

April 8, 2003

TO: Board of Selectmen, Sewer Commissioners

FROM: Trey Shupert, Chairman

SUBJECT: Selectmen and Sewer Commissioners Report

April 8, 2003

**NOTE: MEETING BEGINS AT 6:00 P.M.
IN A-B HIGH SCHOOL LIBRARY**

I. CITIZEN'S CONCERNS

II SEWER COMMISSIONER'S BUSINESS

III. PUBLIC HEARINGS & APPOINTMENTS

1. **MINUTEMAN REGIONAL HIGH SCHOOL** – Superintendent Fitzgerald and Acton Representative Charles Olmstead will meet jointly with the Board of Selectmen, School Committee and Finance Committee to discuss the Minuteman Assessment for FY04.

IV. SELECTMEN'S BUSINESS

2. **ASSABET RIVER RAIL TRAIL (ARRT)** – Enclosed please find correspondence from the Town of Maynard.

3. **HAZARDOUS WASTE DAY** – Enclosed please find correspondence for Board consideration.

4. **TOWN MEETING DISCUSSION** – Enclosed please find various presentation materials and backup information.

5. **OTHER BUSINESS**

V CONSENT AGENDA

VI. TOWN MANAGER'S REPORT

VII EXECUTIVE SESSION

ADDITIONAL INFORMATION

Enclosed please find additional correspondence that is strictly informational and requires no Board action.

FUTURE AGENDAS

To facilitate scheduling for interested parties, the following items are scheduled for discussion on future agendas. This IS NOT a complete Agenda.

**April 28, 2003 – Site Plan Special Permit = 25 Powder Mill Road
Site Plan Special Permit = 60 Powder Mill Road
Board Reorganization**

May 19, 2003

GOALS 2002-2003

1. Labor Negotiations & Improve Labor Relations environment (Peter/Trey)
2. Improve Communication with Town Boards (Peter/Trey)
Implement Chairman Round Table - (Trey) *(for Dec/Jan)*
Revisit 2020 Planning Process for direction to make this process more beneficial towards
Implementation of long-term vision (Trey).
3. Towne Building Reuse (Walter/Dore'/Peter)
4. ALG process be used for purpose of Budget Planning for FY04 (Walter/Trey)
5. Residential and Commercial Growth (Walter/Pam) *(PCRC EDC – Continuing to meet)*
6. Open Space and Recreation Plan (Peter/Walter) Completed
7. Health Insurance Trust Agreement (Peter) *(Peter still working on getting comments from Water District.)*
8. Decision on Pentamation Accounting System (Dore'/Peter) *(Proposals are being looked at by staff)*
9. Process Planning for "Life after NESWC" (Pam/Peter) *(John Murray is looking at this)*
10. Joint IT process-organizational change (Walter/Dore') (
11. Implement an on-going Public Relations campaign regarding budgetary situation (Trey/Walter) *(ALG put plan in place A/B)*
12. Provide looking at salary levels in the organization, include liaison with Personnel Board (Trey /Peter) *(Need to look at budget)*
Based upon results of Salary Survey, conduct a through review of current salary levels (Trey/Peter) *(Need to look at budget override for Operating budget)*
13. Broader community interface with Emerson Hosp.- Board of Health to take elder issues on (Pam)
14. Recreational field lack of space, prison land etc. (Walter)
15. Middlesex Pension alternatives (Walter)

GOALS carried forward

16. Public Safety Facility (Dore'/Trey)
17. Determine future of Vaillancourt House - 17 Woodbury Lane. (Pam) *(No dialogue thus far as budgets have had the bottom fallout, Historical Commission issue and seek suggestions)*

Goals 2003-Selectmen folder

EXTRA INFO. 4/8/03

ANDERSON & KREIGER LLP

April 7, 2003

cc: BOS
RE ART. 29

①

By Facsimile 978-264-9630 and Mail

Don P. Johnson
Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Dear Don: (Minuteman Regional School District)

You have asked about the effect of the proposed vote on the Minuteman RSD assessment provided to you by the Regional Superintendent. I believe that the proposed vote can be clarified while preserving the intended meaning as explained to you by the Superintendent. I therefore recommend the Town adopt a more explicit vote as set forth below.

Vote to appropriate [\$825,918] for the expenses of the Minuteman Regional School District, based on a Regional School District budget of \$15,443,465, as reduced by its current estimate of state aid; provided, however, that any increase in the amount to be raised by assessment on the Town because of a decrease in state aid or otherwise, shall require approval by the Town Meeting.

