

File Copy

2/21/92

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

Don P. Johnson
Town Manager

February 11, 1992

Mr. Kenneth H. Olsen, President
Digital Equipment Corporation
146 Main Street
Maynard, Massachusetts 01754

Dear Mr. Olsen:

I am writing you regarding a situation that the Acton Board of Selectmen and I believe has the potential for causing a great deal of difficulty for Digital Equipment Corporation and, especially, your personnel.

For many years we in the Town of Acton have been concerned about the condition of the railroad overpass bridge on Route 27 in South Acton. The rating on this bridge was reduced to 6 tons in 1985. This is the most restrictive weight limit that may be imposed, short of closing the bridge. For over six years, virtually all truck traffic has been required to detour through adjacent residential neighborhoods, while the bridge remains open only to passenger size vehicles.

After years of study, State Officials and Local Interests finally agreed on the preliminary design for a replacement bridge in 1989. At that time we were hopeful that replacement would occur quickly, eliminating the inconveniences of truck deliveries that had been (and continue to be) forced to reroute around the bridge. Unfortunately, since then there has been little or no progress from the State toward completion of the design or replacement. We are now informed by the State that the project is "dead" and it's future seems to be unknown.

This portion of Route 27 carries approximately 19,000 vehicles daily with approximately 2,000 vehicle trips occurring during the morning and evening commute. The bridge is in imminent danger of being closed due to its continuing deterioration. Such a closure would necessitate serious detours of commuter traffic and many of your personnel would be forced into lengthy rerouting. Both employees and business

clientele who normally access your facilities via this bridge will experience severe delays and very difficult traffic conditions.

We urge you to communicate with your legislative representatives and the Governor's office and seek their assistance in moving this project forward. The bridge continues to deteriorate and the Selectmen are fearful that its declining condition may soon force closure. Without replacement plans, one can only speculate as to the duration and severity of the inconveniences we will all suffer.

Please feel free to contact my office if you have any questions or desire more detail in this regard.

Very truly yours,

Don P. Johnson (DPJ)

Don P. Johnson
Town Manager

DPJ:251

INTERDEPARTMENTAL COMMUNICATION

TOWN MANAGER'S OFFICE

DATE: 2/21/92

TO: Board of Selectmen

FROM: John Murray

SUBJECT: Democratic Committee's Request to use Town Hall

Mr. Eisengrein is correct that Rep. Pam Resor, Senator Bob Durand and US Representative Chet Atkins have been granted permission to use town hall. Their activities have been and will continue to be limited to interacting with their constituents. In fact what we have done is to allow these elected officials to hold "office hours" in town hall. We view this as a public service to the citizens of Acton who do not or cannot attend "office hours" in Boston or Washington.

S Valley . FEB 20 1992
Acton, MA 01720
Feb. 19, 1991

Board of Selectman
Town of Acton:

Subject: Use of Town
Hall for Meetings

As Chairman of the Acton Democratic Town Committee, I have requested use of Town Hall for Committee meetings on several occasions; I have been refused by citation of quoted regulations barring Town Hall usage for political purposes that appear to be partisan-based.

I recently asked again for Town Hall usage for a Senate District Conference meeting of area towns for about 100 people; the meeting was to elect candidates for the State Democratic Committee. I was refused on the same grounds as noted above.

I am writing to appeal these decisions; the appeal is based on the following facts:

1. Elected officials presently use Town Hall for meetings; for example, Pam Resor and Chet Atkins.
2. The members of the Acton Democratic Town Committee also are officials elected by citizens; for example, the March 10, 1992 Democratic primary ballot lists 27 individuals.
3. The meetings of concern for which we requested Town Hall usage have always been open to the public, and are not concerned with lobbying for partisan candidates for publicly elected positions.

Therefore, our Committee requests that you clarify and modify the regulations to permit the type of meetings cited above. To clarify the situation for Town Hall staff, perhaps the definition of acceptable meetings, by Democratic or Republican committees, might be:

4. A requirement for a published notice of meeting time, date, and agenda, one or two weeks before the meeting.
5. The notice should indicate that the general public may attend, just as they may attend your meetings. Individual committee by-laws would determine the extent of their participation, just as you do.

We would agree to the present ban on partisan meetings held primarily to promote party candidates.

Opening such meetings to the general public would match your efforts to educate the public on the political process.

We would appreciate your prompt consideration of the above matter to clarify this situation. I would be available to attend your meeting to comment on our position as the matter is discussed.

Yours truly,



R.H. Eisengrein
Chairman, Acton
Democratic Committee



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Central Regional Office

FEB 13 1992

William F. Weld
Governor
Daniel S. Greenbaum
Commissioner

cc: BOS

URGENT LEGAL MATTER: PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

January 30, 1992

Sun Refining & Marketing Co.
35 Terminal Road
Providence, RI 02905

RE: CRWSC Site Number: 2-0745
Sunrise Sunoco
421 Massachusetts Avenue
Acton, MA 01720

Attention: Carl Borkland,
Regional Environmental Mgr.

FIRST NOTICE OF DEFICIENCY
Waiver Application
M.G.L.c.21E and 310 CMR 40.537

Dear Mr. Borkland:

The Department of Environmental Protection, Bureau of Waste Site Cleanup, Central Region, Worcester, Massachusetts (the Department), received a Waiver Application on August 27, 1991, for the property located at 421 Massachusetts Avenue, Acton, Massachusetts.

As stated in the Massachusetts Contingency Plan (MCP), 310 CMR 40.537(1), a potentially responsible party (PRP) or other persons may apply to the Department for a waiver of the approval requirements set forth in 310 CMR 40.536. Such waivers may be granted only for disposal sites which have been classified by the Department as non-priority disposal sites pursuant to 310 CMR 40.544.

Based upon a review of the Waiver Application Form, the Preliminary Assessment Report, the Interim Site Classification Form, and the Phase 1 Report (Phase I Limited Site Investigation) prepared by Handex, Inc., and other site investigation reports prepared by Handex, the Department has determined that the information provided is not sufficient to classify the site as a non-priority disposal site. Therefore, in order to further consider this application as eligible for the waiver process, the following additional information must be submitted:

NOTICE OF DEFICIENCY, WAIVER APPLICATION

Page 2

Sunrise Sunoco, Site Number: 2-0745

January 30, 1992

- 1) Identify all schools within 500 feet of the site, and evaluate the potential for impact on the school grounds by contaminants migrating from the site.
- 2) Identify all private water supplies within the area (indicate overburden or bedrock well), and evaluate the potential for impact on the wells by contaminants migrating from the site. Verify the precise uses of the water supplies. Considering the potential for impact of the water supplies and the uses of the water supplies, identify the potential threats to public health and the environment.
- 3) An updated site map indicating all important details, including present and former objects. For example: monitoring wells, soil borings, USTs, ASTs, pump islands, petroleum piping, floor drains, catchbasins, dry wells, leaching fields, sanitary and storm sewerlines, water lines, etc...
- 4) A list of all present and former USTs including: storage quantity, storage contents, tank material, date installed, date removed, condition (if known), tank and line tightness tests, and distance between tanks and water table.
- 5) Assess the reasons that 1.55 feet of floating fuel oil were observed in monitoring well W-4 on September 17, 1991, and yet only 12 gallons of product were recovered from the well. In addition, attempt to determine the reasonable quantity of released product, as well as its potential migration pathway.
- 6) Catchbasins, which were connected to the floor drains, should be assessed as potential sources of oil/hazardous material. Indicate the years that the floor drains were used and the materials that entered them. Obtain a sludge sample from the bottom of the first catch basin which is connected to the floor drains and analyze it using EPA Methods 8240 and TPH.

As stated in 310 CMR 40.537 of the MCP, in order for a site to be eligible for a waiver, it must first be classified as a non-priority site. Until the issues raised in this correspondence are clarified, it will not be possible to make a determination on the classification of the site.

NOTICE OF DEFICIENCY, WAIVER APPLICATION

Page 3

Sunrise Sunoco, Site Number: 2-0745
January 30, 1992

No further action will be taken by the Department until the above-referenced information is received. This correspondence is considered a First Notice of Deficiency, and you are urged to comply with the requests of this Notice. Please inform the Department in writing as soon as possible stating if you plan to collect the requested information and what your schedule for the submission will be.

If you have any questions regarding this matter please contact Bob Caldicott of this office at (508) 792-7653.

Very truly yours,



Daniel J. Hannon
Section Chief
Waste Site Cleanup

DJH/MKG/RJC

2-0745.NOD

cc: Acton Board of Health
Acton Board of Selectmen ✓
Eric Montgomery, Handex, Inc., 398 Cedar Hill Street,
Marlboro, MA 01752
Elaine Jonnet, BWSC, Boston, DEP
Database Entry



OFFICE OF THE
BOARD OF HEALTH
ACTON PUBLIC HEALTH NURSING SERVICES

472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TEL: 508-264-9653

ccBAS

Lucy A. Saia, M.S., R.N.C.
ADMINISTRATOR/SUPERVISOR

February 13, 1992

TO: Don Johnson, Town Manager
FROM: Lucy A. Saia, Administrator/Supervisor

I have made arrangements with Mobile Diagnostics Inc. to do mammography screening at the Town Hall on Saturday, April 4, 1992 from 9 AM to 3 PM. I have discussed this with Dean Charter, and will advertise in the next few weeks. If there are any difficulties with this plan, please advise me.

cc: Dean Charter
Doug Halley

MDI

Mobile Diagnostics Inc.

FEB 14 1992

LETTER OF AUTHORIZATION

This letter of authorization between Mobile Diagnostics, Inc., and Acton Public Health Nursing Service, (Client) gives Mobile Diagnostics, Inc., authority to locate the mobile unit on the premises of facility (listed below) and perform mammography examinations.

Client understands that the mobile unit uses radiation during the examination, and that Mobile Diagnostics, Inc., takes all necessary safety precautions to safeguard against all unnecessary radiation exposure.

Mobile Diagnostics, Inc., agrees to maintain all patient records of each Client location at the Mobile Diagnostics, Inc., address listed below (unless the Client wishes to maintain patient records on site).

Client understands this authorization is required by the Bureau of Radiation Control, and services cannot be instituted unless signed.

Manuel Chibon
Mobile Diagnostics, Inc.

Client Representative

Client

Address

City, State, Zip

January 13, 1992
Date

Date

cc: BOS

FEB 18 1992

February 10, 1992

Dear Don Johnson,

I wanted to write and thank you for all your help in drafting several samples of stationery for use by the Acton/Boxborough Arts Council.

Our chairman, Rosalie DeQuattro picked them up from Christine as she will have the final say concerning them.

I enjoyed meeting with you, and again let me thank you for your time spent in this matter.

Sincerely,

Nancy J. Rembert

Nancy J. Rembert, secretary



Cornelia O. Huber
Town Clerk

TOWN OF ACTON
TOWN CLERK

472 Main Street
Acton, Massachusetts 01720
(508) 264-9615

FEB 14 1992

Catherine Belbin
Asst. Town Clerk

February 13, 1992

cc: BOS

TO: Don Johnson
FROM: Connie Huber *CH*
SUBJECT: Conversation With Jim Guter

Per your request, the following is a synopsis of the telephone call I received this noon from Jim Guter. Jim, who is Director of Fine and Performing Arts of AB Regional school system was in a state of panic about a conflict of dates at the ABRHS auditorium.

Jim says that in May of 1991 he reserved the auditorium for Wednesday, April 8, 1992 for a high school band jazz concert. Apparently nobody told him that the auditorium is reserved for town meeting during this period. Acceptances to his invitations have been received for the concert which he reports involves 5 high school bands and the Berklee's School of Music band.

*3rd night
of ATM*

I told him I would talk with you and call him back.

DOW
FYI
DEAN

PALMER & DODGE

One Beacon Street
Boston, Massachusetts 02108

FEB 13 1992

Telephone: (617) 573 0100

Facsimile: (617) 227 4420
Telex: 951104

cc: BOS

February 12, 1992

Mr. Richard Buck
4 Milldam Road
Acton, MA 01720

Dear Mr. Buck:

Acton town officials have contacted me regarding certain activities you have undertaken on Town conservation land which abuts your property. It is my understanding that many of the concerns of the Town about your conduct were outlined in a letter to you dated December 26, 1991 from Dean Charter. It is also my understanding that you have not replied to Mr. Charter's letter or undertaken any remedial action to begin to restore the conservation land. Under the circumstances, I have been asked to begin legal proceedings against you. Before instituting legal action, I would be glad to speak to you or your lawyer about entering into a settlement agreement. If you wish to pursue settlement of this matter, please call me prior to February 21, 1992. I can be reached at 617-573-0386.

Very truly yours,

Norman P. Cohen

NPC/db
cc: Dean Charter

FILE COPY

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

Don P. Johnson
Town Manager

February 19, 1992

Boston Edison Company
Mr. Jack Goggin
15 Blandin Ave.
Framingham, MA

Dear Jack:

The Selectmen asked during their February 18, 1992 meeting for a complete report concerning the power outage in West Acton on February 14, 1992. At a minimum the written report should contain the following information:

1. Cause of the power outage
2. The reasons that the power could not be rerouted (including all necessary circuit maps)
3. The time differential in responding from Framingham vs. Maynard
4. The extent of calls from customers and the process of disseminating information to the affected customer base
5. The extent of information provided to town officials (including names and times)

Thank you for your time and consideration.

Very truly yours,


John Murray
Assistant Town Manager

FEB 19 1992

ACTON SCHOOL COMMITTEE

CONFERENCE ROOM - #114
R. J. Grey Junior High School

February 20, 1992

AGENDA

- I. 8:30 CALL TO ORDER
- II. 8:35 FY'93 BUDGET DISCUSSION
- III. 9:30 ADJOURNMENT

ACTON-BOXBOROUGH REGIONAL SCHOOL COMMITTEE

Conference Room - #114

February 20, 1992

AGENDA

- I. 7:30 CALL TO ORDER
- II. 7:35 FY'93 BUDGET DISCUSSION AND RECOMMENDATION
- III. 8:30 ADJOURNMENT

GENERAL & EXCAVATING CONTRACTOR

DON,
F.Y.I.
D.O.

TEL.: (508) 763-8868

Letter #31

D. W. WHITE Construction, Inc. FEB 19 1992

867 MIDDLE ROAD - ACUSHNET, MASS. 02743

• Earth Moving • Land Clearing • Grading • Loam • Fill • Gravel •

cc: BOS

CERTIFIED MAIL #P 720 830 785

February 12, 1992

Chief George Robinson
Police Department
Main Street
Acton, MA 01720

Re: Guardrail & Improved Access to
Acton Landfill on Route 2
Town of Acton-Concord
DPW Project No. SP91-176

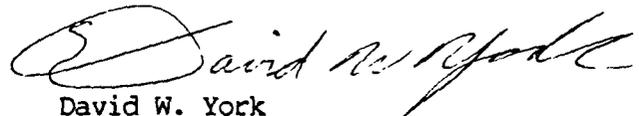
Dear Sir/Madame:

This is to inform you that our firm has been selected by the Massachusetts Department of Public Works to perform the work on the above referenced project.

Work on this project is scheduled to begin on February 24, 1992.

Cordially,

D.W. WHITE CONSTRUCTION, INC.



David W. York
Project Coordinator

DWY/jaf

RECEIVED
FEB 19 1992

ACTON ENGINEERING DEPT.

Town of Acton

Planning Department

472 Main Street Acton, Massachusetts 01720

(508) 264-9636

February 12, 1992

Harold W. Storrs
Director
Dept. of Community Services
Town of Concord
133 Keyes Road
Concord, MA 01742

REGARDING: Watershed Quality Management Planning Grant Application.

Dear Mr. Storrs:

This letter is intended to express the support of the Acton Planning Department for your grant application under the Clean Water Act, Section 604 (b). The purposes and goals expressed in your grant application seem to coincide with Acton's desire, as state in its recent Master Plan, to protect its natural resources. I hope you will succeed in securing this grant and look forward to working with the Town of Concord in developing the watershed management plan. From our perspective, this is an opportunity to develop a management plan that covers all of our shared drinking water resources. They include Nagog Pond as well as portions of Concord which are highly sensitive recharge areas to several of Acton's municipal wells.

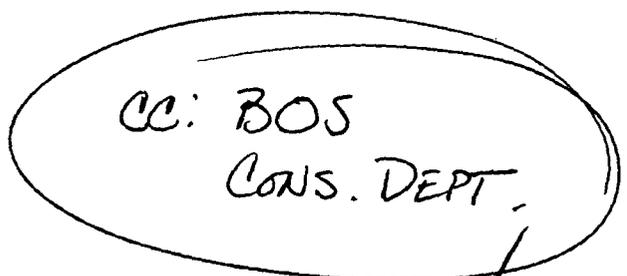
Sincerely,



Roland Bartl
Town Planner

cc: Don P. Johnson, Town Manager ✓
Planning Board

[rhb343*2/92]

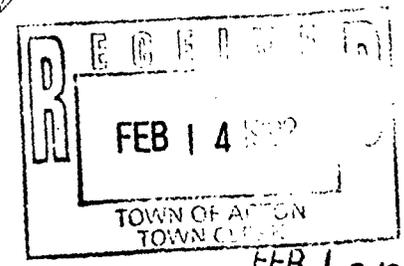


CC: BOS
CONS. DEPT.

✓
2/18/92

COMMITTEE OR
GOVERNING BODY: NESWC Executive Committee

John Murray



FEB 19 1992

MEETING PLACE: Selectmen's Rm, Lexington Town Hall

DATE AND TIME
OF MEETING: Thursday, March 5, 1992 at 1:30 pm

SIGNED *Louis M. Gallane*
CHAIRMAN OR SECRETARY

DATE: February 13, 1992

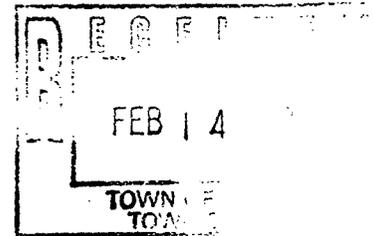
ALL MEETING NOTICES MUST BE FILED AND TIME STAMPED IN THE TOWN CLERK'S OFFICE AND POSTED ON THE MUNICIPAL BULLETIN BOARD 48 HOURS PRIOR TO THE MEETING.

(IN ACCORDANCE WITH CHAPTER 303 ACTS OF 1975)

MEETING NOTICE

Town Clerk's Time Stamp

COMMITTEE OR
GOVERNING BODY: NESWC Financial Affairs Subcommittee



MEETING PLACE: Room 111, Lexington Town Hall

DATE AND TIME
OF MEETING: Thursday, March 12, 1992 at 8:00 am

SIGNED *Louis M. Gallane*
CHAIRMAN OR SECRETARY

DATE: February 13, 1992

ALL MEETING NOTICES MUST BE FILED AND TIME STAMPED IN THE TOWN CLERK'S OFFICE AND POSTED ON THE MUNICIPAL BULLETIN BOARD 48 HOURS PRIOR TO THE MEETING.

(IN ACCORDANCE WITH CHAPTER 303 ACTS OF 1975)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

cc: [unclear]
[unclear]
[unclear]
[unclear]
2/21
FEB 18 1992

February 13, 1992

Norman D. Lake
Chairman, Acton Board of Selectmen
472 Main Street, Town Hall
Acton, Massachusetts 01720

Dear Norman D. Lake:

Attached is a copy of the final W.R. Grace Community Relations Plan and Fact Sheet for your files. Copies are also available at the Acton Memorial Library and the EPA Records Center on 90 Canal St. in Boston. If you have questions about these documents, please call me at (617) 565-3425.

Sincerely,

Diane E. Ready
Superfund Community Relations Coordinator

Attachments

- cc: Lynne Jennings, EPA
- Brenda Haslett, EPA
- Joanne Kasper Dunne, Massachusetts DEP
- Michael LeBlanc, Massachusetts DEP
- Charlie Tuttle, Bureau of Waste Site Cleanup
- Doug Halley, Acton Board of Health
- Bradford Leach, Concord Board of Health
- Robert Eisengrein, Acton Citizens for Env. Safety

1



File

FEBRUARY 14, 1992

2/18/92

TO: Board of Selectmen
FROM: NORMAN LAKE, Chairman
SUBJECT: SELECTMEN'S REPORT

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AGENDA
ROOM 204
7:30 P.M.
FEBRUARY 18, 1992

I. CITIZEN'S CONCERNS

II. PUBLIC HEARINGS & APPOINTMENTS

- 1. 7:45 AUDUBON HILL - Discussion of possible amendments to the Comprehensive agreement.

III. CONSENT AGENDA

- 2. SELECTMEN'S MINUTES - Enclosed please find minutes of the Regular and Executive Session held on January 21, 1992 for Board approval.
- 3. SPECIAL USE PERMIT - BEAN'S INC. - Enclosed please find the Special Permit decision for board action.
- 4. SITE PLAN SPECIAL PERMIT - MIDAS REALTY - Enclosed please find letters of agreement for Board action.
- 5. BETSY BALL FUND - Enclosed please find three requests for disbursement along with staff comment for board action.

IV. SELECTMEN'S CONCERNS

- 6. BUDGET PRESENTATION & WARRANT DISCUSSION - Enclosed is the detailed FY93 Budget as recommended by the Town Manager. Please bring your Draft warrant (distributed last week) for discussion. If you need another copy, please call the office.

V. TOWN MANAGER'S REPORT

VI. EXECUTIVE SESSION

VII. MEETINGS

VIII. ADDITIONAL INFORMATION

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

IX. FUTURE AGENDAS

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

March 3, 1992- Arboretum Presentation, Stoneymead, Ayer Rd., Street Acceptances, Class II 125 High St., ScupperJack's Transfer of Licenses - All Alcoholic and Common Vict.

March 17, 1992

Harold Gordinier - Alternate Board of Assessors

March 31, 1992

April 14, 1992

April 28, 1992

May 12, 1992

May 26, 1992

732 acs

INTERDEPARTMENTAL COMMUNICATION
TOWN MANAGER'S OFFICE

2/18/92 ①
FILE COPY

DATE: 2/7/92

TO: TOWN CLERK, BEACON REPORTER, (FOR POSTING AND NOTIFICATION)

FROM: TOWN MANAGER'S OFFICE

SUBJECT: AUDUBON HILL

The Selectmen have scheduled time on the Agenda of the February 18, 1992 Board of Selectmen's Meeting for the purpose of discussing possible amendments to the comprehensive agreement signed by the Town concerning the Audubon Hill development. Discussions will begin at 7:45 P.M. for those interested in attending.

2/18/92 (2)

**SELECTMEN'S MEETING
JANUARY 21, 1992**

The Board of Selectmen held their regular meeting on Tuesday, January 21, 1992. Present were Norm Lake, Nancy Tavernier, Dore' Hunter, Anne Fanton and Town Manager Johnson

CITIZENS' CONCERNS

None expressed.

PUBLIC HEARINGS AND APPOINTMENTS

**PAPA GINO'S - 82 POWDERMILL ROAD
TRANSFER OF LIQUOR LICENSE**

Carl Gasco, manager of the Papa Gino's explained to the Board that the Transfer was of the entire chain. He would remain in his position as manager of the Acton Store. Outwardly it would have no appearance of change, it was a corporate change of the business. The Board asked about the several health violations noted in the staff comments. Mr. Gasco has met with Health and has taken care of the three infractions which were minor in nature. NANCY TAVERNIER - Moved to approve the Transfer of the Beer and Wine Common Victualer License. DORE' HUNTER - Second. UNANIMOUS VOTE.

REPRESENTATIVE PAM RESOR

Representative Resor came in and updated the Board on the past years events. We have been assured by the governor that he would level fund local aid, although we has heard that it will be directed toward education. Nancy was very interested in lowering health care costs as outlined in the handout in the numbered mail. Pam asked the Board to prioritize the list for her. Dore' said that health benefit were a great concern in the Coordinating Committee process. Dore' asked if any tinkering would take place in the school choice legislation. Pam has been told that there in no way to delete this legislation. The Board agreed to prioritize the list of concerns and get it to Pam for her review and action.

**MINUTEMAN VOCATIONAL SCHOOL
Mr. WILTSE - OVERVIEW MEETING**

Mr. Wiltse along with Ron Fitzgerald updated the board on the operations of the Voc. Tech. They assume that after this year the R&D account will be zeroed after this year and a majority of the town's will be rejecting the Deferral option. Acton was the only town to request deferral. Nancy speaking for herself, was concerned why others had not chosen deferral as it had allowed us to avoid an override this year. Anne after review

stated she would support the printed resolution and vote not to dictate to other towns and would vote against deferral at the Minuteman Level. ANNE FANTON - Moved to reject the deferral on Minuteman Regional Voc. School District school teacher's Compensation for fiscal year 1993 as authorized by Section 3 of Chapter 336 of the Acts of 1991. DORE' HUNTER - Second - UNANIMOUS VOTE.

Dore' asked Mr. Wiltse what he perceived his duties and responsibilities were. He replied to see that the tax dollars are spent properly and to promote voc tech education. Mr. Wiltse was reminded that a Voc. Tech. education was twice the cost of a traditional high school education. Dore' asked that Mr. Wiltse be put on the agenda list for the Coordinating Committee and invited him to attend the Monday morning meetings so he could better understand his role.

BOARD OF ASSESSORS OVERVIEW MEETING

Jim Kotanchick, Chairman answered the Boards questions about the abatement process. They have had 100 applications vs 344 last year and 921 the prior year. The Condo's gave them trouble this year and then the State interjects its views and rules. Anne wanted the cost looked into for an annual reval. They estimate 30,000 every three and that they would look into the yearly update and get back to the Board on the estimated cost. Public information about the denial and approval was discussed and the Assessors agreed to prepare a more detailed response to send to those denied. They were also asked to speak to the tax classification issue next year to further assist the board in their decision.

CONSENT CALENDAR

The Board approved the Consent Calendar as submitted. DORE' HUNTER - Moved to accept as printed. NANCY TAVERNIER - Second. UNANIMOUS VOTE.

SELECTMEN'S CONCERNS

Eagle Scout - Dore' Hunter will attend the next Court in March for Troop 11.

Norm Lake Noted he has taken out papers to run for a second term.

Power Outage - Dore' Hunter received a phone call about the power outage in West Acton. The caller was concerned that the lack of communication between the utility and citizens continues. Staff was asked to interface with Boston Edison once again.

Annual Report - The Board reviewed and voted to submit the report as written with the minor changes as suggested by John Murray.

Coordinating Committee - Dore' outlined the latest meeting. Most of the discussion was based on the readjustment to the budget on the School Choice monies and utilities. Dore' asked to have the wage increases for the past years vs. Town increases gathered for review.

Legal RFP - Dore' spoke to his recent memo. He felt that it would be a helpful exercise and should be considered in the future. Anne thought this was good RFP as written. Anne asked if a general questionnaire had been put out on the current services to staff/committees that use counsel yet. It was suggested that a wording transition to the RFP be prepared and sent to current counsel. Dore' felt that after responding to several of these it was a helpful process for the firm and client relationship.

Regarding the Staff comment, Nancy wanted specific examples of what the problems were from staff/boards. Dore' was not in favor of going to committees for content of the RFP. Dore' wanted to keep the process as philosophical as possible, they tell us what they will do for us. NANCY TAVERNIER - MOVED to send out the RFP as written by Dore' as well as staff questionnaire for comment on current use of counsel. ANNE FANTON - Second. UNANIMOUS VOTE.

Route 2 - The Board reviewed the current response to the letter written by Vanetta Hunter. They were concerned with the notation of a possible construction of an over-under pass at Piper Road. Anne discussed her latest meeting with the State officials, MAPC reps and neighboring towns regarding the CAC process. Anne was asked to contact the DPW by telephone and discuss the Boards concerns.

TOWN MANAGER'S CONCERNS

Don Johnson asked the Board's permission to send letters to the officers involved in the recent hostage situation. The Board agreed to his request and instructed him to draft the letters.

EXECUTIVE SESSION

The Board voted to adjourn into Executive Session for the purpose of discussing Contractual review DORE' HUNTER took roll call all Ayes.

The Board adjourned into executive session at 10:30 P.M.

Clerk

Date

Christine Joyce
Recording Secty.
cmjW11-(191)

EXECUTIVE SESSION MINUTES

January 21, 1992

Porrazzo Properties - Don updated the board on the recent purchase of the property by Dan Porrazzo at auction.

ACHC - Audubon Hill - The Board discussed the most recent staff memo on goals for the project. Dore' felt that the order of priorities was what he expected and was how he remembered the board's priorities.

Mobil Oil - Palmer and Dodge has received a letter from Mobil asking to negotiate and the possibility of further negotiations with the Town on the sign.

The Board adjourned at 11:10 P.M.

Clerk

Date

Christine Joyce
Recording Secty.
cmjW11-(187)

2/18/92
3

Restaurant Special Use Permit #11/14/91-335; Amendment #3/9/83-230

Bean's Inc.

342 Great Road (TAVERNIER)

1

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Decision of the Board of Selectmen (hereinafter the Board) on the petition of Bean's Inc. (hereinafter the Petitioner) for the property located at 342 Great Road, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map D4, Parcel 28.

This Decision is in response to an application submitted to the Board on November 14, 1991 by the Petitioner for a Special Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw) to establish a restaurant. This permit will also amend site plan Special Permit #3/9/83-230.

After causing notice of the time and place of the public hearing and the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on January 7, 1992 at 7:45 P.M. in the Acton Town Hall, Acton, Massachusetts. Board members Norman D. Lake, Nancy E. Tavernier, F. Dore' Hunter and Anne B. Fanton were present through the hearing.

The Petitioner was represented by Mr. David Beardsley. The record of the proceedings and submissions on which this permit is based may be referred to in the Office of the Town Clerk or the Office of the Board.

Submitted for the Board's deliberation, prior to the close of the hearing, were the following exhibits:

Exhibit I

A properly executed application for a restaurant Special Permit; a letter dated May 24, 1991 from Prendergast Development Corp. to the Building Commissioner; a plan showing the layout of the restaurant.

Exhibit II

A request dated July 29, 1991 from the Town Manager for comments; letter to Mr. Beardsley dated November 18, 1991 from the Town Manager's office; letter dated November 18, 1991 from the Town Manager's office to the Beacon; Notice of Hearing; Certified Abutters List dated April 25, 1991.

Exhibit III

Interdepartmental Communication (IDC) from the Building Commissioner to the Board dated December 27, 1991; IDC from the Health Director to the Building Commissioner dated November 21, 1991; IDC from Municipal Properties Director to the Building Commissioner dated November 22, 1991; IDC from Roland Bartl to Don P. Johnson dated November 20, 1991.

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Based upon its review of the exhibits and record of the proceedings the Board under the Bylaw found that:

Findings and Conclusions

1. The restaurant use is appropriate for the site in question.
2. Condition H of Site Plan Special Permit #3/9/83-230 prohibits wet uses. This condition was added to the decision at the request of the Board of Health because of the capacity of the septic system (2104 gallons per day). The Board of Health now feels that instead of prohibiting wet uses the allowed uses should be limited to the system size. The use of all buildings is already limited to the size of the septic system and it would be redundant to limit uses to the septic size.

Therefore it is appropriate to eliminate Condition H.

3. The site plan Special Permit #3/9/83-230 remains in full force and effect with the exception of Condition H which is hereforth removed.
4. The use as proposed is consistent with the Master Plan, is in harmony with the purpose and intent of this Bylaw and will not be determined or injurious to the neighborhood.

Therefore the Board voted to GRANT the requested Special Permit and site plan Special Permit #3/9/83-230 is amended so as to remove Condition H with the benefit of the following limitations.

Limitations

- 2.1 The restaurant shall be run according to the submitted documents.
- 2.2 This decision applies only to the requested Special Permit, other permits or approvals required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 2.3 Effective Date of Special Permit - No special permit or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days has elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such an appeal has been filed, it has been dismissed or denied.

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Appeals

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this day of

Norman Lake, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the decision of the Board of Selectmen.

Christine Joyce
Recording Secretary

Date filed with Town Clerk

Cornelia O. Huber, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the decision of Sean's Inc. has passed and there have been no appeals made to this office.

Date

Cornelia O Huber, Town Clerk

- cc: Petitioner - Certified Mail #
- Building Commissioner
- Planning Board
- Engineering
- Conservation
- Board of Health
- Town Clerk
- Planning Boards - Littleton, Westford, Maynard, Carlisle, Concord, Boxboro, Stow, Sudbury

2/18/92 (4)

TOWN OF ACTON

FEB 10 1992

INTERDEPARTMENTAL COMMUNICATION

DATE: February 7, 1992

TO: Don P. Johnson, Town Manager
FROM: Garry A. Rhodes, Building Commissioner *GAR*
SUBJECT: Site Plan Special Permit 9/23/91-334
Letters of Agreement

I have received two letters of agreement from Midas Realty Corporation. These letters were required as part of the Special Permit. It is my recommendation that they are accepted as written.

BOS CONSENT - 2/18/92

(760)



A Whitman Company

January 27, 1992

Midas Realty Corporation
Northeast Region
61 Robert Treat Paine Drive
Taunton, Massachusetts 02780
(508) 824-1610

Board of Selectmen
Town of Acton
472 Main Street
Acton, MA 01720

Re: Site Plan Special Permit No. 9/23/91-334
Midas Realty Corporation - 124 Great Road
Plan File No. 3304 (Fanton)

Ladies and Gentlemen:

In compliance with section 3.5.1 and 3.5.2 of the above referenced Site Plan Special Permit, Midas Realty Corporation will hereby agree to the following:

- (3.5.1) At such time and in such quantity as the Board of Selectmen may designate, Midas Realty or its assignees will provide up to three (3) monitoring wells for the purpose of monitoring the general quality of groundwater in the area of the subject site and providing an early warning of potential problems. Such wells shall be installed in accordance with the directions and specifications of the Board of Selectmen. Midas Realty, or its assignees, shall agree to assume all costs (not to exceed a maximum total cost of \$3,000 to Midas or its assignees) necessary and associated with the provision of said three (3) monitoring wells, and shall provide at such time the necessary easements/access rights to the Town of Acton and the Acton Water Supply District in order to facilitate the taking of water samples for analysis.
- (3.5.2) At such time as traffic conditions on Great Road (Rt. 2A), in the opinion of the Board, reach proportions that constitute a hazard to the citizens of the Town of Acton, Midas Realty Corporation, or its assignees, will contribute (on a pro rata basis based on the proportion of the total traffic on said highway, which is represented by traffic to and from the Midas property) a fair share toward a traffic study to be conducted at the direction of, and to the satisfaction of, the Board of Selectmen focused on alleviating the problem.



A Whitman Company

Board of Selectmen
Town of Acton
Page Two

Midas Realty Corporation's, or its assignee's share, is to be based on metering of traffic to and from the above referenced property. Midas Realty Corporation, or its assignees, agree to assume all costs necessary related to its premises and will contribute, according to the pro rata formula established in accordance with the above, a fair share towards any mitigation measures suggested in the traffic study.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "T. E. Williams, III".

T. E. Williams, III
Assistant General Counsel
Midas Realty Corporation

- cc: G. A. Rhodes, Building Commissioner
J. S. Quinlan
C. E. Orcott, Jr.
W. G. Dean



A Whitman Company

Midas Realty Corporation
Subsidiary of
Midas International Corporation
225 North Michigan Avenue
Chicago, IL 60601-7601
(312) 565-7500

Airborne 209063610

Mr. Gary Rhodes
Building Department
Town of Acton
472 Main Street
Acton, MA 01720

**Re: Site Plan Special Permit No. 9/23/91-334
Midas Realty Corporation- 124 Great Road
Plan File No. 3304 (Fanton)**

Dear Mr. Rhodes:

Enclosed per Bill Dean's request is the Letter of Agreement necessary to complete Midas' permit application. If you have any questions, please contact Bill Dean.

Thank you for your assistance in this transaction.

Sincerely,

Deborah T. Framarin

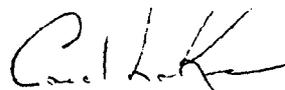
Deborah T. Framarin
Acquisition Development Management

DTF:lf
enc.

cc: J. S. Quinlan w/enc.
W. G. Dean w/enc.

2/19/92
⑤

Edward Bentsen and his wife Barbara live in subsidized elder housing, 2 Sachem Way, Apt. 1A, McCarthy Village. They both have medical problems and are very low income. There is no insurance that covers frames/lenses. Mr. B. needed both at his last eye exam; he is a diabetic. The fund assisted Mrs. Bentsen for eye exam/lenses in February 1989.



Carol Lake
Council On Aging

Betsy M. Ball Fund
\$235.

February 13, 1992

2/19/92
CZ
E

Dorothy Smith, 79, 302 Central Street, is a handicapped widow who lives in her daughter's home. The daughter, a single woman, works during the day. Mrs. Smith has mobility problems; she has attended the elder day care program in the Merriam building twice a week when she is well. Mrs. Smith has the potential of falling, could not get up without assistance, could not call for help. The attached bill is one year's Lifeline service cost; monthly cost would be refunded should the client be off service or institutionalized for a long period.

Mrs. Smith's income is social security only; she shares household expenses with her daughter in a very modest home. The original request for this help came through APHNS.

Carol Lake
Carol Lake
Council On Aging

Betsy Ball Fund
\$290.

February 13, 1992

2/18/92
⑤

Mary Tuttle, 44 Maple Street, 50 years, is a single woman who lives alone in the family homestead. This old house is in a state of disrepair; Mary tries to maintain it and herself on a very limited disability income. Her health insurance is Medicare; she does not have prescription coverage. She has asked for assistance with this bill from Acton Pharmacy and will again ask for help in the future.

Ms. Tuttle is well known to all in the social service network. She has a long history of instability. Our goal for her is to sell her property and seek an apartment in Windsor Green for which she would be eligible.


Carol Lake
Council On Aging

Betsy Ball Fund
\$99.90

February 13, 1992



INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL/CIO

285 DORCHESTER AVENUE, BOSTON, MASSACHUSETTS 02127

617/268-5002



HAND DELIVERED

February 4, 1992

Secretary to the Commission
Civil Service Commission
One Ashburton Place
Room 413
Boston, MA 02108

POSTMARKED 2/5/92
REC'D 2/7/92

Re: Officer Pablo Hernandez and Town of Acton

Dear Sir/Madam:

Enclosed you will find an Appeal of the Decision of the Appointing Authority and a Notice of Appearance for the above-referenced matter.

Kindly file the same.

Very truly yours,

Katherine McClure

Katherine McClure
Counsel

cc: Officer Pablo Hernandez
Officer Al Crowley

2/12/92

12/13

CC: HENRY STEWART - PALMER & DODGE

LOOKS LIKE THEY WANT TO GO TO THE MAT! PLEASE PICK UP OUR SIDE AS APPROPRIATE

CC: BOS
M. CALLAGHAN
N. COHEN

Don Johnson

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

APPEAL NO.

PABLO HERNANDEZ, Appellant)	
)	
v.	)	CLAIM OF APPEAL
)	
TOWN OF ACTON, through its Appointing Authority, Respondent)	
)	

APPEAL OF DECISION OF APPOINTING AUTHORITY

The Appellant, Pablo Hernandez, hereby claims an appeal pursuant to M.G.L. c.31 §§41 and 43, from the attached decision of the Appointing Authority, the Town of Acton. Said decision was received by the Appellant on January 27, 1992.

