation of a three-member Cemetery Commission to be appointed by the Select Board for the purposes of maintaining the Woodlawn Cemetery. The Article would

further authorize the placement of a ballot question to this effect on the Annual Town Election Ballot to be held on May 10, 2022, in accordance with the provision of G.L. c. 41, sec.21.

Sponsor: Select Board

Simple Majority Vote Required

ARTICLE 4: CELL TOWER LEASE

To see if the Town will vote to transfer the care, custody, management and control of the property described below from the Select Board for public works purposes to the Board of Select Board for public works purposes and for the purpose of leasing for telecommunications purposes; and to authorize the Select Board to enter into such a lease or leases for telecommunications purposes, for all or a portion of the land located on Brook Street at Town of Ayer Department of Public Works Facility, shown on Assessors Map 26, Parcel 10, which property is described in a deed recorded with the Middlesex Registry of Deeds at Book 6523, Page 0282, upon such terms and conditions as the Select Board determine to be appropriate, such lease or leases to exceed three years; and to authorize the Select Board to grant such non-exclusive access and utility easements as the Select Board deems appropriate; and to further authorize the Select Board to enter into such agreements and execute such instruments as may be necessary to effectuate the purposes of this article; or take any action thereon or in relation thereto.

Explanatory Note: This Article would authorize the Select Board to re-lease the existing town land that the cell tower is located on at 25 Brook Street (DPW) for a lease or leases not to exceed twenty years. The land lease for the land where the cell tower is located will expire in January of 2023. In accordance with Massachusetts Procurement Law, the lease of town-owned land must go out to a public competitive bid process. To date, the Town of Ayer has collected approximately \$900,000 over the current 20- year lease period.

Sponsor: Select Board

Two-Thirds Vote Required

ARTICLE 5: COMMUNITY PRESERVATION COMMITTEE FUNDING TO UPDATE THE COMMUNITY PRESERVATION FIVE-YEAR PLAN

To see if the Town will vote to transfer from the Community Preservation Fund (FY 2022) Balance Reserve for Undesignated Reserve the sum of \$21,000 to fund updating the Community Preservation Five-Year Production Plan; or take any action thereon or in relation thereto.

Explanatory Note: This Article would authorize funding of \$21,000 from the Community Preservation Fund (FY 2022) Balance Reserve for Undesignated Reserve to hire a consulting firm to work with the Community Preservation Committee to update the Community Preservation Five-Year Plan.

Sponsor: Community Preservation Committee
Select Board: Recommends

Simple Majority Vote Required

ARTICLE 6: COMMUNITY PRESERVATION COMMITTEE FUNDING FOR THE AYER SHIRLEY REGIONAL SCHOOL DISTRICT (ASRSD) ATHLETIC FIELD PROJECT

To see if the Town will vote to transfer from the Community Preservation Fund (FY 2022) Balance Reserve from Open Space Category the sum of \$300,000 to fund a portion of the Town's cost for the rehabilitation and restoration of land for recreational use consisting of the installation of a track area, as part of the Ayer Shirley Regional School District's Athletic Field Project; or take any action thereon or in relation thereto.

Explanatory Note: This Article would fund \$300,000 from the Community Preservation Fund (FY 2022) Balance Reserve from Open Space Category to help offset a portion of the Town of Ayer's cost for the installation of a track area as part of the Ayer Shirley Regional School District's Athletic Field Project. The track will be available for use by Ayer residents when not in use by the schools.

Sponsor: Community Preservation Committee
Select Board: Recommends

Simple Majority Vote Required

ARTICLE 7: TOWN OF AYER FERTILIZER USE BYLAW

To see if the Town will vote to amend the General Bylaws by inserting Chapter 146 - Fertilizer Use Bylaw therein a new bylaw, Fertilizer Use Bylaw as follows; or take any action thereon or in relation thereto.