Very truly yours,

Acheson H. Callaghan

AHC:ay
act\gen\johnson087-AminutemanRSD.wpd



OFFICE OF THE
BOARD OF SELECTMEN
TOWN OF MAYNARD

MUNICIPAL BUILDING
195 MAIN STREET
MAYNARD, MASSACHUSETTS 01754
Tel: 978-897-1001 Fax: 978-897-8457

BOS

MAR 2

2

CHRIS - SCHEDULE FOR SELECTMEN'S
BUSINESS APRIL 8.

ROLAND - PLEASE PLAN TO ATTEND
AND OUTLINE THE PROBLEMS.

DON

March 18, 2003

Acton Board of Selectmen
Town Hall
Acton, MA 01720

Dear Board Members,

The Town of Maynard has been working hard to gain site control of the 8 privately-owned parcels of land that are on the right-of-way of the proposed Assabet River Rail Trail within the Town of Maynard. As part of this effort, the Town was successful in securing an Urban Self-Help Grant to assist in the acquisition of two parcels abutting the Assabet River and the Assabet River National Wildlife Refuge. This \$250,000 grant needs to be matched with \$200,000 granted to the five communities, Acton, Stow, Hudson, and Marlborough in addition to Maynard, through the ISTE A program in 1998.

At the time that the application to the Urban Self-Help Program was submitted, the Inter-municipal Steering Committee agreed that communities would be asked to release funds that are no longer needed that were allocated to each of them when the application was submitted to ISTE A. Other communities could then use those funds for acquisition, the only eligible use for the funds. It was believed at that time that Acton would have sufficiently advanced its level of agreement with the MBTA to obtain its ROW for free and that Acton would release the \$80,000 allotted for acquisition of the MBTA ROW. Acton would still retain \$70,000 for the remaining parcels needed for the ARRT.

Maynard and the seller have a Purchase and Sale Agreement (for the parcels to be acquired by the Urban Self-Help Grant and the ISTE A funds) that terminates on May 1, 2003. Before that time, the Inter-municipal Steering Committee and the Town of Maynard are requesting a letter from the Town of Acton, indicating that Acton is releasing the portion of its ISTE A funds allocated to Acton for acquisition of the MBTA parcel.

Following are some issues for your consideration in supporting the release of these funds:

- The 1998 ISTE A funds must be fully expended by June 30, 2004.
- By contract with MassHighway, the only allowable use of these ISTE A funds is for ARRT ROW acquisition. No other use of funds such as survey, legal, design or other purposes is allowed.

- By Federal regulation, the Towns are not allowed to expend more than the appraised fair market value in acquiring any parcel of ARRT ROW.
- Maynard has 8 parcels to acquire in fee or easement out of the total of 13 parcels (2 in Acton, 3 in Stow).
- Acton has only the Wedgewood Realty Trust parcel left to acquire besides the MBTA ROW. If for some reason the Town is unable to acquire that parcel and instead seeks to acquire ROW for an alternative route, it can still only pay appraised value for the alternative route ROW. With the release of the \$80,000, Acton will still have \$70,000 remaining to secure its ROW. It is also acceptable to acquire an easement interest in the ROW to reduce the total cost of the acquisition.
- This is a 5-Town project. The various grant applications that have been funded were successful expressly because the 5 ARRT Communities are working together on this effort.
- Maynard has invested staff time and soft costs to develop a successful application to the Urban Self-Help Program. We received a grant for \$250,000 to assist in the acquisition of 2 of the 8 parcels. Without the availability of match funds from the ISTE A grant for a Real Estate closing in early June, this grant will have to be forfeited and returned to the state. This will cause a loss of credibility of the whole ARRT project in the eyes of state funders.
- These parcels were eligible for the Urban Self-Help Program because they connect the Assabet River National Wildlife Refuge and a town-owned park, all running along the Assabet River. These are two amenities that will provide recreation and enjoyment to the residents of Acton, as well as residents of Maynard and the other participating communities.
- The Acton Town Planner and the Maynard consulting planner are collaborating to seek ways to reduce the remaining costs to Acton below what will be retained after the release of the requested \$80,000. Further, Acton has been successful in passing the Community Preservation Act that could be potentially utilized to provide insurance funding should the cost of your one remaining parcel increase by a small amount. Additionally, There will still be approximately \$160,000 dollars left in the 1998 ISTE A grant that may not be utilized by Stow and Hudson that could also serve as an “insurance” policy for the town of Acton
- The Inter-municipal Steering Committee is working together to obtain High Priority Project status for the ARRT to assure its funding from the reauthorization of the Federal TEA-21 Legislation.