Pablo Hernandez
11 Cambridge Street
Ayer, MA 01432

by his attorney,

Katherine McClure

Katherine McClure
Katherine McClure
International Brotherhood
of Police Officers
285 Dorchester Avenue
Boston, MA 02127
(617) 268-5002

Dated: February 5, 1992

JAN 27 1992

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

Don P. Johnson
Town Manager

January 3, 1992

Patrolman Pablo Hernandez
Acton Police Department
365 Main Street
Acton, MA 01720

Subject: Civil Service Hearing

Dear Officer Hernandez:

A hearing was held on December 18, 1991 regarding your appeal of a 2-day suspension for failing to report for duty and insubordination. The suspension was imposed under the provisions of Massachusetts General Laws, Chapter 31, Section 41. The purpose of such a hearing under Chapter 31, Section 41 is to determine "...whether there was just cause for the suspension."

In addition to your attendance at the meeting, you were also represented by Ms. Katherine McClure, Legal Counsel from the International Brotherhood of Police Officers (IBPO) and Officer Al Crowley, President of IBPO Local 334. Chief George Robinson presented the reasons for the disciplinary action.

During the course of the hearing a number of documents were presented. There seemed to be no factual dispute on the elements of this case. All agreed that applicable time limits had been met or extended by mutual agreement and, in recognition of the upcoming holiday season, it was agreed that the time for delivery of this decision would be extended to January 3, 1992. During the week of the New Year's Holiday the decision date was further extended at Ms. McClure's request in order to provide an opportunity for additional input from the IBPO prior to issuance of the decision.

From the outset there appeared to be a considerable amount of overlap between issues of Civil Service and Collective Bargaining. I expressed a desire to hold the discussion as closely as possible to the narrowly defined question under Civil Service regarding whether there was just

cause for the suspension. Both sides, you and the Chief, felt there was some degree of need to move across the line into the collective bargaining issues in order to properly evaluate this matter.

After reviewing the information and documents presented at the hearing, along with a review of MGL, Chapter 31, Sections 41-45 and MGL, Chapter 150E, I remain convinced that the two authorities are reasonably distinct and (to the extent possible) should be treated accordingly. Throughout the balance of this decision there will be discussion of both. This is primarily because information at the hearing was presented in both contexts.

I find the facts to be essentially as follows:

1. Sometime during the week of November 4, 1991 the Highway Superintendent contacted Lt. McNiff of the Police Department and requested two (2) Police Officers for November 13, to assist with traffic control at a Highway Department worksite. The site was at the intersection of Route 62 and High Street. Due to the heavy traffic volume at this location, the Highway Superintendent had determined that issues of public and personnel safety justified this level of police protection. Concurrent with this decision, the Highway Superintendent had evaluated other projects at other locations in town and had made the judgement that conditions were less hazardous and, consequently, he did not request the presence of police officers at those sites.
2. On November 12, 1991 Sergeant Thomas Rogers was Supervisor of the 3:00PM - 11:00PM shift. Officer Hernandez was working a 4:00PM - 12:00PM shift the same day. At approximately 3:30PM Sergeant Rogers was made aware that one of the requested traffic control positions for the Highway project the following day had not been voluntarily filled. Sergeant Rogers caused "the list" to be called in an attempt to fill this vacancy. At approximately 4:40PM Sergeant Rogers determined that the vacancy could not be filled through the use of volunteers. At that time he determined that Officer Hernandez was next in line on the "ordered-in" list. (Sergeant Rogers had been ordered by his superior, Lieutenant McNiff, to fill this vacancy with "Acton Officers", only, and to order officers in if necessary to carry out his directive.)
3. Sergeant Rogers directed the Dispatcher on duty to contact Officer Hernandez, who was then on patrol, and have him call back to the station. Subsequently, Sergeant Rogers and Officer Hernandez spoke by

telephone and then in person at the station. The conversations appear to have consisted of the following elements:

a. In their phone conversation Sergeant Rogers informed Officer Hernandez that the vacancy in question remained unfilled and told him that he was going to have to order Officer Hernandez in to fill it. (Both agreed that Officer Hernandez was properly in line for the next ordered-in shift.)

b. Officer Hernandez stated that he was scheduled to baby-sit for his children during the shift in question. He further explained that he was without transportation and could not drive in to fill the shift.

c. Sergeant Rogers informed Officer Hernandez that he (Officer Hernandez) would have to get a baby-sitter but that he (Sergeant Rogers) would arrange for transportation.

d. Officer Hernandez stated that he could not work the assignment. The phone conversation was terminated.

e. Subsequently, at the station, Officer Hernandez argued that a "paving assignment" was not a legitimate reason to order him in to work. In support of his position, Officer Hernandez pointed out that many "road details" (such as Edison and New England Telephone details) are "farmed-out" to personnel from other police departments or left unfilled when Acton officers do not want them.

f. Sergeant Rogers explained that the Acton Police Department considered this assignment to be a matter of public safety.

g. Officer Hernandez responded that it was time for someone to make a test case because he felt this was not a legitimate reason to use the ordered-in list. He further informed Sergeant Rogers that he would not show up for the assignment.

h. Sergeant Rogers concluded the conversation by making it clear to Officer Hernandez that Officer Hernandez was being ordered to work the assignment in question on November 13. Sergeant Rogers noted the time of this order as 5:10PM, November 12.

i. Officer Hernandez acknowledged that he understood the order and left the station to resume his patrol duties.

4. Officer Hernandez did not report for the assigned shift the following day. Sergeant Robert Rhodes, the Shift Commander, upon being informed that Officer Hernandez had not reported for his assignment, caused two (2) phone calls to be placed to Officer Hernandez' residence. These calls were made at 7:46AM and approximately 10:00AM. There was no answer to either call. Sergeant Rhodes reports that he was informed "...by several officers that Officer Hernandez felt this was an illegal order and that he was not going to work same."
5. On November 25, Chief Robinson informed Officer Hernandez that he was aware of the situation, advised him of the possible consequences and asked for Officer Hernandez' side of the story.
6. Officer Hernandez presented his written position to the Chief in a letter dated November 28. Although his letter does not reference the phone conversation with Sergeant Rogers that preceded the meeting at the station, it is reasonably consistent with the content of Sergeant Rogers' report. There is one area of comment, however, that seems to have been a significant factor in his decision not to obey the order. In his letter, Officer Hernandez makes reference to the status of this work in the context of an "emergency" or "non-emergency" situation.
7. Officer Hernandez goes on to explain that he refused to obey the order for three (3) reasons:
 - a. He interpreted the order to be unlawful. In support of his interpretation he referred to the Department's "Manual of Rules and Regulations", Section 1.E.10. "Unlawful Orders". He also referenced and attached a copy of a portion of the section on "Administration of Service-Extra Duty".
 - b. Lack of available transportation was cited as the second reason.
 - c. Child care was cited as the third reason. Officer Hernandez' wife also works at full-time employment and he schedules his time off to care for their children.
8. On December 4, by letter dated December 3, Chief Robinson informed Officer Hernandez of his decision to suspend Officer Hernandez for two (2) days,

effective December 5 and 6. The reasons given were violations of the "Manual of Rules and Regulations for the Acton Police Department", Section 1.F.13 "Duty, Reporting for" (failure to report for duty) and Section 1.G.13 "Insubordination" (failure or deliberate refusal to obey a lawful order).

After considering the above, I have determined the following:

- A. The suspension was made under the provisions of the Civil Service Statute and the decision should be held to whether there was just cause for the suspension.
- B. Officer Hernandez apparently held a strong opinion as to whether use of the "ordered-in list" was appropriate to the work in question. The proper avenue to address this conviction would have been the grievance process in the Collective Bargaining Agreement. The proper action would have been to work the assignment and grieve it later. Unfortunately, Officer Hernandez chose to interpret the order as unlawful and refused to obey.
- C. When Officer Hernandez made his decision he did so without benefit of many factors of which he was not aware. Indeed, this goes to the very heart of the importance that is placed on command and obedience in a paramilitary organization such as a Police Department. Officer Hernandez decided that his judgement (without knowing the reasons for the orders of his Sergeant, Lieutenant and, ultimately, the Chief) was better than that of his superiors. In making such a determination and following it with a refusal to obey a direct order, Officer Hernandez took it upon himself to decide the priorities and responsibilities of the Department and, ultimately, the Town. This is a dangerous and intolerable action on the part of any employee. Moreover, it is unimaginable from a Police Officer whose life might depend on his discipline (or the discipline of a fellow officer) and his confidence in the orders of his superiors.
- D. Although never expressly referenced by Officer Hernandez, he seems to have relied on provisions of Article 11 of the Bargaining Agreement, "Extra Paid

Details and Overtime" as they relate to extra paid details that are "... paid for by another Town Department ... or outside individual groups, corporations or organizations". Extra paid detail assignments are expressly voluntary in the bargaining agreement. The particular assignment in question was not, however, an "extra paid detail". It was work required by the department, just as any other shift to which an officer might be assigned. The standard for ordering an officer in to fill a required shift has nothing to do with an emergency or the subjective judgement of an officer. When personnel are required to complete the necessary work of the department and volunteers are not forthcoming, the administration of the department has no choice but to order-in.

- E. From personal knowledge this writer is aware that there was a degree of urgency related to weather conditions, seasonal closing of asphalt plants, efficient scheduling of Town work crews and (more importantly) the short duration of available State funding for the work in question that placed a priority on this work. None of these issues rise to the level of an "emergency" as Officer Hernandez observed in his letter. What he failed to realize was that the "ordered-in" provisions of the contract do not in any way turn on the existence of an "emergency". The "ordered-in" provisions come into play long before the condition of an "emergency" is reached. Officer Hernandez erred when he placed this arbitrary test against the order and, in so doing, gave further justification for the need to follow orders.
- F. When the Highway Superintendent requests the presence of police officers at a work site he does so as an agent of the officers' employer, the Town. Officers working these sites are employees of the Town, receive their compensation directly from the Police Budget and are performing the work as part of their responsibility to their primary employer, the Town. These are not "Outside Details" such as the Edison and Boston Gas examples. Before honoring such a request the Police Chief or his designee makes an evaluation of the site conditions (similar to the evaluation made by the Highway Superintendent), and determines whether he agrees that conditions warrant this level of protection and, consequently, the expenditure from his budget. Officer Hernandez had no reasonable way of knowing these internal decisions nor did he have a need to know. When he decided not to obey the order he was taking upon himself the

right and responsibility of determining the work and priorities of the Police Department, the Highway Department and the Town. He also made a defacto decision as to the level of safety for his fellow employees and the public. He did this without benefit of knowledge of the work plan or conditions anticipated by his Superiors and the Highway Superintendent. He had neither the authority nor the responsibility for such decisions.

G. Officer Hernandez sets a dangerous example when he decides that personal convenience outweighs the operational needs of the Department and the Town. If employees were allowed to dictate work schedules of their departments by deciding to deliberately disobey the direction of their supervisors, the Town would lose its ability to schedule and accomplish work. In this case, Officer Hernandez was offered a partial solution to the objections he raised against being ordered-in. There is no evidence that he made any attempt whatsoever to accommodate the order. On the contrary, he appears to have decided to defy the order and take his chances. In taking this stand he deliberately jeopardized the safety of other Municipal employees and the general public, not to mention the quality and efficiency of the work that was being performed.

H. There are numerous references in the "Manual of Rules and Regulations" to the absolute need to obey orders:

1. Section E.2. "Conflicting Orders" gives an officer a procedure for dealing with conflicting orders but instructs the officer to obey the order and deal with the question later.

2. Section E.9. "Unjust or Improper Orders" gives an officer a procedure for dealing with what may seem to be an unjust or improper order but, again, instructs the officer to obey the order and deal with the matter later.

3. Section E.10. "Unlawful Orders" specifies a narrow range in which an officer may refuse to obey an order. Even then, the officer is admonished that the officer is to be held to a strict accountability for his or her actions in deciding not to obey the order. Officer Hernandez justifies his actions on the basis of his interpretation that he was ordered to do something that violated a provision of the Collective Bargaining Agreement and that he is protected, by this section of the "Rules and Regulations", from having to obey such an order. Specifics of this

section include that a superior officer shall not knowingly issue an order that violates any law or departmental rule. [This is the only tie that is made to departmental rules. There has been no indication that a superior officer issued an order that he knew to violate any law or departmental rule.] Officers are further advised that "... no officer is required to obey any order which is contrary to Federal or State law." [Again, there has been no indication that Officer Hernandez was ordered to violate Federal or State law.]

4. Section 1.G.13. "Insubordination" defines this term as a failure or deliberate refusal to obey a lawful order given or issued by a superior officer or the Shift Commander.

- I. Officer Hernandez and his representatives argue that this order did not rise to the level of the cited examples under provisions of the Collective Bargaining Agreement. For various reasons that have been cited above, I believe this argument has failed. More importantly, if it had merit, Officer Hernandez negated the opportunity to present his case when he refused to obey the order and, in so doing, raised the debate to a significantly higher plane. Clearly, refusing to obey the order raises issues of much greater import than what should have been a question of definition and clarification. These issues could have been handled under the Grievance Process of the Collective Bargaining Agreement.

It is, therefor, my conclusion that there was just cause for the suspension. The defiance of Officer Hernandez appears to have been so flagrant that I have been inclined to consider increasing the suspension. Indeed, I have debated whether termination would have been more appropriate. Having considered these alternatives, I conclude that the Chief had the same opportunity to evaluate this disciplinary action that I have had and he apparently found mitigating circumstances that weighed in Officer Hernandez' favor. Accordingly, I will not impose my judgement over that of the Chief.

The 2-day suspension is upheld.

Very truly yours,



Don P. Johnson
Town Manager

cc: Ms. Katherine McClure
Officer Al Crowley
Chief Robinson

DPJ:233

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

APPEAL NO.

PABLO HERNANDEZ,
Appellant
v.
TOWN OF ACTON,
through its Appointing
Authority,
Respondent

APPEARANCE

In the above captioned proceeding, I appear for and on behalf of Pablo Hernandez. In filing this appearance, I recognize that I will receive all official communication from the Civil Service Commission concerning this case and that I will be responsible for informing all other persons, whom I represent, of the contents of these communications.

KATHERINE MCCLURE

Katherine McClure
International Brotherhood
of Police Officers
285 Dorchester Avenue
Boston, MA 02127
(617) 268-5002

Dated: January 5, 1961

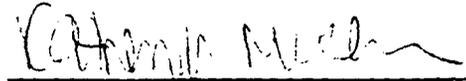
CERTIFICATE OF SERVICE

I, Katherine McClure, an attorney with the International Brotherhood of Police Officers, do hereby certify that I have, on this day, served a copy of the within Appeal of Decision of the Appointing Authority by mailing a copy of said Appeal to the following:

Officer Pablo Hernandez
11 Cambridge Street
Ayer, MA 01432

Officer Al Crowley
Acton Police Department
365 Main Street
Acton, MA 01720

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



Katherine McClure

Dated: October 5, 2011

TOWN OF ACTON
EMERGENCY
STAFF HOME TELEPHONE LISTING
FAX (508) 264-9630

SPECIAL NOTE: Some phone numbers are unlisted please be discreet

MANAGER/SELECTMEN

Town Manager - Don Johnson

Home - (508) 897-2049
Business - (508) 264-9612

Assistant Town Manager - John Murray

Home - (508) 263-3423
Business - (508) 264-9612

Town Manager's Secretary - Christine Joyce

Home - (508) 772-0610
Business - (508) 264-9612

BUILDING DEPARTMENT

Building Commissioner - Garry Rhodes

Home - (508) 297-3584
Business - (508) 264-9632

Building Department Secretary - Norine Christian

Home - (603) 595-7524
Business - (508) 264-9632

Plumbing Inspector - Paul Kelleher

Home - (508) 263-3356

Deputy Plumbing Inspector - Gary Corey

Home - (508) 263-5595

Wire Inspector - Clarence Frost

Home - (508) 263-5964

Deputy Wire Inspector - Don MacLeod

Home - (508) 263-3081

BUILDING AND GROUNDS

Director of Municipal Properties - Dean Charter
Home - (508) 263-8997
Business - (508) 264-9629

Conservation Administrator - Tom Tidman
Home - (508) 597-8445
Business - (508) 264-9631

Cemetery Superintendent - Stewart Kennedy
Home - (508) 263-5744
Business - (508) 264-9644

CIVIL DEFENSE

Civil Defense Director - Norm Lake
Home - (508) 263-7635
Business - (508) 264-9655
Beeper - (508) 387-6480

Civil Defense Deputy Director - John Hawkes
Home - (508) 263-8289
Business - (508) 264-9655
Beeper - (508) 387-6481

DEPARTMENT OF PUBLIC WORKS

Town Engineer - David Abbt
Home - (508) 263-8393
Business - (508) 264-9628

Highway Superintendent - Richard Howe
Home - (508) 263-7082
Business - (508) 264-9624

Highway Foreman - David Brown
Home - (508) 263-4067
Business - (508) 264-9624

FINANCE DEPARTMENT

Director of Finance/Treasurer - W. Roy Wetherby
Home - (508) 435-6425
Business - (508) 264-9617

FIRE DEPARTMENT

Acting Fire Chief - Robert Craig
Home - (508) 692-8955
Business - (508) 264-9645

HEALTH DEPARTMENT

Health Director - Douglas Halley
Home - (508) 297-3901
Business - (508) 264-9634

Health Sanitarian - Rose Erdozaincy
Home - (617) 598-0581
Business - (508) 264-9634

Health Sanitarian - Alan Perry
Home - (617) 647-2656 or (508) 992-2505
Business - (508) 264-9653

Nursing Supervisor - Lucille Saia
Home - (603) 891-0751
Business - (508) 264-9653

LIBRARY DEPARTMENT

Memorial Library Director - Wanda Null
Home - (508) 263-7316
Business - (508) 264-9641

West Acton Library Director - Suzi Pomeroy
Home - (508) 263-4034
Business - (508) 264-9652

PLANNING DEPARTMENT

Planning Administrator - Roland Bartl
Home - (508) 630-1727
Business - (508) 264-9636

POLICE DEPARTMENT

Chief of Police - George Robinson

Home - (508) 263-3599
Business - (508) 264-9638

WATER DISTRICT

Acton Water District Manager - John MacLeod

Home - (508) 897-6880
Business - (508) 263-9107

BOARD OF SELECTMEN

Clerk Board of Selectmen - F. Dore Hunter

Home - (508) 263-0882
Business - (617) 482-3366

Chairman Board of Selectmen - Norm Lake

Home - (508) 263-7635
Work - (508) 264-9655

Vice-Chairman Board of Selectmen - Nancy Tavernier

Home - (508) 263-9611
Business - (508) 264-9611

Member Board of Selectmen - Anne Fanton

Home - (508) 263-4989

extra #1

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

Don P. Johnson
Town Manager

12, 1992

R. Smith Associates, Inc.
292 Great Road
Acton, Massachusetts 01720

Attention: Mr. Roy Smith

Boston Federal Savings Bank
17 New England Executive Park
Burlington, Massachusetts 01803

Attention: Mr. David Conley

Subject: Audubon Hill

Gentlemen:

I appreciated the opportunity of meeting with both of you on February 6 to discuss your concerns for the status of this project and your interests in reconsidering elements of the original Comprehensive Development Agreement. I believe that each participant has been forthright in this matter and, given the preliminary documents that I have received for review from Boston Federal's attorney, Stanley Gordon, I believe that we have reached an agreement in principle that will benefit all parties.

It is apparent from the preliminary draft of Attorney Gordon's proposed modifications that, given some further refinement, we are basically in agreement on the essential elements of the negotiations that have taken place. Those being:

- 1) Boston Federal will guarantee completion of the Senior Center with an allocation of \$300,000.
- 2) \$130,000 will be presented to the Selectmen as a gift to be used for the benefit of Senior Citizens of Acton, or other purposes, as deemed appropriate by the Board of Selectmen. These monies are to be made available from the proceeds of the sale of the next

unit that closes following signing of the modified agreement.

- 3) In exchange for the above, the Board of Selectmen will release all remaining unsold "Restricted Units" and "AHA Restricted Units" from the restrictive requirements of the Agreement.

I am confident that the terms of the proposed modifications will be suitably resolved before the Selectmen's meeting on February 18. Consequently, I plan to recommend their approval at that time.

In closing, I should like to make an observation. From the outset of these negotiations it has been apparent that we were dealing with a situation where all parties might lose. Town officials entered the process hoping to salvage value for the Town but, equally important, we have sought to avoid circumstances that would force the project into foreclosure or cause embarrassment for R. Smith Associates. I believe the honest, candid approach taken by all parties has resulted in accomplishment of all of our goals. I hope you agree.

Very truly yours,



Don P. Johnson
Town Manager

cc: Board of Selectmen

DPJ:253

INTERDEPARTMENTAL COMMUNICATION
TOWN MANAGER'S OFFICE

2/18/92 ①
FILE COPY

DATE: 2/7/92

TO: TOWN CLERK, BEACON REPORTER, (FOR POSTING AND NOTIFICATION)

FROM: TOWN MANAGER'S OFFICE

SUBJECT: AUDUBON HILL

The Selectmen have scheduled time on the Agenda of the February 18, 1992 Board of Selectmen's Meeting for the purpose of discussing possible amendments to the comprehensive agreement signed by the Town concerning the Audubon Hill development. Discussions will begin at 7:45 P.M. for those interested in attending.

cc: BOS

ACTON SCHOOL COMMITTEE

Library
Douglas School

February 13, 1992

AGENDA

- 7:30 I. CALL TO ORDER
- 7:31 II. APPROVAL OF MINUTES OF JANUARY 9, 1991 AND STATEMENT OF WARRANT
- 7:35 III. PERIOD OF PUBLIC PARTICIPATION
- 7:45 IV. EDUCATION REPORT - Lisette Kaplowitz
- 8:05 V. SUPERINTENDENT'S REPORT FOR THE MONTH OF FEBRUARY
Robert Kessler
RECOMMENDATIONS
1. Regional Action Requiring Acton's Approval
 - a. Energy Management System Upgrade
 - b. America 2000
 - c. Aids Policy
 2. Gift Payment from MIT
- 8:15 VI. FOR YOUR INFORMATION
1. Conant Current Events
 2. Monthly Enrollment Figures
 3. Douglas News
 4. Resignation
 5. Letter from CASE
 6. News from Gates
 7. Letter from Who's Who Among American Teachers
 8. News from Conant
 9. Job Construction Progress Synopsis
 10. LEA Three Year Program for Special Education
- 8:20 VII. WARRANT DISCUSSION
- 8:25 VIII. CONCERNS OF THE BOARD
1. Legislative Liaisons
 2. School Choice
- 8:40 IX. NEXT MEETING - March 12, 1992, Room #114, Junior High School -7:30 p.m.
- 8:41 X. EXECUTIVE SESSION
- 9:10 XI. ADJOURNMENT

cc: BOS

ACTON SCHOOL COMMITTEE

Library
McCarthy-Towne School

January 9, 1992

Members Present: Steve Aronson, Pam Harting-Barrat, Jean Butler, Sally Campbell, Lees Stuntz

Also Present: Robert Kessler, William Ryan, Fran Leiboff, Mac Reid, Jim Palavras, Parker Damon, Cliff Card, Lisette Kaplowitz, citizens and press.

The meeting was called to order at 7:30 p.m. by Jean Butler, Secretary, in the absence of Chairman Pat Cataldo..

Warrant #92-014 in the amount of \$0, warrant #92-015 in the amount of \$129,112.11 and warrant #91-112 in the amount of \$755.34 were signed by the secretary and circulated to the other members of the Committee. On December 20, 1991, warrant #92-013 in the amount of \$15,168.44 and warrant #91-111 in the amount of \$-124.51 were signed by the Committee.

EDUCATION REPORT: McCarthy-Towne Principal, Parker Damon conducted a mini tour of the areas of the school which inadequately house the "hidden" programs - Health, Speech/Language, Resource Rooms, the Generic Instructional Consultant and Educational Needs Consultant and C.A.S.E. classrooms. Parker said that McCarthy-Towne had not been designed for these programs 20 years ago and although the 1976 renovation provided for some, even now the Special Education Resource Rooms areas were too small. With the need for two additional classrooms next year, Parker also showed the Committee two areas which might be converted, the Sloyd Room and the Play Room.

Parker said that the enrollment counts for McCarthy-Towne do not reflect those students in the C.A.S.E. classes which will number 16 next month, some of which are integrated partly into regular classrooms. .

MINUTES: The minutes of December 12, 1991 were approved as written.

PUBLIC PARTICIPATION: None

SUPERINTENDENT'S RECOMMENDATIONS FOR JANUARY

It was moved, seconded and unanimously

VOTED: To approve the policy, Drug Free Workplace.

VOTED: To accept the resignation for the purpose of retirement of Aldie Laird, effective June 30, 1992.

Aldie Laird is eligible for a 5% salary increase for the 1991-92 school year as negotiated with the AEA. She is also eligible for the standard early retirement bonus as outlined in the AEA contract.

It was moved, seconded and

VOTED: To approve the following recommendations regarding the use of space in the elementary buildings for the 1992-93 school year which are consistent, with slight modifications, with those made by the Use of Space Committee:

1. Kindergarten classes will remain in the four existing schools for SY'92-93. The Kindergarten Registration process will be conducted as in past years. The process, dates and other information will be included in the January, 1992 Lamplighter.
2. Sixth grade classes will remain in the four existing school for SY'92-93.
3. The USC is to continue to meet to consider both short term ('93-95) and long term ('95-2000) space needs at both the elementary and secondary levels. The USC will meet twice each month from January through June, and present its next report to the Superintendent at the end of April. The USC should be expanded by two members - a representative from the High School faculty and a representative from the primary grade faculty.
4. Depending on the FY'93 budget, the schools are to operate programs in art, Chapter One, counseling, ESL, library, music (instrumental and vocal), physical education, and remedial reading, special education (including C.A.S.E.) and speech and language. Some regular and/or special education programs may be impacted due to changes in the use of space.
5. Conant is to make a recommendation to the superintendent for solving its space needs (1 classroom) for SY'92-93 by adjusting the use of space within its building.
6. Gates is to make a recommendation to the superintendent for solving its space needs (1 classroom) for SY'92-93 by adjusting the use of space within its building.
7. McCarthy-Towne is to make a recommendation to the superintendent for solving its space needs (2 classrooms) for SY'92-93, but that in doing so it is possible three and a half classrooms - one of which may be the gym - may be used in the Merriam Building and impact at least one tenant.
8. The Computer Lab and Curriculum Specialists' Office may have to be relocated if McCarthy-Towne needs to use space in the Merriam Building. Such relocation could be to the Senior High, the Junior High or McCarthy-Towne.
9. The School System will notify Merriam tenants that some or all of the Merriam building will be needed for school use starting in the summer of 1993.
10. The School System needs to address the issue of space equity among the elementary schools as part of long range planning.

The motion was approved by a vote of 4 members, Steve Aronson abstained from voting.

A member of the audience asked if the Merriam tenants would get advance notice meetings of the Use of Space Committee, would they be open or closed and could they be provided with minutes.

Parker said that the Committee, in the fall, felt it was wisest to meet privately with forums being offered to update the public. He added that the task now will be more complex and that the meetings would probably continue to be private so they could proceed more rapidly but reports would be made to the School Committee and public forums provided.

FOR YOUR INFORMATION:

Dr. Kessler referred to the first reading of the modified policy and procedures on Aids in which the changes are significant. Fran Leiboff said the main issues are around disclosure.

Dr. Kessler handed out copies of enrollment figures which showed a significant increase in the enrollments in the elementary grades. Since October, the elementary enrollment has increased by 17 and we have knowledge of another 9 expected, so there is no reason to believe our space challenges will be lessened.

He referred to the copies provided of the revisions to Douglas School's report cards.

WARRANT: There were no questions.

CONCERNS OF THE BOARD: None.

EXECUTIVE SESSION: No need for one.

NEXT MEETING: February 13 1992 in the Douglas School Library starting at 7:30 p.m.

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Evelyn I. Smith,
Secretary, Pro Tempore

ACTON/CONCORD PRISON
LIAISON COMMITTEE MEETING

1/08/92

ACTON JR. HIGH SCHOOL

MCI-CONCORD COMPLEX
~~File~~ Northeastern
Concord
P.O. Box 1069 Center
V. Concord 01742

Present:

Mr. Paul DiPaolo, Concord Complex Administrator
Mr. Jake Gadsden, NCC Facility Administrator
Mrs. Jean Schoch, Acton
Mr. Richard Weidman, Acton
Mr. Wally Walworth, Concord
Ms. Brenda Covenor, Administrative Assistant

CC: BOS
DEAN C. J. NOTE
DICK H. J. P.R.
2/11

The meeting began by reviewing the last meeting minutes for any questions, comments, or concerns.

J-BUILDING - Mr. DiPaolo stated that J-Building will open this month and is approximately 90% functional due to problems with the phone systems. Mr. DiPaolo went on to say that it has been a long process, approximately 22 months, however, J-Building is now staffed and the phone situation is set to be fully operational by March, 92. Mr. Gadsden stated that J-Building is a nice addition to MCI-Concord for inmates being completed assessed prior to being classified to lower securities, such as N.C.C.

Mrs. Schoch asked if the opening of J-Building has helped with our employment rate?

Mr. DiPaolo stated that 400-600 staffing positions department wide have helped the employment rate greatly.

BEACONS - Mr. DiPaolo stated that the Beacons are all operational and are being tested periodically. Mr. DiPaolo and Mr. Gadsden are in the process of coordinating an escape drill and will notify the towns of the lighting of the beacons.

Mrs. Schoch inquired as to who's decision it was not to scroll?

Mr. DiPaolo stated that an agreement was made at the last liaison meeting that scrolling would not be feasible because it would only bring unnecessary alarm to the surrounding towns.

LANDFILL - Mr. DiPaolo stated that the Commissioner supports the idea of landfill. We are still looking at the best situation for all concerned.

WORK - Mr. DiPaolo stated that the Commissioner supports inmates working, not only to prepare them to reintegrate into society, but also to alleviate idle time and to keep them productive. Mr. Gadsden stated that at the present time there are 8 work crews that go into the communities, (cities, towns and state agencies) made up of inmates that are selected and screened based on their crimes as to the best candidates, i.e., no sex offenders or mental health. Mr. Gadsden went on to say that they have worked together, the communities and the D.O.C., for the best results. At the present time an agreement is in effect that the officer's are paid by the communities and the inmates are paid through the institution. This has been proven to be very cost effective for both parties and the communities are very pleased with the work that the inmates have done. Another way the Commissioner is looking to expand jobs for inmates is having a Retail Outlet, possible located on the grounds of NCC, where goods made by the inmates would sell at retail, directly to the public to be put back into programs. This however, is still in draft form.

EDUCATION - Mr. DiPaolo stated that the Commissioner is also very supportive of inmates having at least a GED level prior to being reintegrated into society. At the present time Mr. DiPaolo and Mr. Gadsden are looking for buildings, for N.C.C., that would give them more space for more educational programs. The Commissioner is also looking into privatizing education as well.

PRIVITIZATION - Mr. DiPaolo stated that the first major part of privatization started January 1, 1992. All Health Services and Psychological Services has been contracted to an independent contract system wide. Mr. DiPaolo went on to say that right now there still working out some problems, however the long term of privatization will benefit the D.O.C. as far as being cost effective. The contract will be in effect for approximately 18 months and then it will be up for review to renew. Mr. Gadsden stated that privatization will help N.C.C. as far as better coverage for inmates with medical issues.

SEWERAGE - Mr. DiPaolo stated that we have decided not to tie in with the towns sewerage system because of the cost. We have the money for a new system on site, but were waiting for the bids to come back. In the meantime, the present system is being check once a week from both institutions for any problems.

NEXT MEETING WILL BE APRIL 8, 1992

6:00 pm - CONCORD HIGH SCHOOL

11/87
CC: BOS

MINUTES FORM

Please send a copy after each meeting to Town Hall

MINUTES OF Historic District Commission

Meeting posted: x yes, ___ no

Date: 1/13/92 Time: 7:30 p.m. Place: H.R. 46

Members present: Dallmus, Forbes, Gates, Mowry, Schmidt and Moran.

Minutes of December 16 were approved as amended.

NEW BUSINESS: Forbes noted: letter from Boston requesting our district Guidelines; that Newton has gone to the legislature requesting home rule to extend district to private ways, to include B.C., and that Bulger circumvented request; that the Exchange Hall in So. Acton is for sale; that she had talked to Stan Black of Concord re the Citgo sign on Lowell Rd., and he said it predated his tenure. Dallmus reported that Mashpee has a Mobil station where the sign is down lower than usual. It was agreed to hold the next meeting on Thurs. 1/30 when two members said they could not make the Mon. 1/27 planned date. Forbes noted that we need to review a draft conservation plan for comment by 2/17. The Commission approved a draft annual report read by Forbes.

OLD BUSINESS: Forbes reported answers to questions we had posed to Don Johnson..Budget; we have \$400 for start up costs to be spent before July; hope to have a revolving account for fees for regular budget. Guidelines: ^{TOWN COUNSEL SAYS} we can start without adopting guidelines, and can do a waiver of a public hearing. Forbes reminded members that Greg Niemyski has requested our comments on anything we think should be changed in the sign bylaw, in time for ^{THE COORDINATING COMMITTEE} ~~the 1/27~~ meeting. ^{IN EARLY FEB.}
The Commission finished reviewing draft #3 Rules and Regulations, and draft Certificate of Appropriateness, and Instructions and Information, and voted to approve these for circulation to pertinent town personnel for comment before final approval. The meeting adjourned at 10 p. m.

Next meeting January 30 at 7:30 p. m. H.R.46

Joan Gate, sec.



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Central Regional Office

William F. Weld
Governor

Daniel S. Greenbaum
Commissioner

CC: BOS

FEB 10 1992

February 6, 1992

Airco Gases
Mountain Avenue
Murray Hill, New Jersey 07974

RE: Airco Gases
Site No. 2-0816
Short Term Measure
Acetone Spill Area

Dear Mr. Merriam:

The Department of Environmental Protection (the Department) has reviewed the addendum to the Short Term Measure submitted by IT Corp. proposing the use of soil vapor extraction to remediate soils in the spill area that are not accessible by excavation. As discussed in a telephone conversation with Raymond Ball of IT, continuous split spoon samples will be sampled and screened in the field by a portable gas chromatograph to better delineate the extent of contamination in the soil.

The Department approves of the January 13, 1992 addendum with the above mentioned stipulation regarding the addition of split spoon sampling and analysis during well installation.

Please submit any questions or comments regarding this site to Michael LeBlanc of this office or telephone (508)792-7653.

Sincerely yours,

D. Lynne Chappell
D. Lynne Chappell
Section Chief
Waste Site Cleanup

DLC/MRL
stmapp.amd

cc: Raymond Ball, IT Corporation, Shrewsbury, MA
Robert Kimball, DWPC, CERO
Division of Response and Remediation, State Site Branch
Acton Board of Health
Acton Board of Selectmen
Site Database

VOLUNTEER COORDINATING COMMITTEE MEETING

1/27/92

Present: Snook, Husbands, Comstock, Lane, George, Kadlec
Absent: Whitcomb

Called to order 7:30 PM at Town Hall. Minutes of 1/13/92 read and accepted.
Thanks to Whitcomb updated committee lists were distributed.

INTERVIEW:

GAIL ERWIN for A/B Arts Council.

Lives 120 Parker St. Acton 2 1/2 yrs. MA yrs. Is an attorney and an artist. Has attended A/B Arts Council mtgs. Wants to serve on the Arts Lottery Council but in order to be a member of that board must be a member of ABAC. Time restraints are uncertain.

Acton has seven members as far as we know. Whitcomb will check with Arts Council before we vote.

Resignation: M. Grothier, effective 1/16/92. Lane will advertise for a replacement.

- * Accepted final draft letter for committee chairpersons as done by Comstock. Snook and Whitcomb will distribute.
- * Husbands will check with Historic District Committee to see if they want more associates.
- * Discussed dividing up committees for each member of our committee to monitor.

Adjourned at 9:05 PM. Next meeting 2/10/1992 at 7:30 PM.

Respectfully submitted,
Jean Lane, Acting Sec't. VCC

cc selectmen + Town Clerk

Sudbury seeks town counsel

Selectmen receive 22 applications for post

By Valle Dwight

NEWS STAFF WRITER

SUDBURY — After going out to bid for town counsel for the first time in 14 years, selectmen have received 22 applications for the position, including one from the current town counsel.

Selectmen will narrow the field to three to five candidates before interviewing the finalists, according to Executive Secretary Richard Thompson, probably in early March.

The town went out to bid for counsel at the recommendation of the Legal Services Review Committee, a group of local attorneys who last spring studied the town's use of town counsel. The town has never before sought other applications when it had a town counsel on staff, according to Thompson.

Prompted by a soaring legal budget and the complaints of several boards about the town's legal service, selectmen appointed the Legal Services committee. Boards complained about the availability of legal service, the lack of outside expert counsel for technical cases, and the lack of communication with town counsel.

After interviewing all boards which use town counsel and after a public hearing, the committee issued a 27-page report recommending several changes, including looking at other counsels periodically, and the appointment of a permanent legal review committee to monitor counsel.

The legal committee reported that advertising for town counsel would ensure that the town is getting the best service for the money. Paul Kenny has been town counsel for 14 years, and has been reappointed yearly, without consideration of other candidates.

The recommendation "is not intended to imply any deficiency in the current town counsel," the committee wrote, and encouraged him to apply for reappointment.

Members of the Legal Services Committee, Edward Glazer, Eric Elfman and Eric Menoyo, and Finance Committee member David Fitts will review the applications, Thompson said. They will make comments but no recommendations, he said.

Approximately 75 percent of the applications came from law firms, and the rest from individuals. Thompson said he will draw up a

criteria sheet to help selectmen make their choice, but there will be no specific guidelines, except that the board will be limited by the \$90,000 legal budget.

"It's not an exact science," Thompson said.

Thompson said he had expected more applications, especially after more than 40 attorneys asked for the town's "scope of service," which outlined the specific duties and requirements of the office.

Currently the town pays Kenny a \$27,500 retainer fee and are charged his hourly rate of \$85 for litigation. The town also pays \$29,000 for assistant town counsel.

Selectmen have not yet decided if they will continue with a retainer or change to a straight hourly rate, but Thompson said that with the town's "high volume" of legal work, he does not see the town moving away from a retainer.

CC: BSS

FEB - 4 1992

VOLUNTEER COORDINATING COMMITTEE MEETING 1/13/92

Present: Kadlec, Snook, Comstock, Lane, Whitcomb, George

Absent: Husbands

Called to order at 7:30PM. Minutes of last meeting read and approved.

INTERVIEWS:

DAVID THROPE for Fair Housing.

Lives at 7 Brucewood Road. Acton 1 yr. 10 mos. MA 33 yrs. We had no appropriate opening a year ago and recently phoned David to learn he still wished to do something for the town. Has 16 years sales/marketing experience. He is willing to serve with the Fair Housing Committee.

LOIS STERN for Fair Housing.

We phoned Stern to check her willingness to consider this committee. She is active as a realtor and could fill a needed role. She lives at 66 Alcott St. 12 yrs. Acton 12 yrs. MA. Has 5 children who completed their high school education in Acton. Energetic and enthusiastic candidate.

EDWARD G. KELLY for Commission On Disability.

Lives at 21 Meetinghouse Rd. Acton 1 year. MA 34 yrs. Has been active with United Cerebral Palsy and with the Easter Seal Organization. Has a child with CP. She attends Conant School. Kelly was enthusiastic and appears to be a doer.

Recommended and voted:

David Thrope full member Fair Housing to 6/93.

Lois Stern full member Fair Housing to 6/93. (These 2 are 93 in order to stagger expiration dates.)

Edward G. Kelly full member, Comm. On Disability to 6/94.

Sworn in: M. Moran 1 yr. Historic District Commission.

Bea Perkins ___ yrs. Board of Appeals.

VCC form letter proposed by Comstock and approved by our committee will be distributed in February by Snook and Whitcomb.

