

Final

**BOARD OF SELECTMEN AND SEWER COMMISSIONERS' MEETING  
October 3, 2011**

**Acton Town Hall  
Francis Faulkner Hearing Room  
7:00 P.M.**

Present: Mr. Gowing, Ms. Harting-Barrat, Ms. Adachi, Mr. Clough; Mr. Sonner absent. Town Manager Ledoux, Recording Secretary Christine Joyce. The meeting was televised.

**CITIZENS' CONCERNS**

None

**CHAIRPERSON'S UPDATE**

Mr. Gowing spoke about the proposed Montachusets Regional Transit Authority (MART) shuttle service between Fitchburg and Alewife with a stop around 8:05 a.m. either in Boxborough (at the technology park on Central @ Route 2) or in Acton on Discovery Way. MART wants to give commuters another option and hopes to start the shuttle service 10/17. Anyone interested should contact Mo Khan, MART Administrator.

**OPERATIONAL MINUTE**

Mr. Ledoux attended a meeting this morning at Minuteman Technical School. The school district consists of 16 communities. The school would like to undertake major capital improvements, which requires unanimity among the district members, via approval at the district members' respective Town Meetings. Members discussed how to allocate capital contributions among the members. The Minuteman school committee approved a calculation based on total student population, not just Minuteman enrollment, which contemplated that a member's Minuteman enrollment would grow as its general school enrollment grew, though that is not necessarily true; members are proposing an alternative calculation based on 50% enrollment and 35% of Chapter 70 funds combined, with each member also contributing 1% toward capital. 35% of Minuteman students pay tuition because they are from non-member communities, principally Medford, Waltham and Watertown; the non-member communities have no capital contribution obligation. Mr. Ledoux would like to put this issue on the next Selectmen's agenda.

All Department heads will be at the annual budget retreat, "On the Hill," at the Public Safety Facility on Wednesday Thursday and Friday. Discussion will cover not only FY13 but FY13 through FY15.

**R E C E I V E D**  
NOV - 8 2011

Board of Selectmen Minutes  
October 3, 2011

TOWN CLERK, ACTON

Final

## **PUBLIC HEARINGS & APPOINTMENTS**

### **SITE PLAN SPECIAL PERMIT #7/6/11-433, 65 POWDER MILL ROAD**

(CONTINUED TO DECEMBER 19, 2011)

#### **VOTE WHETHER THE TOWN WILL ENGAGE IN THE PROCESS TO CHANGE HEALTH BENEFITS UNDER MASS GENERAL c. 32B §§ 21-23**

Mr. Ledoux explained that the Selectmen will invoke the Rule of Necessity as Ms. Adachi is the only member without a conflict of interest. The first step is for the Selectmen with conflicts to recuse themselves. Town Counsel Stephen Anderson confirmed that the Selectmen with conflicts should recuse themselves and explain why.

Messrs. Clough and Gowing and Ms. Harting-Barrat recused themselves: Mr. Clough because his wife works for the Regional School District; Mr. Gowing because he is a member of the Health Insurance Trust (HIT) and has health insurance; and Ms. Harting-Barrat because she has dental insurance. Mr. Anderson noted for the record that Mr. Sonner was absent but previously had recused himself, meaning that the five-member Board has only one member unrecused for consideration of the health insurance issues under Chapter 69.

Mr. Gowing delegated the chairing of the next portion of the meeting to Ms. Adachi.

Mr. Anderson explained the Rule of Necessity, a rule of last resort that may be invoked only when a board lacks a quorum to act on a matter that is within its jurisdiction and as to which no other board has power to act, where there is a limited time for the required action, and where without invoking the Rule a quorum would not be possible. The state posted a memorandum in September, explaining that given the likelihood of conflicts-related recusals on boards throughout the state, the Rule of Necessity might be necessary. A recused member must make and second the motion to allow the Board to sit and decide what to do next in the Chapter 69 process; a recused member may choose to participate or to leave the room.

Ms. Adachi read the Motion for Invoking Rule of Necessity Relative to Chapter 69 Process, Chapter 69 Evaluation and Chapter 69 Vote, and requested that a recused member move and second. Mr. Gowing – Moved, Ms. Harting-Barrat – second. Mr. Anderson noted for the record that Mr. Sonner previously had recused himself and, while absent, remains recused unless when he is present he elects to participate. Ms. Adachi roll call, all Ayes. Ms. Adachi asked the recused members whether or not they wished to participate; Mr. Gowing said all wished to participate. Ms. Adachi then turned over the chairing responsibility to Mr. Gowing.