If you have any questions, please don't hesitate to contact me at (978) 897-1001, or Carolyn Britt, Consulting Planner (978) 897-0564 or Michelle Ciccolo, ARRT Municipal Coordinator at (978) 562-9963.

Thank you for your consideration of this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gianotis", with a long horizontal flourish extending to the right.

Michael Gianotis, Town Administrator to the
Maynard Board of Selectmen

Cc: Michael Gianotis, Town Administrator
Carolyn Britt, AICP, Maynard Consulting Planner
Roland Bartl, Acton Planning Director
Michelle Ciccolo, Assistant Town Administrator for Hudson and ARRT Municipal
Coordinator

EXTRA INFO. 4/8/03

cc: BOS

3

Don Johnson

To: Board of Selectmen
Subject: FW: Hazardous Waste Day

I will seek the Board's direction in this regard tonight.

Regards,
Don

-----Original Message-----

From: Doug Halley
Sent: Tuesday, April 08, 2003 1:06 PM
To: Don Johnson
Subject: Hazardous Waste Day

For the upcoming Hazardous Waste Day on May 3rd we have a contractor that will accept CRT's at \$5 per unit. We have been aggressively advertising hazardous waste day, in particular CRT collection at \$25 per unit. In the past we have maintained the \$25 per unit even if our cost was lower to offset the cost of the entire collection. Thus far our price has been accepted by the citizens and has not been seen as a deterrent for collecting CRT's. Would you like to maintain the current pricing or lower it in accordance with our real cost? In addition, departments with surplus CRT's have paid for the disposal of their CRT's at the same rate charged to citizens. Do you want to continue this policy? Unless directed otherwise it would be my recommendation to continue the existing pricing and policies at least for the upcoming Hazardous Waste Day. Thanks.

EXTRA INFO. 4/8/03

Don Johnson

From: Stacy Yannetty [SYannetty@AndersonKreiger.com]
Sent: Tuesday, April 08, 2003 12:40 PM
To: Don Johnson; Roland Bartl
Subject: FW: Proposed PCRC Amendment

cc: BOS
TREY - PLS. NOTE
RE ART. 32

4

-----Original Message-----

From: Acheson Callaghan [mailto:ahcall@msn.com]
Sent: Tuesday, April 08, 2003 11:03 AM
To: djohnson@acton.town.mass.us; Stephen D. Anderson
Cc: rbartl@acton.town.mass.us; Stacy Yannetty
Subject: Proposed PCRC Amendment

Don: I think the proposed PCRC amendment is within the scope of the article and thus legal. I do not have any views on its wisdom or practicalbility, although In I have several questions. By counting dwelling units rather

than building lots, Eder may have created significant problems. In particular the subdivision process does not require information about the location of builings on lots, but that is the point at which wetlands requirements come into play. In effect the applicant will have to designate locations on the hypothetical plan and the Planning Board, perhaps in consultation with the Conservation Commission, will have to verify the number on DU that could be located on the land within the Wetlands constraints. Thats a lot of extra work for the developer and the town in preparing and reviewing a plan that will not be built. Second, to the extent that some of the affordable development overlay districts allow multiple DU on a single lot it is possible that the option would generate more DU and therefore much more dense PCRC developments than Eder expects or than are now permitted. Roland may be able to check this. I can be reached at 617-661-0828 until about 1:00 pm and then some time lat in pm after 3:30 or 4:00. Mike

The new MSN 8: advanced junk mail protection and 2 months FREE*
<http://join.msn.com/?page=features/junkmail>



Don Johnson

From: Don Johnson
Sent: Tuesday, April 08, 2003 4:28 PM
To: Trey Shupert
Cc: Board of Selectmen
Subject: FW: Proposed PCRC Amendment

Importance: High

Trey:
This is the amendment proposed by Mr. Eder. This should help put Mike's comments in perspective.