Lane will take notes at our next meeting on January 27th.
Charles Olmstead is now on Finance Committee.

Meeting adjourned at 9:45 PM.

Respectfully submitted.

Nancy A. Whitcomb, Secretary



TOWN OF ACTON
TOWN CLERK
TOWN HALL
472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TELEPHONE (617) 263-8200 ext. 1092

RECORD OF TOWN ELECTION HELD MARCH 2, 1970

QUESTION 1.

"Shall the town, in addition to the payment of fifty percent of a premium for contributory group life and health insurance for employees in the service of the town and their dependents, pay a subsidiary or additional rate?"

	PRECINCT 1	PRECINCT 2	PRECINCT 3	TOTAL
YES	184	215	309	708
NO	207	185	237	629
BLANKS	17	22	24	63

Attest:
Robert A. Clark
TOWN CLERK ACTON MASS



TOWN OF ACTON
TOWN CLERK
TOWN HALL
472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TELEPHONE (617) 263-8200 ext. 1092

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	PRECINCT 1	PRECINCT 2	PRECINCT 3	TOTAL
YES	184	215	309	708
NO	207	185	237	629
BLANKS	17	22	24	63

A 113 1092 1970

Arthur R. Bell
TOWN CLERK ACTON MASS

File box
2/4/92

JANUARY 31, 1992

TO: Board of Selectmen
FROM: NORMAN LAKE, Chairman
SUBJECT: SELECTMEN'S REPORT

#####

AGENDA

ROOM 204

7:30 P.M.

FEBRUARY 4, 1992

I. CITIZEN'S CONCERNS

II. PUBLIC HEARINGS & APPOINTMENTS

1. 7:31 BOSTON EDISON - STRAWBERRY HILL ROAD - Enclosed please find request for installation of conduit and staff comment.
2. 7:45 THE DOCTOR - CLASS II DEALER'S LICENSE 2 EASTERN ROAD - Enclosed please find a request for a Class II license and staff comment for Board action.

III. CONSENT AGENDA

3. SELECTMEN'S MINUTES - Enclosed please find minutes of the Regular and Executive Session held on January 7, 1992 for Board approval.
4. APPOINTMENT - Edward G. Kelly - Enclosed please find memo from VCC regarding Mr. Kelly as a regular Member for a term to expire 6/30/94 to the Commission of Disability.
5. APPOINTMENT - David P. Thorpe - Enclosed please find a memo from VCC regarding Mr. Thorpe's appointment as a regular member for a term to expire 6/30/93 to the Fair Housing Committee for Board action.
6. APPOINTMENT - Louis A. Stern - Enclosed please find a memo from VCC regarding Ms. Stern's appointment as a regular member for a terms to expire 6/30/93 to the Fair Housing Committee for Board action.

IV. SELECTMEN'S CONCERNS

7. ACTON REPUBLICAN TOWN COMMITTEE RECOMMENDATION- Registrar of Voters
8. Citizen and Large - MPCC
9. Town Manager will discuss the status of the W.R. Grace Bioremediation Project.

V. TOWN MANAGER'S REPORT

VI. EXECUTIVE SESSION

10. The Town Manager will be requesting an Executive Session for the purpose of discussing Audubon Hill

VII. MEETINGS

VIII. ADDITIONAL INFORMATION

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

IX. FUTURE AGENDAS

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

Feb 18, 1992 - No Public Hearings Scheduled

March 3, 1992- Stoneymead, Ayer Rd., Street Acceptances, Class II
125 High St.

March 17, 1992

730 acs

1

2-4-92

TOWN OF ACTON

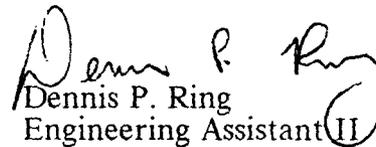
INTER-DEPARTMENTAL COMMUNICATION

DATE: 1/17/92

TO: Board of Selectmen
FROM: Engineering Department
SUBJECT: Boston Edison Petition
29 Strawberry Hill Road

This petition is for the installation of a conduit to provide underground electrical service to a newly constructed house on Strawberry Hill Road.

We see no problems with the proposed installation of this conduit.


Dennis P. Ring
Engineering Assistant II

[150]

BOSTON EDISON PETITIONS
~~NEW ENGLAND TELEPHONE AND TELEGRAPH~~

FOR: ENGINEERING ASSESSORS

LOCATION

29 Strawberry Hill

ORIGINAL PLANS ATTACHED _____

ORIGINAL PETITION ATTACHED _____

PLEASE RETURN ORIGINAL PLANS AND PETITIONS _____

PLEASE SEND COMMENTS AND RECOMMENDATIONS _____

ASSESSORS: FOR IMMEDIATE ABUTTERS



BOSTON EDISON

15 Blandin Avenue
Framingham, Massachusetts 01701

December 23, 1991

Board of Selectmen
Town Hall
Acton, MA 01720

RE: 29 Strawberry Hill Road
Acton, MA
Work Order #653209

Dear Members of the Board:

The enclosed petition and plan is being presented by the Boston Edison Company for the purpose of obtaining a Grant of Location to install approximately five (5) feet of conduit at pole 53/5 Strawberry Hill Road, Acton. This work is necessary in order to provide overhead/underground electrical service to a new house located at 29 Strawberry Hill Road, Acton.

All correspondence and questions regarding this petition should be directed to me. Your prompt attention to this matter would be greatly appreciated. If I can be of any further assistance, please contact me at (508) 626-2804.

SFK/rbb
Enclosures

Very truly yours,

Stephen F. Kane, Jr. - Supervisor
Distribution Division - Western District

TOWN OF ACTON
NOTICE OF HEARING

Notice is hereby given that the Board of Selectmen will hold a public hearing in its office at the Town Hall on Tuesday, February 4, 1992 at 7:45 P.M. on the application of Paul R. Murphy, Sr. d/b/a The Doctor, Inc. for a Class II Dealer's License at 2 Eastern Road, Acton, MA.

NORMAN D. LAKE
NANCY E. TAVERNIER
F. DORE' HUNTER
ANNE B. FANTON
BOARD OF SELECTMEN

TOWN OF ACTON

INTERDEPARTMENTAL COMMUNICATION

DATE:

TO: Don P. Johnson, Town Manager
FROM: Garry A. Rhodes, Building Commissioner *JAR*
SUBJECT: Class II License The Doctor, 2 Eastern Rd.

2 Eastern Rd. is zoned for Small Manufacturing. The sale of light vehicles is not a permit use within this zone. This site used to be zoned for General Industrial and sales were allowed, but no longer. It is not possible to obtain a use variance to change this. It is therefore my recommendation that this request be denied.

(742)

TOWN OF ACTON POLICE DEPARTMENT

INTER-DEPARTMENTAL COMMUNICATION

Town Manager
Information

TO: Don Johnson, T.M.

DATE: January 16, 1994

FROM: George W. Robinson, C.O.P. TIME: 10:27 AM

SUBJ: Class II License Application, Murphy

Utilization of resources available to this Department indicate no reason to recommend against issuance of the subject license.

January 13, 1992

TO: Building Commissioner, Police Dept.

FROM: Don P. Johnson, Town Manager

SUBJECT: CLASS II LICENSE - THE DOCTOR, INC. 2 EASTERN ROAD

#####

Enclosed please find a copies of a Class II License Application for PAUL MURPHY, THE DOCTOR, INC. AT 2 EASTERN ROAD.

Please send your comments and recommendations. The hearing is set for FEBRUARY 4, 1992 at 7:45 P.M.



Christine Joyce
Town Manager's Office

Town of Acton

2/4 @ 7:45

APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE
OR ASSEMBLE SECOND HAND MOTOR VEHICLES
OR PARTS THEREOF

I, the undersigned, duly authorized by the concern herein mentioned, hereby apply for a
class license, to Buy, Sell, Exchange or Assemble second hand motor vehicles or parts thereof, in accordance with
the provisions of Chapter 140 of the General Laws.

1. What is the name of the concern? The Doctor Inc.

Business address of concern. No. 2 Eastern Road St.,
Acton Ma 01720 City — Town.

2. Is the above concern an individual, co-partnership, an association or a corporation?

Corporation

3. If an individual, state full name and residential address.

4. If a co-partnership, state full names and residential addresses of the persons composing it.

Paul R. Murphy SR President + Treasurer
22 Todd Drive
Townsend Ma 01469
Paul R. Murphy JR
54 Edward Rd - Secretary
Townsend Ma 01469

5. If an association or a corporation, state full names and residential addresses of the principal officers.

President PAUL R. Murphy SR
Secretary PAUL R. Murphy JR
Treasurer PAUL R. Murphy SR

6. Are you engaged principally in the business of buying, selling or exchanging motor vehicles? NO

If so, is your principal business the sale of new motor vehicles?

Is your principal business the buying and selling of second hand motor vehicles? and Repairing

Is your principal business that of a motor vehicle junk dealer? NO

7. Give a complete description of all the premises to be used for the purpose of carrying on the business.

3 Eastern Road Fernon Ave. Span. & John

8. Are you a recognized agent of a motor vehicle manufacturer? NO (Yes or No)

If so, state name of manufacturer

9. Have you a signed contract as required by Section 58, Class 1? NO (Yes or No)

10. Have you ever applied for a license to deal in second hand motor vehicles or parts thereof? YES (Yes or No)

If so, in what city - town ACTON - MASS

Did you receive a license? YES (Yes or No) For what year? 1986-87-88

11. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked? NO (Yes or No)

Sign your name in full. Paul R. Murphy Sr. (Duly authorized to represent the concerns herein mentioned)

Residence 22 Todd Dr Townsend MASS 01469

IMPORTANT

EVERY QUESTION MUST BE ANSWERED WITH FULL INFORMATION, AND FALSE STATEMENTS HEREIN MAY RESULT IN THE REJECTION OF YOUR APPLICATION OR THE SUBSEQUENT REVOCATION OF YOUR LICENSE IF ISSUED.

NOTE: If the applicant has not held a license in the year prior to this application, he must file a duplicate of the application with the registrar. (See Sec. 59)

**SELECTMEN'S MEETING
JANUARY 7, 1992**

The Board of Selectmen held their regular meeting on Tuesday, January 7, 1992. Present were Norm Lake, Nancy Tavernier, Dore' Hunter, Anne Fanton and Town Manager Johnson

CITIZENS' CONCERNS

Superior Trading owner, Mr. Dan Wagner asked the Board to discuss the various allegations made at the December 17 Board Meeting regarding the operation of his Class II license on Main Street. He outlined his conversations with the Building Commissioner and his attempts to contact the Town Manager since learning of his 90 day limited license limitation voted by the Board. The Chairman asked Mr. Wagner to confer with the Town Manager and if he could not work it out he would be scheduled on the agenda to discuss this further.

PUBLIC HEARINGS AND APPOINTMENTS

**BOSTON EDISON POLE LOCATION
LILLIAN ROAD**

NANCY TAVERNIER - Moved to approve with staff comments included. DORE' HUNTER - SECOND. UNANIMOUS VOTE

**SPECIAL PERMIT #11/14/91-335
BEAN'S INC. - GREAT WOODS PLAZA, ROUTE 2A**

Mr. Beardsly the operator of Bean's presented his request for a Special Permit and outlined his operation for the Board. He said his business was not a Restaurant as commonly thought, merely in name only. The operation has no waitpersons, or table service. The only thing offered is bagels, muffins and pastry. The food is consumed with the coffee at the small tables in the store. Baking is done in the front in a convection oven which also is used to warm the bagels sold on site. He felt that they would not violate the 2,000 gallon limitation as 75% of the water actually leaves the store according to his calculations. Nancy Tavernier noted that for environmental reasons the Board had conditioned the site plan with no wet uses when it was originally approved and that with the Towns Groundwater Protection Bylaw that condition would be protected anyway. NANCY TAVERNIER - Moved to take the issued under advisement. DORE' HUNTER - Second. UNANIMOUS VOTE.

**COMMON VICTUALLERS LICENSE
BEAN'S INC. - GREAT WOODS PLAZA, ROUTE 2A**

Dore' Hunter - Moved to approve the Common Victualler's License for Bean's Inc. NANCY TAVERNIER - Second. UNANIMOUS VOTE.

**LAST NATIONAL WINE CO.
TRANSFER OF LIQUOR LICENSE LOCATION**

Peter Masters representing the store said that he felt the new location would provide better opportunity for the business and asked for favorable Board action on his request. Dore' noted that this was the third move of the license and that he felt that the store had operated without problems and wished them well in the venture, especially in light of the economic climate. DORE' HUNTER - MOVED to approve the Transfer of the Package Store All Alcoholic Beverage License from 82 Powdermill Road to 18 Powdermill Road. NANCY TAVERNIER - Second. UNANIMOUS VOTE.

**RUSTY SCUPPER
CHANGE OF MANAGERS REQUEST**

Nancy Hamel the proposed new manager of the Rusty Scupper presented the Board with the operation manual which is used in the Scupper. She gave the board information on how the staff is trained in the dispensing techniques and management of patrons consuming the beverages. Ms. Hamel has been with the Rusty Scupper for two years, prior to Acton she was in the Connecticut restaurant. The Board thanked her for the detailed manual. NANCY TAVERNIER - Moved to approve the Change in Manager's from Craig Robbins to Nancy Hamel. DORE' HUNTER - Second. UNANIMOUS VOTE.

**ACTON COMMUNITY HOUSING CORPORATION
AUDUBON HILL**

Bill Grothrope, President of the ACHC updated the Board on the preliminary discussions with the bank and the ACHC for the restricted units at Audubon Hill. The purpose of the proposed trade was to protect the 5 units and have them donated to ACHC. They were contemplating entering into a management contract with the Housing Authority to manage the properties since they are a volunteer Committee. Betty McManus said that the funds to outright purchase the units is at least 6-10 years away according to all information she can get on state funding. Roy Smith said that the units were never originally placed in specific locations in the phases, that it was better to put the handicapped units together since they would be built on a slab for accessibility. He presented the Board with original documents outlining the phases and locations of units. The ACHC said that they felt that the money to operate the units would be offset with little or no profit from rents charged. They anticipated a rent of \$175.00

per month and the condo fee would be \$80.00 and that the Management fee would also be figured in the formula. They had used the 30% of adjusted income as the guideline that the Housing Authority uses to determine the rent to be charged. Nancy asked for clarification on the number of units. Roy Smith said that originally there were 19 and the revised number would be 8 restricted. Betty McManus said that they usually have 60 days to make decision when the units are offered to the Housing Authority to react to the right of first refusal and that these preliminary discussions have been held open allowing them not to have to act so quickly which has helped them not lose the chance to act. Bill Grothorpe said the economic times are one reason that the restricted units have not sold. He said that this plan would have the bank taking a substantial loss, it would not get them anything but an improved time line since the foundations need to be poured. Roy Smith could not understand since from the outside the units are the same, maybe they don't have air conditioning, but otherwise they are the same, he feels it might be the word "restricted" that is holding up sales of these designated units and has made every effort to market them. Betty McManus said she has had inquiry into the units as rentals and would be able to use them as additional housing stock. The Board thanked them and said they would give them a timely response after conferring with counsel.

CONSENT CALENDAR

The Board approved the Consent Calendar as submitted, including the gift of \$25.00 to be used by Civil Defense. Nancy Tavernier held the Housing Authority Letter of support for discussion. It was later decided to change the wording to support with a stronger endorsement of the Self Sufficiency Program as suggested by Betty McManus. Nancy agreed to prepare the revised wording. NANCY TAVERNIER - Moved to accept the Consent Calendar with additional item as noted. DORE' HUNTER - Second. UNANIMOUS VOTE.

SELECTMEN'S CONCERNS

Eagle Scout - Norm volunteered to attend the Eagle Scout court for Noah Budiansky on Sunday the 12th.

South Acton Village - Anne Fanton again updated the board regarding the SARC dispute with the Planning Board. She asked the Board to review her current memo and asked for their direction. The Board said that the agreement reached was satisfactory. Staff was asked to notify VCC they no longer needed to recruit for SARC.

McNulty Case - Dore' noted that a number of negative comments have been received about the McNulty expenditures made by the School to the various offices when taxpayers are paying their real estate bills. Due to the complexity of the issue staff is not prepared to field the questions and he suggested that the Town Manager ask

the schools to prepare a brief memo concerning the McNulty suit and associated legal fees. The Board directed the Town Manager to contact the Superintendent to formulate a message.

TOWN MANAGER'S CONCERNS

Fire Arbitration - Don informed the Board that a 43 page decision has been rendered and that Counsel was reviewing it at present, and he would update the board after the review was complete.

Cable TV - Don was informed that Cablevision was informed by the School Committee's that if they wanted to "float" with the Local meetings they could film and that at the Regional level, the Committee did not want to be filmed unless it was simulcast on the Boxboro cable station. Dore' thought it was unfortunate that the School Committee choose to prevent Cablevision from live television coverage of the additional governmental actions. Nancy noted that under the open meeting law Cablevision did not need permission. Anne was told by Cablevision that the School Committee Meetings would be covered. Don Johnson stated that the most current information he had was that it would not be happening.

Retiree's Health Benefits - Don updated the Board on the request for additional benefits. Roy is investigating a lesser cost and benefit plan for employees and retirees. The calculated cost of the increase would be about 7 cents on the tax rate or \$98,000.00

EXECUTIVE SESSION

The Board voted to adjourn into Executive Session for the purpose of discussing and litigation and Contractual review DORE' HUNTER took roll call all Ayes.

The Board adjourned into executive session at 9:23 P.M.

Clerk

Date

Christine Joyce/John Murray/Don Johnson
Recording Secty.
cmjW11-(189)

EXECUTIVE SESSION MINUTES

January 7, 1992

Porrazzo Properties - The Board discussed the apartment and depot properties.

ACHC - Audubon Hill - Dave Bannard, Counsel from Palmer and Dodge discussed with the Board the present request of the ACHC. Counsel and Staff were asked to contact the bank enter into formal negotiations, and make a recommendation to the board at a later date.

The Board adjourned at 10:20 P.M.

Clerk

Date

Christine Joyce
Recording Secty.
cmjW11-(187)

JANUARY 3, 1992

TO: Board of Selectmen
FROM: NORMAN LAKE, Chairman
SUBJECT: SELECTMEN'S REPORT

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AGENDA

ROOM 204

7:30 P.M.

JANUARY 7, 1992

I. CITIZEN'S CONCERNS

II. PUBLIC HEARINGS & APPOINTMENTS

1. 7:31 BOSTON EDISON- POLE LOCATION - LILLIAN ROAD - Enclosed please find staff comment. (NOTE: This has been pre-installed)
2. 7:45 BEAN'S INC. - SPECIAL USE PERMIT #11/14/91/335- Enclosed please find staff information comment for Board review and action.
3. 7:50 BEAN'S INC. - COMMON VICTUALLERS LICENSE- Enclosed please find request and staff comment for Board action.
4. 8:15 LAST NATIONAL WINE CO. - ALCOHOLIC BEVERAGE TRANSFER - Enclosed please find a request from the Last National Wine Co. to transfer location of the All Alcoholic Beverage Package Store license from 82 Powdermill Road to 18 Powdermill Road along with staff comment for Board action.
5. 8:30 RUSTY SCUPPER- CHANGE OF MANAGERS - Enclosed please find a request for manager change approval for Board action.
6. 8:45 ACTON COMMUNITY HOUSING CORPORATION

III. CONSENT AGENDA

7. SELECTMEN'S MINUTES - Enclosed please find minutes of the Regular and Executive Session held on December 3, 1991 for Board approval.

8. APPOINTMENT - Enclosed please find recommendation from the VCC to appoint Katherine Reiner as a member of the Fair Housing Committee for Board action.
9. ACCEPT GIFT - Enclosed please find a request to accept 24 quilts donated by Mt. Calvary Ladies Guild to the Acton Nursing Service for Board action.
10. ACTON HOUSING AUTHORITY - Enclosed please find a request from Acton Housing to support the Section 8 Certificates for Board action.

IV. SELECTMEN'S CONCERNS

V. TOWN MANAGER'S REPORT

VI. EXECUTIVE SESSION

VII. MEETINGS

VIII. ADDITIONAL INFORMATION

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

IX. FUTURE AGENDAS

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

Jan 21, 1992

Pam Resor - Coordinate for the new year

Papa Gino's - Transfer Liquor License

Bob Wiltse - Minuteman Tec.

Feb 4, 1992

Feb 18, 1992 - No Public Hearings Scheduled

March 3, 1992 - Stoneymead, Ayer Rd., Street Acceptances

March 17, 1992

#4

2-4-92

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

Date : Jan 24, 92
To : Town Manager
From : Volunteer Coordinating Committee
Subject : Recommendation for Appointment

At its 1-13-92 meeting, the VCC voted to recommend Edward G. Kelly as a Regular Member of the Commission on Disability term to expire 6-30-94. While Mr. Kelly is not himself disabled he has a daughter who suffers from Cerebral Palsy and has been very active of support and research in this area.

TOWN OF ACTON VOLUNTEER APPLICATION

Residents interested in serving on a Town Board, Committee, or Commission are requested to complete this form and forward it to the office of the Town Manager at the Acton Town Hall.

(Please print or type)

Date: 12-9-91

Mr / Mrs
Ms / Dr Kelly Last Name EDWARD First Name G Middle Initial

21 Meetinghouse Rd Street Address 263-1790 Home Phone (617) 288-8158 Business Phone

Please refer to the other side of this sheet and indicate below, in order of preference, the Board, Committee, or Commission which is of interest to you:

- 1) Commission on Disability
- 2) _____
- 3) _____

Have you been a member of a Board, Committee, or Commission previously (either in Acton or elsewhere)? If you have, please list name(s) and dates (approx):

United Cerebral Palsy (Metro Boston) 1986 to 1991 Board of Directors
Mass. Easter Seal Board of Directors 1989 to Present

Do you have any time restrictions? Work During Day, School some nights

How long have you lived in Acton? 11 months in Massachusetts? 34 years

Are you a US citizen? Yes

Present occupation and employer (optional - attach resume) CAN-AM Consulting

Presently working with (ICBM) BusComp in Boston on how to better transport children with disabilities

Do you or your employer have any current or potential business relationship with the Town of Acton that could create a conflict of interest? NO

Education or special training Along with my masters and almost JD

Have taken many courses on the rights of the disabled due to my daughter having cerebral palsy.

EDWARD G. KELLY
21 Meetinghouse Road
Acton, MA 01720
(508) 263-1790

Court is appointed by the Court's own the Boston School Law

EXPERIENCE

- 2/91 - **CanAm Consultants, Inc.** **Boston, Massachusetts**
Marketing Department
Vice President. Develop and market sales strategies for various companies throughout the country.
- 1/83 - 2/91 **Massachusetts State Treasury** **Boston, Massachusetts**
Unclaimed Money Division
Deputy Treasurer. Responsible for the administration of approximately 173 employees. Developed strategic plan to ensure unclaimed monies (approximately \$186 million) were returned to the rightful owners.
- 1/88 - 11/88 **Celebrity Legends Charity Hockey Game** **Boston, Massachusetts**
Chairman of the Committee. Created and coordinated charity hockey games between the Boston Bruins Legends and the Hollywood Celebrity Hockey Team. Successfully raised over \$400,000 for various charities.
- 11/87 - 11/88 **United Cerebral Palsy** **Boston, Massachusetts**
Treasurer. Analyzed, forecasted, and implemented one million dollar budget for the Metropolitan Boston area.
- 6/79 - 12/83 **City of Boston** **Boston, Massachusetts**
Neighborhood Business Department
Regional Director. Evaluated opportunities and developed strategies for successfully establishing an improvement program for neighborhood businesses throughout the City utilizing bank loans and monies obtained from the Federal Government.

**EDUCATION
HIGHLIGHTS**

- Suffolk University** **Boston, Massachusetts**
Awarded Masters of Business Administration, May, 1987.
- University of Massachusetts** **Boston, Massachusetts**
Received Certificate of Management, 1986.
- Stonehill College** **North Easton, Massachusetts**
Awarded Bachelor of Arts, May, 1979.

**PROFESSIONAL
AFFILIATIONS**

- Massachusetts Easter Seals Director
United Cerebral Palsy Board of Directors Member
United Cerebral Palsy Grand Achievers Award, 1985 - 1991
Arnold Arboretum Public Safety Committee; Founder and President
Jamaica Plain Neighborhood Association; Founder and President

REFERENCES

Available upon request

AS

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

Date : Jan 24, 1992
To : Board of Selectmen
From : Volunteer Coordinating Committee
Subject : Recommendation for Appointment

At its 1-13-92 meeting, the VCC voted to recommend David P. Thrope as a regular member of the Fair Housing Committee to a two year term expiring on 6-30-93. The term appointment will assure that there are staggered terms. We Feel that Mr. Thrope educational training will contribute to his effectiveness on the Committee.

~~not available evenings~~

~~no other~~

TOWN OF ACTON VOLUNTEER APPLICATION

Residents interested in serving on a Town Board, Committee, or Commission are requested to complete this form and forward it to the office of the Town Manager at the Acton Town Hall.

(Please print or type)

Date: 12/3/90

Mr / Mrs
 Ms / Dr Thoupe David P.
Last Name First Name Middle Initial

7 Braeewood Rd 264-0490 _____
Street Address Home Phone Business Phone

Please refer to the other side of this sheet and indicate below, in order of preference, the Board, Committee, or Commission which is of interest to you:

- 1) Planning Board
- 2) Acton Boy's & Girls Club Council
- 3) Conservation Commission
Finance Ctte

★ Will look around at cttes and let us know what he is interested in

Have you been a member of a Board, Committee, or Commission previously (either in Acton or elsewhere)? If you have, please list name(s) and dates (approx):

No

Do you have any time restrictions? _____

How long have you lived in Acton? 9 months in Massachusetts? 31 years

Are you a US citizen? yes

Present occupation and employer (optional - attach resume) _____

Do you or your employer have any current or potential business relationship with the Town of Acton that could create a conflict of interest? _____

Education or special training See Resume

David Thrope

7 Brucewood Road · Acton, Massachusetts 01720 · Phone/Fax (508)264-0107

- Objective** To provide expertise and assistance in organizational growth and development.
- Profile** Sixteen years sales/marketing experience for a growing manufacturer. Hands-on experience in manufacturing, product design, finance, human resources management. Proficient in many computer application packages (Spreadsheets, Word processing, data base management, computerized accounting systems, LAN's) . Strategic approach linking customers, suppliers and the company. Formal teaching experience including course development.
- Career Summary**
- FORM FIT PLASTICS , Dracut, MA**
(Manufacturer of food service and food packaging items with annual sales of \$13.5M)
- V.P. Sales/Marketing - 1989 -1990
Acting Controller - 6/89 - 12/89
- Handled the company's three largest accounts. Coordinated sales efforts between three manufacturing plants after decentralization to meet corporate objectives.
 - Developed and monitored business plans
 - Recruited the Company's first controller and West Coast Sales Manager.
 - Trained successor to ensure a smooth transition.
- National Sales Manager - 1980 - 1989
Developed and implemented marketing strategies, targeting niche markets within the food service industry as well as supermarket and food packaging. Drafted and implemented pricing and promotion policies. Composed press releases to ensure visibility in a highly competitive market. Called on national accounts and supplier regularly to develop strong relationships..
- Sales Representative - 1974 - 1980
Started as this entrepreneurial company's first full-time sales representative. Developed a customer base and refocused the company from industrial applications to concentrate on the food industry, based on analysis of market analysis.
- Teaching Experience**
- BOSTON UNIVERSITY - Spring 1992**
Master of Science in Administration
Innovation and Technology
The Innovation Process: Developing New Products and Services
- FITCHBURG STATE COLLEGE - Fall 1991**
Entrepreneurship
(Developed and taught course)
- MT. WACHUSETT COMMUNITY COLLEGE - Spring 1991**
Principles of Accounting
- Education**
- BOSTON UNIVERSITY**
Doctoral Candidate in Human Resources Education
- BABSON COLLEGE, Wellesley, MA**
M.B.A. with major in Marketing/ Entrepreneurship - 1987
- NEW YORK UNIVERSITY**
Bachelor of Arts Degree - 1973
- BENTLEY COLLEGE, Waltham, MA**
Certificate in Accounting - 1979

6

2-4-92

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

Date : Jan 24, 1992
To : Board of Selectmen
From : Volunteer Coordinating Committee
Subject : Recommendation for Appointment

At its 1-13-92 meeting, the VCC voted to recommend Lois A. Stern as a regular member of the Fair Housing Committee to a two year term expiring on 6-30-93. The term appointment will assure that there are staggered terms. We feel that Lois' reality experience will make a contribution to the Committee.

Call in Jan -

TOWN OF ACTON VOLUNTEER APPLICATION

Residents interested in serving on a Town Board, Committee, or Commission are requested to complete this form and forward it to the office of the Town Manager at the Acton Town Hall.

(Please print or type)

Date: 11/27/90

Mr / Mrs Ms / Dr

Stern Last Name

Lois First Name

A Middle Initial

66 Alcott Street Street Address

(508) 263-1709 Home Phone

Carlson Real Estate Business Phone (508) 369-9965 - 369-5652

Please refer to the other side of this sheet and indicate below, in order of preference, the Board, Committee, or Commission which is of interest to you:

- 1) Edit Town Report - still interested
2) Historic Dist Comm? - call me if qualified
3) Fair Housing

Have you been a member of a Board, Committee, or Commission previously (either in Acton or elsewhere)? If you have, please list name(s) and dates (approx):

NO

Do you have any time restrictions?

How long have you lived in Acton? 10 years in Massachusetts? 10 years

Are you a US citizen? yes

Carlson R. E.

Present occupation and employer (optional - attach resume) Realtor

De Wolfe New England / Concord

Do you or your employer have any current or potential business relationship with the Town of Acton that could create a conflict of interest? None that I'm aware of.

Education or special training

Associates Degree in Commercial Science; B.S. in Elementary Education

SELECTMEN'S CONCERNS

BOS

(27)

2-4-92

15 Marian Road
Acton, MA 01720

January 25, 1992

Norman E. Lake
Acton Board of Selectmen
472 Main Street
Acton, MA 01720

Dear Mr. Lake,

The Acton Republican Town Committee submits the following three names for consideration to fill the vacancy of Republican Registrar of Voters:

Frederick H. Bubier	23 Seneca Road
Robert J. Erickson	18 Nash Road
Malcolm S. MacGregor	72 Robbins Street

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Karey D. Brown

Karey D. Brown, Chairman
Acton Republican Town Committee

8-

2-4-92

January 30, 1992

TO: Board of Selectmen
FROM: Anne Fanton
SUBJECT: Citizen-at-Large on Master Plan Coordinating Committee

When you approved the formation of the Master Plan Coordinating Committee (MPCC), one of Don's recommendations was to include a "citizen-at large" on the committee. It was included in the committee "charge" that you approved a few weeks ago. The spot has yet to be filled, and Don and I are in agreement that a citizen representative would bring a different viewpoint to the committee's discussions.

I would like to recommend the appointment of Nicholas Miller to the MPCC as the "citizen-at-large." Nick has expressed an interest in the committee's work. He attended a number of the Master Plan public meetings and Town Meeting when the Master Plan articles were adopted. Although the VCC has not been involved in seeking candidates for the MPCC (and may not know that it exists), I have included a completed VCC form for your information. We may want to send it to them for their information and their files.

I will seek your comments and/or approval at our meeting on February 4.



cc. Don Johnson

TOWN OF ACTON VOLUNTEER APPLICATION

Residents interested in serving on a Town Board, Committee, or Commission are requested to complete this form and forward it to the office of the Town Manager at the Acton Town Hall.

(Please print or type)

Date: 1/30/92

Mr / Mrs Miller Last Name Nicholas First Name P. Middle Initial

30 Taylor Rd. Street Address 263-4251 Home Phone (617) 863-1401 Business Phone

Please refer to the other side of this sheet and indicate below, in order of preference, the Board, Committee, or Commission which is of interest to you:

- 1) Master Plan Coord. Committee
2)
3)

Have you been a member of a Board, Committee, or Commission previously (either in Acton or elsewhere)? If you have, please list name(s) and dates (approx):

No

Do you have any time restrictions? evening meetings only

How long have you lived in Acton? 19 yrs. in Massachusetts? same

Are you a US citizen? yes

Present occupation and employer (optional - attach resume) President, Supervisory Consultant, Harris Miller Miller & Hanson (Acoustical consulting firm)

Do you or your employer have any current or potential business relationship with the Town of Acton that could create a conflict of interest? No

(we are employed by Massport to work on noise control/issues at Hanscom)

Education or special training Relevant Experience Work with public groups to solve noise problems; conflict resolution; public presentations

January 27, 1992

TO: Don Johnson, Town Manager
FROM: Doug Halley, Health Director
SUBJECT: W.R. Grace - Bioremediation Project

The Bioremediation project has been delayed while Anderson & Krieger and G.Z.A. worked out the contractual arrangements necessary for G.Z.A. to acquire bids. At this date it appears all parties have been satisfied and G.Z.A. will be soliciting bids during the next two weeks. After receipt of these bids G.Z.A. will advise me of their findings and I will contact each firm to confirm their bid.

G.Z.A. has also reached agreement with Pine & Swallow, A.C.E.S. consultant, regarding the scope and requirements of the bioremediation test. Based on John Swallow's input the Request for Proposals has been adapted accordingly. Despite this delay G.Z.A. does not anticipate any detrimental impacts from conducting the bioremediation tests during the winter months.

TOWN MANAGER'S CONCERNS 2/4.

#10 2-4-92



• TEL. (508) 263-0011

292 GREAT ROAD • ACTON, MA. 01720

REALTOR

EXEC SESSION
2/4/92

JAN 15 1992

January 14, 1992

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

Re: Audubon Hill

Dear Don:

In accord with our discussion on 10 January 1992, I am resubmitting the Third Supplemental Agreement to the Comprehensive Development Agreement dated 23 June 1989. Would you please have it signed at the meeting next week.

I have attached the distribution sheet for the original agreement (attachment #1) and a sheet indicating the revised distribution (attachment #2). This transfer will have no impact on the on going discussions.

As you know we are now carrying two finished restricted units which are not sold. This situation is having an adverse impact on the project. They are not being transferred and we are actively marketing them. With the two units held for the Housing Authority in the South Phase, we have eight units committed. In the original allocation we had eight units in the North Phase and 16 in the South Phase. As of now we have eight units in the South Phase and sixteen in the North Phase.

We will experience serious scheduling problems and delays if this transfer is not formalized during the next meeting. The Bank will not release additional funds until the transfer is completed. I would like to attend next weeks meeting to assist in concluding this exercise.

Yours truly,

Roy C. Smith
President

Enclosures (2)(3)

cc David Banner, Esquire
Stanley L. Gordon

A BON HILL UNIT TYPES
 JANUARY 29, 1989

PHASE#	UNIT#	TYPE	FND.	PHASE#	UNIT#	TYPE	FND.
S-1	1	B	F/B	N-1	101	A (R)	REAR
S-1	3	A	PART	N-1	103	B (R)	REAR
S-1	5	A (R)	REAR	N-1	105	B	REAR
S-1	7	B (R)	REAR	N-1	107	A	REAR
S-1	9	B	REAR	N-1	109	A (R)	REAR
S-1	11	A	REAR	N-1	111	B (R)	REAR
S-1	13	B (R)	F/B				
S-1	15	A (R)	END				
S-2	17	B	F/B	N-2	113	B	F/B
S-2	19	A	PART	N-2	115	A	END
S-2	21	A (R)	PART	N-2	117	B (R)	F/B
S-2	23	B (R)	F/B	N-2	119	A (R)	END
S-2	25	B (HP)	SLAB	N-2	121	B	F/B
S-2	27	A (S)	SLAB	N-2	123	A	PART
S-2	29	B (R)	F/B	N-2	125	A (R)	REAR
S	31	A (R)	F/B	N-2	127	B (R)	REAR
S-3	34	B (R)	REAR	N-2	118	B (R)	REAR
S-3	36	A (R)	REAR	N-2	120	A (R)	END
S-3	38	B	REAR	N-2	122	B	F/B
S-3	40	A	REAR	N-2	124	A	END
S-3	42	B (R)	REAR	N-2	126	B (HP) (R)	SLAB
S-3	44	A (R)	REAR	N-2	128	A (S) (R)	SLAB
S-3	46	A	PART	N-2	130	A	REAR
S-3	48	B	F/B	N-2	132	B	REAR
S-4	18	B (R)	F/B	N-3	102	B (R)	F/B
S-4	20	A (R)	PART	N-3	104	A (R)	END
S-4	22	A	REAR	N-3	106	B	F/B
S-4	24	B	REAR	N-3	108	A	END
S-4	26	B (R)	REAR	N-3	110	B (R)	F/B
S-4	28	A (R)	REAR	N-3	112	A (R)	PART
S-4	30	B	REAR	N-3	114	A	REAR
S-4	32	A	REAR	N-3	116	B	REAR
	2	B (S) (R)	SLAB	(S)			SLAB LAYOUT
	4	A (S) (R)	SLAB	(HP)			HANDICAP ACCESSIBLE LAYOUT
S-5	6	A	F/B	(R)			REVERSED LAYOUT
S-5	8	B	F/B	SLAB			SLAB ON GRADE
S-5	10	B (R)	F/B	F/B			FULL BASEMENT
S-5	12	A (R)	END	END			END WALKOUT
S-5	14	B	F/B	REAR			REAR WALKOUT
			END	PART			PARTIAL WALKOUT

A BON HILL UNIT TYPES
JANUARY 29, 1989

PHASE#	UNIT#	TYPE	FND.	PHASE#	UNIT#	TYPE	FND.
S-1	1	B	F/B	N-1	101	A (R)	REAR
S-1	3	A	PART	N-1	103	B (R)	REAR
S-1	5	A (R)	REAR	N-1	105	B	REAR
S-1	7	B (R)	REAR	N-1	107	A	REAR
S-1	9	B	REAR	N-1	109	A (R)	REAR
S-1	11	A	REAR	N-1	111	B (R)	REAR
S-1	13	B (R)	F/B				
S-1	15	A (R)	END				
S-2	17	B	F/B	N-2	113	B	F/B
S-2	19	A	PART	N-2	115	A	END
S-2	21	A (R)	PART	N-2	117	B (R)	F/B
S-2	23	B (R)	F/B	N-2	119	A (R)	END
S-2	25	B (HP)	SLAB	N-2	121	B	F/B
S-2	27	A (S)	SLAB	N-2	123	A	PART
S-2	29	B (R)	F/B	N-2	125	A (R)	REAR
S	31	A (R)	F/B	N-2	127	B (R)	REAR
S-3	34	B (R)	REAR	N-2	118	B (R)	REAR
S-3	36	A (R)	REAR	N-2	120	A (R)	END
S-3	38	B	REAR	N-2	122	B	F/B
S-3	40	A	REAR	N-2	124	A	END
S-3	42	B (R)	REAR	N-2	126	B (HP) (R)	SLAB
S-3	44	A (R)	REAR	N-2	128	A (S) (R)	SLAB
S-3	46	A	PART	N-2	130	A	REAR
S-3	48	B	F/B	N-2	132	B	REAR
S-4	18	B (R)	F/B	N-3	102	B (R)	F/B
S-4	20	A (R)	PART	N-3	104	A (R)	END
S-4	22	A	REAR	N-3	106	B	F/B
S-4	24	B	REAR	N-3	108	A	END
S-4	26	B (R)	REAR	N-3	110	B (R)	F/B
S-4	28	A (R)	REAR	N-3	112	A (R)	PART
S-4	30	B	REAR	N-3	114	A	REAR
S-4	32	A	REAR	N-3	116	B	REAR
5	2	B (S) (R)	SLAB	(S)	SLAB LAYOUT		
	4	A (S) (R)	SLAB	(HP)	HANDICAP ACCESSIBLE LAYO		
S-5	6	A	F/B	(R)	REVERSED LAYOUT		
S-5	8	B	F/B	SLAB	SLAB ON GRADE		
S-5	10	B (R)	F/B	F/B	FULL BASEMENT		
S-5	12	A (R)	END	END	END WALKOUT		
S-5	14	B	F/B	REAR	REAR WALKOUT		
			END	PART	PARTIAL WALKOUT		

YOU HAVE THE ORIGINAL

AMENDMENT
OF

MASTER DEED
CONDOMINIUM

R. Smith Associates, Inc., a Massachusetts Corporation, having a usual place of business at 292 Great Road, Acton, MA 01720, being the Declarant in a Master Deed of Audubon Hill South Condominium dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds, as amended by Amendment No. 1 To The Master Deed of Audubon Hill Condominium dated February 26, 1991, recorded as Instrument No. 51 of July 26, 1991, Amendment No. 2 To The Master Deed of Audubon Hill Condominium dated July 24, 1991, recorded as Instrument No. 53 of July 26, 1991, Amendment No. 3 to the Master Deed of Audubon Hill Condominium dated August 26, 1991, recorded as Instrument Number 620 of November 1, 1991 and Amendment No. 4 to the Master Deed of Audubon Hill Condominium dated October 28, 1991, recorded as Instrument No. 623 of November 1, 1991 in accordance with the provisions of said Master Deed as amended, including but not limited to Sections 1, 11, and 14 of said Master Deed do hereby amend the Master Deed of Audubon Hill South Condominium by deleting Unit Numbers 6, 8, 10 and 14 as "Restricted Units" from Section 9.2, Subsection (a) and Subsection (b). Notwithstanding anything to the contrary, Unit Nos. 1, 13, 17, 18, 48, 2, 4, and 25 shall be known as the "Restricted Units" and Unit Nos. 2 and 4 shall be known as the "A.H.A. Restricted Units" within Section 9.2, Subsection (a) and Subsection (b) of the Master Deed of the Audubon Hill South Condominium.