SECTION 1: PRESUMPTIONS

- A. Over 13.5% of Ayer's topography is comprised of open water (ponds, streams, rivers) and diverse wetlands. In addition, three important underground aquifers are located within Ayer's boundaries, two of which supply drinking water to town residents and businesses.
- B. Sufficient scientific evidence exists that demonstrates that the inappropriate, excessive, and/or improper use of turf fertilizer products containing phosphorus and nitrogen can result in the direct runoff and/or groundwater leaching of these products into water resources and nearby ponds and streams. This impact, however unintended, can be significant and costly.
- C. Public health risks from excessive loading of nutrients to water resources may include direct detrimental effects on drinking water sources by increased concentrations of nitrates and phosphates that can violate safe drinking water standards.
- D. Evidence also shows that the excessive nutrient enrichment of ponds from fertilizer runoff can contribute to the significant acceleration of a natural process called '**eutrophication**' (see Definitions). Fertilizer runoff is just one source of over-enrichment that stimulates the dense growth of algae, invasive aquatic vegetation, and the overgrowth of native plant species. The build-up of the resulting organic sediment at the bottom of a pond leads to the gradual depletion of oxygen in the water, the deterioration of water quality, and the destruction of habitat for fish and wildlife. In addition to potential algae blooms and fish kills, this also may drive up the cost of drinking water purification and impair human recreational uses.

E. Ayer already annually spends thousands of dollars of taxpayer revenue to treat some of its ponds in order to slow eutrophication, reduce the growth of invasive aquatic vegetation (e.g. milfoil, fanwort) and manage the over-growth of native aquatic vegetation (e.g. waterlilies, phragmites) – all forms of vegetation that thrive from the addition of fertilizer runoff.

F. Because fertilizer use is a more controllable source of excessive nutrient runoff, and because there are reasonable alternatives, this bylaw is an effort to encourage our community to do what we can to minimize and/or mitigate these negative effects and better protect our valuable water resources.

SECTION 2: GOALS

A Town bylaw to conserve resources, protect the environment, and reduce taxpayer expenses by regulating the outdoor application of nitrogen and phosphorus in commercial fertilizers in order to reduce the overall amount of excess nitrogen and phosphorus entering the Town's resource areas as defined in the Ayer Wetlands Protection Bylaw (Article XXVI). Reducing excess nitrogen and phosphorus will help protect and improve the water quality of Ayer's valuable aquifers and surface waters and to prolong the health of its ponds and wetlands for habitat and recreational use.

Consistent with this goal, and based on the findings provided above, the Town provides this bylaw to achieve the following goals:

- A. To provide standards and regulations that will allow reasonable use of fertilizers for the enhancement and maintenance of turf quality.
- B. To ensure application of fertilizer shall be performed in a manner consistent with best management practices (BMPs), which from time to time may undergo changes in response to scientific research.
- C. To provide a legal mechanism for enforcement against the inappropriate and/or improper use of fertilizer.
- D. To incorporate, by reference, the University of Massachusetts Extension's Turf Management BMPs as the primary standard for the content and application practices related to turf fertilizer. (See Definitions below)
- E. To provide a regulatory tool that will help the Town to achieve total daily maximum load (TDML) improvements to impaired waters within Ayer as well as to achieve the phosphorus reduction goals identified in the "Biological Survey, Assessment and Management Recommendations for Ayer's Ponds" prepared by Geosyntec Consultants in 2016.
- F. To conserve valuable water resources, increase property values, and reduce the financial burden on taxpayers and property owners by regulating the outdoor application of nitrogen and phosphorous on turf.
- G. To help achieve goals set forth in the Town of Ayer's Master Plan, Open Space & Recreation Plan, and local Wetland Bylaw (Article XXVI).

SECTION 3: AUTHORITY

This bylaw is adopted by the Town of Ayer as implementing regulations pursuant to and as authorized by Section 9 of Chapter 262 of the Acts of 2012 as adopted by the Legislature of the Commonwealth of Massachusetts.

