

Thank everyone for taking time during the meeting to discuss this.

The document we're going over today is a clean draft to be reviewed by the Con Com at large. Although the Content here is all complete the final spelling and grammatical errors have not been removed yet. This is the first of three meetings we will have on the issue and the first time the commission as a whole will be seeing the entire finished draft. The public is allowed and welcomed to participate, though in this meeting in particular we ask that people recognize that this meeting is geared more toward the commission and to keep their comments brief. The following two meetings being held on zoom 5/11 & 5/25 are specifically geared toward receiving public comment.

(Slide 1) Title: Welcome to the bylaw review.

We're here to present the revised bylaw regulations. We are the BRRSC. The committee was only two members, Michele Lobe as chair and myself. The meetings were held on the first and third Fridays of the month from January 7<sup>th</sup> until April 29<sup>th</sup>. The majority of the meetings ran an hour with some running closer to two. The meetings were all done over zoom and recorded. The videos of these meetings along with the meeting notes can be found on the Con Com website.

(Slide 2) Title: Scope

The subcommittee was formed to create a final draft of revised regulations for Con Com to adopt. The existence of the Conservation Commission and their ability to promulgate regulations to work under are the laws. Those facts were not considered or challenged in this process. The Subcommittee's focus was specifically to revise the regulations that the Con Com works under. These regulations are specific to Amherst and represent what we believe to be the best ways to protect the wetland resources in the town.

(Slide 3) Title: Background

The WPA was passed by the state in 1972 and most recently amended in 2014. Under the home rule provision of the state constitution cities and towns are allowed to create bylaws that can exceed but not reduce the protections granted in the WPA. Amherst has exercised this ability and is currently working under regulations approved in 2014. The regs we offer today are actually the end of a multi-year process. Starting with a working group of Beth Wilson , former Wetlands Administrator, Briony Angus, former Con Com chair and Rob Maura the building commissioner the 2014 regulations were reviewed and edits made. When Erin joined the town staff in 2019 Beth Wilson and her went over the document again and made comments. Additionally Erin did present these edits in at least one meeting to the Con Com. Coming into our first Bylaw meeting in January our 2014 regs had over 800 edits and comments to consider.

(Slide 4) Title: Sequence

Consider them we did. Starting from our first meeting the subcommittee reviewed each page of the document. We read the existing text and previous comments. Then the three of us would discuss changes we'd like to incorporate. In some instances topics were tabled to allow for research or expert advice. The sources researched were generally other town bylaws and scientific articles. The experts consulted were most often our town attorney, KP law and Emily Stockman a wetland specialist that the Town often turns to for peer review work. After completing the first read through and mark-up of each

section Erin would write a draft, which would then be reviewed by town attorney. Next, that new draft would come back to the subcommittee for review again. Final edits were made from us and the draft presented here will be final after any comments from the full commission and public have been considered.

(Slide 5) Title: Goals bullets:

We had three big changes in mind when it came to these amendments. First was simply to make it smaller. There was a number of unnecessary wording, redundant phrases and run-on sentences. Our current version did achieve that goal to some degree. We consolidated some ideas and removed a lot of the redundancy. However there were whole sections missing from the 2014 version that had to be added. The second goal was to make it approachable. We achieved this through a lot of reorganizing and rewording. The version we are presenting today has all sections following the same order and definitions that are clear. Our final goal was consistency both within the regulations and with the WPA. This is important for appeals and litigation but it is also important for people's ability to understand our bylaws. Wherever possible we tried to mimic wording from the WPA or our existing regulations. Where we made changes it was to be sure the sections were in agreement with each other in terms of definitions and intent.

(Slide 6) Title: N/a

With all that background let's get right into the proposed 2022 bylaw regulations. We are not attempting in one meeting to go through each of the 800+ comments but I will try to point out each of the major changes we made and explain why. After this meeting you should have access to the latest clean version presented here and we will have two more meetings to discuss it.

The first change you'll notice is the table of Contents, in that there is one! We all agreed that this was a small but important change. Obviously it helps you find your way around but in electronic format it also allows for jumping from there to any section in the document.

(Slide 7) Title: Part I

Moving into content we have Part I: General Provisions. Section A, Introduction. Here we removed some redundant language and inserted a reference number to the statements. Don't worry I will not mention every reference we put in. This is just a good first example of where we tried to make it more approachable and consistent.