It is interesting to note that Mr. Eder was reluctant to share this wording with the Moderator because doing so might mess-up his strategy. The Moderator informed him that he needed to see it and share it with Counsel in order to determine whether it was legal and within the scope of the Article. I am of the belief that Mr. Eder did not like sharing it that far. In talking with the Moderator I asked whether he wished me to not share it and his answer was that he had not told Mike to keep it confidential so I assume sharing is OK. I would ask you, however, to understand (and maybe be sensitive to) the circumstances under which it was shared with the Moderator ... if that makes any difference.

Regards,
Don

-----Original Message-----

From: Stacy Yannetty [mailto:SYannetty@AndersonKreiger.com]
Sent: Tuesday, April 08, 2003 4:11 PM
To: Don Johnson; Roland Bartl
Subject: Proposed PCRC Amendment



EderPCRC
Amendment.doc

Mr. Eder moves to delete section 9.6.2.3 of the motion as read in its entirety and to replace it with the following new section 9.6.32.3.

9.6.2.3 Maximum Number of DWELLING UNITS Permitted – The total number of DWELLING UNITS in a PCRC shall not exceed the number of DWELLING UNITS that could be developed without the benefit of the PCRC standards in the District in which the TRACT OF LAND is located. Provided however, that the number of allowable DWELING UNITS in the R-8/4 District shall be based on the dimensional requirements applicable in the R-4 District, and the number of allowable DWELLING UNITS in the R-10/8 District shall be based on the dimensional requirements applicable in the R-8 District. In making the determination of the number of allowable DWELLING UNITS, the Planning Board shall require that the applicant provide a plan demonstrating evidence that, if such TRACT OF LAND were to be developed under the standard requirements applicable for the underlying or otherwise applicable zoning district,

- a) the development would comply with all applicable requirements of this Bylaw;
- b) the development would comply with the Massachusetts Wetland Protection Act and the Acton Wetland Protection Bylaw.

In the AFFORDABLE Housing Overlay District - Sub-Districts A and B: The number of DWELLING UNITS may be increased pursuant to the formulas provided in Section 4.4.3.1 and subject to the requirements of Sections 4.4.5, 4.4.6, 4.4.7, 4.4.8 and 4.4.9. The inclusion of AFFORDABLE DWELLING UNITS in compliance with the above referenced Sections of the Bylaw shall be authorized under a Special permit for a PCRC.

Note: The language of section 9.6.2.3, 9.9.2.3 a) and 9.6.2.3 b) is the same as section 4.2.3.2 of the existing zoning bylaw except that BUILDING LOTS has been substituted with DWELLING UNITS and Open Space Development has been substituted with PCRC. In a) the word “applicable” was inserted and in b) “Wetland” was replaced by “Wetland Protection”. The section on AFFORDABLE housing is unchanged from what is in the Warrant

EXTRA INFO. 4/8/03

CC: BOS

PETER - PLS. NOTE

RE ART. 38

L1

Don Johnson

From: Don Johnson
Sent: Tuesday, April 08, 2003 1:32 PM
To: Peter Ashton
Cc: Board of Selectmen; Roland Bartl
Subject: FW: Stacy's Way acceptance

Peter:

Re Article 38, Street Acceptance, Stacy Way. Roland has tried to reach Ms. Hogan with no luck so far. He has sent the following message to see if she held the Article last night and, if so, why. He also informs me that there is at least one abutter, on Barker Road at the end of Stacy Way, who has a complaint about water in their basement. He is writing a larger e-mail "report" to give us more detail as to the possibilities for the "Hold". I have asked him to include the Board in this e-mail (to be received later this afternoon).

Regards,
Don

-----Original Message-----

From: Roland Bartl
Sent: Tuesday, April 08, 2003 12:33 PM
To: 'ac.hogan@verizon.net'
Cc: Don Johnson
Subject: Stacy's Way acceptance

Dear Ms.Hogan:

At last night's Town Meeting session the street article for Stacy's Way was pulled off the consent agenda. It will come up tonight for discussion. We do not know who pulled it off the consent or why? I am writing to see if your concerns have been taken care off. Mr. Sweeney informed us that he repaired all the wiring and piping around the manhole. So, your driveway lights should work again. It is understood that some final finishing work will need to be done once the spring season has progressed a little further. Is there anything else in this regard that we could help resolve?