Mr. Gowing opened the discussion to comments from residents in the audience.

Paulina Knibbe, Quabog Road, Finance Committee (FinComm) member - Noted that FinComm has an interest in the financial impact of the Board's decision, has just received a copy of the interim Segal report but has not had an opportunity to review and discuss it, and wanted assurance that the Board will make no binding decision before the FinComm has had an opportunity to weigh in.

Board of Selectmen Minutes  
October 3, 2011

Final

Mark Lewis, President Acton Education Association (AEA) – Not an Acton resident but the Board agreed to let him speak. AEA represents the largest group of Acton and Regional District school employees (376 certified staff, including teachers, librarians, nurses, counselors, specialists). He was troubled by the timing for decision-making. Also troubled by the scheduling on Rosh Hashanah of the meeting at which the consultant's report was to be released to the public, which meeting he was unable to attend; he also learned that there was an announcement at the same meeting that the Selectmen would be discussing and voting on the issue tonight. He said he received no notice of tonight's meeting, which he believes is a statutory violation. He asked how many employees each of the Selectmen has spoken with in preparing for tonight's decision.

John Petersen, Chairman of the Acton Boxborough Regional School Committee (ABRSC) and ABRSC representative to the HIT - Speaking as ABRSC Chairman. He sent out a memorandum over the weekend, and read an excerpt: ABRSC and Acton Public School Committee (APSC) decided three years ago to gradually shift more of benefits cost to employees as part of process to encourage more cost-effective use of medical services; employees will be fully responsible for 25% contribution in FY14; critical element of union contracts and agreements with non-union employees is that same benefits at same costs would be offered to all groups. ABRSC joined with APSC to negotiate with unions, so no difference in terms for Regional District employees and Acton School employees, who also are Town employees. ABRSC is concerned that Chapter 69 process might decouple the Regional District and the Acton Schools with respect to benefits. The ABRSC requests that the consideration of health insurance inform under Chapter 69 be in a joint session of the Selectmen and ABRSC at which the HIT could present its analysis of the final Segal report before the Selectmen take any action.

In response to a query by Mr. Gowing, Mr. Petersen said the current contract started in FY11 and will end in FY13. Mr. Gowing noted that Section 4 of the law says any changes in benefits will have no impact until the expiration of the current contract, so there is no urgency, given that the current contract will remain in effect. Mr. Petersen said the negotiation that is about to begin, if the Regional District and Acton Public Schools do not remain coupled, will involve the formation of a group of the school and other municipal unions—AEA, AFSCME, fire, police, etc.—and in that group, the AEA vote would dominate and represent the interests of the schools, not fire, police, highway. So it would be better to take time to make sure there is good data to present to everyone.

Ms. Harting-Barratt recalled back when she was a School Committee member that there was a joint Selectmen-Schools discussion of proposed changes in employee contributions. John Murray, Assistant Town Manager/Treasurer, noted that at that time, the Selectmen and schools did not join together to bargain with unions.

Mr. Clough noted that the first requirement is that there be the potential for at least a 5% cost savings, and the purpose of the study was to determine potential savings. The inclusion of the topic on tonight's agenda was because this is the first opportunity to vote, and does not mean the Board will vote

Mr. Petersen, following up on Ms. Harting-Barratt's comment, said that a separate issue for the Town and schools is coordination of benefits, which representatives of both sides could meet to discuss. He also was aware that the Board might not take action tonight.

Board of Selectmen Minutes  
October 3, 2011

Final

Bob Evans, Brewster Lane – When he was involved in negotiation as a School Committee member, there was little or no coordination with the Selectmen or Town approach. Speaking as HIT Chairman, he said HIT should have the completed report from Segal by the end of the week, so the Board would not have to wait long for that.

Ms. Adachi asked whether the Board was expected to vote tonight, and said that she had just gotten a copy of the draft Segal report this afternoon via the School Committees' packet, had not had time to study it, and was unprepared to vote.

Ms. Harting-Barrat addressed Mr. Lewis's comments about the religious holiday, said that other meetings conflicted with Rosh Hashanah, people in Town have worked hard to be diverse and respectful, scheduling important meetings on the high Jewish holidays was disrespectful, and she hoped such problems could be avoided in the future. She also would not be prepared to vote tonight.