In all other respects, the terms and provisions of the Master Deed, as amended, are hereby ratified and confirmed.

Witness our hand and seal this _____ day of November, 1991.

R. SMITH ASSOCIATES, INC.

By: _____
Roy C. Smith, President

By: _____
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November , 1991

Then personally appeared the above-named Roy C. Smith, President, and Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

The Town of Acton hereby assents to the foregoing Amendment Number 5 To The Master Deed of Audubon Hill South Condominium and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June 23, 1989, recorded in Book 19966, Page 008, with the Middlesex South District Registry of Deeds, as supplemented by a Supplemental Agreement dated October 27, 1989, recorded in Book 20205, Page 227, said Deeds and a Second Supplemental Agreement, dated August 26, 1991, recorded as Instrument No. 621 of November 1, 1991, with said Deeds.

TOWN OF ACTON
Acting by and through its
Town Manager

Don P. Johnson

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

November , 1991

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me

Notary Public
My commission expires:

k/amendment.ix

THIRD SUPPLEMENTAL AGREEMENT

This Agreement (the "Third Supplemental Agreement") is made as of the _____ day of November, 1991, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation, having a usual place of business at the Acton Town Hall, Acton, MA 01720, acting by and through its Town Manager, the duly authorized designee of the Town's Board of Selectmen under the terms and conditions of a certain Comprehensive Development Agreement (the "Comprehensive Development Agreement") dated as of June 23, 1989, and recorded in Book 19966, Page 008 with the Middlesex South District Registry of Deeds, and a Supplemental Agreement (the "Supplemental Agreement") dated as of October 27, 1989, and recorded in Book 20205, Page 227 with said Deeds, and a Second Supplemental Agreement (the "Second Supplemental Agreement") dated as of August 26, 1991 and recorded as Instrument No. 621 of November 1, 1991 with said Deeds and R. Smith Associates, Inc. (the "Developer"), a Massachusetts corporation having a usual place of business at 292 Great Road, Acton, MA 01720.

RECITALS

Reference is hereby made to the following facts:

A. The Town and the Developer entered into the Comprehensive Development Agreement and the Supplemental Agreement in order to set out the terms and conditions under which the Development Property (as defined in the Comprehensive Development Agreement) would be developed.

B. The Developer has created the Audubon Hill South Condominium by Master Deed dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds (the "Master Deed"). Section 9.2 of the Master Deed indicated that Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38, 48, 2, 4, and 25 would be "Restricted Units" in partial satisfaction of Section 3.3 (c) of the Comprehensive Development Agreement, subject to the Developers right to amend the restriction as set forth in Section 9.2(b) and Section 9.4 of the Master Deed by substituting a different Unit for any of the above-referenced "Restricted Units" so long as the total number of Units, so restricted is not reduced in number.

C. The Second Supplemental Agreement modified the Comprehensive Development Agreement by removing Unit Numbers 23, 27, 29 and 31 as "Restricted Units" and establishing Unit Numbers 125, 127, 130 and 132 of the Audubon Hill North Condominium as "Restricted Units, in their place, and leaving Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 48, 2, 4 and 25 as "Restricted Units" in the Audubon Hill South Condominium

D. Despite an active sales and marketing campaign, the Developer has continued to have difficulty in finding a sufficient number of qualified purchasers ("Eligible Purchasers" as defined in the "Master Deed") to purchase the "Restricted Units" in a manner to accommodate the scheduled order of construction.

E. The Town and the Developer wish to clarify certain of the terms and conditions of the Comprehensive Development Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements in this Third Supplemental Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Unit Numbers 6, 8, 10, and 14 of the Audubon Hill South Condominium shall no longer be "Restricted Units". The Developer shall, at the time of the creation of the Audubon Hill North Condominium, establish Unit Numbers 104, 108, 112, and 118 as "Restricted Units". Unit Numbers 1, 13, 17, 18, 48, 2, 4, and 25 shall continue to be the "Restricted Units" within the Audubon Hill South Condominium, subject to the Developers continuing right to substitute a different Unit for any of the above-described "Restricted Units", so long as the total number of Units so restricted is not reduced in number.

3. Capitalized terms used in this Third Supplemental Agreement and not otherwise defined shall have the meaning ascribed to them in the Comprehensive Development Agreement.

4. Except as amended hereby, the Comprehensive Development Agreement, the Supplemental Agreement and the Second Supplemental Agreement remain in full force and effect and this Third Supplemental Agreement shall be construed so as to supplement, clarify and amend such prior agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Agreement to be executed under seal as of the date first written above.

TOWN OF ACTON
Acting by and through
its Town Manager

Don P. Johnson, hereunto
duly authorized

R. SMITH ASSOCIATES, INC.

By: _____
Roy C. Smith, President

Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November , 1991

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November , 1991

Then personally appeared the above-named Roy C. Smith, President, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August , 1991

Then personally appeared the above-named Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

k/supplemental.4

Massachusetts Office on Disability

One Ashburton Place Room 1305 Boston, MA 02108

(617) 727-7440

(800) 322-2020

(617) 727-0965 FAX



CC: BOS

IN PALMER AND DODGE
MATERIAL (IN THIS PACKET)
THERE IS A BRIEF REVIEW
OF THIS LAW AND ITS IMPACTS.

William F. Weld, Governor

WOW

January 22, 1992

Dear Chief Executive:

On January 26, 1992 the Americans with Disabilities Act (ADA) becomes effective for municipal governments.

The other side of this letter is a "To Do" list that outlines municipalities' responsibilities.

Your legal counsel should be able to provide you with a copy of the ADA regulations which were printed in the Federal Register July 26, 1991 at 28 CFR Part 35. If you're having difficulty obtaining the regulations please call and I'll send you a copy.

Those of you with 50 or more employees will need to assign an employee to be the ADA Coordinator. Please send me the Coordinator's name and address to include in trainings.

Finally, if you do not have an active commission on disability this is a good time to start one. A commission can help with the self-evaluation and transition plans. In cities commissions are established by vote of city council. In towns they are established by vote at town meeting. Again, please feel free to call if you'd like help setting up a commission.

I know that this is a time of great fiscal constraints and that the regulations are at times complicated and unclear. Nevertheless, it is important to ensure that your municipality complies fully with the law. I hope that we can work together to increase the participation of persons with disabilities in our communities.

Sincerely,

Kathy Gips

Assistant Director for Community Services

cc: Municipal Commissions on Disability

**AMERICANS WITH DISABILITIES ACT (ADA)
"TO DO" LIST FOR STATE AND LOCAL GOVERNMENT**

The requirements of the ADA become effective for state and local government entities on January 26, 1992. The following list the basic things state and local government entities must do to ensure compliance with the ADA.

SELF-EVALUATION: State and local governments must conduct a self-evaluation (with public participation) of services, programs, activities and employment practices to ensure non-discrimination and inclusion of people with disabilities, by January 26, 1993.

- State and local governments with 50 or more employees must maintain the self-evaluation on public file for 3 years.
- If a state or locality has already complied with the self-evaluation requirement under section 504 of the Rehabilitation Act of 1973, then the ADA requirement only applies to programs, services, policies and practices that were not included in the 504 evaluation.

TRANSITION PLAN FOR STRUCTURAL CHANGES: If structural changes in facilities are needed to comply, the changes must be made as soon as possible but no later than by January 26, 1995.

- State and local governments with 50 or more employees must develop a transition plan by July 26, 1992 setting forth the steps necessary to complete the structural changes.
- New construction and alterations must comply with either Uniform Federal Accessibility Standards (UFAS) or ADA Accessibility Design Guidelines (ADAAG).

DESIGNATED EMPLOYEE: State and local governments with 50 or more employees must assign an employee to ensure compliance with the ADA.

NOTICE State and local governments and their agencies must develop and disseminate a notice describing the rights of persons with disabilities under the ADA.

COMPLAINT PROCEDURES: State and local governments with 50 or more employees must adopt a grievance procedure and designate at least one employee to coordinate the evaluation and modifications and to investigate complaints.

NOTE: Complaints may also be filed with appropriate federal agencies and/or by filing a lawsuit in federal court. Injunctive relief, attorneys' fees and actual damages can be ordered.

**For More Information Contact:
MASSACHUSETTS OFFICE ON DISABILITY
(617) 727-7440 voice/TDD**

**January, 1992
(800) 322-2020 voice/TDD**

Confidential

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

TO: THE BOARD OF SELECTMEN
FROM: JOHN MURRAY, ASST. TOWN MANAGER
DATE: JANUARY 31, 1992
RE: LEGAL ADVISORY

Attached are copies of advisory letters from Palmer & Dodge. These newsletters have been and continue to be very helpful for staff. Normally, we have not shared them with the Board, but we feel it is very important that the Board now become fully aware of the extent of the service provided by Palmer & Dodge. We believe that newsletters provided "free" of charge is more cost effective than being a member of a group which divides the cost of meeting once a month with counsel to discuss items of mutual concern.

Also attached is a complete Palmer & Dodge bill. It has been staff's practice only to forward the summary pages to the Board for their review.

We hope the attachments will provide the Board with a greater depth of understanding of the service package delivered by P&D.

PALMER & DODGE

TO: Our Clients and Friends

RE: The Americans with Disabilities Act
Impacts on Building Owners, Operators and Tenants

DATE: January, 1992

In July, 1990 new civil rights legislation, the Americans with Disabilities Act (ADA), was signed into law. The ADA is a comprehensive and complex law covering a wide scope of disability issues, including employment discrimination, discrimination in public accommodations and private service establishments, and discrimination in transportation and communication access. The ADA broadens the range of accessibility modifications that must be made to accommodate persons with disabilities. In addition to dealing with mobility impairments, such as wheelchair access, the ADA addresses communicative disabilities, such as vision, hearing and speech impairments.

Title III of the ADA deals specifically with providing access to persons with disabilities in private buildings. Final rules establishing standards and procedures for implementation of Title III and accessibility guidelines for the ADA were published on July 26, 1991, and will take effect on January 26, 1992. The Title III guidelines for building construction and operation, in effect, serve as a form of building code. As such, Title III will have a significant impact upon persons who own, operate, lease and manage buildings. Because many of the accessibility requirements imposed by the ADA will take effect on January 26, 1992, it is imperative that owners, operators and tenants of buildings develop an understanding of the ADA and a strategy for compliance.

Generally, the ADA requires that certain modifications be made to certain types of existing buildings to bring them into compliance with the ADA, and also imposes design requirements upon new construction and certain types of alterations or renovations.

EXISTING BUILDINGS

Whether an existing building must be modified to comply with the ADA depends upon whether the building is a "public accommodation" or a "commercial facility." A public accommodation is a facility whose operations affect commerce, such as a place of lodging, eating establishment, auditorium, or service facility. A commercial facility is a facility

intended for a private business and its employees. Many buildings, which may appear at first glance to be commercial facilities, such as buildings housing offices of accountants or lawyers, places of education, insurance offices and medical offices, are classified as public accommodations under the ADA. Thus, the public accommodation category includes at least a part of many traditional office buildings.

An existing public accommodation must implement programs to provide auxiliary aids and services and to remove architectural and communicative barriers that impede access for persons with disabilities. In contrast, the requirement to provide auxiliary aids and services and to remove barriers under Title III does not apply to commercial facilities. A commercial facility need only provide "reasonable accommodations" for employees with disabilities under Title I of the ADA.

The requirements for installation of auxiliary aids and services and removal of architectural and communicative barriers in public accommodations are extensive. They range from providing assistive listening devices and braille lettering, to providing accessible ramps, parking and seating arrangements, widening doors and repositioning shelves and telephones. Alternatives to these technical requirements may be allowed in some instances depending upon the nature and cost of the work required, available financial resources, and overall benefits. A determination of the extent of the work required in a particular building will depend upon a site specific analysis and consideration of the burdens associated with full compliance. Costs may be allocated between a landlord and tenant depending upon the work required and the provisions of a particular lease.

In order to establish a record of good faith efforts toward compliance with the ADA, the Justice Department recommends conducting a building survey to assess accessibility problems, consulting with groups representing persons with disabilities, and putting into effect an ongoing ADA compliance plan before January 26, 1992.

NEW CONSTRUCTION

The ADA makes no distinction between public accommodations and commercial facilities for new construction. New buildings for which a building permit is issued after January 26, 1992, and a certificate of occupancy is issued after January 26, 1993, must comply with the ADA technical requirements. Very restrictive exemptions are available under the ADA if full compliance is technically infeasible, however, the presumption under the ADA is that new construction will be able to satisfy the technical access requirements. In those circumstances where an exemption is invoked, accessibility, to the extent possible, is nonetheless required.

RENOVATIONS AND ALTERATIONS

Both public accommodations and commercial facilities must comply with the ADA requirements applicable to renovations and alterations. Buildings that will undergo renovations or alterations after January 26, 1992 need to comply with the ADA requirements in the area renovated or altered. The entire building need not be brought into compliance. If the renovated areas are considered "primary function areas" (areas where the major activities occur within a building), however, additional access improvements may be required along the "path of travel" to the renovated area (e.g., hallways leading to a renovated cafeteria, bank lobby or service counter). Cost and technical considerations for renovations and alterations may permit alternative access improvements if compliance would be technically infeasible or disproportionately expensive.

Building owners, occupants and tenants planning to undertake renovations or alterations after January 26, 1992, should carefully consider the ADA requirements in their construction plans.

SPECIAL REQUIREMENTS

The ADA imposes additional technical requirements for specific types of facilities, including restaurants and cafeterias; medical care, business and mercantile facilities; libraries; and transient lodging facilities.

EXEMPTIONS

There are a limited number of exemptions under the ADA. Private clubs, religious organizations and multi-family dwellings are not covered by the ADA.

PENALTIES AND CREDITS

Because the ADA is a civil rights act, enforcement will not be conducted through state and local building code enforcement agencies. Enforcement will be by private litigants and the Justice Department, who may bring civil actions seeking injunctive relief, civil penalties (up to \$50,000 for the first violation and \$100,000 for subsequent violations) and damages.

The Internal Revenue Code provides some tax incentives associated with ADA access improvements. A deduction of up to \$15,000 per year of certain costs of compliance is allowed, and certain small businesses are entitled to a limited tax credit for qualifying compliance costs.

OTHER PROVISIONS OF THE ADA

In addition to Title III, there are three other major titles in the ADA dealing with rights of persons with disabilities. Title I provides protection against discrimination of disabled persons by employers and requires that reasonable accommodations be made for disabled employees. Our Labor & Employment Law Group is preparing an in-depth analysis of Title I which will be available for our clients and other friends shortly. Title II prohibits discrimination by state and local governments against disabled persons and provides for improved accessibility in public transportation. Title IV requires telecommunication service companies to provide relay services to assist persons with communication disabilities.

CONCLUSION

To comply with ADA requirements and reduce the risk of litigation, owners, operators and tenants should consult with legal counsel, architects, and other qualified consultants to learn more about how the ADA affects them. Owners, operators and tenants of existing places of public accommodation should promptly survey their buildings for compliance, and implement ADA compliance plans. For those who are involved in new construction or building alterations, construction plans should be prepared carefully to address ADA technical requirements.

Prepared by

James M. Whalen - Catherine Brienza - Mark A. Kablack

PALMER & DODGE

One Beacon Street

Boston, Massachusetts 02108

(617) 573-0100

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ESS. July 17

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PUBLIC LAW 101-336 (S. 933); July 26, 1990

AMERICANS WITH DISABILITIES ACT OF 1990

For Legislative History of Act, see p. 267.

An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—EMPLOYMENT

- Sec. 101. Definitions.
- Sec. 102. Discrimination.
- Sec. 103. Defenses.
- Sec. 104. Illegal use of drugs and alcohol.
- Sec. 105. Posting notices.
- Sec. 106. Regulations.
- Sec. 107. Enforcement.
- Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

- Sec. 201. Definition.
- Sec. 202. Discrimination.
- Sec. 203. Enforcement.
- Sec. 204. Regulations.
- Sec. 205. Effective date.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

- Sec. 221. Definitions.
- Sec. 222. Public entities operating fixed route systems.
- Sec. 223. Paratransit as a complement to fixed route service.
- Sec. 224. Public entity operating a demand responsive system.
- Sec. 225. Temporary relief where lifts are unavailable.
- Sec. 226. New facilities.
- Sec. 227. Alterations of existing facilities.
- Sec. 228. Public transportation programs and activities in existing facilities and one car per train rule.
- Sec. 229. Regulations.
- Sec. 230. Interim accessibility requirements.
- Sec. 231. Effective date.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

- Sec. 241. Definitions.
- Sec. 242. Intercity and commuter rail actions considered discriminatory.
- Sec. 243. Conformance of accessibility standards.

Americans with Disabilities Act of 1990.

42 USC 12101 note.

to Civil Service.

- Sec. 244. Regulations.
- Sec. 245. Interim accessibility requirements.
- Sec. 246. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY
PRIVATE ENTITIES

- Sec. 301. Definitions.
- Sec. 302. Prohibition of discrimination by public accommodations.
- Sec. 303. New construction and alterations in public accommodations and commercial facilities.
- Sec. 304. Prohibition of discrimination in specified public transportation services provided by private entities.
- Sec. 305. Study.
- Sec. 306. Regulations.
- Sec. 307. Exemptions for private clubs and religious organizations.
- Sec. 308. Enforcement.
- Sec. 309. Examinations and courses.
- Sec. 310. Effective date.

TITLE IV—TELECOMMUNICATIONS

- Sec. 401. Telecommunications relay services for hearing-impaired and speech-impaired individuals.
- Sec. 402. Closed captioning of public service announcements.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Construction.
- Sec. 502. State immunity.
- Sec. 503. Prohibition against retaliation and coercion.
- Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 505. Attorney's fees.
- Sec. 506. Technical assistance.
- Sec. 507. Federal wilderness areas.
- Sec. 508. Transvestites.
- Sec. 509. Coverage of Congress and the agencies of the legislative branch.
- Sec. 510. Illegal use of drugs.
- Sec. 511. Definitions.
- Sec. 512. Amendments to the Rehabilitation Act.
- Sec. 513. Alternative means of dispute resolution.
- Sec. 514. Severability.

42 USC 12101.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies,

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failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

42 USC 12102

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

42 USC 12111.

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) DIRECT THREAT.—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(5) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) ILLEGAL USE OF DRUGS.—

(A) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

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(7) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense when considered in light of the factors set forth in subparagraph (B).

(B) FACTORS TO BE CONSIDERED.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compen-

42 USC 12112.

sation, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of admin-

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

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(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE EXAMINATIONS AND INQUIRIES.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) REQUIREMENT.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES.

42 USC 12113.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity,

and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) **QUALIFICATION STANDARDS.**—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) **RELIGIOUS ENTITIES.**—

(1) **IN GENERAL.**—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) **RELIGIOUS TENETS REQUIREMENT.**—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

LIST OF INFECTIOUS AND COMMUNICABLE DISEASES.—

(1) **IN GENERAL.**—The Secretary of Health and Human Services, not later than 6 months after the date of enactment of this Act, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) **APPLICATIONS.**—In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) **CONSTRUCTION.**—Nothing in this Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

Public
information.

42 USC 12114.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) **QUALIFIED INDIVIDUAL WITH A DISABILITY.**—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

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(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are

employed in such positions (as defined in the regulations of the Department of Transportation).

(d) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) TRANSPORTATION EMPLOYEES.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

42 USC 12115.

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

42 USC 12116.

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

42 USC 12117.

SEC. 107. ENFORCEMENT.

(a) POWERS, REMEDIES, AND PROCEDURES.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) COORDINATION.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and

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part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

42 USC 12111
note.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

SEC. 201. DEFINITION.

42 USC 12131.

As used in this title:

(1) PUBLIC ENTITY.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SEC. 202. DISCRIMINATION.

42 USC 12132.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT.

42 USC 12133.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204. REGULATIONS.

42 USC 12134.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) **RELATIONSHIP TO OTHER REGULATIONS.**—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 23, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) **STANDARDS.**—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

42 USC 12131
note.

SEC. 205. EFFECTIVE DATE.

(a) **GENERAL RULE.**—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) **EXCEPTION.**—Section 204 shall become effective on the date of enactment of this Act.

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Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

42 USC 12141.

SEC. 221. DEFINITIONS.

As used in this part:

(1) **DEMAND RESPONSIVE SYSTEM.**—The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) **DESIGNATED PUBLIC TRANSPORTATION.**—The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) **FIXED ROUTE SYSTEM.**—The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) **OPERATES.**—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) PUBLIC SCHOOL TRANSPORTATION.—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 222. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

42 USC 12142.

(a) PURCHASE AND LEASE OF NEW VEHICLES.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) PURCHASE AND LEASE OF USED VEHICLES.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) REMANUFACTURED VEHICLES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES.—

(A) GENERAL RULE.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph

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(1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 222(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

42 USC 12143.

SEC. 223. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying

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For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) OTHER PROVISIONS.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) REVIEW OF PLAN.—

(1) GENERAL RULE.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) DISAPPROVAL.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) DISCRIMINATION DEFINED.—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

42 USC 12144.

SEC. 224. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable

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by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 225. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

42 USC 12145

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 226. NEW FACILITIES.

42 USC 12146

For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 227. ALTERATIONS OF EXISTING FACILITIES.

42 USC 12147

(a) GENERAL RULE.—With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or

access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID RAIL AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) PLANS AND MILESTONES.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

42 USC 12148.

SEC. 228. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—

(1) IN GENERAL.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

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794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 229. REGULATIONS.

42 USC 12149

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) STANDARDS.—The regulations issued under this section and section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 230. INTERIM ACCESSIBILITY REQUIREMENTS.

42 USC 12150

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of

such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

42 USC 12141
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SEC. 231. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY
INTERCITY AND COMMUTER RAIL

42 USC 12161.

SEC. 241. DEFINITIONS.

As used in this part:

(1) COMMUTER AUTHORITY.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8)).

(2) COMMUTER RAIL TRANSPORTATION.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9)).

(3) INTERCITY RAIL TRANSPORTATION.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) RAIL PASSENGER CAR.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) RESPONSIBLE PERSON.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

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(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 242. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY. 42 USC 12162.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;
- (iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and
- (iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

- (i) be able to be entered from the station platform by an individual who uses a wheelchair; or
- (ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;
- (iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or
- (iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

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(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and
(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to

purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for daily passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

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issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(5) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242 (a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

42 USC 12161
note.

TITLE III—PUBLIC ACCOMMODATIONS
AND SERVICES OPERATED BY PRIVATE
ENTITIES

SEC. 301. DEFINITIONS.

42 USC 12181.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

42 USC 12163.

SEC. 243. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

42 USC 12164.

SEC. 244. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

42 USC 12165.

SEC. 245. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is

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Sec. 301

issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242 (a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE.

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(b) EXCEPTION.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

42 USC 12161
note.

TITLE III—PUBLIC ACCOMMODATIONS
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SEC. 301. DEFINITIONS.

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(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) **FIXED ROUTE SYSTEM.**—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) **OVER-THE-ROAD BUS.**—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) **PRIVATE ENTITY.**—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) **PUBLIC ACCOMMODATION.**—The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

→ (A) an inn, hotel, motel, ~~or other place of lodging~~ except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

→ (B) a restaurant, bar, or other establishment serving food or drink;

→ (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

→ (D) an auditorium, convention center, lecture hall, or other place of public gathering;

→ (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

→ (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

→ (G) a terminal, depot, or other station used for specified public transportation;

→ (H) a museum, library, gallery, or other place of public display or collection;

→ (I) a park, zoo, amusement park, or other place of recreation;

→ (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

→ (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

→ (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) **RAIL AND RAILROAD.**—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) **READILY ACHIEVABLE.**—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

→ (A) the nature and cost of the action needed under this Act;

→ (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the

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impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) SPECIFIED PUBLIC TRANSPORTATION.—The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) VEHICLE.—The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

42 USC 12182.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privi-

lege, advantage, or accommodation, or other opportunity that is as effective as that provided to other individuals.

(iv) INDIVIDUAL OR CLASS OF INDIVIDUALS.—For purposes of clauses (i) through (iii) of this subparagraph the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing, or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, services, facilities, privileges, advantages, and accommodations shall be provided to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—For purposes of subsection (a) discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fun-

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damentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) EQUIVALENT SERVICE.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) DEMAND RESPONSIVE SYSTEM.—For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily

accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (A) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall be construed to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

42 USC 12163.

SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and

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(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

42 USC 12154

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 5 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 5 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following

the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) HISTORICAL OR ANTIQUATED CARS.—

(1) EXCEPTION.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) DEFINITION.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

42 USC 12155.

SEC. 305. STUDY.

(a) PURPOSES.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) CONTENTS.—The study shall include, at a minimum, an analysis of the following:

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(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) **ADVISORY COMMITTEE.**—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) **DEADLINE.**—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

President of U.S.

(e) **REVIEW.**—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

42 USC 12156.

SEC. 306. REGULATIONS.

(a) **TRANSPORTATION PROVISIONS.**—

(1) **GENERAL RULE.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections

302(b)(2) (B) and (C) and to carry out section 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS.—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of the submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) STANDARDS.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not

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referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) CONSISTENCY WITH ATBCB GUIDELINES.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

(d) INTERIM ACCESSIBILITY STANDARDS.—

(1) FACILITIES.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) VEHICLES AND RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this title, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this title and are in effect at the time such design is substantially completed.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS. 42 USC 12187.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT. 42 USC 12189.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of

section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) INJUNCTIVE RELIEF.—In the case of violations of sections 302(b)(2)(A)(iv) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—

(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

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(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and (C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

- (i) not exceeding \$50,000 for a first violation; and
- (ii) not exceeding \$100,000 for any subsequent violation.

(3) SINGLE VIOLATION.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) PUNITIVE DAMAGES.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES.

42 USC 12189

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE.

42 USC 12110
note.

(a) GENERAL RULE.—Except as provided in subsections (b) and (c), this title shall become effective 18 months after the date of the enactment of this Act.

(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

- (1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less; and
- (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less.

(c) EXCEPTION.—Sections 302(a) for purposes of section 302(b)(2)(B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

State and local
governments.
47 U.S.C. 225.

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the

regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications

relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

“(e) ENFORCEMENT.—

“(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

“(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

“(f) CERTIFICATION.—

“(1) STATE DOCUMENTATION.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

“(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

“(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

“(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

“(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

“(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

“(g) COMPLAINT.—

“(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

“(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

“(A) final action under such State program has not been taken on such complaint by such State—

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"(i) within 180 days after the complaint is filed with such State; or
"(ii) within a shorter period as prescribed by the regulations of such State; or
"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f)."
(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—
(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and
(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.
Section 711 of the Communications Act of 1934 is amended to read as follows:

47 USC 611.

SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.
"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—
"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and
"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement."

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

42 USC 12201.

(a) IN GENERAL.—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.
(b) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.
(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—
(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms

of a bona fide benefit plan that are based on underwriting risk, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

(d) ACCOMMODATIONS AND SERVICES.—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

42 USC 12202.

SEC. 502. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

42 USC 12203.

SEC. 503. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 203, and 305 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

42 USC 12204.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) CONTENTS OF GUIDELINES.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) QUALIFIED HISTORIC PROPERTIES.—

(1) IN GENERAL.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for

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alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) OTHER SITES.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEY'S FEES.

42 USC 12205.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

42 USC 12206.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) RENDERING ASSISTANCE.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE 1.—The Equal Employment Opportunity Commission and the Attorney General shall implement the

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(b) SUBMISSION OF REPORT.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) SPECIFIC WILDERNESS ACCESS.—

(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

SEC. 508. TRANSVESTITES.

42 USC 12208.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

42 USC 12209.

(a) COVERAGE OF THE SENATE.—

(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:

"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap."

(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent

practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraph (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) APPROVAL.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS.

(a) IN GENERAL.—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

42 USC 12210.

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) HEALTH AND OTHER SERVICES.—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) DEFINITION OF ILLEGAL USE OF DRUGS.—

(1) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

42 USC 12211.

SEC. 511. DEFINITIONS.

(a) HOMOSEXUALITY AND BISEXUALITY.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) CERTAIN CONDITIONS.—Under this Act, the term "disability" shall not include—

- (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) compulsive gambling, kleptomania, or pyromania; or
- (3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) DEFINITION OF HANDICAPPED INDIVIDUAL.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) For purposes of title V, the term 'individual with handicaps' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

"(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

"(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

"(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

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except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(b) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22)(A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

"(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law."

(c) CONFORMING AMENDMENTS.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

42 USC 12212.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials,

and arbitration, is encouraged to resolve disputes arising under this Act.

42 USC 12213.

SEC. 514. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

Approved July 26, 1990.

LEGISLATIVE HISTORY—S. 933 (H.R. 2273):

HOUSE REPORTS: No. 101-485, Pt. 1 (Comm. on Public Works and Transportation), Pt. 2 (Comm. on Education and Labor), Pt. 3 (Comm. on the Judiciary), and Pt. 4 (Comm. on Energy and Commerce) all accompanying H.R. 2273; and No. 101-558 and No. 101-569 both from (Comm. of Conference).

SENATE REPORTS: No. 101-116 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD:

Vol. 135 (1989): Sept. 7, considered and passed Senate.

Vol. 136 (1990): May 17, 22, H.R. 2273 considered and passed House; S. 933 passed in lieu.

July 11, Senate recommitted conference report.

July 12, House agreed to conference report.

July 13, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):
July 26, Presidential remarks and statement.

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NATIONAL LABOR RELATIONS ACT

Employer's Bargaining Obligation Clarified by Recent Court Decisions

An employer does not violate federal labor law by insisting on control over wage increases, provided that there is no additional evidence of bad faith bargaining. Two courts of appeal recently clarified the scope of the bargaining obligation in this crucial area, increasing employers' leverage at the bargaining table.

In *Colorado-Ute Electric Association v. NLRB* (July 22, 1991), the United States Court of Appeals for the Tenth Circuit reversed the NLRB in holding that an employer may implement a merit-based wage increase plan when a bargaining impasse is reached. The Union opened negotiations with a proposal for a 9% across-the-board wage increase for all unit employees. The Employer countered with a proposal to phase out the existing structure of multiple progression levels within each job category and replace it with a system under which each job category would receive a single wage rate. Under the Employer's proposal,

individual employees within each category would be eligible for merit increases at the discretion of the Company.

No agreement was reached at the first meeting, nor at any of the subsequent 22 sessions which took place over the next eight months. Although *Colorado-Ute* continued to insist on merit increases while the Union pressed for an across-the-board increase, considerable give and take did occur. Among other things, the Employer eventually agreed to submit the proposed merit increases to review by upper-level management, which responded to the Union's concern that granting complete control over wage increases to supervisors would create a favoritism problem.

Ultimately, neither side would move further. The Employer notified the Union that it believed an impasse had been reached and it intended to implement its final offer. The Union struck; the Employer implemented the merit increase program as proposed.

The NLRB held that *Colorado-Ute* had violated Section 8(a)(5) of the National Labor Relations Act because it had never bargained over the "specific terms" of the merit increase program — that is, the actual timing and amount of

the individual employees' increases. According to the NLRB, the Employer's insistence on retaining control amounted to a request that the Union waive its statutory right to bargain over the timing and amount of wage increases.

The Tenth Circuit, however, disagreed and held instead that the bargaining history of the case demonstrated that the Union's rights had been vindicated by hard, vigorous and constructive bargaining over the merit wage proposal. In the Court's view, the law did not require bargaining over the timing and amount of rate increases for individual employees. Rather, bargaining over a general proposal to retain discretion over merit wages satisfied the employer's bargaining obligation. Subject to the obligation to bargain in good faith — which was met here, the court emphasized — an employer is free to implement its own proposals at impasse.

The United States Court of Appeals for the District of Columbia reached a similar result in *Cincinnati Newspaper Guild, Local 9 v. NLRB* (July 12, 1991). Again, the issue was whether the Employer had violated its good faith bargaining obligation by insisting upon unilateral control over wage increases. The NLRB maintained that the Employer's proposal amounted to a *per se* refusal to bargain. The Court held that the NLRB's position was inconsistent with the general rule that "the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." The Court also found that there was insufficient evidence to support the NLRB's charge that the Employer had insisted on unilateral control over all aspects of wages,

including wage reductions and pay rates for new hires.

Both decisions indicate that, in itself, an employer's insistence upon a particular bargaining position is rarely, if ever, a violation of the National Labor Relations Act (NLRA). There must be additional evidence of bad faith before the employer's conduct rises to an unfair labor practice. For example, bad faith has been found where an employer unilaterally changed the work schedule during negotiations; made misrepresentations and withheld information during bargaining; offered a benefits plan that openly discriminated against union members; discouraged the union from accepting the employer's offer; or maintained a "sham" insistence on a particular proposal. However, in the absence of bad faith, an employer is free to propose to retain discretion over wage increases and to remain steadfast on that issue. Of course, the employer is still required to deal with the union as the bargaining representative. ■

Employees Can Have Union Assistance When Submitting To Drug Tests

Unionized employers should be aware that an employee may be entitled to assistance from his or her union if asked by the employer to submit to a drug test, at least if failure of the test could lead to disciplinary action.

In 1975, the United States Supreme Court, in its *Weingarten and Garment Workers* decisions, held that an employee is entitled to insist upon

union representation at an employer's investigatory interview. In particular, the Court held that union assistance with an investigation that could result in disciplinary action against the employee constitutes "protected concerted activity" within the meaning of the National Labor Relations Act, and that any action by an employer to discipline or discharge an employee for refusing to participate in the employer's investigation without union representation is a violation of Section 8(a)(1) of the Act.

The NLRB recently applied this logic to the drug testing area. *Safeway Stores, Inc.* (July 31, 1991) involved an inquiry into an employee's record of absenteeism. As part of that inquiry the employee was asked to submit to a drug test. When he refused to do so without union assistance, he was suspended for refusing to cooperate with the employer's investigation. The NLRB ruled that this suspension violated the employee's *Weingarten* rights and ordered that the employer offer to reinstate the employee.

The NLRB emphasized that its decision was based on the fact that the drug test in question was part of a larger disciplinary investigation by Safeway Stores. It did not decide whether an employee is entitled to union representation any time he or she is required by the employer to be tested for drugs. However, the Supreme Court's *Weingarten* decision suggests that union representation during an employer's investigation must be permitted whenever an employee reasonably expects that disciplinary action may result. Since most employers that conduct drug tests of current employees at least leave open the possibility that evi-

dence of drug use may result in disciplinary action, unionized employers should not as a general rule refuse an employee's request for union assistance with any drug test. ■

Appeals Courts Amplify Successorship Rules

A sharply divided United States Court of Appeals for the Seventh Circuit recently held that an employer that illegally avoided its obligation to bargain as a successor employer must reinstate all the terms of employment, including the collective bargaining agreement, in effect under the predecessor employer. *U.S. Marine Corporation v. NLRB*, (September 25, 1991).

The case arose from events surrounding the 1984 purchase of Chrysler Marine Corporation by U.S. Marine. During the purchase negotiations, U.S. Marine repeatedly stated that it planned to hire some of the Chrysler employees but that it would not recognize the union which had represented them. Upon completion of the sale, Chrysler laid off its entire work force and U.S. Marine began interviewing potential employees. U.S. Marine indicated that it would need 396 workers on the job by June of 1984. By January, 261 workers had been hired, 223 of whom had been employed by Chrysler. Thirty-four former Chrysler employees were not hired.

U.S. Marine rejected union requests for discussions of grievances and lists of employees. U.S. Marine then raised the estimate of workers needed by June to 460. The Union filed an unfair labor practice charge claiming that U.S. Marine had unlawfully refused to bargain. U.S. Marine

claimed that under the "successor employer" doctrine, it had no duty to recognize the union because less than half of the 460 expected employees were Chrysler workers.

The Seventh Circuit agreed that U.S. Marine's refusal to recognize the union constituted an unfair labor practice and that its refusal to hire the thirty-four Chrysler employees was an attempt to evade its obligation as a successor employer. The Court recognized that a successor employer is not obligated to observe the substantive terms of a collective bargaining agreement in effect between a union and its predecessor and is usually "free to set the initial terms on which it will hire the employees of a predecessor." The Court noted, however, the rule articulated by the United States Supreme Court that in "instances in which it is perfectly clear that the new employer will retain all of the employees in the unit . . . it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms." The Court of Appeals interpreted the rule to require that "[w]here all or substantially all of the predecessor's employees would have been retained but for the successor's unlawful discrimination, the successor loses the right to set initial terms and conditions of employment and violates the Act if it unilaterally alters the predecessor's terms without first consulting the union. In such cases, the Board may impose a status quo remedy to restore the situation to what it would have been absent the successor's unfair labor practices."

A lengthy dissent in the case took issue with the "remedy" imposed, contending that it in fact amounted to a penalty that the Board has no

authority to issue. The arguments raised by the dissent appear to have merit and this case will have to be watched for further developments.

In another decision, the United States Court of Appeals for the Third Circuit distinguished an employer's labor obligations following a stock transfer transaction from those that attach to successorship status.

The Court upheld the NLRB's determination that an employer that transferred its stock to a larger corporation but remained intact as a separate entity is not relieved of its obligations under a collective bargaining agreement. NLRB doctrine governing successor corporations was held not to apply because the original employer never went out of business but merely became a subsidiary of a larger corporation.

Harmony Mining Corporation operates a coal mine in Portage, Pennsylvania. The United Mine Workers of America was the collective bargaining representative of its employees when production at the mine was suspended and the employees were laid off. During the layoff period, the ownership of Harmony changed when Harmony's major creditor acquired all of Harmony's assets and shares of stock, which the creditor then assigned to its parent company. Harmony continued to exist after the stock transfer, but its financial operations were consolidated with its creditor and the parent company. When the mine resumed operations, Harmony, under its new owner, failed to recall laid-off employees in accordance with the seniority provision of the collective bargaining agreement.