Regards,

*Roland Bartl, AICP
Town Planner, Town of Acton
472 Main Street
Acton, MA 01720
978-264-9636*

Don Johnson

From: Roland Bartl
Sent: Tuesday, April 08, 2003 1:43 PM
To: Planning Board
Cc: Acheson Callaghan; Stephen Anderson; Engineering Department; Board of Selectmen; Don Johnson
Subject: Article 38 - acceptance of Stacy's Way (Dunn's Way subdivision)

CC: BOS

PETER - PLEASE NOTE.

41

Dear Planning Board members:

First, note that Mr. Eder has submitted an amendment to the PCRC article. I have not yet seen the wording. It will come up tonight.

Article 38 was pulled off the consent last night. It will come up in its regular spot tonight. We do not know who pulled it off consent, or why. Planning Board members might wish to be prepared to speak to the issue tonight. We have 3 guesses:

- Ms. Alice Hogan at 1 Stacy's Way called last week complaining about the loss of power at her driveway lights. The reason was that the developer (Kevin Sweeney) needed to raise a drain hole cover beside her driveway, which his surveyors had missed on the as-built plan. It had sunken and was covered with debris. Interestingly, Ms. Hogan's power line to the driveway light as well as a sprinkler line ran right across the cover. They needed to be cut and re-routed, which took a couple of days to complete. That was the reason for Ms. Hogan's complaint. She should be all set, unless she is unhappy with the way the work site has been left - somewhat unfinished. Sweeney has also cleaned out the drain hole and the associated pipes. He is committed to finishing up this work, once grass will grow later this spring. We still hold a large bond, just in case. This morning, I called Ms. Hogan and wrote her an e-mail, but could not reach her yet.
- The resident(s) of 12 Barker Road, across from the Stacy's Way intersection with Barker Road have in the past complained about a wet basement, implicating the new development as a cause. This is an older house. We have word (unconfirmed, but believable) that the house had a wet basement long before the subdivision was built. It sits at the bottom of the slope. There are wetlands in the back yard. As part of the subdivision construction, a recharge trench was installed across the street from the house to meet the Town's requirement for no net loss of groundwater recharge after development. The trench has an overflow pipe to an existing catch basin at the end of Barker Road, which in turn drains into the nearby wetland. There is no evidence that the construction of Stacy's Way cause the basement flooding. The owner(s) were notified of the acceptance hearing in February but did not attend, or at least did not speak up. Instead, they called David Abbt a few days before or after, to lodge the wet basement complaint. The caller claimed extensive experience on the Littleton Planning Board and stated that Stacy's Way should not be accepted until their problem is resolved. The caller suggested that the Town might take on a legal liability by accepting the street.
- Earlier last year, we had a complaint about the way in which the cul-de-sac island was finished. This came after the landscaping on the island was completed and Dean Charter had signed off. The island meets our specifications. Other islands that have been prettied up further are the creation of residents who live there.

There could be another reason, of course, that we do not know about. As usual, our Engineering Department has inspected Stacy's Way thoroughly and found it completed and acceptable. All manholes, catch basin, and drain pipes were cleaned out. As far as the street is concerned, we are not aware of anything that should delay the acceptance of Stacy's Way as a public way. Issues unrelated to the street itself, if any, are not the subject of street acceptances or of subdivision control.

See you tonight, I hope.

Roland Bartl, AICP



CONSERVATION COMMISSION
P. O. BOX 236
ACTON, MASSACHUSETTS 01720

EXTRA INFO. 4/8/03 -

TREY -
TO ANNE FORBES' QUESTION.
RE ART. 36
CC: BSS
4

June 22, 1981

Mr. & Mrs. McConnon
217 Nagog Hill Road
Acton, MA. 01720

RE: Quin Land Licensing

Dear Mr. & Mrs. McConnon,

The purpose of this letter is to present the final format for the License agreement which the Commission has agreed upon. We would like for you to look this over, and send us your comments, so that we can review these before we finalize the agreement.

The main body of the License agreement remains the same however there are a few changes in Sections 4 and 6.

Section IV Structures

A moveable fence may be placed on the Hay Field to the left of the house and Barn. This fence shall be a maximum of 3 ½ to 4' in height, and shall run along one side only of the existing foot path. If the rear portion of the Hay field is to be used, the licensee is responsible for placing spring gates at the exit and entrance of the foot path, and for repairing the existing stone wall and fence to prevent horses from leaving the property.

No other fencing or structures will be allowed without prior approval of the Commission.

