

Minutes of the Noise Bylaw Committee
Selectmen's Conference Room
April 29, 2015 7:00 PM

At 7:15 PM Selectman Ben Franco, serving as chair, called the meeting to order.

Mr. Franco briefly discussed the Selectmen's charge to the committee and how the meeting fit into that charge.

Mr. Franco reminded the committee about the upcoming Open Meeting Law training on May 6th sponsored by Town Counsel's Office. Mr. Franco reminded the committee that everyone must undergo Open Meeting Law training.

Mr. Franco then turned the meeting over the Town Counsel, Joslin Murphy, for a presentation about her prospective on the Noise Control and Leaf Blower Bylaws.

Attorney Murphy made general comments about the Noise Control and Leaf Blower Bylaws. Her experience is that there is great confusion about what the these bylaws say – every spring and fall her office gets questions about what is allowed and not allowed. Last spring language was posted on the Town's website summarizing when leaf blowers may and may not be used. This language will be reposted shortly. The Police Department has posted similar language on their website. In Attorney Murphy's opinion confusion about the two bylaws exists for a few reasons:

- The Noise Control Bylaw is old and has not undergone a comprehensive review in sometime; as a result the bylaw is difficult for a reader to understand
- The rules governing gasoline powered leaf blowers are laid out in two bylaws and the two bylaws do not reference one another

Attorney Murphy believes a lot of confusion would be eliminated if the Leaf Blower Bylaw (Article 8.31) were referenced in the Noise Control Bylaw (Article 8.15). Under questioning, Attorney Murphy does not see the bylaws as being in conflict with each other (from a legal perspective).

Committee Member Daniel Fishman agreed with the need to reference Article 8.31 in Article 8.15 (and vice versa), but commented that the two bylaws appear to have different goals. The Leaf Blower Bylaw appears targeted at addressing the environmental impacts of leaf blowers. The Noise Control Bylaw is concerned with regulating excess noise and addressing quality of life issues.

Committee Member Irene Scharf believes the Leaf Blower Bylaw should be expanded to cover all lawn care equipment (lawn mowers, weed whackers, etc...).

Daniel Fishman believes part of the confusion the committee has heard about is due to the misconception that the Leaf Blower Bylaw applies to all types of leaf blowers. In fact, the Leaf Blower Bylaw only applies to gasoline powered leaf blowers. Mr. Fishman

believes the committee should recommend changing the title of the Leaf Blower Bylaw to “Gasoline Powered Leaf Blowers.” Making this change would make it clear to people that this bylaw only applies to gasoline powered leaf blowers.

Chairman Ben Franco asked why go down this road rather than writing a specific exclusion for non-gas powered leaf blowers into the bylaw? There was no consensus about which approach would better eliminate confusion (a title change or the addition of an explicit exclusion for non-gas powered leaf blowers).

Committee Member Beth Shuman asked where the 67 dBA noise limit emerged from in the Noise Control Bylaw. There was speculation that 67dBA was the volume of most residential leaf blowers when 8.15.6(f) was adopted.

Ben Franco asked Attorney Murphy if she was aware of a reason that DPW contractors were not exempted from the Noise Control Bylaw but were from the Leaf Blower Bylaw. (Article 8.15.5 exempts the DPW from the Noise Control Bylaw for day and night activities related to routine maintenance. Article 8.31.2(2) exempts the Town and its contractors from the leaf blower bylaw provisions.)

Attorney Murphy was not aware of a reason for this and speculated that there might have been a legislative purpose.

Attorney Murphy commented that it might be helpful to create a grid of the different types of leaf blowers (gasoline powered and non-gasoline powered) and the rules are for each of them.

Ben Franco reminded the group that this committee was charged with engaging in a technical review and not coming back with a recommendation that would result in policy changes. For example, it would be inappropriate for the committee’s report to recommend the Leaf Blower Bylaw apply to both gas and non-gas powered leaf blowers.

Ben Franco summarized the discussion to this point and asked Attorney Murphy’s legal opinion about a committee recommendation to do the following with the goal of eliminating the confusion that exists about the Noise Control and Leaf Blower Bylaws:

- Changing the title of the Leaf Blower Bylaw (Article 8.31)
- Including reference to the Leaf Blower Bylaw in the leaf blower section of the Noise Control Bylaw (Article 8.15.6(f) and reference to the leaf blower section of the Noise Control Bylaw in the Leaf Blower Bylaw
- Recommending that the Noise Control Bylaw be reviewed and rewritten to improve readability

Attorney Murphy said all these actions would be legally permissible.