The Court considered evidence of the relationship between the mine operator, its corporate owner, and the corporate owner's parent and upheld the finding of the NLRB that they comprised a single employer for purposes of determining whether the corporate owner was bound by the terms of the collective bargaining agreement executed by the mine operator prior to the stock transfer.

The Court distinguished a stock transfer and a successor relationship. As the Court stated, "the concept of successorship. . . . contemplates the substitution of one employer for another, where the predecessor employer either terminates its existence, or otherwise ceases to have any relationship to the on-going operations of the successor employer." Even if successorship analysis may be appropriate in some stock transfer situations, this was not such a case, according to the Court, "because the enterprise did not change substantially as a result of the transfer of stock . . . [or] result in a substantially different enterprise." The NLRB did not err, therefore, in refusing to apply the successorship doctrine and in finding that Harmony and its corporate parents were still obligated to bargain with the union and refrain from unilaterally changing the conditions of employment.

The Court also rejected the employer's argument that a five-year hiatus in mine operations caused an "essential change" in the company's operations, thus relieving it of its labor obligations. The Court upheld the NLRB's determination that where the identity of the employer remains the same, the length of a hiatus in operations does not rebut the presumption of a union's majority status among unit employees. ■

NLRB Rules That Company's Reference To Need To Survive in Competitive Market Insufficient To Trigger Duty To Disclose Financial Information

The National Labor Relations Board recently ruled that a company's references at the bargaining table to its need to keep labor costs low to ensure survival in a competitive market were insufficient to trigger a duty to disclose financial information to the union. *Concrete Pipe & Prods. Corp.* (Sept. 30, 1991).

In that case, the United Steelworkers of America union local filed a complaint against Concrete Pipe and Products Corp., alleging that in the course of collective bargaining negotiations, the Company asserted that it could neither afford the economic package provided for in the expiring collective bargaining agreement nor provide for any increase, and that the Company refused the Union's request to examine the Company's financial records.

As a general matter, a company that responds to a union's wage demands with a claim of financial inability to pay places in issue its financial condition and thus entitles the union to examine the company's financial records. In this particular case, the Company's president made repeated references to the intense competition that the Company faced in a declining market for its products and further remarked on the low labor costs of its nonunion competitors. The president also stated that "[t]o survive in today's market we have got to be

able to be competitive, and to be competitive, wage rates and benefits must be lowered."

Such comments, the Board concluded, did not raise a claim of present inability to pay and thus did not trigger a duty on the Company's part to furnish the economic information requested by the Union. In reaching this conclusion, the Board noted that the employer did not claim that it was losing money or that its business was at imminent risk of closing. Accordingly, the Board understood the Company's statements to be no more than assertions that it was not competitive and that it desired to reduce its labor costs.

It is important to note that in *Concrete Pipe & Prods. Corp.*, the Board emphasized that the Company did not place at issue its present or immediate financial condition by vague and general statements regarding its ability to survive in a competitive market. Accordingly, employers should be aware that statements similar to those made in *Concrete Pipe & Prods. Corp.*, without more, will not trigger a duty to disclose financial information but that similar comments could trigger such a duty in a different context. ■

EMPLOYEE BENEFITS

Effects Of Insurance Company Problems On Pension And Savings Plans

Many sponsors and fiduciaries of pension plans are reviewing their

arrangements with insurance companies in light of the insolvency of Executive Life Insurance Company, the conservatorship of Mutual Benefit Life Insurance Company and the reevaluation of the financial ratings of a number of other insurance companies.

On June 12, 1991, the Department of Labor brought suit against the fiduciaries of two pension plans, charging them with violating their fiduciary duties under the Employee Retirement Income Security Act ("ERISA") in connection with annuities purchased from Executive Life Insurance Company. The first case was filed in the U. S. District Court for the Northern District of California against Pacific Lumber Company. In 1986, when Pacific Lumber was taken over by Maxxam, the company's pension plan was terminated. As part of that termination procedure, Maxxam hired an independent insurance consultant who was to evaluate the applications of six insurance companies that had bid to provide annuities to plan participants. The insurance company chosen was Executive Life Insurance Company, which is now insolvent and has been placed in conservatorship by the State of California. At the time the annuities were purchased, Executive Life was rated as having an "average" ability to pay. This was the lowest rating of the six companies bidding. Maxxam retained \$62 million as surplus assets of the pension plan after the purchase of the annuities and the termination of the plan. The Department alleges that the purchase of annuities from Executive Life Insurance Company was a violation of Pacific Lumber's fiduciary duty under ERISA.

In the second case, filed in the U.S. District Court for the Eastern District

of Wisconsin, the same failed insurance company, Executive Life, was a 10% shareholder of MagneTek, which purchased annuities from Executive Life for two of its pension plans. MagneTek officials had been informed of Executive Life's unstable condition prior to the purchase. The Department of Labor asserts that MagneTek and Executive Life breached their fiduciary duties by purchasing the annuities for the pension plans from Executive Life.

Representatives of the Department of Labor have announced that it may file additional lawsuits and will continue to investigate other fiduciaries who purchased annuities from Executive Life or other failed or weakened insurance companies for their pension plans.

The purchase of guaranteed investment contracts ("GIC's") from insurance companies by fiduciaries of savings (including 401(k)) plans is another area that may come under scrutiny for compliance with ERISA fiduciary standards.

The problems of failed and weakened insurance companies have raised a number of unresolved questions. Must a pension plan fiduciary pay the highest price bid when purchasing annuities for plan participants and retirees? Is the plan fiduciary limited to accepting bids only from companies with the highest generally accepted financial rating? In the event of a failure of the insurance company does the employer sponsoring the plan have a fiduciary duty to make the plan and its participants whole? If so, how can it do this without violating Department of Labor restrictions on dealings between a plan and the sponsoring

employer and Internal Revenue Service restrictions on permitted contributions to plans? What, if any, steps should a savings (including 401(k)) plan take to ensure that funds will be available for plan loans and distributions despite the inability of the insurance company to provide the funds promised under the contract? Plans are dealing with these questions on a case-by-case basis, until the IRS or Department of Labor provide clearer guidance than is now available. ■

IMMIGRATION

Recent INS Final Regulations Change I-9 Obligations

Recent INS final regulations took effect on November 21, 1991 which change the rules governing employer sanctions and employment authorization. Highlights include:

Revised I-9 Forms: The regulations anticipate publication of a revised I-9 form. Among other changes, the revised I-9 will call for the identification numbers and expiration dates of *all* documents used to establish the employee's identity and work authorization. Until revised I-9s are obtained, employers are required to record this information on the presently available I-9 forms completed on or after November 21, 1991.

Definition of "knowing": The regulations expand the definition of "knowing" to include constructive knowledge. The effect is to increase the number of employers who are potentially subject to fines for

"knowingly" employing aliens who lack work authorization. Under the regulations, an employer is held accountable not only for what the employer actually knows, but also for "knowledge which may be fairly inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition." Constructive knowledge may be found in an employer's failure to properly complete an I-9, an employer's having "information available to it that would indicate that the alien is not authorized to work", an employer's "reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on [the employer's] behalf", and in various other circumstances.

Prohibited Inferences from Foreign Appearance or Accent: The regulations forbid employers to infer that an employee lacks work authorization based on the employee's foreign appearance or accent. Employers also are forbidden to require an employee to present more documentation than the regulations require in order to establish identity and work authorization.

Reverification of Work Authorization: Under the regulations, an employer is no longer required to complete a second I-9 when retaining an employee whose temporary work authorization has been extended or replaced by a new grant of work authorization. The employer must determine, no later than the last day of the employee's work authorization, whether the employee is authorized to work beyond the original period. If so, the employer may amend the

original I-9 by recording the identification number and expiration date of the new work authorization document and by signing and dating the amendment.

Extensions of Nonimmigrant Status: Temporary work authorization is inherent in certain nonimmigrant visa statuses. H-1B professionals, L-1 intracompany transferees, and E-1 treaty traders (among others) have such temporary work authorization. Under the new regulations, employers may retain these employees for up to 240 days from the expiration date of their employment authorizations where the employees have made proper, timely applications to extend their stays but the INS has not adjudicated the applications. Employment authorization terminates, according to the final rule, upon notification to the employer that INS has denied the employee's application to extend stay.

INS Subpoena Power: The regulations expressly state that INS has authority to issue subpoenas for I-9s and "any other relevant documents" in employer sanctions investigations. W-4 forms, FICA reports, unemployment compensation records, and labor certifications are examples of "relevant documents" which INS has previously obtained pursuant to subpoenas. The rule provides for no direct penalties for employers who fail to comply or to comply fully with an INS subpoena. In order to enforce its subpoena, INS must sue in federal court, thus providing the employer an opportunity to contest the subpoena's legality or scope.

The revised I-9s and the new INS "Handbook for Employers", Publication No. M-274, are available from local offices of the Immigration and

Naturalization Service. The publications are also being distributed automatically in general mailings by the Internal Revenue Service. The forms may be obtained from the Government Printing Office in Washington, D.C. (tel. 202 783-3238) or in lesser quantities by writing to: Kevin P. Morrissey, Senior Special Agent, Immigration & Naturalization Service, United States Department of Justice, John F. Kennedy Federal Building, Government Center, Boston, MA 02203.

The new regulations underscore the importance of employers maintaining docketing systems to keep track of upcoming expiration dates of employees' temporary work authorizations. The original I-9, if properly completed, records the expiration date of the employee's temporary work authorization. Where the employee's work authorization expires, INS will impute constructive knowledge to the employer that the employee is being employed without work authorization. The employer may then be liable for paperwork fines based on the failure to reverify the employee's I-9 and for substantive fines based on knowingly employing an alien who lacks work authorization. ■

DISCRIMINATION

Employer's Failure To Post Notice Extends Time For Filing Discrimination Claim

In a case of first impression, the Massachusetts Commission Against Discrimination has ruled that an employee could file a complaint for discrimination even though the statu-

tory six-month period for filing had expired where the employer had failed to post a statutorily-required notice of employee rights in the workplace. *Weaver v. Health & Educational Services, Inc.*, (Aug. 26, 1991).

The Massachusetts Fair Employment Practices Law requires employers to post conspicuously in the workplace a notice prepared or approved by the MCAD, which sets forth excerpts from the Fair Employment Practices Law and additional information necessary to explain the law. The Commission held that the six-month filing period for discrimination complaints is "tolled," or suspended temporarily, by an employer's failure to conspicuously post a notice of employee rights under the Fair Employment Practices Law, and that in such a case the six-month period will run when an employee either retains an attorney or acquires actual knowledge of his rights. In reaching this result, the Commission reasoned that "the Legislature imposed this requirement on employers to insure that protected employees would be fully informed of their rights" and that "this end would not be realized if employers were free to breach the posting requirement without penalty."

Although it remains to be seen whether Massachusetts courts will accept the MCAD's interpretation of the posting requirements of the Fair Employment Practices Law, the Commission's decision is consistent with those of a number of federal courts, including the United States Court of Appeals for the First Circuit, in construing analogous statutory provisions in federal antidiscrimination laws. Accordingly, employers should be sure to display prominently in their workplace all statutorily required notices of employee rights. ■

Age Discrimination Cases Offer Guidance About How To Treat Older Workers

Three recent age discrimination cases from around the country provide valuable guidance about the types of personnel actions employers may take without discriminating against older workers.

In *Fallis v. Kerr-McGee Corporation*, (September 13, 1991), the United States Court of Appeals for the Tenth Circuit found that an employer did not commit age discrimination by holding an older, more experienced employee to a higher standard than younger, less experienced workers.

In March 1986, at the age of fifty-three, the plaintiff, Fallis, was terminated from his position at Kerr-McGee as a senior exploration geologist. According to the Company, Fallis was let go, along with other U.S.-based geologists who received low performance ratings, as part of a reduction in force caused by deteriorating economic conditions.

Under Kerr-McGee's evaluation system, supervisors rated an employee's performance on three grounds:

- (1) what work he did, i.e., the quality and quantity of his work and his effectiveness in meeting job-related objectives;
- (2) how he worked, i.e., his demonstrated job knowledge and his effectiveness in working with normal supervision, planning and organizing job assignments, working with others, and communicating; and
- (3) his skills, i.e., analytical ability, judgment, initiative, dependability, and ability to meet deadlines.

These criteria were utilized to rank an employee's performance on a scale of 1 to 5, with 1 the highest and 5 the lowest.

Fallis' performance in 1985 was initially rated as a "4." However, his rating was then lowered to a "5," when, after comparing his performance to other geologists on a bell curve, the Company discovered that he was the lowest ranked geologist. As part of the reduction in force, the Company terminated geologists with ratings of "4" and "5."

Fallis argued that Kerr-McGee's evaluation system was intrinsically biased against older workers because first-year employees were not rated at all and "more was expected of him than lower-level, presumably younger, geologists." Fallis evidently believed that he should have been evaluated at a lesser standard and allowed to compete for a lower-level geologist position.

According to the Court, Fallis' "specific arguments merely indicate that age may have entered indirectly into the decision to terminate him, but [he] fails to establish that the decision was not controlled by other nondiscriminatory factors The pivotal issue . . . is whether it was a sham to hold plaintiff to such higher expectations." In considering this issue, the Court concluded that the evaluation system under which Fallis was terminated was not a pretext for age discrimination. It reasoned that Fallis was treated the same as similarly-situated geologists and that "the failure to take into account the higher standard would only be a problem if [Fallis] had some right to compete with other Kerr-McGee geologists for the lower-level positions."

Similarly, in another case, where a fifty-eight year old college graduate was denied a position at a bank as a customer service representative because he had too much education, the United States Court of Appeals for the Sixth Circuit concluded that there was no age discrimination. *Stein v. National City Bank* (September 6, 1991).

In 1982, National City Bank instituted a policy of not hiring college graduates for "non-exempt" positions. This policy was developed in response to information that the bank obtained through exit interviews, suggesting that college graduates quickly became bored in non-exempt jobs and tended to seek more challenging positions shortly after they were hired. Thus, the bank hoped to minimize the turnover of its clerical staff by not hiring college graduates for such positions.

The plaintiff, Stein, claimed that the bank's policy against hiring college graduates was a pretext for age discrimination because (1) the bank did not apply the policy uniformly and (2) the policy was unreasonable because it does not achieve its stated goals.

In reviewing the evidence, the Court noted that the fact that the bank employs some individuals with college degrees in non-exempt jobs is probative of pretext. However, the Court rejected Stein's argument because the record showed that although one individual with a college degree was hired for a non-exempt job, during the same period, almost two thousand applicants with college degrees were rejected. Four other individuals earned college degrees after they were hired.

With respect to Stein's second contention, the Court stated that "it is not the function of courts to judge the wisdom of particular business policies, but to ensure that such policies are made on a rational basis. A court will uphold a policy so long as the purpose or effect of an employer's act does not result in discrimination." Thus, although no evidence was introduced to show that the bank's assumptions about college graduates were true, the bank's policy was upheld merely because the bank articulated a reason for it. The Court seemed particularly persuaded by the fact that the policy had "objective and measurable criterion" as opposed to a "shifting standard" that the employer could change at will.

Finally, in *Bay v. Times Mirror Magazine*, the United States Court of Appeals for the Second Circuit held that an employer, who fired a highly paid executive to reduce its costs, did not commit age discrimination.

In 1975, Eugene Bay, the plaintiff in this case, accepted a position at Field & Stream Magazine. Over the years, he was promoted to Vice President and Publisher. In this capacity, Bay had substantial authority and independence. He was responsible for such matters as circulation, finance, personnel, salaries, marketing, and advertising.

In 1987, Times Mirror, which already owned several magazines, acquired Field & Stream and several other monthly publications. As a result of this acquisition, Times Mirror organized all of its magazines into two groups based on reader demographics, advertising and circulation size. Instead of having publishers, like

Bay, with substantial authority for individual magazines, functions were centralized and directed by two group publishers, who were assigned to the two clusters of magazines.

Because of this restructuring, Bay's responsibilities were diminished dramatically. He only retained real authority for Field & Stream's advertising. Moreover, for the first time, he had to report to a second-level executive.

After learning of these changes, Bay made no secret of his dissatisfaction with both the group publisher concept and the fact that he now had to report to another executive. Consequently, when it came time to select a group publisher for Field & Stream's group, Times Mirror chose a forty-one year old executive at an annual salary of \$107,000. It also fired Bay from his job as publisher of Field & Stream and replaced him with a thirty-five year old at a salary of \$85,000. At the time of his termination, Bay earned \$150,000.

Bay subsequently sued Times Mirror, alleging that its employment decisions "were part of a deliberate effort to replace older, highly compensated employees with younger, less costly employees." In rejecting Bay's argument, the Court stated that:

There is nothing in the ADEA that prohibits an employer from making employment decisions that relate an employee's salary to contemporaneous market conditions and the responsibilities entailed in particular positions and concluding that a particular employee's salary is too

high. To be sure, high salary and age may be related, but, so long as the employer's decisions view each employee individually on the merits, do not impose a general rule that has a disparate impact on older workers, and are based solely on financial considerations, its actions are not barred by the ADEA. ■

FAIR LABOR STANDARDS ACT

"On-Call" Time Held Not To Be Working Time

Under the Fair Labor Standards Act, employees are entitled to overtime pay for all time worked in excess of forty hours per workweek. In most instances, calculating overtime eligibility simply involves counting the number of hours, over forty, that a particular employee has worked. However, in the healthcare industry and other fields where employees are required to be "on call," determining working time is not always so straightforward.

In *Bright v. Houston Northwest Medical Center Survivor, Inc.* (July 2, 1991), a recent case decided by the United States Court of Appeals for the Fifth Circuit, a hospital repair technician sought overtime compensation for "on call" time, even though he was not actually called into work. In addition to working a standard forty hour workweek, the technician was required to wear a beeper throughout his off-duty hours and to be "on-call" to come to the hospital to make emergency repairs

on biomedical equipment.

During his "on-call" hours, the technician was not required to remain at the hospital. He was free to do as he pleased, provided that he followed three restrictions: (1) he must not be intoxicated or impaired to the extent that he could not repair medical equipment, if called, although total abstinence was not required; (2) he must always be reachable by the beeper; and (3) he must be able to reach the hospital within approximately twenty minutes of being called on the beeper. In fact, when he was "on-call," the technician engaged in many activities away from home, including shopping and going out to eat.

The Court in *Bright* held that the technician's "on-call" time was not working time. It reasoned that, unlike other cases where employees were confined to their employer's premises and subject to the employer's discipline, the technician was at liberty to "carry on his normal personal activities at his own home [and to] do normal shopping, eating at restaurants, and the like, as he chose," subject only to the restrictions outlined above. According to the Court, "the critical issue in cases of this kind . . . is whether the employee can use the [on-call] time effectively for his or her own purposes." If so, it should not be compensable as working time.

Although the *Bright* case, described above, involved the issue of whether "on-call" time was working time, where the technician was not actually called, the technician there was paid for a minimum of four hours each time he was called into work, even though he typically could make

the necessary repairs in less time. Similarly, under a Massachusetts reporting pay statute, if an employee reports to work at the employer's request, the employee must be paid for at least three hours of work, even if the employee actually performs less work. Although the employee must be paid only at the minimum wage, many employers compensate employees at their regular rate of pay. ■

PERSONNEL POLICY MANUALS

Federal District Court Rules That A Handbook Disclaimer Does Not Defeat Employee's Claim For Wrongful Discharge

A disclaimer in an employee handbook stating that the handbook was not intended to create a contract between the company and its employees was insufficient to defeat an employee's claim for wrongful discharge, ruled a Wyoming federal district court. *Arellano v. Amax Coal Co.* (September 26, 1991).

The plaintiff, Paul Arellano, had worked as a hopper operator at defendant Amax Coal Company's Eagle Butte mine. While at home, he suffered a seizure and subsequently was hospitalized for a short period of time. Arellano applied for and received short-term disability for one year, the maximum period available under the Company's policy. Throughout the year following his seizure, Arellano remained in touch with Company personnel and requested that he be allowed to return to work. The Company consistently

refused to permit Arellano to return to work in any capacity, explaining that because he remained under medical restrictions prohibiting him from operating heavy equipment, it had no position available for him. Accordingly, when Arellano's disability benefits expired at the end of one year, his employment was terminated under the Company's disability policy.

Arellano then filed suit, claiming that in terminating him, the Company breached the terms of its employee handbook because it fired him without following the specific discharge procedures outlined in the handbook. The handbook contained a disclaimer stating that it "is not meant to cover everything and is not intended to be a contract between the company and its employees." The Court rejected the Company's argument that it would be "manifestly unfair" to enforce the provisions of the handbook regarding specific discharge procedures, while refusing to enforce the handbook's disclaimer. In so doing, the Court reasoned that "[a]n employer cannot make representations to employees that their employment will be governed by certain terms, in order to procure work force loyalty, discourage unionization, or for whatever reason, yet surreptitiously reserve for itself the right to capriciously depart from those same terms." The Court also emphasized the inconspicuous nature of the disclaimer, which consisted of a single sentence appearing in regular-sized type on the fifth page of the handbook, in the middle of a letter from the general manager of operations welcoming new employees. The Court held that to be effective a disclaimer must be "made so conspicuous that the employee

reading it would know that the representations made in the handbook may be deviated from by the employer at any time."

There are no reported Massachusetts decisions addressing the precise issue presented in the *Arellano* case. The Massachusetts courts have held, however, that an employee handbook may form the basis of an employment contract. In determining when such a contract may be found to exist, the Massachusetts courts generally have looked to the totality of the circumstances. It is possible, however, that a Massachusetts court would follow the result reached by the *Arellano* court. In view of that decision, therefore, an employer should not rely on the existence of a disclaimer to relieve itself from adhering to the specific disciplinary and discharge procedures outlined in its employee manual. Employers also should review their handbooks to be sure the disclaimers are conspicuous. ■

IN BRIEF

Final Regulations Issued By EEOC On Access To Agency Records

On June 28, the Equal Employment Opportunity Commission (EEOC) issued a final rule about protection procedures for confidential commercial information that is collected during agency investigations. The EEOC's rule dictates also that information collected under the Americans with Disabilities Act (ADA) is subject to the same non-disclosure rules as information collected under

Title VII of the Civil Rights Act of 1964.

The rule provides that confidential commercial information is not to be disclosed to third parties except under established procedures. This applies to information provided to the EEOC by employers, including corporations, state government, or foreign governments. When a Freedom of Information Act (FOIA) request is received by the EEOC, it will provide the submitter of the information with a notice of the submitted FOIA request whenever:

- The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;
- The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or
- The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information.

Following the EEOC notice, the submitter will be given a minimum of five working days to provide the Commission with a detailed statement as to why the information should not be disclosed and its reasons.

If the EEOC still decides to disclose the information, it will provide the

submitter with a written explanation within a minimum of three working days before the anticipated disclosure date, thus enabling the submitter a chance to seek a court order against disclosure of the information.

The notice provisions in the rule do not apply if the EEOC determines that the information should not be disclosed; the information is published or otherwise officially available to the public; or disclosure is required by some law other than FOIA.

Human Rights Law Causes Employer Concern

A New York City human rights law that recently took effect on September 16 is causing compliance concerns for many employers, and not only in "the big apple."

The new law, which goes beyond employee protections afforded in both state and federal law, is meant to restore civil rights protections that seem to have eroded at the federal level in recent years.

The effects of this new law are varied and (1) require that once disparate impact has been shown, employers prove as a defense that this policy or practice has a significant relationship to a vital business objective, (2) permit private civil actions in a court of law by an aggrieved person for damages, punitive damages, or injunctive relief, (3) permit these plaintiffs in civil actions to recover court costs and attorneys' fees, and (4) expand the area of employer liability for the actions of its employees, especially employees who exercise managerial or supervisory re-

sponsibility. An example would be in a situation where the employer "knew or should have known" of a discriminatory action but failed to act against it when it was known by the employee in the managerial or supervisory position. Under the new law, the employer is deemed to know of the conduct if it is known by an employee who exercises managerial or supervisory responsibility, even if this employee is only a co-worker not formally designated as a supervisor.

This also applies to conduct by independent contractors, if the conduct is committed in the course of employment and with the "knowledge and acquiescence" of the employer.

State Agencies Join Forces With Feds To Enforce Child Labor Laws

Massachusetts and New Hampshire have signed agreements with the United States Department of Labor's Wage and Hour Division to coordinate their enforcement of state and federal child labor laws. The agreements call for the agencies to exchange information about possible violations. The federal and state authorities also will continue to work together to increase awareness of the child labor laws among educators and guidance counselors. For example, the agencies have published a set of pamphlets that explain the fit between federal and state requirements. According to the Labor Department, the New England states have always acted aggressively to protect young workers. The new agreements simply formalize an already strong working relationship.

Warn Threshold Question Addressed

In 1988, Congress enacted the Worker Adjustment and Retraining Act (WARN), which generally requires businesses with 100 or more employees to give 60 days advance written notice of plant closings and "mass layoffs". A recent court decision serves as a reminder that it will not always be obvious, however, whether an employer exceeds the 100 employee threshold. The United States Court of Appeals for the Sixth Circuit indicated, in the case of *Damron v. Rob Fork Mining Corp.* (August 6, 1991), that former workers with a "reasonable expectation of recall" in the near future must be included as employees for the purpose of calculating the WARN threshold, even if they are not currently working for the employer. In the *Damron* case the Court held that WARN did not apply, because it found that employees who had been laid off for 8 to 10 years and had never worked for the employer again could not have any reasonable expectation of recall or further employment. Businesses should remember that, in other circumstances, they may have to count former employees toward the WARN threshold.

**Best Wishes
for the
Holidays
and
a prosperous
New Year**



from the
**Palmer & Dodge
Labor & Employment
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The content of this letter is general in nature and is not intended as legal advice related to individual situations. Counsel should be consulted for specific legal planning and advice.

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PALMER & DODGE

To: Our Clients and Other Friends

Re: The Federal Civil Rights Act of 1991
A Statutory Expansion of Employers' Potential Liability for Discrimination

Date: November 21, 1991

Now that political compromise has transcended debate about whether and to what extent anti-discrimination laws may foster arbitrary quotas, Congress has passed and President Bush has signed into law the Civil Rights Act of 1991. This new Act changes the Supreme Court's interpretation of existing federal laws and adds new provisions to these laws, all in an attempt to prevent a broader range of discriminatory conduct and to impose greater civil penalties on employers who unlawfully discriminate in the workplace.

The Act will make it significantly easier for employees or applicants to bring lawsuits alleging that they were the victims of unlawful discrimination, and make it harder for employers to defend themselves against such claims. It will also expand the scope of employer conduct that is subject to federal anti-discrimination law, and will increase employers' potential liability for discriminatory acts or practices.

Easier To Prove Discrimination

Many people who are aggrieved by an adverse employment decision, such as a decision to fire or not to hire or promote that person, and who believe that the decision resulted from intentional discrimination or discriminatory practices will be able to obtain relief more easily under the new Act than under current law.

First, Congress has decided that employment decisions that are based in part on legitimate considerations and in part on unlawful discrimination — so called "mixed-motive" decisions — shall always be unlawful. Prior to the new Act, under cases culminating in the Supreme Court's 1989 *Price Waterhouse v. Hopkins* decision, an employer was not held liable under federal law if it could show that it would have made the same decision absent the discrimination.

The new Act allows a plaintiff to prove that he or she was subjected to an unlawful employment practice by demonstrating that intentional discrimination on the basis of race, color, religion, sex, or national origin was at least one of the factors that motivated an adverse employment decision. To do so a plaintiff generally must produce direct evidence of discrimination, such as statements by a decision-making manager or supervisor that demonstrate discriminatory animus. Evidence that the employer would have made the same decision because of legitimate business considerations even in the absence of any discriminatory taint may limit the employer's financial liability, but will no longer excuse the influence of deliberate discrimination upon employment decisions. This change will make it easier for plaintiffs to reach a jury with a claim of intentional discrimination, and more difficult for employers to resolve such claims at an earlier stage of litigation.

Second, Congress has made it easier for plaintiffs to prove that a facially neutral employment criterion, such as objective testing or educational requirements, has an unlawfully discriminatory impact. In its 1989 *Wards Cove Packing Co. v. Atonio* opinion the Supreme Court decided that plaintiffs bear the entire burden of proving that employment practices with a discriminatory impact were unlawful, including the burden of showing that such practices were not undertaken out of some business necessity.

The new Act provides that plaintiffs need only demonstrate that a practice has a discriminatory impact, at which point the burden will shift to the employer to prove that the practice is reasonably related to the job in question and is consistent with business necessity. This change, intended by Congress to return to the burdens of proof imposed prior to the Supreme Court's *Wards Cove* decision, will make it easier for plaintiffs to challenge neutral employment criteria that have a discriminatory impact.

Broader Remedies

Victims of intentional employment discrimination on the basis of sex, religion, or national origin will be entitled to more monetary relief and to jury trials under the new Act. Existing laws — Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 (the "ADA") — only provide so-called "equitable remedies" for such claimants. This means that successful plaintiffs are only entitled to court orders that they be hired, or reinstated, and be given the "back pay" that they would have received if they had been employed all along. It also means that they are not entitled to

have their discrimination claims decided by a jury.

In contrast, people who are intentionally discriminated against on the basis of race or ethnicity are not currently limited to the equitable remedies available under Title VII. A Civil War era federal statute, known as Section 1981, also permits such plaintiffs to recover so-called "compensatory" damages, to compensate for direct and indirect economic losses as well as emotional distress caused by intentional discrimination. They may also recover purely punitive damages to punish employers for more egregious violations of these anti-discrimination laws. Plaintiffs alleging intentional age discrimination are not entitled to compensatory damages, but may collect punitive damages for willful violations of the Age Discrimination in Employment Act. Age or race discrimination plaintiffs are also entitled to a trial by jury to the extent that they may claim compensatory or punitive damages.

Congress has tried to harmonize these different statutes by amending Title VII and the ADA to provide compensatory and punitive damages to victims of intentional discrimination and by allowing claims for such damages to be tried to a jury. Thus plaintiffs claiming intentional discrimination on the basis of sex, national origin, religion, or disability will have access to compensatory and punitive damages and to jury trials for the first time under federal law.

Under the Act, all factual issues raised by such claims of intentional employment discrimination may be heard by a jury if the claim goes to trial. However, the sum of recoverable compensatory and punitive damages is capped at \$300,000 for

employers with more than 500 employees, and at lower dollar levels for those with fewer employees. Furthermore, plaintiffs who succeed with a "mixed-motive" claim (described above) will not be able to collect the broader compensatory and punitive damages if the defendant employer can establish that it would have made the same employment decision even absent any intentional discrimination.

The new Act also gives courts the discretion to allow successful discrimination plaintiffs to recover any fees paid to their expert witnesses. This provision will tend to increase challenges to facially neutral employment practices, since such claims often turn on expert testimony.

Wider Scope of Prohibited Activity

The new Act also expands the scope of federal prohibitions against employment discrimination by applying them to a broader range of activity.

United States citizens working in a foreign country for an American company, or for a foreign corporation that is controlled by an American company, are given new protections by a provision of the new Act which reverses the Supreme Court's 1991 *E.E.O.C. v. Arabian American Oil Co. (Aramco)* decision. The primary federal anti-discrimination statute and the recent federal law requiring reasonable accommodations for disabled employees have both been expanded to apply to such employment outside the territorial limits of the United States. This change does not, however, require employers to take any action that would violate the law of a foreign country.

In addition, the new Act increases the reach of Section 1981. This statute was narrowly interpreted by the Supreme Court, in its 1989 *Patterson v. McLean Credit Union* decision, as prohibiting racial discrimination only in the making or enforcement of contracts. Congress has now stated that this law also prohibits racial discrimination in all aspects of the performance of a contract or the enjoyment of all benefits from the contractual relationship. This change may have some application in the employment context, for example by permitting greater damages than may be available under other anti-discrimination laws or by providing a longer limitations period during which claims of racial discrimination may be brought, but will apply more broadly to all contracts and contractual relationships, whether or not of an employment nature.

Changes in Limitations Periods

Congress chose to negate two recent Supreme Court decisions regarding the statute of limitations for bringing certain discrimination claims.

On the one hand, Congress effectively reversed the Supreme Court's 1989 *Lorance v. AT&T Technologies* decision and expanded the opportunity for employees to challenge a seniority system on the ground that it is unlawfully discriminatory. Such claims may now be brought not only when the system is first adopted but also when an employee is adversely affected by application of the system or when a new employee becomes subject to the system.

On the other hand, Congress has also effectively reversed the Supreme Court's 1989 *Martin v. Wilks* decision and limited the opportunity similarly to challenge an employment practice that is implemented pursuant to a court order or consent decree. Such claims by new employees or employees who are only aggrieved long after the practice was first implemented may now be barred by the statute of limitations if the practice already was or reasonably could have been challenged soon after the practice was first implemented.

*Provisions Against "Race Norming"
of Tests*

Finally, the new Act prohibits employers from altering the results of objective employment tests on the basis of race, color, religion, sex, or national origin of the applicant or candidate for employment or promotion. For example, the Act prohibits employers from discriminatorily

adjusting individual scores on such a basis, or from establishing different minimum scores for different groups.

However, the Act does not require that any employment decision be made completely objectively in accordance with available test results. To the contrary, the Act explicitly permits employers to implement otherwise lawful affirmative action efforts or programs that do not utilize discriminatory testing procedures.

Complying With the New Law

In order to avoid unpleasant and costly confrontations with federal anti-discrimination law, employers should work with competent counsel and human resources professionals to make sure that they have sound anti-discrimination policies in place, and that supervisors and managers are consistently following and implementing those policies.

Prepared by:
Kenneth W. Salinger, Esq.
Member of the
Labor and Employment Law Group

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NOV 25 1991

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November 21, 1991

Mr. Don Johnson
Town Manager
P.O. Box 236
Acton, MA 01720

Dear Don:

I enclose our bill for services through October 31,
1991.

If you have any questions, please let me know.

Very truly yours,

Acheson H. Callaghan

W 93026
date: 12/31/91

AHC/dcb

Enclosure

cc: BOS
LELA SORENSEN
GARRY RHODES
BOB CRAIG

CONFIDENTIAL

COVER & FIRST 2 SUMMARY PAGES.

Town of Acton
P.O. Box 236
Acton, MA 01720

PALMER & DODGE

One Beacon Street
Boston, Massachusetts 02108-3190
Telephone: (617) 573-0100
FEDERAL ID NUMBER 04-2170788

November 21, 1991

For professional services through October 31, 1991, as follows:

General

Review and preparation of motions, advice on various issues and attendance at Special Town Meeting;	\$ 1,750.00
Research and advice concerning appeal and other alternative to limit MBTA train whistles; and drafting of legislation related thereto;	1,750.00
Research and advice on various zoning issues, including Mobile Oil site plan and sign decisions;	850.00
Review of billing records for W.R. Grace cost recovery action; and	500.00
Advice and services on miscellaneous general matters, including waiver for recycling program and Digital sidewalk.	600.00
Miscellaneous services on <u>Perkins</u> litigation, including preparation of amended answer with counterclaim;	350.00
Preparation of form interrogatories, scheduling of cases, and miscellaneous other services in connection with ATB cases; attendance at hearings on motions to dismiss;	6,500.00
Preparation of response to counterclaim in Porrizzo lien litigation;	550.00
Negotiations with firefighters, preparation of brief regarding vacations and miscellaneous other services related to collective bargaining and labor relations;	6,700.00

EXPENSES INCURRED BUT NOT POSTED PRIOR TO THE BILLING DATE WILL APPEAR ON A SUBSEQUENT STATEMENT.

DUE AND PAYABLE WITHIN THIRTY DAYS

Town of Acton
P.O. Box 236
Acton, MA 01720

PALMER & DODGE

One Beacon Street
Boston, Massachusetts 02108-3190
Telephone: (617) 573-0100

FEDERAL ID NUMBER 24-2170788

November 21, 1991

For professional services through October 31, 1991, as follows:

General

Review and preparation of motions, advice on various issues and attendance at Special Town Meeting;	\$ 1,750.00
Research and advice concerning appeal and other alternative to limit MBTA train whistles; and drafting of legislation related thereto;	1,750.00
Research and advice on various zoning issues, including Mobile Oil site plan and sign decisions;	850.00
Review of billing records for W.R. Grace cost recovery action; and	500.00
Advice and services on miscellaneous general matters, including waiver for recycling program and Digital sidewalk.	600.00
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EXPENSES INCURRED BUT NOT POSTED PRIOR TO THE BILLING DATE WILL APPEAR ON A SUBSEQUENT STATEMENT.