SECTION 4: PERFORMANCE STANDARDS FOR FERTILIZER APPLICATION

This bylaw shall apply to, and regulate any and all, applications of fertilizers containing nitrogen and phosphorus within the Town of Ayer. Except as specified under Exemptions (see following section), applications of fertilizer to turf shall comply with the following standards:

- A. The application of fertilizer containing nitrogen and/or phosphorus is prohibited between November 1 and April 1 unless specifically permitted by the enforcement authority.
- B. Nitrogen or phosphorus from any fertilizer application shall not be applied to, or otherwise deposited on, any impervious surface, including parking lot, roadway, sidewalk, frozen soil, or ice. Any fertilizer applied, spilled, and/or deposited on any impervious surface, either intentionally or accidentally, must be immediately and completely removed and contained and either legally applied to turf or any other legal site or returned to an appropriate container.
- C. No person shall apply nitrogen or phosphorus containing fertilizer directly during or immediately prior to forecast heavy rainfall, such as but not limited to thunderstorms, hurricanes, or nor'easters, nor shall fertilizer be applied onto saturated ground.
- D. Applications of fertilizer should be watered in with a minimum amount of water to avoid runoff into nearby resources or across impervious surfaces. A suggested standard is no more than 0.25 inch of irrigation or natural rain within the twenty-four hour period following application.
- E. The application of nitrogen or phosphorus containing fertilizer is prohibited within 100 feet of Wetland Resource Areas and within 200 feet of Riverfront Areas as defined in the Ayer Wetland Protection Bylaw (Article XXVI) and Regulations unless permission is obtained through the enforcement authority herein allowing such activity. The application of such fertilizers is also prohibited within all land mapped as Zone II (Aquifer Protection Overlay District) surrounding a public water supply well and including all Interim Wellhead Protection Areas, as detailed in Section 8.1 of the Ayer Zoning Bylaws.
- F. Fertilizer that contains phosphorus shall not be used unless a soil test taken not more than three years before the proposed fertilizer application indicates that additional phosphorus is needed for growth of that turf, or unless establishing new turf or re-establishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP developed by the University of Massachusetts Extension, Center for Agricultural, Turf Program.
- G. The fertilizer application requirements of this subsection shall apply with the same limitations to combination products as defined by this bylaw.

SECTION 5: EXEMPTIONS

A. For agriculture and horticulture uses. Applications of fertilizer to vegetated areas that do not include managed turf/landscaped areas are not subject to the provisions of this bylaw as they are regulated by MDAR fertilizer regulations (see definitions below).

B. For use in gardens, including vegetable and flower, trees, shrubs, and indoor applications including greenhouses.

C. For the establishment of new turf, including the use of hydroseeding, and/or vegetation in the first growing season.

D. For the repair of existing turf, including the use of hydroseeding, after substantial damage or ground disturbance, or where soil tests performed within 3 years confirm the need for additional phosphorus or nitrogen application. The lawn fertilizer application shall not contain amounts of phosphorus or nitrogen exceeding the amount and rate of application recommended in the soil test evaluation.

E. Yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil itself.

SECTION 6: DEFINITIONS

For the purposes of this bylaw, the following terms are defined as provided below:

AGRICULTURE/AGRICULTURAL USE

Includes farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural, viticultural, or horticultural commodities.

BEST MANAGEMENT PRACTICES (BMP)

A sequence of activities designed to limit a non-point pollution source. For the purposes of this bylaw, BMP means the “Best Management Practices for Soil and Nutrient Management in Turf Systems,” prepared by the University of Massachusetts Extension, Center for Agriculture, Turf Program. The version of this document that applies to this bylaw shall be that which was most recent at the time of the adoption of this bylaw or any subsequent versions that are adopted as an amendment to this bylaw through a majority vote at Town Meeting.

COMBINATION PRODUCTS

Sometimes known as “weed and feed,” any product that, in combination with fertilizer, contains pre- or post-emergence herbicides, insecticides, or other pesticides or plant growth regulators.