Daniel Fishman noted that the Leaf Blower Bylaw references noise control as one of its goals (in the Statement of Purpose section), but does not set out any objective standards.

The Committee discussed making the following changes to the Leaf Blower Bylaw (Article 8.31):

(Underlined text is proposed for addition; struck through text is proposed to be eliminated.)

Article 8.31
Gasoline Powered Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of gasoline powered leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of gasoline powered leaf blowers as defined and set forth herein.

Section 8.31.2: USE REGULATIONS

1. Gasoline Powered Leaf Blowers.

Gasoline Powered leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Gasoline Powered leaf blowers ~~shall not~~ may be operated ~~except~~ between March 15 and May 15 and between September 15 and December 15 ~~in each year.~~ ~~The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors. The provisions of this section also do not apply to non-residential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.~~

b. The provisions of Articles 8.15 shall also apply to gasoline powered leaf blowers.

3. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Gasoline Powered Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her

designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. For the purposes of this section “person”, as referenced in Articles 10.1, 10.2 and/or 10.3, shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

- (a) a warning or \$50.00 for the first offense;
- (b) \$100.00 for the second offense;
- (c) \$200.00 for the third offense;
- (d) \$200.00 for successive violations, plus
- (e) court costs for any enforcement action.

5. Exemptions

The provisions of this subsection shall not apply to the use of leaf blowers by the Town and its contractors when said contractor is working pursuant to its contract with the Town. The provisions of this section also do not apply to non-residential property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of gasoline powered leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.

~~5.~~ 6. Effective Date.

The provisions of this Gasoline Powered Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

The Committee then discussed the following changes to Article 8.15.6(f):

(Underlined Text is proposed for addition; struck through text is proposed to be eliminated.)

(f) Leaf Blowers

No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer’s label or a label from the town indicating the model number of the Leaf Blower(s) and designating a Noise Level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology. Any Leaf Blower(s) which bears such a manufacturer’s label or town’s label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, any Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any portable Leaf Blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By-law, may be required to

have the unit tested by the town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or town label. Any portable Leaf Blower(s) must comply with the labeling provisions of this By-law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI label on the equipment, may obtain a label from the town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level.

Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By-law.

Gasoline powered leaf blowers are further regulated in Article 8.31.

Daniel Fishman noted that the word "portable" is not defined in either Articles 8.15 or 8.31, and wondered if the word should be struck from the Articles.

Ben Franco noted that the charge of this committee was technical in nature. Before deciding whether to strike the word "portable" (or include a definition of portable in the bylaws) Mr. Franco wants to investigate whether there is a standard definition of "portable" in surround community's leaf blower/noise control bylaws. This will guide the committee as to a) whether including the word "portable" is in line with surrounding communities, and b) how surrounding communities define portable leaf blowers.

Irene Scharf moved that the word "portable" be struck from the following articles discussion of leaf blowers:

- 8.15.6(f)
- 8.31.2(1)

Ben Franco again expressed his desire to conduct further investigation before deciding whether to strike or leave the word "portable" from/in Articles 8.15 and 8.31. He noted that there had been general agreement about inviting the landscape contractors back that had appeared at the committee's April 16 meeting. He would like to know their opinion about this matter before deciding what to do.

Irene Scharf withdrew her motion and agreed to postpone discussion of the word "portable" to a future meeting.

Ben Franco proposed that the next meeting be divided between a conversation with the Commissioner of Public Works and with the landscape contractors that appeared at the committee's April 16 meeting. There was agreement.

Mr. Franco asked if committee members were comfortable adopting the draft minutes that were circulated of the April 16 meeting. There were several proposed edits to the minutes. By a 6-0 vote the minutes of the April 16 meeting were adopted, as amended.

The committee voted to close the meeting at 8:55 PM.

Members Present:

Ben Franco
Daniel Fishman
Irene Scharf
Judy Meyers
Maura Toomey
Beth Shuman

Members Not Present:

Richard Nangle
Neil Gordon

Members of the Public Present:

None

Materials Reviewed:

Articles 8.15 and 8.31 of the Bylaws