Section B, Purpose, remained largely unchanged. It should be noted though that the WPA protects eight of the values listed here the rest are additional to Amherst.

Section C Statement of Jurisdiction also remains largely unchanged. A good example of where we tried to make things more clear is I.C.1.d where we changed "water bodies set forth above" with "river or perennial stream, i.e. Riverfront area".

(Slide 8) Title: Part 1 cont.

Section D represents the first of the significant changes. Our reading of this section left us confused and we were not alone! Upon advice from KP law the section was entirely rewritten including the title which was, Exceptions and Variances. Neither of those terms are quite right or useful in these regulations. It

has been changed to Exemptions and Minor Activities. This is an example of where the new wording shows consistency. It is now in line with WPA and makes our additional protection clear. We even added a bit of commentary to make clear that an NOI is required for work in and 100' around all resource areas. Section E is mostly unchanged. However I'd like to point out to the Commission that this section clearly puts the burden on the applicant to show how an activity would NOT impact an area. The Commission does not have to prove that an activity WILL impact an area.

(Slide 9) Title: Part II Definitions

Moving on to Part two, definitions. This was by far the most straight forward part of the document to approach. That said there were some major changes to take a look at. Initially (from 2014) the list had 76 definitions our version here has 48 achieving one of our main goals of reducing the size of these regs.

First of all II.A.3.j. This is this list of actions considered alterations of an area. We've included the conversion of land cover types to this list. II.A.9 is new and adds a definition for BVW. Number 13 is also new and is our attempt at defining clear cutting. Michele actually did a fair bit of research on this. There seems to be a great variance of scientific and professional opinion on what constitutes clear cutting so this definition will be truly a town of Amherst definition. For this reason we're very open to other commissioner's thoughts on this one.

(Slide 10) Title: Part II Cont.

Back to back big ones, number 14 is our definition for Competent Source(s). There are several places in the regulations that call for a Competent Source and no clear way of knowing what that is. This is small change that really helps clarify to applicants and future commissioners what is required in various circumstances. Number 22 is impervious surface, it is straightforward but a new addition to these regs.

Numbers 24 and 45 are both new and related. These are new definitions for isolated Vegetated Wetland and Vernal Pools. Wherever vernal pools are concerned much of the experience and research was brought by Michele and it was immensely helpful, especially in later section. Here though, the big take away is that the Commission WILL treat all vernal pools the same whether certified or not.

(Slide 11) Title: Part III Procedures

That finishes out definitions and brings us to Part III; Procedures. Part III. A is unchanged. Section III.B is Abutter Notification, where we added some things. ANRADs were added to the list of permits required to notify abutters. More importantly *all* abutter notices are required to show the time and place of the public hearing as well as a rough project description.

This is a good example of the additional protections these home rule regulations allow for Amherst residents. Under the state WPA applicants are only required to notify abutters that a project is occurring and where to find more information. With the additional date and place requirements Amherst residents will not have to work through an extra step to have their voices heard.

Section III.C has added the Mullin rule which allows for Commissioner's who miss a site visit or hearing to participate in future proceedings on that application.

(Slide 12) Title: III.D RDAs

RDAs are obviously a big part of what we do on the Commission so we felt that this was an important section to make clear. There is one important process change, and I believe this will apply to the NOI section as well, an electronic copy of the application must now be submitted along with the hard copy. Much of the information here has not changed; abutter notification is required, a majority of the Commission must agree and determinations are still good for three years. However much of the wording has been changed for clarity. For instance previously this section said that after a positive finding an "Application for Permit" must be filed. I'm not sure any of us know what this is. It now reads a positive determination will require an NOI for an activity to begin. The biggest addition we made reads: "The... Commission may require at its discretion storm water BMPs." This will really allow for the Commission to use its judgement to reduce burdens to applicants.

(Slide 13) Title: III.E NOIs

The next subsection, III.E covers NOIs. Many similar formatting changes occurred here and again most of the original information is retained. The changes again included the ability to ask for storm water calculations and require abutter notification. There are two major additions here. First is 3.E.6 which determines that activities which occur outside of a resource area that have negatively impacted a resource area are violations and subject to enforcement. Also Section III.E.10 has been added. This states that Orders of Conditions shall be recorded in land court. This is important in that buyers of properties in town would then be fully aware when purchasing a lot of the outstanding conditions on the property. Also it gives the commission much more protection in cases of appeals.