COMPOST or ORGANIC COMPOST

The biologically stable, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

EUTROPHICATION

In Greek, this means “well-nourished.” When talking about lakes and ponds, its meaning is more like “over-nourished,” derived from the gradual increase in concentrations of phosphorus, nitrogen, and other plant nutrients. As ponds fill with sediments from decaying plant growth, they lose oxygen, depth, and water quality, leading to fish kills, algae blooms, and the loss of habitat. While eutrophication used to mean the process of a pond or lake aging naturally over thousands of years, human activities – including the use of excess or inappropriate fertilizers and other forms of pollution run-off – have been shown to dramatically accelerate the process and are now regarded as the primary driver of this serious ecological challenge.

FERTILIZER RATIO (N-P-K RATIO)

When buying commercially-available fertilizers, nutrient levels are indicated on packaging as a ratio of three numbers, e.g. '10-10-10' or '24-6-6', etc. These numbers refer to the percentage by weight in the package of Nitrogen (N)-Phosphorus (P)-Potassium (K). The remainder of the package is comprised of inert filler material that assists in the dispersal of the nutrients.

FERTILIZER

A substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorous, potassium or other substances. Fertilizer does not include those nutrients that are normally excluded from fertilizer, such as chemicals that are part of horticultural gypsum, dolomite, limestone, lime, Jersey greensand, grass clippings, or compost topdressing. Commercially available fertilizers can be broken down into two types: Organic and Synthetic.

ORGANIC FERTILIZERS

Organic fertilizers feed the soil. They are derived from plants, manure, once-living organisms, and naturally-occurring mineral deposits and include alfalfa, seaweed, cottonseed meal, bone meal, manure, heat-dried microbes, greensand, rock phosphate. These fertilizers are slow-release and water-insoluble, relying on microorganisms in the soil to digest and break down the nutrients more slowly into a form then available to plants. While they have a slower immediate impact, they tend to remain in the soil and provide ongoing effects. They present a low risk of burning, leaching, or run-off.

SYNTHETIC FERTILIZERS

Synthetic fertilizers feed the plant. They are manufactured by chemically processing minerals, gases, and waste products, and are engineered to deliver nutrients rapidly into the plant itself. They are water-soluble for immediate root uptake and do not tend to improve the soil itself. They have a higher risk of burning, leaching, or run-off if used in excess.

HEAVY RAIN

A rainfall greater than 0.25 inch per hour during a given twenty-four-hour period or a rainfall of greater than one inch total in the next twenty-four-hour period.

IMPERVIOUS SURFACE

Any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes concrete, asphalt, paver blocks, gravel, decks, patios, elevated structures, and other similar structures, surfaces, or improvements, in addition to frozen ground during winter months.

MANAGED TURF AREA

An area of turf, such as a lawn or landscaped area, that is periodically maintained through mowing, fertilizing, aerating, irrigation, or other similar activities designed to maintain or enhance the health, functionality, and/or aesthetic appeal of the turf.

MDAR FERTILIZER REGULATIONS

The most recent regulations of the "Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes," developed by the Massachusetts Department of Agricultural Resources (MDAR) pursuant to its authority under MGL, c. 128, sections 2(k) and 65(A), as amended by Chapter 262 of the Acts of 2012, 330 CMR 31.00.

MUNICIPAL APPLICATOR

A public employee of a town, the county, or the state or federal government (or an employee of a department of and within such public entity) who fertilizes and manages turf located on property owned or controlled by a town, the county, the state or federal government (including publicly owned golf courses and athletic fields) within the scope of their official public employment responsibilities.

NITROGEN (N)

An element essential to plant growth. For the purposes of the bylaw, nitrogen may be available in 2 forms: **slow-release** (aka controlled-release, timed-release, slowly available, or water-insoluble) nitrogen, which means nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants; and/or **quick-release**, water-soluble nitrogen, which means nitrogen in a form that has no delay and is rapidly available for turf and other plant uptake and use after application.