DUE AND PAYABLE WITHIN THIRTY DAYS

Miscellaneous services in connection with Borggard
complaint about Stoneymeade bond; 130.00

Miscellaneous services in Norkin claim. 120.00

TOTAL SERVICES

\$ 19,800.00

DISBURSEMENTS:

Clerical Overtime	\$ 33.20
Duplication	305.40
Express Delivery	217.10
Official Fees (ATB)	450.00
Publication	3.94
Telecopier	210.00
Telephone	58.51
Travel & Related Expenses	<u>67.55</u>

TOTAL DISBURSEMENTS

1,345.70

AMOUNT DUE

\$ 21,145.70

*PO 100507 - 100000
PO 100606 - 345.70*



PALMER & DODGE
ONE BEACON STREET
BOSTON MA 02108
FED ID# 04-2170788

TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

1

FOR PROFESSIONAL SERVICES RENDERED AND COSTS ADVANCED

INVOICE#: C70039
DATE: 11/21/91

TOWN OF ACTON
RE: GENERAL

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
10/01/91	Mary Beth Heffernan - ACTUAL DATE 10/24 - DRAFT LEGISLATION	3.00
10/04/91	Norman P. Cohen - SPECIAL TOWN MEETING	0.50
10/04/91	Martha M. Walz - DPU: CONF. W/M. LYNCH; REVIEW DPU ORDER; CALL G. RHODES, N. TAVERNIER; CALLS TO/FROM J. MURRAY.	1.10
10/07/91	Acheson H Callaghan Jr - REVIEW DPU TRAIN WHISTLES DECISION; MEMO AND CONFERENCE WITH M. WALZ	1.20
10/07/91	Martha M. Walz - DPU: REVIEW DPU ORDER; LEGAL RESEARCH RE: STANDARD OF REVEIW AND TIME FOR APPEAL; CONF. W/AHC; DRAFT LETTER TO BOARD OF SELECTMEN RE: DPU ORDER.	2.50
10/08/91	Acheson H Callaghan Jr - DRAFT RELEASE FOR RECYCLING; L/MURRAY; REVIEWED TOWN MEETING WARRANT	1.00
10/08/91	Acheson H Callaghan Jr - T/D. JOHNSON, NANCY TAVERNIER RE: TRAIN WHISTLE CASE	0.45
10/08/91	Norman P. Cohen - DIGITAL SIDEWALK	0.25

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RE: GENERAL

2

..DATE..PROFESSIONAL SERVICES.....	...HOURS
10/09/91	Norman P. Cohen - WARRANT	1.00
10/09/91	Acheson H Callaghan Jr - T/D. JOHNSON RE: MISC; L/RE: RELEASE; WARRANT; T/NPC	1.00
10/10/91	Norman P. Cohen - WARRANT AND QUESTIONS	0.75
10/10/91	Martha M. Walz - DPU: CALL G. RHODES RE: DECISION OF BOARD OF SELECTMEN.	0.40
10/18/91	Martha M. Walz - DPU: CALL FROM G. RHODES.	0.30
10/21/91	Acheson H Callaghan Jr - C/D. JOHNSON RE: ATB CASES, TEACHERS' SALARY; T/R. BARTL	0.25
10/23/91	Martha M. Walz - DPU: CALL FROM G. RHODES; CONF. W/M.B. HEFFERNAN RE: LEGISLATION; MEMO TO MB AND LETTER TO G. RHODES RE: LEGISLATION; MEMO RE: EXPERT WITNESS.	2.20
10/23/91	Acheson H Callaghan Jr - L/RE: ZONING AMENDMENT; AGRICULTUREAL OPERATIONS; REVIEW LETTER RE: MOBIL OIL AGREEMENT	1.25
10/23/91	Acheson H Callaghan Jr - [W.R. GRACE] T/C. HESLIN; C/RE: GRACE RECORDS	0.20
10/24/91	Martha M. Walz - DPU: CALL FROM M.B. HEFFERNAN; CALL TO G. RHODES; CONF. W/M.B. HEFFERNAN.	0.70

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TOWN OF ACTON
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RE: GENERAL

3

..DATE..PROFESSIONAL SERVICES.....	...HOURS
10/24/91	Norman P. Cohen - TOWN MEETING MOTIONS AND QUESTIONS	0.75
10/24/91	Acheson H Callaghan Jr - C/NPC; T/BARTL; T/G. RHODES RE: ZONING ISSUES	0.70
10/25/91	Norman P. Cohen - MOTIONS	1.00
10/25/91	Martha M. Walz - DPU: EDIT DRAFT LEGISLATION; CALL FROM G. RHODES.	0.60
10/26/91	Norman P. Cohen - DIGITAL SIDEWALK	0.50
10/27/91	Martha M. Walz - DPU: EDIT DRAFT LEGISLATION; LETTER TO G. RHODES.	0.60
10/28/91	Norman P. Cohen - TOWN MEETING QUESTIONS	0.25
10/28/91	Acheson H Callaghan Jr - T/D. JOHNSON RE: TOWN MEETING; REVISE MOTIONS; REVIEW TEACHER DEFERRAL STATUTE; ATTEND TOWN MEETING	2.00
10/29/91	Acheson H Callaghan Jr - REVIEW GRACE BILLING DOCUMENTS; L/HESLEN	1.25
10/29/91	Acheson H Callaghan Jr - REVIEW MOBIL SIGN DECISION; SITE PLAN CONDITIONS	0.70
10/30/91	Martha M. Walz - DPU: CALL E. JONES; PROOF LEGISLATION;	0.70

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TOWN OF ACTON
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RE: GENERAL

4

..DATE..PROFESSIONAL SERVICES..... ..HOURS
(cont'd) CALL G. RHODES.
10/30/91 Acheson H Callaghan Jr - T/GARRY RHODES RE: MOBIL SIGN 0.70
DECISION; MOBIL SITE PLAN CONDITION; MIDAS MUFFLER
10/31/91 Acheson H Callaghan Jr - C/PARALEGAL RE: GRACE DOCUMENT 0.20
TOTAL HOURS 28.00

SERVICES PERFORMED BY..... ..HOURS
Acheson H Callaghan Jr 10.90
Norman P. Cohen 5.00
Mary Beth Heffernan 3.00
Martha M. Walz 9.10

PALMER & DODGE
ONE BEACON STREET
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TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

RE: GENERAL

5

..DATE..	.....COSTS ADVANCED.....	.....AMOUNT
	TELEPHONE	\$ 32.32
	TELECOPIER	147.00
	HAND DELIVERY	5.00
	DUPLICATION	49.05
	PUBLICATION	3.94
	TOTAL CURRENT COSTS	----- \$237.31

PALMER & DODGE
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TOWN OF ACTON
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ATTN: DON JOHNSON, TOWN MANAGER

1

FOR PROFESSIONAL SERVICES RENDERED AND COSTS ADVANCED

INVOICE#: C70041
DATE: 11/21/91

TOWN OF ACTON
RE: MALCOLM PERKINS

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
10/01/91	Rebecca S. K. Webber - CALL TO COURT (C SESSION CLERK)	0.10
10/02/91	Rebecca S. K. Webber - CALL TO COURT; CW SESSION C CLERK RE: MOTION TO AMEND ANSWER; MESSAGE TO AHC	0.30
10/03/91	Acheson H Callaghan Jr - C/WEBBER	0.10
10/04/91	Rebecca S. K. Webber - CALL TO COURT	0.20
10/07/91	Rebecca S. K. Webber - CALL TO MIDDLESEX CLERK'S OFFICE; LETTER TO CLERK IN SESSION C WITH COPY OF MOTION	0.40
10/08/91	Rebecca S. K. Webber - CALL CROWLEY	0.10
10/10/91	Acheson H Callaghan Jr - C/WEBBER	0.15
10/10/91	Rebecca S. K. Webber - PREPARE AMENDED ANSWER FOR FILING; CW AHC	0.40
10/11/91	Rebecca S. K. Webber - CALL TO COURT; CALL CROWLEY; CALL ACTON	0.20

PALMER & DODGE
 ONE BEACON STREET
 BOSTON MA 02108
 FED ID# 04-2170788

TOWN OF ACTON
 P. O. BOX 236
 ACTON, MA 01720
 ATTN: DON JOHNSON, TOWN MANAGER

RE: MALCOLM PERKINS

2

..DATE..	.....PROFESSIONAL SERVICES.....	....HOURS
10/16/91	Rebecca S. K. Webber - CALLS TO CROWLEY; CALL TO COURT	0.30
10/17/91	Rebecca S. K. Webber - CALL TO COURT	0.10
10/18/91	Rebecca S. K. Webber - CALL TO COURT RE: STATUS OF MOTION TO AMEND AND ABSENCE OF WRITTEN NOTICE	0.20
10/23/91	Rebecca S. K. Webber - FILING OF LITIGATION DOCUMENTS; CALL TO WETHERBY RE: TRIAL DATE	0.10
10/25/91	Rebecca S. K. Webber - CALL WETHERBY RE: 11/22 TRIAL; SEND NOTICE OF TRIAL TO WETHERBY AND JOHNSON	0.20
	TOTAL HOURS	2.85

SERVICES PERFORMED BY.....	....HOURS
Acheson H Callaghan Jr	0.25
Rebecca S. K. Webber	2.60

..DATE..	.....COSTS ADVANCED.....	.....AMOUNT
	TELEPHONE	\$ 1.22
	DUPLICATION	0.30
	TOTAL CURRENT COSTS	\$ 1.52

PALMER & DODGE
ONE BEACON STREET
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FED ID# 04-2170788

TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

1

FOR PROFESSIONAL SERVICES RENDERED AND COSTS ADVANCED

INVOICE#: C70042
DATE: 11/21/91

TOWN OF ACTON
RE: APPELLATE TAX BOARD

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
10/01/91	Ronald Taylor - TEL. CONF. W/L. SORENSON RE: AFFIDAVITS; DRAFT MOTIONS TO DISMISS; OPEN FILES FOR NEW MATTERS.	2.75
10/02/91	Ronald Taylor - PREPARE ELECTION TO FORMAL PROCEDURES; MEETING W/ J. GRUBER RE: STATUS OF INTERROGATORY AND DISMISSAL.	5.75
10/02/91	Gerald A. Schanz - DATABASE MAINTENANCE AND REPORT FORMAT GENERATION.	1.00
10/03/91	Ronald Taylor - DEVELOP AND PREPARE INTERROGATORIES.	8.00
10/03/91	Jay R. Gruber - DRAFT FORM INTS	0.50
10/03/91	Kathleen E. McGrath - REVIEWING DRAFT INTERROGATORIES; FILE MANAGEMENT	1.00
10/04/91	Ronald Taylor - PROOF INTS; PREPARE DOCU. REQUEST.	6.00
10/04/91	Jay R. Gruber - INTERROGATORIES	0.25
10/04/91	Kathleen E. McGrath - REVIEWING AND SIGNING 56 SETS OF	2.50

PALMER & DODGE
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FED ID# 04-2170788

TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

RE: APPELLATE TAX BOARD

2

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
(cont'd)	INTERROGATORIES AND DOCUMENT REQUESTS	
10/07/91	Ronald Taylor - TRIAL PREPARATION.	2.00
10/07/91	Kathleen E. McGrath - PREPARING FOR AND ATTENDING HEARING RE MOTIONS TO DISMISS SIX CASES	1.50
10/08/91	Ronald Taylor - CASE LOAD ORGANIZATION.	1.75
10/08/91	Jay R. Gruber - TEL CONF WITH LELA SORENSON RE PREPARATION OF DEFENSE, ORGANIZATION FOR TRIAL; PARTICIPATION OF MMC, ETC.; REVIEW TRIAL LIST	2.25
10/09/91	Ronald Taylor - MEETING W/J. GRUBER RE CASE OVERVIEW; UPDATE DATABASE.	5.25
10/09/91	Jay R. Gruber - MANAGEMENT, COORDINATION OF ATB PRACTICE; STAFFING MEMO	0.75
10/10/91	Ronald Taylor - MEETING W/J. GRUBER AND L. SORENSON RE PUNCHLIST; UPDATE DATABASE.	4.00
10/10/91	Jay R. Gruber - CONF WITH LELA SORENSON, PAUL MILLER, RON TAYLOR AND - AT TIMES - KATHY MC GRATH RE ORGANIZATION AND STRATEGY FOR CASES SCHEDULED FOR TRIAL IN NOVEMBER	3.00
10/10/91	Kathleen E. McGrath - ATTENDING MEETING WITH LELA SORENSON RE CASE LOAD; FOLLOWUP ADMINISTRATIVE TASKS	1.50

PALMER & DODGE
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TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

RE: APPELLATE TAX BOARD

3

..DATE..	.....PROFESSIONAL SERVICES.....	....HOURS
10/11/91	Ronald Taylor - MEETING W/J. SCHANZ AND J. GRUBER RE; DATABASE CHANGES.	1.25
10/15/91	Jay R. Gruber - STAFFING MEMO	0.40
10/15/91	Ronald Taylor - MEMO RE MEETING OF 10/10/91; PUNCHLIST OF TO DO.	1.25
10/16/91	Ronald Taylor - TEL. L. SORENSON; MTG. W/K. MCGRATH AND J. GRUBER.	0.75
10/17/91	Ronald Taylor - TEL. CONF. W/L. SORENSON; TEL. CONF. W/K. O'DONNELL; TEL. CONF. A. ALTMAN RE CONTINUANCE OF SCHEDULED HEARING.	0.75
10/20/91	Ronald Taylor - PREPARE MOTIONS TO DISMISS AND AFFIDAVITS; DRAFT FORM CONTINUANCE LETTER.	3.00
10/21/91	Ronald Taylor - EDIT MOTIONS TO DISMISS; AFFIDAVITS; LTR. AND TEL. CONF. RE SAME.	3.25
10/22/91	Acheson H Callaghan Jr - C/GRUBER RE: ATB CASES	0.20
10/28/91	Jay R. Gruber - 3 MOTIONS TO DISMISS ARGUED AT ATB	1.50
10/28/91	Ronald Taylor - MEETING W/J. GRUBER RE MOTIONS TO DISMISS; TEL. CONF. W/L. SORENSON.	0.50

PALMER & DODGE
ONE BEACON STREET
BOSTON MA 02108
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TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

RE: APPELLATE TAX BOARD

4

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
10/28/91	Anne Marie Hill - CALL W/RST RE MOTIONS TO DISMISS; CALL TO JAY GRUBER	0.20
10/29/91	Ronald Taylor - UPDATE DATABASE; DRAFT LETTER RE JELRIC; MEETING W/A. HILL.	3.25
10/29/91	Anne Marie Hill - CASE W/L. SORENSON; CALLS W/WAGNER; MTG. W/RST RE TRIAL SCHEDULE AND CONTINUANCES	0.70
10/30/91	Ronald Taylor - MEETING W/J. GRUBER AND A.M. HILL; DRAFT LTRS. TO L. SORENSON AND N. EGAN; UPDATE FILES.	3.75
10/30/91	Anne Marie Hill - MTG. W/JAY GRUBER & RON TAYLOR; CALL W/LELA SORENSON; CALLS TO WAGNER; LTRS. TO ATB & ACTON; REVIEW UPDATED TRIAL SCHEDULE	1.80
10/31/91	Ronald Taylor - MEETING W/A. HILL; REVIEW AND EDIT LETTERS; UPDATE DATABASE.	2.00
	TOTAL HOURS	74.30

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TOWN OF ACTON
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ACTON, MA 01720
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RE: APPELLATE TAX BOARD

5

SERVICES PERFORMED BY.....	HOURS
Acheson H Callaghan Jr	0.20
Jay R. Gruber	8.65
Anne Marie Hill	2.70
Kathleen E. McGrath	6.50
Gerald A. Schanz	1.00
Ronald Taylor	55.25

..DATE..	.....COSTS ADVANCED.....	.....AMOUNT
TELEPHONE		\$ 13.16
OFFICIAL FEES		450.00
TRAVEL & RELATED EXPENSES		24.30
EXPRESS DELIVERY		212.10
TELECOPIER		12.00
DUPLICATION		238.20
	TOTAL CURRENT COSTS	\$ 949.76

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TOWN OF ACTON
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1

FOR PROFESSIONAL SERVICES RENDERED AND COSTS ADVANCED

INVOICE#: C70044
DATE: 11/21/91

TOWN OF ACTON
RE: PORAZZO - LIEN APPEAL

..DATE..	PROFESSIONAL SERVICES.....	...HOURS
10/07/91	Thomas G. Ambrosino - REVIEW PORRAZZO COUNTERCLAIM	0.30
10/08/91	Thomas G. Ambrosino - REVIEW OF COUNTERCLAIM; RESEARCH ON RESPONSES	0.70
10/09/91	Thomas G. Ambrosino - RESEARCH ON ANSWER; DRAFT REPLY TO COUNTERCLAIM	2.30
10/10/91	Thomas G. Ambrosino - REPLY TO COUNTERCLAIM	0.30
	TOTAL HOURS	3.60

SERVICES PERFORMED BY.....HOURS
Thomas G. Ambrosino 3.60

..DATE..	COSTS ADVANCED.....	.....AMOUNT
	DUPLICATION	\$ 5.70
	TOTAL CURRENT COSTS	\$ 5.70

PALMER & DODGE
ONE BEACON STREET
BOSTON MA 02108
FED ID# 04-2170788

TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

1

FOR COSTS ADVANCED

TOWN OF ACTON
RE: KENNEDY ESTATES

INVOICE#: C70043
DATE: 11/21/91

..DATE..	.....COSTS ADVANCED.....	.....AMOUNT
DUPLICATION		\$ 0.15
	TOTAL CURRENT COSTS	\$ 0.15

PALMER & DODGE
ONE BEACON STREET
BOSTON MA 02108
FED ID# 04-2170788

TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

1

FOR PROFESSIONAL SERVICES RENDERED AND COSTS ADVANCED

TOWN OF ACTON
RE: BORGGARD CONSTRUCTION CORP.

INVOICE#: C70046
DATE: 11/21/91

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
10/09/91	Dorothy Foley - CALLS TO CO-COUNSEL AND OPPOSING COUNSEL, REVIEWING CORRESPONDENCE FROM CO-COUNSEL AND OPPOSING COUNSEL	0.70
10/15/91	Acheson H Callaghan Jr - T/BARTL RE: STONEYMEADE	0.10
10/22/91	Acheson H Callaghan Jr - L/BARTL	0.10
	TOTAL HOURS	----- 0.90

SERVICES PERFORMED BY.....	....HOURS
Acheson H Callaghan Jr	0.20
Dorothy Foley	0.70

..DATE..	.....COSTS ADVANCED.....	.....AMOUNT
	TRAVEL & RELATED EXPENSES	\$ 12.00
	DUPLICATION	2.10
	TOTAL CURRENT COSTS	----- \$ 14.10

PALMER & DODGE
ONE BEACON STREET
BOSTON MA 02108
FED ID# 04-2170788

TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

1

FOR PROFESSIONAL SERVICES RENDERED

INVOICE#: C70047
DATE: 11/21/91

TOWN OF ACTON
RE: NORKIN

..DATE..	.....PROFESSIONAL SERVICES.....	...HOURS
10/04/91	Acheson H Callaghan Jr - T/J. MURRAY	0.10
10/09/91	Acheson H Callaghan Jr - T/MCCI CLAIMS ADJUSTER	0.20
10/15/91	Acheson H Callaghan Jr - T/WETHERBY	0.15
	TOTAL HOURS	----- 0.45

SERVICES PERFORMED BY.....HOURS

Acheson H Callaghan Jr 0.45

PALMER & DODGE
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TOWN OF ACTON
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ATTN: DON JOHNSON, TOWN MANAGER

1

FOR PROFESSIONAL SERVICES RENDERED AND COSTS ADVANCED

INVOICE#: C70045
DATE: 11/21/91

TOWN OF ACTON
RE: COLLECTIVE BARGAINING

..DATE..	.....PROFESSIONAL SERVICES.....	....HOURS
10/01/91	Henry G. Stewart - ON FILE; NEGOTIATIONS WITH FIRE FIGHTERS.	4.75
10/02/91	Henry G. Stewart - ON BRIEF REGARDING VACATIONS; PHONE CALL MURRAY; PHONE CALL JOHNSON.	7.00
10/03/91	Henry G. Stewart - ON VACATION BRIEF.	6.00
10/03/91	Kate Daly - RESEARCH ON WAIVERS BASED ON SHORT-TERM INACTION AND ACQUIESCENCE	2.50
10/03/91	Kate Daly - RESEARCH AND MEMO ON GRIEVANCE WITHDRAWALS	3.00
10/04/91	Henry G. Stewart - PHONE CALL MURRAY, ROME; LETTER ELLIS; ON BRIEF.	5.00
10/08/91	Henry G. Stewart - PHONE CALL ROME; ON BRIEF.	0.75
10/10/91	Henry G. Stewart - PHONE CALL MURRAY (2); LETTER JOHNSON.	0.50
10/15/91	Henry G. Stewart - PHONE CALL JOHNSON (2)	0.20

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TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

RE: COLLECTIVE BARGAINING

2

..DATE..	PROFESSIONAL SERVICES	..HOURS
10/28/91	Henry G. Stewart - PHONE CALL JOHNSON RE POLICE AGREEMENT	0.25
10/29/91	Henry G. Stewart - ON CONTRACT, PHONE CALL JOHNSON (2)	0.30
10/30/91	Henry G. Stewart - PHONE CALL JOHNSON (2)	0.20
10/31/91	Henry G. Stewart - PHONE CALL JOHNSON (2)	0.20
	TOTAL HOURS	30.65

SERVICES PERFORMED BY.....HOURS

Kate Daly	5.50
Henry G. Stewart	25.15

..DATE..	COSTS ADVANCED	..AMOUNT
	TELEPHONE	\$ 11.81
	CLERICAL OVERTIME	33.20
	TRAVEL & RELATED EXPENSES	31.25
	TELECOPIER	51.00
	TOTAL CURRENT COSTS	\$ 127.26

PALMER & DODGE
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TOWN OF ACTON
P. O. BOX 236
ACTON, MA 01720
ATTN: DON JOHNSON, TOWN MANAGER

1

FOR COSTS ADVANCED

TOWN OF ACTON
RE: PRENDERGAST DEVELOPMENT CORP.

INVOICE#: C70040
DATE: 11/21/91

..DATE..	.....COSTS ADVANCED.....	.....AMOUNT
	DUPLICATION	\$ 9.90
	TOTAL CURRENT COSTS	\$ 9.90

Charles Kadlec
19 Paul Revere Rd
Acton MA 01720

24 January 1992

To: Board of Selectmen, School Committee,
and Finance Committee

Re: Financial information for the Acton Annual Town Meeting

Please include the actual expenditures for FY '91 in the information usually distributed at the Annual Town Meeting in support of the budget articles. Comparison of the proposed (=FY '93) budget items to previous years budgeted amounts is not very useful when the actual expenditures are different. If space allows, I would like to see both the budgeted and the actual amounts for FY '91.

I know that the final "actuals" are not available for the current year; however, most of the major budget areas (salaries, benefits, fixed expenses, etc) are pretty well established by Town Meeting, and therefore some indication of how the actual expenditures look versus the budget should be possible for FY '92 as well.

Thank you.

Charlie

January 22, 1992

TO: Don Johnson, Town Manager
FROM: Doug Halley
SUBJECT: Health Inspections of Papa Gino's

Enclosed with this memo please find copies of inspections conducted at Papa Gino's by the Health Department. It should be noted that corrective action, from our inspections, by Papa Gino's, has decreased dramatically in the past year. Due to the lack of response on the last inspection (Jan 14, 1992) the department was forced into fining Papa Gino's. While violations have not been critical they have been habitual. The Health Department believes that habitual violations show a lack of understanding of the regulations and will eventually lead to more severe problems if not constantly cited.

1/30/92

BOS-

I WAS CONCERNED AT THE DISPARITY
IN COMMENTS FROM THE HEALTH DEPT. VS EXPLANATIONS
YOU HEARD AT YOUR LICENSE HEARING FOR THIS
PETITIONER. I ASKED DOUG TO PROVIDE THE ATTACHED
FOR MY REVIEW AND NOW FEEL YOU SHOULD ALSO
REVIEW THE RECORD - FYI -

Now

BOARD OF HEALTH

472 MAIN STREET
 ACTON, MASSACHUSETTS 01720
 TEL: 264-9634

FOOD ESTABLISHMENT INSPECTION REPORT

Establishment Name <u>Papa Ginos</u>		Date <u>01/14/91</u>
Address <u>82 Powdermill Rd</u>		Time: In _____ Out _____
Telephone <u>897-7797</u>	Type of Establishment: <input checked="" type="checkbox"/> Food Service <input type="checkbox"/> Retail Food <input type="checkbox"/> Residential Kitchen <input type="checkbox"/> Mobile Unit <input type="checkbox"/> Temporary Food Service	Purpose: <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Follow-up <input type="checkbox"/> Complaint <input type="checkbox"/> Investigation <input type="checkbox"/> Other
Owner's Name <u>Michael Vallerio</u>		
Person in Charge <u>Carl Gasco</u>		
Inspector's Name <u>R.M. Erdozainy R.S.</u>		

Based on an inspection today, the items checked below indicate the violated provisions of 105 CMR 590.000. Each item is followed by the applicable section of the Massachusetts regulation. Non-critical violations are marked under column "N" and critical violations are marked under column "C". Descriptions of each item appear on the back of this form. Each violation checked requires an explanation on the narrative page(s). This report serves as official notice of violated provisions and official notice to correct said violations.

Failure to comply with the specified correction time may result in the assessment of fines and/or in the suspension or revocation of your food establishment permit and cessation of your food establishment operation.

You have the right to request a hearing before the Acton Board of Health. Requests must be made in writing and filed in the Health Department office located at 472 Main Street in Acton, MA within 10 days of this inspection.

<p>Food</p> <p>1. Food Supply .002 <input checked="" type="checkbox"/></p> <p>2. Food Containers .002 <input checked="" type="checkbox"/></p> <p>Food Protection</p> <p>3. PHF Temperatures .004 <input checked="" type="checkbox"/></p> <p>4. Facilities, Hot & Cold Storage .004 <input checked="" type="checkbox"/></p> <p>5. PHF Re-service .006 <input checked="" type="checkbox"/></p> <p>6. Spoiled/Damaged Foods .003 <input checked="" type="checkbox"/></p> <p>7. Food Protected .003 <input checked="" type="checkbox"/></p> <p>8. Food Thermometers .004 <input type="checkbox"/></p> <p>9. Cross Contamination .005 <input type="checkbox"/></p> <p>10. PHF's thawed, cooked & cooled .005 <input type="checkbox"/></p> <p>11. Food Handling .005 <input type="checkbox"/></p> <p>12. Dispensing Utensils .006 <input type="checkbox"/></p> <p>Personnel</p> <p>13. Employee Infections .008 <input checked="" type="checkbox"/></p> <p>14. Employee Hygiene .009 <input checked="" type="checkbox"/></p> <p>15. Employee Clothing .010 <input type="checkbox"/></p> <p>Equipment & Utensils</p> <p>16. Equipment/Utensil Clean & Sanitized .013 <input checked="" type="checkbox"/></p> <p>17. Food Contact Surfaces .013 <input type="checkbox"/></p> <p>18. Non-Food Contact Surfaces .013 <input type="checkbox"/></p> <p>19. Food Contact Surfaces Clean .013 <input type="checkbox"/></p> <p>20. Non-Food Contact Surfaces Clean .013 <input type="checkbox"/></p> <p>21. Wiping Cloths .013 <input type="checkbox"/></p> <p>22. Dish/Warewashing Facilities .013 <input type="checkbox"/></p> <p>23. Pre-Scraped, Soaked Wash/Rinse Water .013 <input type="checkbox"/></p> <p>23. Thermometers/Test Kits .013 <input type="checkbox"/></p> <p>26. Equipment/Utensil Storage .014 <input type="checkbox"/></p> <p>27. Single Service Articles .014 <input type="checkbox"/></p> <p>28. Single Service Re-Use .012 <input type="checkbox"/></p>	<p>Sanitary Facilities</p> <p>29. Water Source .015 <input type="checkbox"/></p> <p>30. Sewage .016 <input type="checkbox"/></p> <p>31. Cross-Connections .017 <input type="checkbox"/></p> <p>32. Toilets/Handwashing .018 & .019 <input type="checkbox"/></p> <p>33. Insects/Rodents .021 <input type="checkbox"/></p> <p>34. Plumbing .017 <input type="checkbox"/></p> <p>35. Toilet Rooms .018 <input type="checkbox"/></p> <p>36. Handwashing Areas .019 <input type="checkbox"/></p> <p>37. Garbage/Refuse .020 <input type="checkbox"/></p> <p>38. Outside Disposal .020 <input type="checkbox"/></p> <p>39. Outer Openings .021 <input type="checkbox"/></p> <p>40. Pesticide/Rodenticide Application .021 <input type="checkbox"/></p> <p>Physical Facilities</p> <p>41. Floors .022 <input checked="" type="checkbox"/></p> <p>42. Walls, Ceiling .022 <input type="checkbox"/></p> <p>43. Lighting .023 <input checked="" type="checkbox"/></p> <p>44. Ventilation .024 <input type="checkbox"/></p> <p>45. Dressing Rooms .025 <input type="checkbox"/></p> <p>Other</p> <p>46. Toxics .026 <input checked="" type="checkbox"/></p> <p>47. Premises .027 <input type="checkbox"/></p> <p>48. Living Areas .027 <input type="checkbox"/></p> <p>49. Linen .027 <input type="checkbox"/></p> <p>50. Pets .027 <input type="checkbox"/></p> <p>51. Bulk Foods .031 <input type="checkbox"/></p> <p>52. Salad Bars .032 <input type="checkbox"/></p>
---	--

No. of 13 Critical Items Violated _____
 These items require immediate attention.

Received by: [Signature] Inspected by: [Signature]

Establishment Name

Papa Gino's

Date

01/14/92

Address

82 Powdermill Rd

Page 2 of 2

Item No.

In the space below describe all violations checked on front page.

Re-inspection

based on violations indicated during routine inspection dated 12/31/91, the following are recurring violations, & the facility will be fined accordingly:

#41 Clean flooring beneath & behind work table adjacent to 3 compartment sink, & around equipment legs - Floor is littered with old food & debris.

#2 Label & date food items such as spaghetti sauce when not in original containers

#7 The Board of Health has not received any bacteriological analysis results for the soft serve machine since July 1991. It has not, to date, received any back copies since -

#43 Replace missing light shields from fluorescent light tubes in the store room.

Discussion with Management

Much improvement is needed in this facility; it appears as though a minimum amount of work went towards the problem areas noted on the previous report. Management needs to make health & safety code requirements much more of a priority than it is currently.

BOARD OF HEALTH

472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TEL: 264-9634

FOOD ESTABLISHMENT INSPECTION REPORT

Establishment Name <i>Papa Gino's</i>		Date <i>12/31/91</i>	
Address <i>82 Powdermill Rd</i>		Time: In Out	
Telephone <i>897-7797</i>	Type of Establishment: <input checked="" type="checkbox"/> Food Service <input type="checkbox"/> Retail Food <input type="checkbox"/> Residential Kitchen <input type="checkbox"/> Mobile Unit <input type="checkbox"/> Temporary Food Service	Purpose: <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Follow-up <input type="checkbox"/> Complaint <input type="checkbox"/> Investigation <input type="checkbox"/> Other	
Owner's Name <i>Michael Vallerio</i>			
Person in Charge <i>Carl Gasco</i>			
Inspector's Name <i>R.M. Graziano RS</i>			

Based on an inspection today, the items checked below indicate the violated provisions of 105 CMR 590.000. Each item is followed by the applicable section of the Massachusetts regulation. Non-critical violations are marked under column "N" and critical violations are marked under column "C". Descriptions of each item appear on the back of this form. Each violation checked requires an explanation on the narrative page(s). This report serves as official notice of violated provisions and official notice to correct said violations.

Failure to comply with the specified correction time may result in the assessment of fines and/or in the suspension or revocation of your food establishment permit and cessation of your food establishment operation.

You have the right to request a hearing before the Acton Board of Health. Requests must be made in writing and filed in the Health Department office located at 472 Main Street in Acton, MA within 10 days of this inspection.

Food

- 1. Food Supply .002
- 2* Food Containers .002

Food Protection

- 3* PHF Temperatures .004
- 4. Facilities, Hot & Cold Storage .004
- 5. PHF Re-service .006
- 6. Spoiled/Damaged Foods .003
- 7* Food Protected .003
- 8* Food Thermometers .004
- 9. Cross Contamination .005
- 10. PHF's thawed, cooked & cooled .005
- 11. Food Handling .005
- 12. Dispensing Utensils .006

Personnel

- 13. Employee Infections .008
- 14. Employee Hygiene .009
- 15. Employee Clothing .010

Equipment & Utensils

- 16. Equipment/Utensil Clean & Sanitized .013
- 17. Food Contact Surfaces .013
- 18* Non-Food Contact Surfaces .013
- 19. Food Contact Surfaces Clean .013
- 20. Non-Food Contact Surfaces Clean .013
- 21. Wiping Cloths .013
- 22. Dish/Warewashing Facilities .013
- 23. Pre-Scraped, Soaked .013
- 4. Wash/Rinse Water .013
- 5. Thermometers/Test Kits .013
- 26. Equipment/Utensil Storage .014
- 27. Single Service Articles .014
- 28. Single Service Re-Use .012

Sanitary Facilities

- 29. Water Source .015
- 30. Sewage .016
- 31. Cross-Connections .017
- 32. Toilets/Handwashing .018 & .019
- 33. Insects/Rodents .021
- 34. Plumbing .017
- 35. Toilet Rooms .018
- 36* Handwashing Areas .019
- 37. Garbage/Refuse .020
- 38. Outside Disposal .020
- 39. Outer Openings .021
- 40. Pesticide/Rodenticide Application .021

Physical Facilities

- 41* Floors .022
- 42. Walls, Ceiling .022
- 43* Lighting .023
- 44* Ventilation .024
- 45. Dressing Rooms .025

Other

- 46. Toxics .026
- 47. Premises .027
- 48. Living Areas .027
- 49. Linen .027
- 50. Pets .027
- 51. Bulk Foods .031
- 52. Salad Bars .032
- 53* Safety

No. of *13* Critical Items Violated
 These items require immediate attention.

Reviewed by: *[Signature]* Inspected by: *[Signature]*

Establishment Name

Papa Gino's

Date

12/31/91

Address

82 Powdermill Rd, Acton

Page 2 of 3

Item No.

In the space below describe all violations checked on front page.

Routine Inspection:

#41 - Clean flooring beneath & behind work table, adjacent to 3-compartment sink & around equipment legs - Floor is filthy -

#3 - Cheese cut @ room temp - Keep potentially hazardous foods stored below 45°F or above 140° - Reduce time that food items are left outside room temperature as much as possible -

#36 - Handwashing sink is coated with grime & food debris - Use this sink for handwashing only -

#8 - All refrigeration units to be provided with an accurate readily visible thermometer

#53 - Keep fire extinguishers in good, working order - Small BC extinguisher near fryolator has no service tag & needle gauge indicates recharging is needed -

#44 - Ventilation grills are coated with grease - Clean them

#2 - Label & date bulk food items such as spaghetti sauce when not in original container

#7 - The Board of Health has not received a bacteriological analysis of the soft-serve yogurt in this facility since July - This is a recurring problem & if you continue to ignore this monthly requirement we will fine you for each month of non-compliance - Submit results to this office within 10 days -

#18 - Clean out the bottom of the beverage cooler

Discussion with Management

Facility is in need of improvement in regards to routine cleaning/maintenance & evidence of some poor food handling practices

Fines will be imposed for non-compliance. Re-inspection to occur in 2 weeks.

No

OK

OK

OK

No

No

No

letter

Establishment Name

Papa Gino's

Date

12/31/11

Address

Powdermill Plaza

Page 3 of 6

Item No.

In the space below describe all violations checked on front page.

Routine Inspection: cont'

[Back Work room]

#41

Flooring beneath large work table is filthy & littered with debris & Clean it up

#36

Restock paper towel dispenser above mop sink

#53

Pressurized gas cylinders are not effectively restrained in store room - re arrange chain to effectively restrain

#43

Replace missing light shields from fluorescent light tubes/ fixtures in the store room.

OK

Discussion with Management

BOARD OF HEALTH

472 MAIN STREET
 ACTON, MASSACHUSETTS 01720
 TEL: 264-9634

FOOD ESTABLISHMENT INSPECTION REPORT

Establishment Name <i>Papa Gino's</i>		Date <i>6/13/91</i>
Address <i>82 Powdermill Rd</i>		Time: In _____ Out _____
Telephone <i>897-7797</i>	Type of Establishment:	Purpose:
Owner's Name <i>Michael Valerio</i>	<input checked="" type="checkbox"/> Food Service	<input type="checkbox"/> Routine
Person in Charge <i>Carl Gatto</i>	<input type="checkbox"/> Retail Food	<input checked="" type="checkbox"/> Follow-up
Inspector's Name <i>RM Edgeman RS</i>	<input type="checkbox"/> Residential Kitchen	<input type="checkbox"/> Complaint
	<input type="checkbox"/> Mobile Unit	<input type="checkbox"/> Investigation
	<input type="checkbox"/> Temporary Food Service	<input type="checkbox"/> Other

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Food

- 1. Food Supply .002
- Food Containers .002

Food Protection

- 3. PHF Temperatures .004
- 4. Facilities, Hot & Cold Storage .004
- 5. PHF Re-service .006
- 6. Spoiled/Damaged Foods .003
- 7. Food Protected .003
- 8. Food Thermometers .004
- 9. Cross Contamination .005
- 10. PHF's thawed, cooked & cooled .005
- 11. Food Handling .005
- 12. Dispensing Utensils .006

Personnel

- 13. Employee Infections .008
- 14. Employee Hygiene .009
- 15. Employee Clothing .010

Equipment & Utensils

- 16. Equipment/Utensil Clean & Sanitized .013
- 17. Food Contact Surfaces .013
- 18. Non-Food Contact Surfaces .013
- 19. Food Contact Surfaces Clean .013
- 20. Non-Food Contact Surfaces Clean .013
- 21. Wiping Cloths .013
- 22. Dish/Warewashing Facilities .013
- 23. Pre-Scraped, Soaked .013
- 4. Wash/Rinse Water .013
- 5. Thermometers/Test Kits .013
- 26. Equipment/Utensil Storage .014
- 27. Single Service Articles .014
- 28. Single Service Re-Use .012

N C

Sanitary Facilities

- 29. Water Source .015
- 30. Sewage .016
- 31. Cross-Connections .017
- 32. Toilets/Handwashing .018 & .019
- 33. Insects/Rodents .021
- 34. Plumbing .017
- 35. Toilet Rooms .018
- 36. Handwashing Areas .019
- 37. Garbage/Refuse .020
- 38. Outside Disposal .021
- 39. Outer Openings .021
- 40. Pesticide/Rodenticide Application .021

Physical Facilities

- 41. Floors .022
- 42. Walls, Ceiling .022
- 43. Lighting .023
- 44. Ventilation .024
- 45. Dressing Rooms .025

Other

- 46. Toxics .026
- 47. Premises .027
- 48. Living Areas .027
- 49. Linen .027
- 50. Pets .027
- 51. Bulk Foods .031
- 52. Salad Bars .032

N C

No. of 13 Critical Items Violated
 These items require immediate attention.

Received by *[Signature]* Inspected by *[Signature]*

Establishment Name

Papa Gino's

Date

6/3/91

Address

82 Powdermill Rd

Page 2 of 2

Item No.

In the space below describe all violations checked on front page.

#10

Re-inspection:
 The following items are repeat/chronic violations both of which were noted on 5/21/91
 Dishwasher is not functioning properly, no on-line chemical sanitizer attached to the unit. This is a continued violation & an on-going problem -

#33

Several (6) dead insects noted in the store room. Clean them up to facilitate a current evaluation of possible infestation.

Due to the nature of these recurring violations, I have scheduled another re-inspection for 6/5/91 to ensure compliance. Fines will be re-imposed if these problems are not resolved.

6/5/91
 - Above items corrected. Thank you for cooperating.

Discussion with Management

Fines will be imposed for recurring violations

BOARD OF HEALTH

472 MAIN STREET
 ACTON, MASSACHUSETTS 01720
 TEL: 264-9634

FOOD ESTABLISHMENT INSPECTION REPORT

Establishment Name <u>Papa Gino's</u>		Date <u>5/21/19</u>	
Address <u>83 Powdermill Rd</u>		Time: In Out	
Telephone <u>887-7747</u>	Type of Establishment:		Purpose:
Owner's Name <u>Michael Vailuro</u>	<input checked="" type="checkbox"/> Food Service	<input checked="" type="checkbox"/> Routine	<input checked="" type="checkbox"/>
Person In Charge <u>Joe Gallen Carl Gaseo</u>	<input type="checkbox"/> Retail Food	<input type="checkbox"/> Follow-up	<input type="checkbox"/>
Inspector's Name <u>RM Erdogmus</u>	<input type="checkbox"/> Residential Kitchen	<input type="checkbox"/> Complaint	<input type="checkbox"/>
	<input type="checkbox"/> Mobile Unit	<input type="checkbox"/> Investigation	<input type="checkbox"/>
	<input type="checkbox"/> Temporary Food Service	<input type="checkbox"/> Other	<input type="checkbox"/>

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Food

- 1. Food Supply .002
- 2. Food Containers .002

Food Protection

- 3. PHF Temperatures .004
- 4. Facilities, Hot & Cold Storage .004
- 5. PHF Re-service .006
- 6. Spoiled/Damaged Foods .003
- 7. Food Protected .003
- 8. Food Thermometers .004
- 9. Cross Contamination .005
- 10. PHF's thawed, cooked & cooled .005
- 11. Food Handling .005
- 12. Dispensing Utensils .006

Personnel

- 13. Employee Infections .008
- 14. Employee Hygiene .009
- 15. Employee Clothing .010

Equipment & Utensils

- 16. Equipment/Utensil Clean & Sanitized .013
- 17. Food Contact Surfaces .013
- 18. Non-Food Contact Surfaces .013
- 19. Food Contact Surfaces Clean .013
- 20. Non-Food Contact Surfaces Clean .013
- 21. Wiping Cloths .013
- 22. Dish/Warewashing Facilities .013
- 23. Pre-Scraped, Soaked .013
- 24. Wash/Rinse Water .013
- 25. Thermometers/Test Kits .013
- 26. Equipment/Utensil Storage .014
- 27. Single Service Articles .014
- 28. Single Service Re-Use .012

Sanitary Facilities

- 29. Water Source .015
- 30. Sewage .016
- 31. Cross-Connections .017
- 32. Toilets/Handwashing .018 & .019
- 33. Insects/Rodents .021
- 34. Plumbing .017
- 35. Toilet Rooms .018
- 36. Handwashing Areas .019
- 37. Garbage/Refuse .020
- 38. Outside Disposal .020
- 39. Outer Openings .021
- 40. Pesticide/Rodenticide Application .021

Physical Facilities

- 41. Floors .022
- 42. Walls, Ceiling .022
- 43. Lighting .023
- 44. Ventilation .024
- 45. Dressing Rooms .025

Other

- 46. Toxics .026
- 47. Premises .027
- 48. Living Areas .027
- 49. Linen .027
- 50. Pets .027
- 51. Bulk Foods .031
- 52. Salad Bars .032

No. of 13 Critical Items Violated _____
 These items require immediate attention.