(slide14) Title: Part III F,G & H

The base information of the next three sections is unchanged. That said, the order of these sections and the wording has been reworked quite a bit. The only major change to section F, Public Hearings, was to clarify why a Public hearing may be continued. This is an effort to no longer have hearings be open for years at a time. Section G is changed only in that we now require an electronic copy to be accessible various town boards as opposed to the hard copy. This will speed up transaction times within town government and of course save paper! Section III.H is unchanged.

(Slide 15) Title Extension and Enforcement

Permits can be extended but we have all at times but can see that extensions present some significant challenges. We tried to address them here. In the previous version there were no clear requirements for how a permit would be extended. Here in section III.I.2 we have provide a list of these including the presence of original flagging. It should also be noted that if resource boundaries on the property have changed than amendments to the existing Order of Conditions must be made before an extension will be issued. On the other hand we also now provide a clear list for why extension would be denied. Speaking of denials we can move right into enforcement which is section III.J. The content of this section only looks radically different from our 2014 version. In fact most of the information is the same but reorganized for clarity and consistency. The biggest difference is that we have specified more types of violation but as with the old regulations this is not considered a complete list.

(Slide 16) Title: Certificates of compliance

There were almost no content changes here as well. The majority of the changes concerned wording and consistency such as in Section III.K.2 which brings our words more directly in line with WPA. Though

changes were minimal I'd like to point out to the commission that Certificates of Compliance does require a site visit and that there are staff costs associated with that, which will come up later.

(Slide 17) Title LMNO....P!

The remaining subsections III.L-P. are almost identical to our old 2014 version with one big exception. Section III.M, emergencies was added. The section makes clear why an emergency application can be filed, the process for such and the limits of an emergency order. Generally speaking to be considered an emergency the situation must be an immediate or rapidly growing concern to public health. Emergency certifications still require a site visit and the work allowed is limited to within 30 days.

(Slide 18) Title: Standards for Inland wetlands

Part four is by far the largest and the most changed of the document. In fact this Part was closer to re-written than edited. The section itself is "Standards For Inland Wetlands". There is actually a whole lot of the WPA dealing with coastal wetlands that luckily we don't have to worry about! For us though this is the major place that our town specific protections come into play. Again under home rule in Massachusetts each town is allowed to enact protections stronger but not less than those from the state.

(Slide 19) Title: Wording

There were two big themes in the changes we made. The simpler one was to bring the wording and references in line with the WPA as much as possible. Simple but not short. Writing something essentially from scratch took a great deal of time and effort from Erin. After which the town attorney also spent the majority of their time on this section. Overall this ended up in a much longer piece going from roughly 12 pages to 40. With that in mind I'm not even going to attempt to go through every line but rather just touch on each of the resource types.

The second big theme in the changes was one of mindset. Since we were re-creating this section we tried to keep in mind how the bylaw has actually been working in and seen by the town. An easy example of this is vernal pools. We all know there has been confusion around how to deal with them. In the old version, vernal pools were a subset of "seasonal" or isolated wetlands. In this version you find them in Sec IV.C with a distinct heading and protections.

With that said let's head into the resource areas. Considering this is really the first time you're being presented the clean version I encourage everyone to read Section 4 on their own time and return to the next meeting with any comments. Again this is a big section and I am really only able to do a blast through on this first night.

So each of these resource Sections will be broken into; a preamble, definition, presumptions and performance standards. The preamble will discuss what functions the resource has and why we believe in its protection. The definition and characteristics bit will describe each resource area in detail. Finally the general performance standards are the clear do's and don'ts of work to be done in each area.

(Slide 20) Title: Banks

Banks are first up and one of the easier ones to peak at. Our preamble is much the same as are the definitions. There was one major clarification which is that the bank of a perennial stream is indeed the same as riverfront area. There were also a couple of major additions to the performance standards. Section IV.A.4.a.6 which is about stream crossings and section IV.A.4.b.a, which gives us a 50 foot no disturb on all Banks. Challenges made still be made, and won on a case-by-case basis but now that challenge will require evidence from a credible source.