NUTRIENT

Any of the following 17 elements needed for growth of a plant: the three non-mineral elements: carbon, hydrogen, and oxygen; the six macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulfur; and the eight micronutrients: boron, copper, iron, chloride, manganese, molybdenum, nickel, and zinc.

PHOSPHORUS (P)

Phosphorus, in mineral or organic form, is just one of the nutrients needed by plants to maintain healthy, strong growth. It is also one of the chemicals involved with fertilizers that are commonly found in water runoff that contributes to the pollution of ponds and groundwater.

SATURATED GROUND

Soil soaked with moisture so that it cannot absorb any more liquid.

TURF

Any non-crop land area that is covered by any grass species (i.e. 'lawn' or 'sod') or related groundcover, excluding meadows, grasslands, pasture, hay land, trees, shrubs, turf grown on turf farms, or any form of agricultural production or use.

SECTION 7: ENFORCEMENT

The enforcement authority shall be the Conservation Commission and its agents, or any town officials in addition as designated by the Select Board to oversee and enforce the provisions of this bylaw. A warning in lieu of a fine or other enforcement action for the first offense can be issued at the discretion of the enforcement authority.

SECTION 8: REGULATIONS

After public notice and public hearing, the Conservation Commission may enact additional regulations to carry out the purposes of this bylaw, effective when approved by vote of the Commission and filed with the Town Clerk.

SECTION 9: OTHER REMEDIES

The enforcement authority may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the enforcement authority shall not preclude enforcement through any other lawful means.

SECTION 10: EDUCATION

A. The Ayer Conservation Commission will assist in maintaining a program of fertilizer and turf management education that is based on BMPs and the latest science.

B. Fertilizer education may consist of, but is not limited to, collaboration with retailers to post in-store information on Town fertilizer regulations, the BMP requirements, mailings, and flyers for the general public concerning Town fertilizer regulations, the BMP requirements, and outreach to landscape professionals and municipal applicators concerning fertilizer-related laws and the BMP requirements.

SECTION 11: SEVERABILITY

Should any section, part, or provision of this bylaw be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of this bylaw as a whole or any part thereof, other than the section, part, or provision held invalid or unconstitutional.

Explanatory Note: This Article would amend the Town’s Bylaws to add a Fertilizer Use Bylaw in the Town of Ayer which is intended to help prevent the threats of fertilizer pollution to Ayer’s waterways and shared environmental resources. The principal enforcement agent of the Fertilizer Use Bylaw would be the Ayer Conservation Commission. The Fertilizer Bylaw if passed by Town Meeting is subject to final review and acceptance by the Massachusetts Attorney General.

Sponsor: Select Board

Conservation Commission: Recommends

Simple Majority Vote Required

CITIZENS PETITIONS

PETITION ARTICLE

REZONE 29 HARVARD ROAD, LOT 35-22, FROM GR (GENERAL RESIDENCE) TO GB (GENERAL BUSINESS)

To see if the Town will vote to rezone 29 Harvard Road (Lot 35-22) from GR to GB. This is in keeping with (consistent) with the zoning surrounding lot 35-21, 27 Harvard Road.

Sponsor: By Petition

Planning Board: To Report at Town Meeting

Simple Majority Vote Required

Explanatory Note: This Citizens Petition was submitted by Theodore Maxant on September 8, 2021, signed by 142 Ayer Voters with all signatures certified by the Town Clerk. To view a copy of the Petition and supporting documents, please visit the Town’s website at www.ayer.ma.us/townmeeting or contact the Office of the Ayer Town Clerk.

A True Copy Attest: *Susan E. Copeland*
Susan E. Copeland, Town Clerk

Date: October 8, 2021

As directed in the foregoing warrant, I have this day posted three attested copies in three public places, one of which was the Town Hall, at least fourteen days before said meeting, all as herein directed.

Samuel A. Gordon Jr.
Constable

Date: October 8, 2021