Section VI Payment

The payment for use of the land will be \$20.00 per acre. The specific areas for use must be approved by the Commission, so that we can calculate this fee. The amount of land to be used must also be reflected in the insurance of the Licensee.

page 2
Mr. & Mrs. McConnon
License Agreement

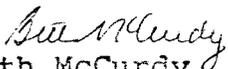
6/22/81

The Commission has consulted with several surrounding Towns concerning their licensing programs, and we believe this fee to be consistent with their requirements.

We would like to point out that we will be putting the land "up for grabs" so to speak following this agreement. We have already received a few "concerned" comments from residents, and feel that an opening up of the land for use will alleviate these concerns.

Please call our office or drop by at any time if you have any concerns or questions. Let me also apologize for the delay in finalizing this form. Its always difficult the first time around on any project as important as this one.

Sincerely,


Beth McCurdy
Conservation Assistant

RC

file

August 29, 1980

Town of Acton
Conservation Commission
Attn: Beth McCurdy
14 Forest Road
Acton, Massachusetts 01720

Dear Ms. McCurdy,

In response to our conversation at the Conservation Commission meeting on August 20th, we are submitting for the Commission's consideration the following proposal regarding the use of the former Quin property on Nagog Hill Road:

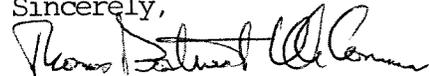
- A. We are requesting from the Commission a license to use, for grazing purposes, that portion of the field behind our property which is unsuitable for Mr. Mong's haying operation (to the right of the fence that divides the field, as one faces the field from Nagog Hill Road). In addition, we plan to cut back any growth from the surrounding woods that might encroach on the field. Also, we will inspect and repair the fences surrounding the field to keep the grazing within its boundaries.

- B. In order to facilitate the haying of the field beside our barn, we will allow Mr. Mong and his associates to freely pass across our land in front of the barn to gain access to the haying field. We are also willing to negotiate with Mr. Mong about the possibility of his storing hay and/or materials and equipment in our barn.

We believe that our goals as the new owners of this property are the same as those of the Conservation Commission: to keep the field in its existing state. Our interest is increased since much of the value of the property we are purchasing depends on the beauty of the surrounding land. It is our intention to do our best to preserve it. Your granting us the license to use the field for grazing, along with the combined efforts of ourselves, Steve Mong, and our tenant Ian MacPherson, to care for the land will certainly enable us to achieve this goal.

Thank you for your consideration. Please feel free to contact us should any questions arise.

Sincerely,



Thomas Bostwick McConnon



Rita-Marie McConnon

217 Nagog Hill Road
Acton, Massachusetts 01720
home: 263-2596
office: 862-3083

LICENSE AGREEMENT

THIS AGREEMENT made this nineteenth day of July 1989 by and between the TOWN OF ACTON, a municipal corporation in Middlesex County, Massachusetts, acting by its Conservation Commission, hereinafter referred to as the COMMISSION, and Thomas B. and Rita McConnon hereinafter referred to as the LICENSEE,

WITNESS that:

the LICENSEE is hereby given the privilege and license by the COMMISSION to use the land more fully described below from July 19, 1989 to July 18, 1992, for the purposes and upon the terms and conditions hereinbelow set forth:

I. Description of Licensed Premises:

Twelve and one half acres more or less of land owned by the Town of Acton Conservation Commission, referred to as the "Quin Land". This area is further defined as the existing open fields and apple orchard (as of July 1, 1983) on plans:

Plan of Land in Acton, MA. Owned by the Acton Conservation Commission for conservation purposes. Town of Acton Engineering Department Scale 1"=80' Dated: March 20, 1981 File # 2728. Recorded in Middlesex County Registry of Deeds in Cambridge as 1099 of 1980.

A plan and letter submitted by the McConnons on June 12, 1982 detailing the existing and proposed fences and the uses of the fields.

II. Land Use Plan

- A. The aforesaid premises may be used by the LICENSEE solely for the purpose of grazing and exercising horses.
- LICENSEE shall maintain the premises in as good a condition as they are in at the time of commencement of this agreement, normal wear and depreciation from causes beyond LICENSEE's control excepted. All grazing and exercising of horses shall be done in a manner consistent with proper use of conservation land; and without limiting the generality of the foregoing.
- B. No trees or shrubs shall be removed without consent of the COMMISSION. LICENSEE shall take care to prevent injury or damage to the trees and shrubs on the premises.
- C. The LICENSEE agrees not to use any herbicide, insecticide, pesticide, or fertilizer without the prior written consent of the COMMISSION.
- D. The LICENSEE will post at all times the field or fields that are in use in such a manner as to be easily read and understood by the general public.
- E. The LICENSEE will not engage in the business of riding lessons or any other profit making venture without the express permission of the Commission.
- F. At not time will the LICENSEE have more than eight horse to graze in the fields without the express approval of the COMMISSION.