Received by: X [Signature] Inspected by: RM Erdogmus

Establishment Name

Papa Gino's

Date

5/11/91

Address

82 Powdermill Rd

Page 2 of

Item No.

In the space below describe all violations checked on front page.

Routine Inspection

8

Provide a thermometer for the reach-in refrigerators

19

Soft-serve yogurt machine on site. - This is being operated without appropriate analysis records. The following must be completed to come into compliance.

- (a) obtain frozen dessert permit current
- (b) submit monthly laboratory analysis results to the Board of Health office.

33

Dead insect noted @ collection tray of soft serve machine
Temp OK @ 40°F

41

Clean floors throughout facility - Do not neglect hard-to-reach areas such as under 3-compartment sink adjacent to ice machine also in storage room

Daily log for sanitizer not being kept

16

Jackson/Lalco High-temp machine only reached 135°F on second cycle. Either add an on-line chemical sanitizer or repair dishwasher to maintain 180°F. This is a critical item & must be corrected c/o 24 hrs

Discussion with Management

~~Items indicate 5 day compliance schedule~~

x J.H.L.

Jim Giambrone

Establishment Name

Papa Gino's

Date

5/21/91

Address

87 Powdermill Rd

Page 3 of

Item No.

In the space below describe all violations checked on front page.

Onions stored next to bottles of window & employee's jacket:

#46

Keep toxics store below & away from food items - (corrected during inspection)

#15

Keep employee personal items stored separately from food items

#41

Clean floor drain adjacent to walk-cooler

#34

Repair leak at mop sink

#33

More ^{dead} insects, noted in back storage room. Have licensed pest control service evaluate if problem exists

#17

Organize back storage more efficiently - Eliminate clutter.

5/22 Re-inspection of dishwasher - 168°F unable to reach 180° rinse cycle - Management has agreed to manually ~~sterilize~~ ^{sanitize} using 3 compartment sink. Chemical sanitizer will be used on dishwasher upon re-inspection of 5/31/91
X [Signature] JMErdogan

Discussion with Management

Re-inspect in 10 days

Fines imposed for non-compliance

24 hr check on dishwasher

x [Signature]

JMErdogan

BOARD OF HEALTH

472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TEL: 264-9634

FOOD ESTABLISHMENT INSPECTION REPORT

Establishment Name <i>Papa Ginos</i>		Date <i>10/22/92</i>
Address <i>82 Powdermill Road</i>		Time: In Out
Telephone <i>877-7797</i>	Type of Establishment: Food Service <input checked="" type="checkbox"/> Retail Food <input type="checkbox"/> Residential Kitchen <input type="checkbox"/> Mobile Unit <input type="checkbox"/> Temporary Food Service <input type="checkbox"/>	Purpose: Routine <input type="checkbox"/> Follow-up <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Investigation <input type="checkbox"/> Other <input type="checkbox"/>
Owner's Name <i>Michael Vallerio</i>		
Person in Charge <i>Joe Gallen</i>		
Inspector's Name <i>Joe Chodanney, R.S.</i>		

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Food

- 1. Food Supply .002
- Food Containers .002

Food Protection

- 3. PHF Temperatures .004
- 4. Facilities, Hot & Cold Storage .004
- 5. PHF Re-service .006
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- 8. Food Thermometers .004
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- 11. Food Handling .005
- 12. Dispensing Utensils .006

Personnel

- 13. Employee Infections .008
- 14. Employee Hygiene .009
- 15. Employee Clothing .010

Equipment & Utensils

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- 5. Thermometers/Test Kits .013
- 26. Equipment/Utensil Storage .014
- 27. Single Service Articles .014
- 28. Single Service Re-Use .012

Sanitary Facilities

- 29. Water Source .015
- 30. Sewage .016
- 31. Cross-Connections .017
- 32. Toilets/Handwashing .018 & .019
- 33. Insects/Rodents .021
- 34. Plumbing .017
- 35. Toilet Rooms .018
- 36. Handwashing Areas .019
- 37. Garbage/Refuse .020
- 38. Outside Disposal .020
- 39. Outer Openings .021
- 40. Pesticide/Rodenticide Application .021

Physical Facilities

- 41. Floors .022
- 42. Walls, Ceiling .022
- 43. Lighting .023
- 44. Ventilation .024
- 45. Dressing Rooms .025

Other

- 46. Toxics .026
- 47. Premises .027
- 48. Living Areas .027
- 49. Linen .027
- 50. Pets .027
- 51. Bulk Foods .031
- 52. Salad Bars .032

No. of 13 Critical Items Violated _____
 These items require immediate attention.

Received by: *[Signature]* Inspected by: *[Signature]*

Establishment Name

Papa Gino's

Date

10/22/90

Address

82 Powdermill Rd.

Page 2 of 2

Item No.

In the space below describe all violations checked on front page.

Re-inspection:

Facility much improved

#42 - Wall to be repaired under sink
arrangements have been made

#25 - Obtain test strips to check sanitizer

Thank you for your cooperation

Discussion with Management

the noted items have been discussed
& are in process of repair/correction

BOARD OF HEALTH

472 MAIN STREET
 ACTON, MASSACHUSETTS 01720
 TEL: 264-9634

FOOD ESTABLISHMENT INSPECTION REPORT

Establishment Name <i>Papa Geno's</i>		Date <i>10/16/90</i>
Address <i>82 Powdermill Rd</i>		Time: In <i>10:00</i> Out
Telephone <i>897-7797</i>	Type of Establishment:	Purpose:
Owner's Name <i>Michael Vallerio</i>	<input checked="" type="checkbox"/> Food Service	<input checked="" type="checkbox"/> Routine
Person in Charge <i>George Vetrois</i>	<input type="checkbox"/> Retail Food	<input type="checkbox"/> Follow-up
Inspector's Name <i>Loe Erdogany</i>	<input type="checkbox"/> Residential Kitchen	<input type="checkbox"/> Complaint
	<input type="checkbox"/> Mobile Unit	<input type="checkbox"/> Investigation
	<input type="checkbox"/> Temporary Food Service	<input type="checkbox"/> Other

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Food

- 1. Food Supply .002

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- 2. Food Containers .002

--	--	--

Food Protection

- 3. PHF Temperatures .004

--	--	--
- 4. Facilities, Hot & Cold Storage .004

--	--	--
- 5. PHF Re-service .006

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- 6. Spoiled/Damaged Foods .003

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- 7. Food Protected .003

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- 8. Food Thermometers .004

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- 9. Cross Contamination .005

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- 10. PHF's thawed, cooked & cooled .005

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- 11. Food Handling .005

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- 12. Dispensing Utensils .006

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Personnel

- 13. Employee Infections .008

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- 14. Employee Hygiene .009

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- 15. Employee Clothing/Personal Items .010

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Equipment & Utensils

- 16. Equipment/Utensil Clean & Sanitized .013

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- 17. Food Contact Surfaces .013

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- 18. Non-Food Contact Surfaces .013

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- 19. Food Contact Surfaces Clean .013

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- 20. Non-Food Contact Surfaces Clean .013

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- 21. Wiping Cloths .013

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- 22. Dish/Warewashing Facilities .013

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- 23. Pre-Scraped, Soaked .013

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- 24. Wash/Rinse Water .013

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- 25. Thermometers/Test Kits .013

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- 26. Equipment/Utensil Storage .014

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- 27. Single Service Articles .014

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- 28. Single Service Re-Use .012

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Sanitary Facilities

- 29. Water Source .015

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- 30. Sewage .016

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- 31. Cross-Connections .017

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- 32. Toilets/Handwashing .018 & .019

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- 33. Insects/Rodents .021

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- 34. Plumbing .017

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- 35. Toilet Rooms .018

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- 36. Handwashing Areas .019

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- 37. Garbage/Refuse .020

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- 38. Outside Disposal .020

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- 39. Outer Openings .021

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- 40. Pesticide/Rodenticide Application .021

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Physical Facilities

- 41. Floors .022

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- 42. Walls, Ceiling .022

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- 43. Lighting .023

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- 44. Ventilation .024

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- 45. Dressing Rooms .025

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Other

- 46. Toxics .026

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- 47. Premises .027

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- 48. Living Areas .027

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- 49. Linen .027

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- 50. Pets .027

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- 51. Bulk Foods .031

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- 52. Salad Bars .032

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No. of 13 critical items violated _____
 These items require immediate attention.

Received by: *[Signature]* Inspected by: *[Signature]*

Establishment Name

Papa Gino's

Date

10/16/70

Address

82 Powdermill Rd

Page 2 of 3

Item No.

In the space below describe all violations checked on front page.

OK

17

Clean soda dispenser nozzles & adjacent plates to remove mold & syrup.

20

Remove food spills from the cream/milk bin.

8

OK

Provide an accurate, readily visible thermometer for the small reach-in refrigerator (crease)

OK

36

Handwashing sink is dirty & being used for cleaning the facility. Use it only for handwashing.

OK

44

Steam clean the ventilation filters which have an accumulation of grease

20

Can opener gears are filthy - Clean them

15

OK

Do not store non-food items in the microwave - Keep employee items stored in a separate area away from food prep area

2 or order

Transfer contents of the large blue can into a watertight, cleanable container with a tight-fitting lid, label & date

7

Containers of "Phase" margarine on floor under handwashing sink ~~tab~~ & date, all foods at least 6" above ground

check

62

Repair wall behind the 3 compartment sink

Discussion with Management

Establishment Name

Papa Gino's

Date

10/16

Address

82 Powdermill Rd

Page 3 of 3

Item No.

In the space below describe all violations checked on front page.

Refrigeration temps 39°F & 42°F

#25

No test log or strips on site to measure the sanitizers in the 3 compartment sink. These levels must be checked & measured at least once a day

OK

on order

IMMEDIATELY Remove the four

#53

pressurized gas cylinders from the adjacent water heater. This is a hazardous situation. They are also unrestrained the cylinders must be relocated & secured.

OK

Provide properly stocked & placed toilet paper in the women's room

- #53 to be corrected within 3 days.

- All other items must be corrected within one week.

Discussion with Management

TOWN OF ACTON

INTER-DEPARTMENTAL COMMUNICATION

DATE: 1/27/92

TO: Don P. Johnson

FROM: David F. Abbt, Engineering Administrator

J. Abbt

SUBJECT: ROUTE 2/PIPER ROAD

Concerning the letter of January 8, 1992 from the Massachusetts Department of Public Works (Mass. Highway Department) to Vanetta M. Hunter, I have now talked to Bob MacDonald at District 4 (the new projects engineer) and can report the following:

1. Concerning the "modifications to the existing islands during the construction process", these are apparently in sketch form only. I asked that we be sent a copy of the plan as soon as it was ready. Bob said that these modification will make the illegal maneuver in question a little more difficult, but not impossible. The limiting factor is the width of existing pavement and they are reluctant to pursue a widening at this time due to wetlands (always a convenient excuse!).
2. I also asked about the "locations unit" which it turns out, as we expected, is their design group that examines "problem spots" statewide. They are going to be looking at "unresolved issues" along the Route 2 corridor, including the Route 2/Mass. Ave./Piper Rd. area. The time frame is four to five years and the Mass. Highway Department is now committed to the "Citizens Advisory Committee" process. They hope the committee for Route 2 will provide the necessary local input to arrive at acceptable solutions to the problem spots along the corridor.

ANNE FANTON -

THIS IS A REPORT OF DAVID'S FINDINGS
PRIOR TO YOUR INDICATION THAT YOU WOULD
TALK W/ MS. BEDINGFIELD... FYI.

CC: BOS



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Central Regional Office

JAN 30 1992

William F. Weld
Governor

Daniel S. Greenbaum
Commissioner

January 27, 1992

Acton Board of Selectmen
14 Forest Street
Acton, Massachusetts 01720

Dear Local Official:

Enclosed please find information regarding hazardous waste sites in your community where Preliminary Assessments and/or Limited Site Investigations have been completed.

The Massachusetts Contingency Plan (310 CMR 40.000) requires that notice be given to Chief Municipal Officials and the Boards of Health regarding hazardous waste sites in their municipalities. Attached is a copy of a legal notice and press release which will appear in a regional daily or weekly newspaper on or about January 31, 1992. The legal notice contains the most recent listing of hazardous waste sites in your community that have been investigated, pursuant to the Massachusetts Contingency Plan and M.G.L. c. 21E.

The results of these investigations will also appear in the Department's annual "List of Confirmed Disposal Sites and Locations to be Investigated". You will receive a copy of your community's complete listing prior to the List's publication.

For more information about individual sites identified by DEP in your community, please contact Mary Richards at (508) 792-7653 or the letterhead address.

Yours truly,

Daniel J. Hannon
Section Chief
Waste Site Cleanup

DJH/MJR/lcg
enclosures

LEGAL NOTICE

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL PROTECTION
January 31, 1992

JAN 30 1992

Pursuant to M.G.L. c. 21E, Section 14 (a) and the Massachusetts Contingency Plan (310 CMR 40.00), the Department of Environmental Protection announces that Preliminary Assessments and Limited Site Investigations have been performed at the following locations:

<u>Community</u>	<u>Site Name/Address</u>	<u>Site No./Classification</u>
Acton	Shell Service Station 341 Great Road	2-0848 (P)
Auburn	Shell Service Station 695 Southbridge Street	2-0270 (W)
Fitchburg	Poirier Property 273 Milk Street	2-0413 (NP)
Hudson	Hudson Lock, Inc. 81 Apsley Street	2-0736 (W)
Littleton	Lucas Grason-Stadler 537 Great Road	2-0769 (W)
Marlborough	Gulf Service Station 146 Maple Street	2-0446 (W)
Southbridge	Main Street Shell 904 Main Street	2-0716 (W)
Tyngsboro	Tyngsboro Tire & Gas, Inc. 257 Middlesex Road	2-0137 (P)
Tyngsboro	Westech Industrial Park Westech Drive	2-0428 (W)
Westminster	Aubuchon Warehouse 95 Aubuchon Drive	2-0383 (W)
Worcester	U-Haul of Worcester 290 Belmont Street	2-0186 (NP)
Worcester	Worcester T&G/Fleet Garage 75 East Worcester Street	2-0627 (NP)

These investigations have confirmed that a release of oil and/or hazardous materials has occurred at these locations. Therefore, the Department has identified them as confirmed disposal sites. The Department has also determined that these sites are priority disposal sites (P) or non-priority disposal sites (NP) (as defined by M.G.L. c. 21E, Section 2).

Priority disposal sites are defined as those which constitute a substantial hazard to health, safety, public welfare, or the environment. M.G.L.c. 21E, Section 3A(f)(3) requires that, if feasible, permanent solution be implemented at each of these disposal sites. If a permanent solution is not feasible, then a temporary solution must be implemented, and a plan for achieving a permanent solution must be developed. For Non-priority disposal sites (which are defined by M.G.L.c. 21E, Section 2), M.G.L.c. 21E, Section 3A(f)(3) requires that, if feasible, permanent solutions be implemented at each of these disposal sites. If a permanent solution is not feasible, then a plan for achieving a permanent solution must be developed.

Waiver sites (W) are non-priority disposal sites which have been granted a waiver of approvals by the Department pursuant to 310 CMR 40.537. This waiver allows the person granted the waiver to conduct remedial response actions at the disposal site without prior Department approval of these actions.

M.G.L. c. 21E and the Massachusetts Contingency Plan provide several opportunities for public notice of and involvement in decisions regarding response actions at disposal sites, including:

The chief municipal official and board of health of the community in which the site is located will be provided with notices of the results of investigations, plans for remedial responses, and field work involving the use of heavy construction equipment and/or protective clothing (310 CMR 40.202).

Upon receipt of a petition from ten or more residents of the municipality in which the disposal site is located, or of a municipality potentially affected by a disposal site, or upon the Department initiative a plan for involving the public in decisions regarding response actions at the site will be prepared and presented at a public meeting. This plan will be revised based on comments received, and will be implemented over the course of the response action (310 CMR 40.203).

For more information on the confirmed disposal sites referenced above, and the opportunities for public involvement in their remediation, please contact Dan Hannon at DEP, Central Region Office (telephone: (508) 792-7653).



Environmental NEWS

Protection

For Release: on or about
January 31, 1992 Contact: Joanne Kasper-Dunne

FOR IMMEDIATE RELEASE: January 31, 1992

DEP CLASSIFIES 12 HAZARDOUS WASTE SITES

The Department of Environmental Protection (DEP) announced today that it has completed initial assessments of twelve confirmed hazardous waste sites in Central Massachusetts. Two of the sites were classified as "priority" disposal sites, while the remaining ten sites were given "non-priority" designations.

DEP's Central Regional Office has classified 250 hazardous waste sites to date: 90 are priority disposal sites and 160 are non-priority.

Priority sites pose the greatest potential threat to public health or the environment and are the focus of agency resources. Non-priority sites may qualify for waivers from DEP approvals, allowing work to move more quickly, with cleanup work subject to agency audit upon completion.

When Massachusetts voters amended the state Superfund law in November 1986, they committed DEP to an aggressive timetable for locating, assessing and cleaning up hazardous waste sites. The agency publishes a classification for each site where a petroleum or hazardous materials release is confirmed.

DEP also provides for public notice of and involvement in site cleanup decisions. The agency informs municipal officials whenever it investigates a site, plans for remedial actions or does any field work. In addition, ten or more citizens can petition the agency to develop a public involvement plan for a particular site.

--END--

Note: A list of the newly classified sites is attached.

Michael S. Dukakis, Governor
John P. DeVillars, Secretary
Daniel S. Greenbaum, Commissioner

Department of Environmental Protection
One Winter Street • Boston • 02108
Public Affairs Office: (617) 292-5515

Priority Disposal Sites

<u>Town</u>	<u>Site Name/Address</u>	<u>Site#</u>
Acton	Shell Service Station 341 Great Road	2-0848
Tyngsboro	Tyngsboro Tire & Gas, Inc. 257 Middlesex Road	2-0137

Non-Priority Disposal Sites

<u>Town</u>	<u>Site Name/Address</u>	<u>Site#</u>
Auburn	Shell Service Station * 695 Southbridge Street	2-0270
Fitchburg	Poirier Property 273 Milk Street	2-0413
Hudson	Hudson Lock, Inc. * 81 Apsley Street	2-0736
Littleton	Lucas Grason-Stadler * 537 Great Road	2-0769
Marlborough	Gulf Service Station * 146 Maple Street	2-0446
Southbridge	Main Street Shell * 904 Main Street	2-0716
Tyngsboro	Westech Industrial Park * Westech Drive	2-0428
Westminster	Aubuchon Warehouse * 95 Aubuchon Drive	2-0383
Worcester	U-Haul of Worcester 290 Belmont Street	2-0186
Worcester	Worcester T&G/Fleet Garage 75 East Worcester Street	2-0627

* This site has been granted a waiver of approvals by DEP.



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Central Regional Office

William F. Weld
Governor

Daniel S. Greenbaum
Commissioner

January 27, 1992

Shell Oil Company
400 Blue Hill Drive
Westwood, MA 02090

RE: CRWSC - Acton
Shell Service Station
341 Great Road
Site # 2-0848

Attention: Mr. James C. Keuper

Dear Potentially Responsible Party:

This letter concerns the referenced disposal site. M.G.L. c. 21E Section 3A(d)(2) requires that the Department classify disposal sites as "priority" or "non-priority". The Department has reviewed the information available to it about the referenced disposal sites, and has determined that it is a priority disposal site, pursuant to the Interim Site Classification requirements in the Massachusetts Contingency Plan, 310 CMR 40.544.

In addition, M.G.L. c. 21E Section 14(a) requires that, once a site has been classified, the Department publish a legal notice and press release informing the public of the location's status as a disposal site and its classification. The Department will issue a legal notice and press release containing this information on or about January 31, 1992, in the Westford Eagle.

Effective October 3, 1988, the extent of assessment and remediation required by M.G.L. c. 21E at locations and disposal sites will be determined by reference to the Massachusetts Contingency Plan (310 CMR 40.00 et seq.), promulgated pursuant to M.G.L. c. 21E, Sections 3, 3A(m), and 6. Remedial response actions required at locations and disposal sites are described in detail in Subpart E of the Massachusetts Contingency Plan (310 CMR 40.500 et seq.). No further remedial response actions other than those approved by the Department prior to October 3, 1988,

Shell Service Station, Acton
Site #2-0848

Page 2

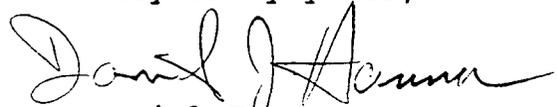
may be conducted at this priority disposal site without first obtaining the Department's approval, as described in 310 CMR 40.536. These regulations require that Department approval be obtained at specific points in the remedial action process:

- Scope of Work for the Comprehensive Site Assessment (Phase II),
- Final Report of the Comprehensive Site Assessment (Phase II),
- Final Remedial Response Plan (Phase III),
- Remedial Response Implementation Plan (Phase IV), and
- Final Inspection Report (Phase IV).

For more information about the classification of the referenced disposal site, please contact the undersigned at the DEP Central Regional Office, (508) 792-7653.

Copies of the Massachusetts Contingency Plan are available from the State Bookstore, Room 116, State House, Boston, Massachusetts 02133, (617) 727-2834.

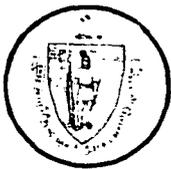
Very truly yours,



Daniel J. Hannon
Section Chief
Waste Site Cleanup

DJH/MJR/lcg

cc: Chief Municipal Officer ✓
Board of Health



The Commonwealth of Massachusetts Department of Education

Bureau of School Nutrition Services

1385 Hancock Street, Quincy, Massachusetts 02169-5183

MEMORANDUM

TO: ~~Mayors~~
Board of Selectmen Chairpersons

FROM: Mary Jo Cutler, Director *Mary Jo Cutler*
Bureau of School Nutrition Services

DATE: January 24, 1992

SUBJECT: Summer Food Service Program for Children

Summer is coming! The beginning of summer marks the end of the school year. For many children it also means the end of school meals - possibly the only nutritious meals available to them each day. There is a program available which will enable you to provide nutritious meals to children in your community during the summer months.

The Summer Food Service Program for Children provides reimbursement for meals served to all children at open/area feeding sites in communities or geographic areas in which at least 50% of the student enrollment is eligible for free or reduced price meals during the school year. Reimbursement is also provided for meals served to all children at closed/enrolled feeding sites when it is determined that at least 50% of the children enrolled at each site are eligible for free or reduced price meals through the submission of an Application for Free and Reduced Price Meals. Programs in other communities or geographic areas may be reimbursed for meals served to children who are individually determined to be eligible for free or reduced price meals.

Collaborative efforts of interested agencies including the Mayor's Office, recreation and human services, school food service and administrative departments have proven successful in the implementation of this program.

Communities unable to prepare and/or deliver meals to feeding sites may still participate in the Summer Food Service Program by purchasing meals from a commercial food service vendor registered with the Bureau of School Nutrition Services. Likewise, school food authorities not wishing to administer the program may prepare and sell meals to private nonprofit organizations in their communities who wish to sponsor the Summer Food Service Program but do not have adequate food preparation facilities.

Please give the possibility of sponsoring the Summer Food Service Program in your community careful consideration. Should you decide to sponsor the program, please submit a letter of intent to Cindy Hoar of this office at the address on the enclosed flyer by March 1, 1992. Please feel free to contact Cindy at (617) 770-7260 for further information. We support your continued commitment to respond to the needs of children.

**The Massachusetts Department of Education
Bureau of School Nutrition Services
USDA Summer Food Service Program for Children - 1992**



The Summer Food Service Program for Children (SFSP) was established to ensure that during school vacations, children could continue to receive the same high-quality meals that are provided during the school year under the National School Lunch and School Breakfast Programs. The program resulted from an increased awareness of the critical importance of proper nutrition to children, and a belief that school vacations should not end the availability of nutritious meals for many children.

The SFSP makes meals available to all children 18 years of age or younger without regard to race, color, national origin, sex, age or handicap. People over 18 years of age, who are determined to be mentally or physically handicapped, are also eligible to receive benefits under certain circumstances.

Organizations that may sponsor the SFSP are limited to (1) public and private nonprofit school food authorities, summer camps and colleges and universities that participate in the NYSP; (2) local, county, municipal or State government units; and (3) private nonprofit organizations that meet the following specific conditions as defined in the SFSP regulations:

1. Serve a total of not more than 2,500 children per day and operate no more than 5 urban or 20 rural sites. If an organization is sponsoring both urban and rural sites, there is a maximum of 20 sites, with no more than 5 urban sites.
2. Serve no more than 300 children at any approved meal service at any one site, unless granted a waiver by the State Agency to serve up to 500 children at an approved meal service at a particular site.
3. Use self-preparation facilities to prepare meals, or obtain meals from a public facility such as a school district, public hospital, or state college or university or a school participating in the National School Lunch Program. Commercial food service management companies may not be used, even if contracted with by a school food authority.
4. Operate in areas where a school food authority or the local, municipal or county government has not indicated by March 1 that it intends to sponsor the Summer Food Service Program in the current year.
5. Provide on-going year-round activities for children or families.
6. Meet applicable state and local health, safety, and sanitation standards.

Public and private nonprofit school food authorities and other applicants which have demonstrated successful Program performance in a prior year are given priority over private nonprofit organizations when both propose to serve the same area or the same enrolled children.

Both private nonprofit organizations and governmental units must have direct operational control over each site under their sponsorship. This means that they will be responsible for (1) managing site staff, including such areas as hiring, conditions of employment, and termination; and (2) exercising management control over SFSP operations at all sites during the period of Program participation.

Potential sponsors must demonstrate that they have adequate management and the necessary financial and administrative capability to meet SFSP objectives and to comply with Program regulations. They must also accept full final financial and administrative responsibility for all sites under their auspices. Approved sponsors must operate the Program according to Federal regulations, relevant instructions and all applicable State and local laws.

The Summer Food Service Program for Children:

- Provides reimbursement for meals served to **all children at open/area feeding sites** in districts where at least 50% of the local children are eligible for free or reduced price meals during the school year.
- Provides reimbursement for meals served to **all children at closed/enrolled feeding sites** where at least 50 % of the children enrolled at the site are individually determined to be eligible for free or reduced price meals through the submission of an Application for Free & Reduced Price Meals.
- Provides reimbursement for meals served to **children individually determined to be eligible for free or reduced price meals** through the submission of an Application for Free & Reduced Price Meals at residential summer camps and nonresidential day camp sites which offer a continuous schedule of organized cultural or recreational programs for enrolled children between their SFSP meal services.

Sponsors may operate the SFSP at one or more "sites" - the physical locations where Program meals are served to children. "Open/Area" or "Closed/Enrolled" sites may be approved to serve up to two meals daily, either lunch and breakfast or lunch and a snack; while residential/nonresidential camps may be approved to serve up to four meals per day - breakfast, snack, lunch, or supper.

INCOME ELIGIBILITY SCALE FOR FREE OR REDUCED PRICE MEALS EFFECTIVE JULY 1, 1991 TO JUNE 30, 1992

HOUSEHOLD SIZE	YEARLY	MONTHLY	WEEKLY
1	12,247	1,021	236
2	16,428	1,369	316
3	20,609	1,718	397
4	24,790	2,066	477
5	28,971	2,415	558
6	33,152	2,763	638
7	37,333	3,112	718
8	41,514	3,460	799
For each additional household member add:	+ 4,181	+ 349	+ 81

FOR MORE INFORMATION CONTACT:

Massachusetts Department of Education
Bureau of School Nutrition Services
Special Nutrition Programs
1385 Hancock Street
Quincy, MA 02169
(617)770-7260

Applicant sponsors shall certify that information submitted on Program applications, site information sheets, Program agreements, requests for advance payments and claims for reimbursement is true and correct and that the applicant sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal criminal statutes. The following criminal penalties and provisions established in Section 13(o) of the National School Lunch Act (42 U.S.C. 1761 (o)) apply: Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or any other document or statement made in connection with the Program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the Program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to defraud the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both. Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the Program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this Program, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over \$200, the penalty shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both). If two or more persons conspire or collude to accomplish any act described above, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

CC: BOS



PLANNING BOARD • Town of Acton

472 MAIN STREET ACTON, MASSACHUSETTS 01720 TELEPHONE (603) 264-9636 ^{JAN 30 1992}

RECEIVED & FILED

ACTON PLANNING BOARD

DATE January 29, 1992

Minutes of Meeting

Barbara Brown
for TOWN CLERK, ACTON

December 16, 1991

Planning Board members in attendance were Chairman Gregory Niemyski, Vice Chairman David Hill, James Lee, William Shupert, Douglas Carnahan and Associate Member John Pavan. Mary Giorgio was absent. Town Planner Roland Bartl and Asst. Planner Donna Jacobs were also in attendance.

I. Consent Agenda

Item A - Trey Shupert moved that the Board vote to approve the minutes of the 12/9/91 Planning Board meeting as rendered. His motion was seconded by David Hill and passed by unanimous vote of the Board.

II. Stonemyeade - Bond Release & Street Acceptance Recommendation

Board members reviewed the letter from the Cooperative Bank dated 12/13/91 and asked for an update of the other outstanding items. Donna Jacobs reported that all of the outstanding items have been completed: the revised as-built plan has been received; a new bounds certification form was submitted; and the outfall on Lot 35 has been repaired to the satisfaction of the Engineering Department.

Jim Lee moved that the Board vote to release the performance bond for the Stonemyeade subdivision subject to the Board of Selectmen's acceptance of the gift monies. David Hill seconded the motion which passed by unanimous vote.

Doug Carnahan moved that the Board vote to recommend acceptance of Stonemyeade Way to the Board of Selectmen. David Hill seconded the motion which passed by unanimous vote.

III. Election of Officers

Greg Niemyski announced that the floor was open for nominations of officers for the coming year. Doug Carnahan expressed his thoughts about the Board's recent practice regarding annual rotation of officers and the value of having the chairman re-elected. Doug stated that he is personally happy with everyone's roles for the past year and that perhaps people had just become comfortable with them.

Greg Niemyski advised the Board that he has no problem with serving as chairman for another year. David Hill stated that he is willing to serve as chairman, but has no pressing need to assume the position for the coming year. Jim Lee said that he thinks annual rotation of officers may be too frequent. Doug Carnahan reported that Mary Giorgio recommends discussion of elections during the first meeting in November so that members will have time to deliberate in advance of the election.

Jim Lee moved that the Board vote to re-elect the present officers. David Hill seconded the motion which was carried by unanimous vote. Greg Niemyski thanked the Board and stated that he was pleased that the Board has worked as a unified body for the past two years.

IV. Discussion - Master Plan Implementation Coordinating Committee

Greg stated that he will continue to serve as the Board's representative to this committee, but recommends that this duty be included in the elections discussion for the first meeting of November in 1992.

V. Acorn Park - Restrictive Covenant

The Board reviewed the Restrictive Covenant for Acorn Park prepared by Kirk Ware. Donna Jacobs reviewed the items in the covenant which differ from the standard form. Doug Carnahan moved that the Board vote to accept the Restrictive Covenant prepared by Kirk Ware and authorize Roland Bartl to execute the document for the Board once the mortgagee has signed the form. His motion was seconded by David Hill and passed by unanimous vote.

VI. P.C.R.C. Rules - Amendments

Board members discussed the proposed amendments to the PCRC Rules and Regulations necessitated by the Zoning Bylaw amendment adopted at the Fall Special Town Meeting. Board members recommended that certain statements be emphasized by underlining or placing in boxes to signify their importance. Jim Lee moved that the Board vote to adopt the revised PCRC Rules and Regulations as amended this evening. His motion was seconded by David Hill and passed by unanimous vote.

VII. South Acton Village Planning Committee - Interviews

The Board interviewed two volunteers for the South Acton Village Planning Committee, Sushama Gokhale and Robert Pion, and met with Sandra Whaley, Betsy Eldridge and Sam Manka of the South Acton Revitalization Committee (S.A.R.C.).

At the beginning of each interview, Chairman Greg Niemyski explained the purpose of the committee to each of the volunteers who met with the Board.

Greg advised them that the recommendation for Village Planning Committees came from the Planning Council during the process of developing the Acton Master Plan. Greg recommended that the village planning committees utilize the Master Plan planning process on a microscale by analyzing existing conditions, recognizing those important features which should be retained and make recommendations for changes where necessary.

Committee volunteers stated that it is important to preserve the quality of historic character in South Acton and work towards the enhancement of historic buildings in the village. Close proximity to playgrounds and the train were named as vital assets of the village. Volunteers stated that they would like to see the following changes in South Acton: addition of shops and businesses which would appeal to commuters and residents alike; additional housing provided; maintenance of the character of the neighborhoods; and increased pedestrian safety measures. Lack of sidewalks, potential for increased traffic, proposed infrastructure improvements, and the suitability of the soil for septic were sited as problems areas.

Sandra Whaley introduced the members of S.A.R.C. to the Board and then provided Board members with an historic perspective of S.A.R.C. Sandra stated that S.A.R.C. has been treading water for the past three years while the Master Plan was being developed because the town's planning staff was unable to provide their technical assistance to S.A.R.C. while working on the Master Plan. S.A.R.C. is now waiting for the Planning staff's professional assistance to carry out their plan. Ms. Whaley stated that S.A.R.C. has been working on their plan since 1982 and does not wish to start all over again.

Greg Niemyski informed S.A.R.C. that the South Acton Village Planning Committee will utilize the "South Acton Center Revitalization Technical Report" completed by M.A.P.C. in August of 1982 in its efforts to develop a master plan for South Acton. However, because the report is almost ten years old and contains dated information and recommendations, the village planning committee would develop, from the "Technical Report" and current information, a master plan for South Acton that would also serve to implement the goals and objectives of the newly adopted Acton Master Plan.

Sandra Whaley said that she feels the Master Plan can be dovetailed into the "Technical Report" and that, other than a parcel-by-parcel inventory, very little updating of the "Technical Report" is necessary. Jim Lee expressed his belief that the "Technical Report" should be dovetailed to the Acton Master Plan rather than the reverse as suggested by Ms. Whaley.

Ms. Whaley explained that she is very protective of the past efforts of S.A.R.C. because they have worked hard on the bridge replacement and sewer issues over an extended time period. Sandra Whaley suggested that the volunteers interviewed by the Planning Board this evening could be asked to serve as associate members of S.A.R.C.

Greg Niemyski suggested that the three members of S.A.R.C. could join the village planning committee and work as one united committee rather than trying to maintain two separate committees for South Acton. Board members

agreed that they should meet with the Board of Selectmen to discuss this issue. The Board agreed to postpone action on the village planning committee until after they meet with the Selectmen.

Other Business

Trey Shupert delivered the letter he wrote to the West Acton Village Planning Committee volunteers which serves to inform them of their appointment to the committee and to announce the first meeting date of January 22, 1991.

Respectfully submitted,



James J. Lee, Clerk



MAGIC to Form Route 2 "CAC"

The MAGIC subregion is forming a Corridor Advisory Committee (CAC) to deal with issues concerning improvements to Route 2. The idea was proposed at a recent meeting between MAGIC and MDPW focusing on how groups of affected communities could participate more fully in the highway planning process.

Contact: *Judith Alland*

Program for Mass Transportation

Phase I of the Program for Mass Transportation (PMT) is complete. MAPC is an active member of the PMT Working Group Committee. Phase I of the process involved "an initial study of suggested transportation improvements". Many individuals commented, either by mail or at a series of town meetings held in the region. A summary document of the Phase I report has been sent to those who participated in the process, as well as local officials, and town libraries.

Contact: *Rachel Kuropatwa*

"NIMBY's live forever"

- *Sue Bernstein, Framingham Planning Board*

Strategic Metropolitan Transportation System

The Transportation Policy Committee has directed staff to review the recommended Strategic Metropolitan Transportation System with the 8 subregions. The system contains the existing rail, rapid transit and water transportation system as well as about 857 miles of highway facilities. The subregional review will be to determine if the appropriate facilities have been placed on the system.

The SMTS highway network contains both a Major System of the key Interstate and Primary roads as well as a Metropolitan System. The Major System contains about 210 miles or 2% of the regions roads. The Metropolitan System contains about 650 miles or slightly less than 6% of the regions road network. The Policy Committee has set a target of 6% or 690 miles for the Metropolitan System.

Contact: *Dan Fortier*

Amendments to MetroPlan 2000

Land Resources

The Land Resources Policy Committee has developed fourteen new action recommendations to implement the four goals of the Land Resources Protection Element. These will be presented to the Council at the February meeting. These action recommendations cover a range of areas including legislation, funding and inter-agency coordination. A few of the recommendations are:

- support efforts to restrict the sale or conversion of existing conservation and park lands,
- use new transportation funding sources to undertake activities related to land resource protection,
- prevent the fragmentation and encroachment on abandoned rights-of-way with recreational potential,
- encourage private sector implementation of the plan,
- coordinate local plans with the Land Resources Protection Element.

Contact: *Joan Blaustein*

Transportation Element

The Transportation Policy Committee reviewed a host of potential transportation element recommendations on January 14th. The recommendations are designed to ensure that existing levels of mobility are maintained and improved while also

targeting attainment of the Clean Air Act mandate.

The possible recommendations include:

- allocating sufficient funding to maintenance of the existing transportation network,
- promoting the use of high occupancy facilities such as transit and vanpooling,
- promoting compact development land use patterns,
- developing disincentives to driving in single occupant automobiles and
- seeking transit solutions as the avenue of first choice in corridors targeted for new highway capacity programs.

Contact: *Dan Fortier*

Housing Element

The Housing Policy Committee is expected to recommend that housing criteria be incorporated more fully into the tools of the plan; thus the several MAPC review procedures would consider local progress in achieving a variety of housing goals. The committee will also propose a new action recommendation dealing with protecting people from displacement and will introduce more detailed strategies to implement the existing action recommendations.

Contact: *Judith Alland*

Vertiport Survey

Preliminary results from the Vertiport Survey are in. Even though businesses are in the mode of reducing costs, enduring hardships, and avoiding long-term commitments, business travellers foretell a different future. An impressive 57% of respondents said they would pay a premium to cut an hour from the overall travel time (door-to-door).

Phase II of the Vertiport Systems Planning Project is slated to begin in February. Volunteers are needed to focus the project on the needs of communities. Can vertiport funds leverage the planning and investment the community needs now?

Contact: *Carol Blair*

Update on the Overall Economic Development Program

The OEDP is sparking interest throughout the region among communities and community development corporations. Thus far, 27 projects have been submitted to MAPC for the OEDP. Based on inquiries fielded by MAPC staff, additional submissions are expected. At its January 9 meeting, the Economic Development Policy Committee agreed that the January 15 deadline for the OEDP will be "soft" and projects will be expected through the month. The Policy Committee, functioning as MAPC's OEDP committee, has been expanded to include representatives of community based organizations and municipalities in the region which now have high unemployment rates.