(Slide21) Title: Bordering Vegetated Wetlands (BVW)

Again each of these sections is complex and I am only giving the highlights here, especially on BVW and IVW. The BVW section is a good one to read against the old version. Almost all of the information is the same but now it is much clearer to read and has proper references to the WPA. The biggest changes are additions to the preamble which talk about the environmental benefits of BVW in Amherst.

(Slide 22) Title: Isolated Vegetated Wetlands (IVW)

The next section, IVW, is a big change unto itself. Previously it was tied to BVW. Though delineated and treated the same we thought it was important to make IVW and independent section as to include Vernal Pools. This is an example of a change based in the reality of how the law works in the town. There have been several times applicants have been confused as to how to treat a vernal pool. The questions are usually either whether or not vernal pools are treated differently than IVW or differently based on their certification. We hope that this new version makes clear that in Amherst all Vernal pools certified or not will be treated the same as IVW. The Definitions and Presumptions for IVW were reworked to include a lot of insights and research from Michele. This allowed for an important change. The Commission may now consider whether or not areas beyond vernal pools contain habitat that is critical to the wildlife of that pool.

(Slide 23) Title: Land Under Water

The next section is Land Under Waterways and Waterbodies. Essentially all of the information in the section is the same as in our old version. This makes it a really easy example of the formatting changes we tried to make. The preamble has been divided by the interests protected. The definitions directly reference WPA and finally the performance standards clearly show what's expected in Amherst. To that point one change that was made here was to include a bit about stream crossings.

(Slide 24) Title: Land Subject to Flooding

Section E which in our revised section is Land subject to flooding did get a lot longer. The good news it is only to have made it more clear about our protections. The overall change was to keep this as one section with separate definitions for both isolated and bordering lands subject to flooding. The splitYou'll also see that there has been clear wording attaching each to vernal pools. Again we note that the commission shall treat all vernal as certified. We also added a clarifier that should actually be obvious which is that any Vernal Pools and IVW are considered Land subject to Flooding.

(Slide 25) Title: Riverfront

Strangely the Riverfront section is entirely new. It seemed odd to all three of us that Riverfront was left out, especially since it is clearly in the WPA, so one was added. It is quite lengthy so I encourage everyone to take a look at it in their own time. The preamble in this section is significant and I hope explains why we definitely needed this section added. Overall it is meant to follow along WPA. However an important Amherst only bit is IV.F.2c.iii. It is part of the definition which states that if the commission receives credible evidence that a stream watershed is greater than ½ square mile the stream will be deemed perennial. This is important because it allows us to look more inclusively at evidence as to whether or not a stream is perennial in Amherst.

(Slide 26) Title: Buffer Zones Set back charts

Riverfront actually wraps up the resource areas themselves and brings us to buffer zones. There were two big changes here. The first was inspired by reading other area town Bylaws. The preamble now states that applicants can alteration of up to 20% of a buffer zone. Additionally on a per case basis the commission can allow further buffer zone alteration in urbanized or highly degraded resource areas. The second big change is easy to see. The bylaw has a table describing our setbacks and our change was to increase almost all of them. In our view the setback distances had not been revisited in quite some time and after reviewing area towns our current limits seemed inadequate.

(Slide 27) Wrap-up!

All of those resource areas including the buffer zone were subsections of part IV are you ready for part V?! 'Cause we're done! Parts V and VI remain unchanged. Part V are the Filing Fees, Plan Requirements, and Work Conditions. Part VI is actually what allows for this revision process which is Amendments.

This *is* a revision of an existing Bylaw, not the creation of a new one. That said much of the wording and organization has changed. If trying to compare our revisions to the existing it may be most helpful to look to the part and section titles. Though the numbers and letters have changed the titles are consistent with the original. The main goals of this revision were again to make it clearer and more workable for both applicants and future commissioners. We hope you'll agree this does that. We definitely want to hear from other commissioners, and the public. This is just an introduction so again feel free to go and read through it on your own time. We are open to all comments but I would remind everyone that the spelling and grammatical errors you see in the current draft will be removed.

(Slide 28) Thanks

I'd like to note and thank town attorney; KP Law. for their extensive help with reviewing the changes each week. I'd like to thank Michele for her expertise, time given and very importantly research conducted. And finally of course I'd like to thank Erin without whom this certainly would not have happened. In addition to actually instigating this effort she was in charge of scheduling all meetings and wrangling the group's thoughts into something legible.