III. Waste

The LICENSEE shall not make, permit or suffer any member of its employees, agents, guests, or invitees to make any unlawful use of the licensed premises nor shall he permit or suffer the commission of waste upon the premises by any such person.

IV. Structures

No structure, or fixed improvement shall be installed placed, or erected or constructed in or upon the licensed premises without the prior written approval of the COMMISSION.

V. Public Access

The LICENSEE shall permit the public to use and traverse the licensed premises for passive recreational purposes and other activities approved by the Conservation Commission, provided, however, that the LICENSEE, in accepting this condition, does not thereby waive any remedies it may have against any member of the public who shall damage the crops or property on land covered by this license. The COMMISSION, its agents and servants shall have unrestricted access to the aforesaid premises at all times.

VI. Payment

Upon execution of this license agreement, the LICENSEE shall pay to the Town of Acton the sum of Two Hundred Dollars (\$200.00) for the use and occupation of the premises during the aforesaid license period.

VII. The LICENSEE acknowledges and agrees that the LICENSEE is responsible as an independent contractor for all operations under this license, for all proceedings and claims arising out of the rights and privileges conferred by this agreement, and for all the acts of its employees and agents hereunder, and agrees that it will indemnify and hold the Town of Acton and its officers, boards, committees and employees harmless from any and all losses, damages, costs, charges, expenses and claims which may be made against it or them or to which it, they or any of them may be subject by reason of any alleged act, action, neglect, omission or default on the part of the LICENSEE or any of its agents or employees in any way arising out of this license agreement.

VIII. Insurance

Before executing this agreement, the LICENSEE shall purchase and maintain at its expense for the duration of this agreement a policy of insurance providing for public liability and property damage insurance covering liability for itself, its employees and agents under this agreement, which provides indemnity protection to the amount or limit of at least \$ 100,000 on account of injury to or death of any one person, of at least \$ 100,000 on account of any one accident resulting in injury or death of more than one person, as well as coverage for property damage to the amount or limit of at least \$ 100,000 on account of any one accident resulting in such property damage; and the LICENSEE shall, before execution of this agreement secure and file with the COMMISSION a certificate of such insurance in a form approved by the Town with a surety company or companies authorized to do business in the Commonwealth of

Massachusetts and approved by the COMMISSION. Each such certificate shall state that the Town will be notified in writing no less than (15) days prior to cancellation of any such insurance coverage.

IX. Termination

The LICENSEE agrees that if the COMMISSION shall determine at any time during the term of this agreement that the LICENSEE is using any or all of the premises in violation of the terms and conditions of this agreement, the COMMISSION may, at its election at any time thereafter terminate all or part of this agreement, by giving written notice thereof to the LICENSEE, specifying the effective date of such notice, and thereupon, upon the date so specified, this license shall terminate, but such termination shall not prejudice or waive any rights or remedies which the Town of Acton or the Commission may have against the LICENSEE because of any default or failure to observe and comply with the terms and conditions of this agreement up to the date of such termination.

X. ASSIGNMENT

The LICENSEE shall not assign or transfer by power of attorney, or otherwise, the right and privilege conferred upon it by this license, or any portion thereof, without the previous written consent of the COMMISSION, nor shall any such rights or privilege be subject to or otherwise reached by any legal or equitable process.

XI. NOTICE

Any notice, demand or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties

hereto mailed by certified mail, return receipt requested, postage prepaid, to the COMMISSION at Town Hall, Massachusetts, and to the LICENSEE Thomas B. and Rita Marie McConnon, 217 Nagog Hill Road, Acton, Massachusetts, 01720.

XII. RENEWAL

This license maybe renewed for subsequent one year periods beginning July 19, 1989, by written agreement between the Commission and the Licensee. The LICENSEE shall notify the Commission sixty (60) days in advance of the renewal date of their intention to renew the lease.