Contact: *Steven Landau*

Maine's "Sensible Transportation Policy Act"

Last November Maine passed a new transportation act. Known as the "Sensible Transportation Policy Act", the legislation authorizes widening the Maine Turnpike, and mandates development of state transportation policy which emphasizes public participation and alternatives to increasing roadway capacity. More information on this important statute, or a copy of the bill, can be obtained from Rachel Kuropatwa at MAPC.

Clean Air Presentation

MAPC staff met with staff people from the Boston Transportation Department, the Association for Public Transportation, the Sierra Club, MBTA Advisory Board and others on January 9, 1992 to discuss the Clean Air Act and the requirements for the region to comply. The discussion focused on the problems in the region. It was agreed that a future meeting would be held to focus on possible strategies to attain clean air.

Contact: Dan Fortier

Coming Soon: Census Millennium!

Tearing your hair out because income data for your community is 13 years old? Save your hair, relief is on the way! In the next few weeks the Census Bureau will release Summary Tape File 3 containing 1990 sample data. Included in the file is widely used information on: income, poverty, education, occupation, language spoken at home, shelter costs and commuting. The Metropolitan Data Center staff at MAPC will need several months to obtain the tape, create community profiles and distribute census tract and block group data on diskettes from this massive amount of information. Stay tuned.

Contact: Douglas Carnahan

Washington State Adopts Growth Management

Washington joins Florida, Georgia, Maine, New Jersey, Oregon and Vermont with state growth management programs. The statutes include 13 goals to guide growth including reduced sprawl, new infrastructure to maintain acceptable levels of service during growth, multi-modal transportation systems, preservation of forests and agricultural land, environmental protection, open space and recreational opportunities, economic development, affordable housing, and historic preservation. (Sounds like MetroPlan 2000)

"A Good Planet is Hard to Find"

- World Watch Institute

MBTA Revenue and Service Committee

The Citizens Advisory Committee for MBTA Revenue and Service Environmental Impact Report has been meeting monthly on fare policy issues, and MAPC is taking an active role in these meetings. Current issues before the committee include both the massive investment the T is about to make on new fare collection equipment, and development of a new fare policy and structure. Together with updating the Program for Mass Transportation, these fare policy and structure issues constitute some of the most important transportation issues presently being decided in the region.

Contact: Rachel Kuropatwa

Short Courses for Municipal Officials

Horsley & Witten, Inc. and McGregor & Shea are holding a series of workshops covering a range of topics, including environmental and wetland issues, zoning and subdivision control, comprehensive plans, growth management, housing, enforcement, and being an effective witness in court. Each workshop is held from 6:00 p.m. to 9:00 p.m. at 141 Tremont Street in Boston. The cost is \$95 per session. Resource manuals for each workshop can be purchased separately for \$25. Contact Ellen Barros at (508) 362-5570 for more information.

"The most effective way to cope with change is to help create it."

- Salada Tezalg & Mass. Association of Community Development Corporations

Dedham Common Mall Proposal

The Three Rivers Interlocal Council chair has appointed a five-person subcommittee to monitor the progress of the Dedham Common mall proposal as it moves forward in the local review process. The subcommittee will consider if this project fits into the framework of MetroPlan 2000. Dedham Common is a proposal by Chicago-based Homart Development Company to develop a \$148 million retail shopping mall at the intersection of routes 128 and 135 in Dedham. The three story 850,000 square foot "upscale" mall would be sited on privately owned land presently zoned for single family residences. Dedham Town Meeting members will vote on the rezoning proposal in April.

Contact: Paul DeCoste

Environmental Reviews

MAPC recently reviewed and distributed the following ENFs and EIRs:

Dimock Community Health Center's Youth and Family Services Building, Roxbury;
Roadway Easement, Holbrook;
Bolton Inn, Bolton;
Crystal Cove Marina, Winthrop;
Glass Landfill Closure, Salem;
Logan International Airport, Boston;
Cohasset Heights Landfill, Cohasset;
BJ's Wholesale Club, Danvers.

If you would like more information on these projects, contact: Kent Stasiowski

February Calendar

- | | | |
|----|------------|-----------------------------------|
| 5 | 2:00 p.m. | Subregional Coordinators |
| 6 | 12:00 p.m. | Economic Development Policy Comm. |
| 7 | 9:30 a.m. | Finance Committee |
| | 12:00 p.m. | Officers |
| | 1:00 p.m. | Legislative Committee |
| 11 | 10:00 a.m. | Transportation Policy Committee |
| 12 | 8:00 a.m. | North Suburban Subregion |
| | 10:00 a.m. | Policy Committee Chairs |
| | 11:00 a.m. | Project Review Committee |
| | 7:30 p.m. | MetroWest |
| 13 | 8:30 a.m. | North Shore Task Force |
| | 7:30 p.m. | MAGIC |
| | 7:30 p.m. | South Shore Coalition |
| 19 | 9:00 a.m. | Executive Committee |
| 20 | 3:00 p.m. | SWAP |
| 26 | 3:30 p.m. | Council Meeting |

Call ahead to confirm.

DON'T FORGET

WINTER COUNCIL MEETING

February 22
at the Museum of Science

Meeting starts at 3:30 p.m.,
Omni Theater presentation at
2:00 p.m. Council members should
watch for mailing.

to anyone in your town, such as board and commission members, town employees, citizens groups, etc., who have an involvement in municipal waste disposal policy and planning.

Thanks. Nancy Wolfe LNV 36-9-6-568

AS A RENEWABLE RESOURCE

Tuesday, February 25, 9:30AM

Refreshments at 9:15AM

First Parish Church, 20 Lexington Road, Concord

cc: BOS

An Opportunity to learn about the new technology of co-composting municipal solid waste, which goes beyond the usual interpretation of the 3R's—Reduce, Reuse, Recycle.

Some Questions to be answered: What is co-composting? What goes in? What comes out? Is it cost-effective? Is it good for the environment? How does it compare with other disposal methods? Who is doing it? What about plastics?



Our panelists are leaders in innovative programs in Massachusetts:

ack Macy Director of Composting, Massachusetts Department of Environmental Protection, will discuss state and regional co-composting programs in the context of the state's Solid Waste Management Plan.

Jeff Willett Superintendent of Public Works, Nantucket, will describe Nantucket's co-composting facility, which will start operation during 1992.

Robert Rottenberg Administrator of the Franklin County Solid Waste Management District, will talk about that district's planning for a regional co-composting facility to serve 20 or more communities, with a total of about 60,000 residents.

Richard Gross Chemistry Department of UMass, Lowell, will describe investigations by the Polymer Degradation Research Consortium on bacterially generated polymers and fully degradable plastics.

The panelists' presentations will be followed by a discussion period, with time for questions from the audience.

**Sponsored by the League of Women Voters of Concord-Carlisle
Admission is free. All are welcome.**

cc: BOS

Water Supply District of Acton

P.O. BOX 953
MASSACHUSETTS AVENUE
ACTON, MASSACHUSETTS 01720

BOARD OF WATER COMMISSIONERS
HARLAN TUTTLE BUILDING
693 MASSACHUSETTS AVENUE
ACTON, MA. 01720

January 27, 1992

AGENDA:

- 7:30 P.M. CALL TO ORDER
- 7:31 P.M. ACCEPT MINUTES OF MEETING JANUARY 13, 1992
- OPEN DISCUSSION & COMMENTS FROM CITIZENS

NEW BUSINESS

- WARRANTS & COMMUNICATION
- ANNUAL REPORT - COMMISSIONERS REPORT
- VOTE TO ACCEPT WARRANT ARTICLES & BUDGET
- ASSIGNMENT OF WARRANT ARTICLES

OLD BUSINESS

- WATER RATES
- AFFIDAVIT FROM EDWARDS & ANGELL

TOWN OF ACTON
INTERDEPARTMENTAL COMMUNICATION
TOWN MANAGER'S OFFICE

DATE: Jan. 23, 1992

TO: Sergeant James McPadden
Patrolman Paul Cogan
Detective Ray Grey
Patrolman Fred Rentschler
Dispatcher Scott Howe

FROM: Don P. Johnson, Town Manager

SUBJECT: Kidnap/Armed Robbery Incident,
December 28, 1991

The Board of Selectmen received a copy of Chief Robinson's commendation letter to each of you in the subject regard and has asked that I transmit their sincere appreciation for a job well done.

I have had the additional privilege of reviewing the incident reports and I am extremely impressed with the professionalism with which you handled this sensitive situation. It is apparent to me that, without your careful handling, this situation might easily have resulted in serious injury to the victims, the perpetrator or any one of you.

I am pleased to add my personal "thank you" to that of the Selectmen.

cc: Board of Selectmen ✓
Chief Robinson
Personnel Files



DRAFT

**SELECTMEN'S MEETING
JANUARY 21, 1992**

The Board of Selectmen held their regular meeting on Tuesday, January 21, 1992. Present were Norm Lake, Nancy Tavernier, Dore' Hunter, Anne Fanton and Town Manager Johnson

CITIZENS' CONCERNS

None expressed.

PUBLIC HEARINGS AND APPOINTMENTS

**PAPA GINO'S - 82 POWDERMILL ROAD
TRANSFER OF LIQUOR LICENSE**

Carl Gasco, manager of the Papa Gino's explained to the Board that the Transfer was of the entire chain. He would remain in his position as manager of the Acton Store. Outwardly it would have no appearance of change, it was a corporate change of the business. The Board asked about the several health violations noted in the staff comments. Mr. Gasco has met with Health and has taken care of the three infractions which were minor in nature. NANCY TAVERNIER - Moved to approve the Transfer of the Beer and Wine Common Victualer License. DORE' HUNTER - Second. UNANIMOUS VOTE.

REPRESENTATIVE PAM RESOR

Representative Resor came in and updated the Board on the past years events. We have been assured by the governor that he would level fund local aid, although we has heard that it will be directed toward education. Nancy was very interested in lowering health care costs as outlined in the handout in the numbered mail. Pam asked the Board to prioritize the list for her. Dore' said that health benefit were a great concern in the Coordinating Committee process. Dore' asked if any tinkering would take place in the school choice legislation. Pam has been told that there in no way to delete this legislation. The Board agreed to prioritize the list of concerns and get it to Pam for her review and action.

**MINUTEMAN VOCATIONAL SCHOOL
Mr. WILTSE - OVERVIEW MEETING**

Mr. Wiltse along with Ron Fitzgerald updated the board on the operations of the Voc. Tech. They assume that after this year the R&D account will be zeroed after this year and a majority of the town's will be rejecting the Deferral option. Acton was the only town to request deferral. Nancy speaking for herself, was concerned why others had not chosen deferral as it had allowed us to avoid an override this year. Anne after review

stated she would support the printed resolution and vote not to dictate to other towns and would vote against deferral at the Minuteman Level. ANNE FANTON - Moved to reject the deferral on Minuteman Regional Voc. School District school teacher's Compensation for fiscal year 1993 as authorized by Section 3 of Chapter 336 of the Acts of 1991. DORE' HUNTER - Second - UNANIMOUS VOTE.

Dore' asked Mr. Wiltse what he perceived his duties and responsibilities were. He replied to see that the tax dollars are spent properly and to promote voc tech education. Mr. Wiltse was reminded that a Voc. Tech. education was twice the cost of a traditional high school education. Dore' asked that Mr. Wiltse be put on the agenda list for the Coordinating Committee and invited him to attend the Monday morning meetings so he could better understand his role.

BOARD OF ASSESSORS OVERVIEW MEETING

Jim Kotanchick, Chairman answered the Boards questions about the abatement process. They have had 100 applications vs 344 last year and 921 the prior year. The Condo's gave them trouble this year and then the State interjects its views and rules. Anne wanted the cost looked into for an annual reval. They estimate 30,000 every three and that they would look into the yearly update and get back to the Board on the estimated cost. Public information about the denial and approval was discussed and the Assessors agreed to prepare a more detailed response to send to those denied. They were also asked to speak to the tax classification issue next year to further assist the board in their decision.

CONSENT CALENDAR

The Board approved the Consent Calendar as submitted. DORE' HUNTER - Moved to accept as printed. NANCY TAVERNIER - Second. UNANIMOUS VOTE.

SELECTMEN'S CONCERNS

Eagle Scout - Dore' Hunter will attend the next Court in March for Troop 11.

Norm Lake Noted he has taken out papers to run for a second term.

Power Outage - Dore' Hunter received a phone call about the power outage in West Acton. The caller was concerned that the lack of communication between the utility and citizens continues. Staff was asked to interface with Boston Edison once again.

Annual Report - The Board reviewed and voted to submit the report as written with the minor changes as suggested by John Murray.

Coordinating Committee - Dore' outlined the latest meeting. Most of the discussion was based on the readjustment to the budget on the School Choice monies and utilities. Dore' asked to have the wage increases for the past years vs. Town increases gathered for review.

Legal RFP - Dore' spoke to his recent memo. He felt that it would be a helpful exercise and should be considered in the future. Anne thought this was good RFP as written. Anne asked if a general questionnaire had been put out on the current services to staff/committees that use counsel yet. It was suggested that a wording transition to the RFP be prepared and sent to current counsel. Dore' felt that after responding to several of these it was a helpful process for the firm and client relationship.

Regarding the Staff comment, Nancy wanted specific examples of what the problems were from staff/boards. Dore' was not in favor of going to committees for content of the RFP. Dore' wanted to keep the process as philosophical as possible, they tell us what they will do for us. NANCY TAVERNIER - MOVED to send out the RFP as written by Dore' as well as staff questionnaire for comment on current use of counsel. ANNE FANTON - Second. UNANIMOUS VOTE.

Route 2 - The Board reviewed the current response to the letter written by Vanetta Hunter. They were concerned with the notation of a possible construction of an over-under pass at Piper Road. Anne discussed her latest meeting with the State officials, MAPC reps and neighboring towns regarding the CAC process. Anne was asked to contact the DPW by telephone and discuss the Boards concerns.

TOWN MANAGER'S CONCERNS

Don Johnson asked the Board's permission to send letters to the officers involved in the recent hostage situation. The Board agreed to his request and instructed him to draft the letters.

EXECUTIVE SESSION

The Board voted to adjourn into Executive Session for the purpose of discussing Contractual review DORE' HUNTER took roll call all Ayes.

The Board adjourned into executive session at 10:30 P.M.

Clerk

Date

Christine Joyce
Recording Secty.
cmjW11-(191)

EXECUTIVE SESSION MINUTES

January 21, 1992

Porrazzo Properties - Don updated the board on the recent purchase of the property by Dan Porrazzo at auction.

ACHC - Audubon Hill - The Board discussed the most recent staff memo on goals for the project. Dore' felt that the order of priorities was what he expected and was how he remembered the board's priorities.

Mobil Oil - Palmer and Dodge has received a letter from Mobil asking to negotiate and the possibility of further negotiations with the Town on the sign.

The Board adjourned at 11:10 P.M.

Clerk

Date

Christine Joyce
Recording Secty.
cmjW11-(187)

1-21-92

VOLUNTEER COMMITTEE MEMBERSHIP

BOARD OF SELECTMAN

ACTON/BOMBORO ARTS COUNCIL.....	ABAC.....	1
APPEALS. BOARD OF.....	BOAP.....	2
ASSESSORS. BOARD OF.....	BCAS.....	3
CEMETERY COMMISSION.....	CEC.....	4
CONSERVATION COMMISSION.....	ACC.....	5
COUNCIL ON AGING.....	COA.....	6
FAIR HOUSING COMMITTEE.....	FHC.....	7
HANSCOM FIELD ADVISORY COMMISSION.....	HFAC.....	8
HEALTH. BOARD OF.....	BOH.....	9
HISTORICAL COMMISSION.....	AHC.....	10
HISTORIC DISTRICT COMMISSION.....	AHDC.....	11
METROPOLITAN AREA PLANNING COUNCIL.....	MAP.....	12
MINUTEMAN HOME CARE.....	MMHC.....	13
PLANNING BOARD.....	PLB.....	14
PRISON ADVISORY COMMITTEE.....	PAC.....	15
RECREATION COMMISSION.....	REC.....	16
S. ACTON REVITALIZATION COMMITTEE.....	SARC.....	17
TRANSPORTATION ADVISORY COMMITTEE.....	TAC.....	18
VOLUNTEER COORDINATING COMMITTEE.....	VCC.....	19

TOWN MANAGER

AUDIT MONITORING COMMITTEE.....	AMC.....	20
COMMISSION ON DISABILITY.....	COD.....	21
INVESTMENT ADVISORY COMMITTEE.....	IAC.....	22
PUBLIC CEREMONIES & CELEBRATIONS COMM.....	PCC.....	23
TOWN REPORT COMMITTEE.....	TRC.....	24

TOWN MODERATOR

FINANCE COMMITTEE.....	FIN.....	25
MINUTEMAN VOC SCHOOL COMMITTEE.....	MVSC.....	26

Jan. 1992

A/B ARTS COUNCIL 7 members each Acton & Boxborough
2 year terms

NAME	APP/EXP	SWORN IN	PHONE	APPT
Chr DE QUATTRO, ROSALIE	6/30/93 E	10/9/91	263-3625	88
Harsip, Lisa	6/30/93		263-4499	86
Pitts, Penny	6/30/93	10/23/91	263-7601	86
Rembert, Nancy	6/30/93	10/9/91	263-6589	88
Santillo, Sharon	6/30/93	1/15/92	263-1672	88
Spotkill, Valarie	6/30/93	10/9/91	263-9651	86
Thrope, Janet	6/30/93	3/18/91	264-8490	91

Boxborough has six members at present: Eleanor D. Entremont, Charles Garabedian, Holly Ross, Margaret Tsao, Elizabeth West, and Lois Wisman.

BOARD OF APPEALS

JAN. 1992

3 MEMBERS, 3 ALTERNATES, 3 YEAR TERMS

NAME	APP/EXP	SWORN IN	PHONE	APPT
Clerk Burdine, Malcolm	6/30/94	11/13/91	263-5307	1988 F
Clark, Janet. (alt.)	6/30/94	12/30/91		1991
Crockett, Stephen K. (alt)	6/30/94	10/16/91	264-0586	1991
Chr. Mieziva, Matt	6/30/93	1/15/92	263-3862	1988 F
Perkins, Beatrice (alt.)	6/30/94	10-17-91	369-7726	1991
Wood, Duncan	6/30/94	9/23/91	263-3682	1991

BOARD OF ASSESSORS

JAN. 1992

3 MEMBERS 3 YEAR TERM
1 ALTERNATE 1 YEAR TERM

NAME	APP/EXP	SWORN IN	PHONE	APPT
Adams, Robert	6/30/94	3/27/89	263-2424	1989 F
Kotanchic, James	6/30/93	9/23/91	263-9381	1989
cha Miller, Susan	6/30/92		263-3996	1988
Rhude, Donald	6/30/93	7/26/90	263-5823	1990

CEMETERY COMMISSIONERS

JAN. 1992

4 MEMBERS 3 YEAR TERMS

NAME	APP/EXP	SWORN IN	PHONE	APPT
Putnam, Charles	6/30/93		263-4943	1980 +1987
Chr. Mowry, Wesley	6/30/92	7/26/84 3/22/84	263-5543	1986
Bailey, Edward	6/30/94	9/13/91	263-7084	1985
George, Walter	6/30/94	10/21/91	263-3132	1991

CONSERVATION COMMISSION

JAN. 1992

7 MEMBERS

3 ASSOCIATES

NAME	APP/EXP	SWORN IN	PHONE	APP
Bodner, Morene	6/30/94	8/8/91	263-8958	1991
Chalmers, John	6/30/94	11/6/91	263-7255	1988 F
Hill, Bill	6/30/94		263-1486	1991
Chr Sheehan, Andrew	6/30/92	10/17/89	635-0967	1987
Shubert, Ann	6/30/92	9/19/89	263-9184	1989
Timledge, Charlotte	6/30/93	7/16/90	263-0576	1990 F
Shanahan, Peter	6/30/93	8/9/90	263-4857	1990
McElroy, Linda (Assoc.)	6/30/92	10/15/91	263-1579	1991
Coan, Robert (Assoc.)	6/30/92	10/11/91	635-0243	1991
Carlson, Charles (Asso.)	6/30/92	9/9/91	263-9462	1991

COUNCIL ON AGING

JAN. 1992

9 MEMBERS 1 YEAR

NAME	APP/EXP	SWORN IN	PHONE	APP
Chautin, Dorothy	6/30/92	10/10/91	263-7799	1987
Donovan, Warren	6/30/92	8/16/91	263-2266	1991
Chr Epstein, Maria	6/30/92	10/10/91	897-9960	1990 F
Erlanger, Peggy	6/30/92	4/4/91	263-5313	1991
Kiley, Marianne	6/30/92	10/28/91	263-2653	1986
Krea, Constance	6/30/92	12/19/91	263-7253	1991
Rice, Ruth	6/30/92	10/15/91	263-5624	1987
Trafton, Roy	6/30/92	9/12/91	263-2052	1990
Kennedy, Julie	6/30/92	11/13/91	263-0590	1990

This committee
 being filled. We
 have recommended
 4 so far... I appointed
 Robert Coan.

1-21-92

JAN. 1992

- 3 YEARS

NAME

APP/EXP

SWORN IN

APP

HANSCOM FIELD ADVISORY COMMISSION

JAN. 1992

1 MEMBER - 3 YEARS : 1 ALT. - 1 YEAR

NAME	APP/EXP	SWORN IN	PHONE	APP
Klemmer, Ken	6/30/94	9/26/91	263-3245	1988
MacIntire, Frank(Alt.)	6/30/92	10/3/91	263-9873	1990

BOARD OF HEALTH

JAN. 1992

5 MEMBERS - 3 YEARS : 3 ASSOCIATES

NAME	APP/EXP	SWORN IN	PHONE	APP
Alfaro, Cordelia	6/30/94	10/31/91	263-6985	1991
Barbato, James	6/30/94	11/4/91	263-8480	1991
Bosworth, Jonathan	6/30/92	8/89	264- 0584	1989
Calamai, Edward (Asso.)	6/30/92	11/13/91	263-2473	1991
Conoby, Mark	6/30/93	11/4/91	263-2846	1991
Chc Emmons, George	6/30/92	10/27/89	263-6168	1986
Grossman, Ira (Ass.)	6/30/92	11/7/91	263-5708	1991
McInnis, William H. (As.)	6/30/92	12/23/91	635-9802	1991

HISTORICAL COMMISSION

JAN.92

5 MEMBERS - 3 YEARS : 2 ASSOC. - 1 YEAR

NAME	APP/EXP	SWORN IN	PHONE	APP
Chr. Dodson, Anita	6/30/93	10/26/90	263-7081	1987
Domurat, Francis	6/30/94	8/23/91	263-1338	1991
Klauer, Bill	6/30/93	8/9/90	263-4221	1987
Milbery, Virginia	6/30/94	10/10/91	263-4461	1988
Rhodes, Robert (Ass.)	6/30/92		897-6001	1990
Story, Lawrence	6/30/92	10/17/89	263-7904	1985
Tavares, Marianne(As.)	6/30/92	8/16/91	263-4856	1991

Committee places being
appointed. 4 so far.
Seemed best to do
a sheet for whole
Committee when
complete.

1-21-92

SSION

JAN. 1992

MEMBERS - 3 YEARS (initially staggered)
4 ALTERNATES - 3 YEARS " "

NAME

APP/EXP

SWORN IN

PHONE

APP

MET. AREA PLANNING COUNCIL

JAN.1992

NAME	APP/EXP	SWORN IN	PHONE	APP
GILBERTI, DONALD	6/30/94	5/26/88	263-5129	1988 + 1991

MINUTEMAN HOME CARE

JAN. 1992

1 MEMBER - 1 YEAR

NAME	APP/EXP	SWORN IN	PHONE	APP
GROTHER, Marian	6/30/92	10/8/91	263-5557	1991

PLANNING BOARD

JAN. 1992

7 MEMBERS - 5 YEARS ; 2 ASSOC. - 1 YEAR

NAME	APP/EXP	SWORN IN	PHONE	APP
Carnahan, Douglas	6/30/94	2/12/89	263-0154	1989
Giorgio, Mary	6/30/92	9/12/89	263-2697	1987
Hill, David	6/30/93	12/27/88	263-9135	1988
Lee, James	6/30/94	4/28/89	263-7816	1989
Chn Niemyski, Gregory	6/30/93	6/10/88	635-0453	1988 F
Pavan, John M. (Assoc.)	6/30/92	6/10/91	264-4370	1991
Shupert, Wm. (Trey)	6/30/95	7/26/90	263-9497	1990

PRISON ADVISORY COMMITTEE

JAN.1992

3 MEMBERS - 3 YEARS

NAME	APP/EXP	SWORN IN	PHONE	APP
Gordinier, Harold	6/30/93	1/31/91	263-2368	1990
Chr. Schoch, Jean	6/30	6/5/87	263-7456	1987

RECREATION COMMISSION

JAN. 1992

5 MEMBERS - 3 YEARS

NAME	APP/EXP	SWORN IN	PHONE	APP
Kelly, Johnathan	6/30/94		897-8934	1988 F
Chr. Stamski, Bruce	6/30/94	10/23/87	263-4349	1987
Tohline, Caroline	6/30/92	9/13/89	263-9657	1989

S. ACTON REVITALIZATION COMMITTEE

JAN.1992

5 MEMBERS - 3 YEARS

NAME	APP/EXP	SWORN IN	PHONE	APP
Eldridge, Betsy	6/30/94		263-0586	1988
Manka, Samuel	6/30/94	8/26/91	263-0402	1991
Whaley, Sandra	6/30/94		263-0294	1987

We understand
Martin is drafting
goals + objectives
at this point in
time.

1-21-92

COMMITTEE

JAN. 1992

10 MEMBERS - 3 YEARS

NAME	APP/EXP	SWORN IN	PHONE	APP
Graetz. Martin	6/30/94	9/24/91	263-6469	1988

VOLUNTEER COORDINATING COMMITTEE

JAN. 1992

7 MEMBERS - 3 YEARS

NAME	APP EXP	SWORN IN	PHONE	APP
Comstock, Betsy	6/30/94	11/12/91	263-6984	1991
George, Walter	6/30/94	8/8/91	263-3132	1991
Husbands, Charles	6/30/94	8/8/91	263-5571	1991
Chr. Kadlec, Charlie	6/30/92	9/28/89	263-4361	1989
Lane, Jean	6/30/92	9/1/89	263-5969	1989
Snook, Peggy	6/30/93	10/23/90	263-0455	1987
Whitcomb, Nancy	6/30/93	2/26/90	263-5394	1990

AUDIT MONITORING COMMITTEE

JAN. 1992

5 MEMBERS - 3 YEARS

NAME	APP. EXP	SWORN IN	PHONE	APP
Bradley, Charles	6/30/92		263-1329	1986
Coughlin, Cornelius	6/30/92	8/22/89	263-3777	1982
James, Sara	6/30/91	88	263-6957	1985

COMMISSION ON DISABILITY

JAN.1992

7 MEMBERS - 1.2 & 3 YEAR TERMS

	NAME	APP/EXP	SWORN IN	PHONE	APP
	Beauregard, Louis	6/30/93	6/27/90	263-7248	1990
V. chr.	Geehan, Wayne	6/30/94	6/30/88	263-8122	1988
Treas.	Hobson, Cary	6/30/93	6/18/87 4/11/91	263-8937	1987
	Ingram, Connie	6/30/92	6/21/87 5/23/91	263-2674	1987
Chair	River, Walter	6/30/94	6/23/88	263-0843	1988
Sec'y.	Mayo, Mary Ellen	6/30/99	3/4/91	264-0639	1991
	Lake, Carol	6/30/93	Town Liason	263-7635	1989
	Burrows, Joan	Assoc. Member		263-0843	1988

INVESTMENT ADVISORY COMMITTEE

JAN. 1992

5 MEMBERS - 3 YEARS

NAME	APP/EXP	SWORN IN	PHONE	APP
Conant. Brewster	6/30/94		263-2090	1982
Evans. Howell	6/30/92		263-7987	1981
Greenbaum. James	6/30/94		263-4866	1981
Gulliver. Allen	6/30/94		263-3898	1985
Putnam. Charles	6.30.90		263-4943	1980

PUBLIC CEREMONIES & CELEBRATIONS COMM. JAN.1992

9 MEMBERS - 3 YEARS

NAME	APP/EXP	SWORN IN	APP
Flower, Frank	6/30/92		1986
Gould, Kenneth	6/30/94	12/27/91	1985
Klemmer, Kenneth	6/30/94	9/26/91	1988
Miller, Richmond	6/30/92		1989
Thrope, Janet	6/30/94	3/18/91	1991

TOWN REPORT COMMITTEE

JAN. 1992

7 MEMBERS - 3 YEARS

NAME	APP/EXP/	SWORN	PHONE	APP
Fingerman, Susan	6/30/94	2/8/91	263-1881	1991
Jarvis, Mildred	6/30/94		263-4087	1991
Masson, Sandra	6/30/94	2/8/91	263-2466	1990
Taylor, Georgianne	6/30/94	2/8/91	263-3815	1991
Wisely, Carolyn	6.30.94		263-4854	1991

FINANCE COMMITTEE

JAN. 1992

9 MEMBERS - 3 YEARS

NAME	EXP	SWORN IN	PHONE	APP
Allen. Mark	5/31/94			1991
Chavez Gabbrielli, Camille	5/31/94	8/5/91		1991
Donald. Dr. Mary	5/31/94		263-4747	1988
Harrigan. Arthur	5/31/93		263-7177	1987
Kohout. Paul	5/31/93		264-4284	1990
Mullin. William	5/31/93		263-5962	1990
Olmstead. Charles	5/31/92		263-4320	1991
Peters. Joseph	5/31/92		263-5357	1989
Sanford. Sandy	5/31/92	9/12/89	263-7793	1989

MINUTEMAN VOCATIONAL SCHOOL COMMITTEE

JAN.1992

1 MEMBER - 3 YEARS

NAME	APP/EXP	SWORN IN	PHONE	APP
WILTSIE, ROBERT A.	6/30/94		263-6728	1991

Le LYONNAIS Restaurant
416 Great Road (Rt. 24)
PO. BOX 2017

ACTON MASSACHUSETTS 01720
Tel 2639068.

Extra
consent
2/4/92

File
2/4/92

February 3, 1992

To the Selectmen of the
Town of Acton.

I Gerard Dubrose chef owner of
Le LYONNAIS Restaurant 416 Great Road ACTON,
wish to have the privilege to be opened
for business the Sunday 16 of February
and have the use of a liquor license

Sincerely,

Gerard M. Dubrose

Extra Info 2/4/92

January 25, 1992

South Acton Revitalization Committee
c/o Sam Manka
94 Main Street
Acton, MA 01720

Dean Charter, Municipal Properties Director
Town of Acton
472 Main Street
Acton, MA 01720

Dear Dean:

It has come to our attention that the draft of the proposed Open Space and Recreation Plan is presently being distributed to town boards and committees.

Having quickly glanced at a copy, we notice that the plan involves considerable property in South Acton center, especially the parcels on and near Great Hill and along Fort Pond Brook and the mill pond.

It is part of SARC's responsibility to keep well informed about any potential plans, changes, proposals and problems that would have an impact on South Acton center, as well as to review any potential use of the funds in the Great Hill donation account, a portion of which, as you undoubtedly know, is allocated for the development of a park plan along the Fort Pond Brook corridor.

We were consequently alarmed that SARC was not on the distribution list for information about the Open Space Plan. We'd appreciate it if you could send a copy of the draft to us as soon as possible, and send us any future communications that are relevant to South Acton, as well. We do not have a Town Hall mailbox, but you could send the draft to any one of us at the following addresses:

Betsy Eldridge
85 Stow Street

Sam Manka
94 Main Street

Sandra Whaley
1 River Street

Thanks,



Sam Manka

REPUBLICAN TOWN COMMITTEE

John H. Loring
60 Willow Street
Acton, Mass. 01720
263-4453

Karey D. Brown
15 Marian Road
Acton, Mass. 01720
263-7889

Tatiana F. Loring
60 Willow Street
Acton, Mass. 01720
263-4453

E. Wilson Bursaw
23 Newtowne Road
Acton, Mass. 01720
263-4002

George Wiltsee
11 Putter Drive
Acton, Mass. 01720
897-6009

Donald B. Hodges
4 Rose Court
Acton, Mass. 01720
263-3854

William C. Sawyer
15 Spring Hill Road
Concord, Mass. 01742
369-7367

Patience MacPherson
48 Nagog Hill Road
Acton, Mass. 01720
263-5398

Debra H. Shields
11 Davis Road #C9
Acton, Mass. 01720
263-5364

Craig Fingerman
15 Oneida Road
Acton, Mass. 01720
263-1881

Paul DeVivo
7 Lothrop Road
Acton, Mass. 01720
263-1537

Frederick Bubier
23 Seneca Road
Acton, Mass. 01720
263-7090

John teDuits
15 Nadine Road
Acton, Mass. 01720
263-8650

Nancy Bursaw
23 Newtowne Road
Acton, Mass. 01720
263-4002

Katherine F. Arnold
167 Willow Street
Acton, Mass. 01720
263-4372

Jean Wiltsee
11 Putter Drive
Acton, Mass. 01720
897-6009

Donnie Hodges
4 Rose Court
Acton, Mass. 01720
263-3854

Mary Jane Merrill
75 Harris Street
Acton, Mass. 01720
263-2244

Roberta C. Hammell
4 Rose Court
Acton, Mass. 01720
263-3854

John Sheehan
14 F Wampus Avenue
Acton, Mass. 01720
635-0553

Janet Milliken
152 Willow Street
Acton, Mass. 01720
263-7908

Chuck Kostro
12 Lothrop Road
Acton, Mass. 01720
263-7800

Janet Bubier
23 Seneca Road
Acton, Mass. 01720
263-7090

Horace Hodges
4 Rose Court
Acton, Mass. 01720
263-2904

John G. Sabbey
13 Mohawk Drive
Acton, Mass. 01720
263-1768

Richmond P. Miller
20 Joseph Reed Lane
Acton, Mass. 01720
263-5995

Norman Veenstra
36 Main Street
Acton, Mass. 01720
253-5300

Rita Dolan
7 Alcott Street
Acton, Mass. 01720
263-7884

Alan M. Merrill
75 Harris Street
Acton, Mass. 01720
263-2244

Janet W. Murphy
26 Concord Road
Acton, Mass. 01720
263-2725

Sarah Brown
15 Marian Road
Acton, Mass. 01720
263-7889

Joyce DeVivo
7 Lothrop Road
Acton, Mass. 01720
263-1537

* = Nominations papers have been returned and validated.

2/4/92

Update of Candidates for 3/31/92 Town Election

Selectman : 2 openings - 3yr term
James Burke
Craig Fungerman
* Norman Laker
Thomas Mackey
William Mueller

School Committee - 2 openings - 3yr term

Nancy Jarboe
* Carol Mackey
* Chris M^r Adam
Roy Nelson
Charles Robidoux
* Richard "Dick" Sawyer
* William Weiser
Joseph Will
Alice "Muri" Williams

Sam. Hay has withdrawn from the race

Library Trustee 1 opening 3 yr term
Susan Fingerman (incumbent)

Library Trustee 1 opening - (to replace ^{Ann} Chan) 1 yr term
Robert Ferrara

Housing Authority 1 opening 5 yr term
* Jean Shoch (incumbent)

Moderator
* Don Mac Kenzie (incumbent) 1 yr term

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

Norman D. Lake
Chairman

February 4, 1992

Mr. Robert Eisengrien
A.C.E.S. Project Manager
5 Valley Road
Acton, MA 01720

Dear Bob:

The Board of Selectmen have received your letter of January 23, 1992 and share the concerns that you expressed. Without doubt it is urgent that the bioremediation bench test proceed with as little delay as possible. Equally important is the necessity that the test be done in the most appropriate manner and within the bidding restrictions that constrain the town.

In order to address the parameters of a bench test the town had its consultant, G.Z.A., review and amend the generic R.F.P. you supplied. The revised R.F.P. was then sent to Pine and Swallow for their comment. This process took more time than anticipated as G.Z.A. identified additional parameters that needed to be reviewed in detail by Pine and Swallow. This process has been completed and the R.F.P. is now acceptable to all parties.

The Town, in addition, had to address the state procurement law, Chapter 30B. In order to be consistent with that law the town had to establish the manner in which bids would be requested and the process by which selection would be done. This required Town Counsel to develop a legal representation by which G.Z.A. could act as the town's procurement liaison. This process has also been completed.

At this time G.Z.A. is in the process of contacting bioremediation firms and familiarizing them with the project. It is anticipated that the bidding and selection process will be complete by mid to late February. The bench test would be conducted immediately after the selection of a firm. The Board of Selectmen intend to take every action possible to keep this project on track and on time.

In regards to your memo of October 16, 1991 the Board believes point 2 has been addressed with the newly revised R.F.P. Concerning point 3, the Board of Selectmen finds those conditions acceptable.

In closing the Board appreciates and shares the concerns that A.C.E.S. have raised. The Board believes that this project will answer many questions regarding the W.R. Grace site and is anxious for its completion.

Sincerely,

Norman D. Lake
Chairman
BOARD OF SELECTMEN

To: The Coordinating Committee
From: Staff
Re: FY'93 Draft Plan
Date: January 27, 1992

This plan, like all plans, was constructed from the bottom up. The first step was setting the foundation, which means to determine the assumptions on which the plan is to be constructed. As you are aware, if one were to change all or any of the following assumptions, then the numbers in the financial plan would also have to be modified.

ASSUMPTIONS FOR FY'93

1. Staff was to create a plan which optimized service to the community and minimized the cost to the taxpayer.
2. Both the Schools and the Town would operate with a bottom line budget.
3. Special Ed. Tuition and SPED Transportation will be increased by 15%. (Budgeted amounts for these line items will be based on actual costs.)
4. The NESWC enterprise fund would increase by 15%. (Budgeted amount for this line item will be based on actual cost.)
5. The Regional Schools' legal costs will be budgeted at \$150,000. This increased appropriation (i.e., \$105,000) will be a one-time increase and not become part of the base for FY'94.
6. The FY'93 Minuteman assessment will assume a one-year repayment of their FY'92 teacher deferral amount.
7. Expense categories will be increased by the following amounts:

Utilities	5% (Town) 0% (Schools)
Health Insurance	12.5%
Worker's Comp. Ins.	10%
Pension Expense	5%
Unemployment Ins.	0%
Life Insurance	0%
Contingency Funds	0%
Salaries	5%
Debt and Interest	at actual level of 6/30/92
All Other Expenses	5%
Snow Removal	15%
8. Any excess monies above 1.0% in the Regional School's E & D account (as of 6/30/91 minus transfers for FY'92 legal bills) will be used to offset

5. Regional debt will be re-classed from the Schools expenditure line to the Debt and Interest line.
6. A new expenditure and a new revenue line called Self-Funding Projects will be added. These lines will reflect new programs as of 6/30/91, which are totally self-sufficient. The Self-Funding line will not be used in calculating the allocation split.
7. Deferral Compromise
 - 1) The Local and Regional Schools will accept Deferral for both years (FY92 & FY93).
 - 2) An accelerated amortization will be adopted by written agreement between the three (3) parties. This will consist of a four (4) year pay-back period with the first year of amortization beginning in FY94 and continuing in 1/4 installments for the following three (3) years.
 - 3) No formal amortization votes ... other than one that is supportive of the written agreement ... will be taken by the Selectmen (via placement of an Article before Town Meeting) or the Regional School Committee.
 - 4) Deferral amortization will be built into the budgets for the years FY94-FY97.
 - 5) The Selectmen, Regional School Committee, Fincom and Staff shall adopt and support this compromise.