IN WITNESS HEREOF, the parties have hereto set their hands and seals, the Town of Acton by its Conservation Commission thereunto duly authorized, who, however, incur no personal liability by reason of the execution hereof or anything herein contained, both in duplicate, the date an year first above written.

The Licensee,

By

Rita Marie McConnon

[Name]

By

[Name]

The Town of Acton Conservation Commission,

By

Carol M. Place

Carol M. Place, Chair

ANDERSON & KREIGER LLP *Extra*

cc: BOS
FYI

ACHESON H. CALLAGHAN
acallaghan@andersonkreiger.com

April 8, 2003

BY FACSIMILE 978-264-9630

AND EMAIL

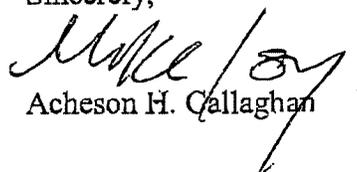
John Murray
Assistant Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Dear John: (Skate Park Land, Town Liability)

Confirming and expanding on what I said last night, the major premise of the letter, which seems to be based on the story about Natick, is wrong. The town, like a private landowner, is protected by the recreational use statute, G.L. c. 21, §17C. The statute provides that the owner of land, including structures and equipment attached to it, "shall not be liable for personal injuries...to a member of the public," including a minor "in the absence of wilful, wanton or reckless conduct" by the owner. Ten years ago the SJC held that the provisions of the Tort Claims Act made this statute applicable to towns. *Anderson v. Springfield*, 406 Mass. 632 (1990). The statute only applies and protects the Town if it allows the public to use the property "without imposing a fee or charge therefor" and does not act in a "wilful, wanton or reckless" manner. There are literally hundreds of cases discussing what constitutes "reckless" conduct, and I cannot give you a simple checklist. However, failure to correct a known defect will usually be considered to be reckless. *Forbush v. City of Lynn*, 36 Mass App Ct 696 (defective swing on public playground). The decision was approved in *Molinari v. Northbridge*, 419 Mass. 278 (1995). It would therefore be sensible to regularly check the condition of the structure, because minor defects can easily cause falls. It also seems sensible to establish and post safety rules, but I do not think that the Town must have a person present at all times.

In short, the scope of the Town's legal liability is much the same as it is for allowing children to use town fields for soccer, baseball, or as the cases cited above make clear, to use like slides and swings, or to skate on NARA pond. There is, however, one gap in the recreational use statute: it does not apply to death cases. The Town's liability for injuries and for death claims is limited by the Tort Claims Act to \$100,000, which is covered by insurance.

Sincerely,


Acheson H. Callaghan

AHC:sy

act/gcn/1/murray/Murray050SkateParkLandTrLiability.doc

The parties agree to the following changes to the Current collective bargaining contract between The Town of Acton and the IBPO Local 334, subject to a ratification vote of each party

1. The current duration clause is extended to cover the period of 7/1/03 to 6/30/04
2. All provisions of the current CBA remain as is, except for:
 - a. Article 5 Compensation tables
 - i. Shall be increased 3 ½% for the period of 7/1/03-6/30/04.
 - b. Article 5 shall be amended to define employees eligible for the Quinn Bill as "All officers hired after July 1, 1997 and those officers eligible for the Quinn Bill under MGL"
 - c. Article 11 - Details
 - i. Pay for 4 hours for all work between 4 and 8 hours – two 4 hour blocks of time
 - ii. Ability to work out of Town details is granted subject to wording agreed to by the Town Manager and the Chief of Police. Further such wording must be approved prior to any ratification votes.
 - iii. Strike Duty Rate to be 200% of normal detail rates
 - iv. Detail Rates
 1. Art. 11.2.A --Modify the current \$32/hr rate to \$39/hr
 2. Art 11.2.B, 11.2.C, 11.2.D --Modify the rate from \$42/hour to \$49/hour
 3. They will accept that the Town can add a vehicle charge on to the detail rate structure to flow only to the Town's coffers.
 - d. Article 6.8 – The phrase "(6) days off during the course of the calendar year" shall be changed to "(6) days off during the course of the fiscal year" on 6/30/04. Further all officers due additional time off for calendar year 2004 shall only be allowed to utilize 3 days off between 1/1/04 and 6/30/04.

Tuesday, April 08, 2003



Leo Gower
President
Local 334



John Murray
Assistant Town Manager
Town of Acton