Mike Coppolino, Isaac Davis Way, Chairman of the APSC - Read a prepared statement from the APSC. The APSC has no formal role in the ongoing process under the Health Care Reform Act, but would like to be included in any discussion and information-sharing that the Board of Selectmen may engage in regarding the APS employees. APSC and ABRSC historically have negotiated jointly with the school unions for separate contracts with those unions. APSC would like to maintain the relationship with ABRSC and the involvement in actions that may affect the compensation of APS employees.

Paul Murphy, Revolutionary Road - Spoke as resident and not as a School Committee member. Asked about the state's "emergency rule" and suggested that if the public comment period still was open, people should be commenting about the rule. Mr. Gowing said that the state has 90 days to formalize the emergency rule and he does not anticipate any major changes.

Mr. Gowing noted that he and Messrs. Evans, Petersen and Murray are on the HIT, as is Sharon "Tess" Summers. Ms. Summers' recusal at the last HIT meeting was due to a conflict of interest as to which the ABRSC as the appointing board had not specifically authorized her to participate in the meeting. So her recusal was not to preclude her participation but to comply with the law. As a result the HIT vote was split, though with a majority that allowed the Selectmen to proceed tonight.

Mr. Petersen said the important issue is what to do going forward. The ABRSC has Ms. Summers' conflict issue on the agenda for its next meeting. He hopes that the Board will agree with the ABRSC's suggestion to have a joint session with the HIT.

Mr. Gowing said that due to the split HIT vote, he would move to delay the Board's vote until the November 7<sup>th</sup> meeting, and also would move to do an independent study: it was possible that the Town would end up differing with the Regional District. The controversy surrounding the Segal study could be "fruit from the poisonous tree." The proposed action would allow the Board to work from a clean report and allow time for the ABRSC and FinComm to evaluate. Ms. Harting Barratt - second.

Ms. Adachi requested clarification of the controversy surrounding the Segal report. Mr. Gowing said the premature release of the report had created a taint that could cause someone to question the legitimacy of a Board decision based on the report. He wants to bring in a disinterested party to do a simplified study that includes just what the state law requires without

Final

the additional information that the Segal report includes. He noted that the Chapter 69 process has three parts: move forward, analyze impact on employees, and mitigation of that impact.

Mr. Clough requested that Mr. Gowing separate the two parts of the motion into two separate motions. Mr. Gowing moved to continue the discussion of the general issue to November 7<sup>th</sup>. Ms. Harting-Barrat – second.

Ms. Adachi asked about Mr. Petersen's suggestion for a joint session, given that the Board will be getting a second report. Mr. Gowing said the purpose of the current motion was simply to move the process forward. Ms. Harding-Barrat asked whether Mr. Gowing expected the second study to be completed by November 7<sup>th</sup>: yes. Mr. Anderson suggested withdrawing the motion and second to allow further discussion. Mr. Gowing and Ms. Harting-Barrat withdrew their respective motion and second.

Mr. Gowing moved to conduct an independent Town study to determine whether the Town should move forward under Chapter 69. Ms. Harting-Barrat - second.

Ms. Adachi asked Mr. Gowing who would pay for the second study: the Town. Who paid for the Segal report?: HIT.

Mr. Clough asked Mr. Gowing whether the intention was to take the Segal report and get a Town-only analysis: yes. Mr. Gowing said that the Regional District was a separate entity and did not have to go along. Mr. Clough asked about the scope and cost of the second study: less complicated analysis and half the data, so Mr. Gowing does not expect the study to be very expensive.

Mr. Anderson suggested that the second study should be completely independent, with the new consultant not getting a copy of the Segal report. Further, the Board should authorized the Town Manager to commission the study so that the new report will come back as soon as possible.

Mr. Gowing asked that the Board direct the Town Manager to commission an independent study in behalf of the Town.

Mr. Clough asked Mr. Gowing whether the aim of second study was to see if the Town exceeds the 5% savings requirement: yes. Mr. Clough said that the Segal draft, which he had seen because he is FinCom liaison, indicated that the Town as around 7% and the Schools around 8.5%; so a different consultant might conclude that the number was 4.9%?: yes, but the consultant would have to justify the data.

Ms. Harting-Barrat said that school district studies consider staffing and hours, whereas municipal studies look at emergency responders and hours, and the two are sufficiently different to warrant a separate study.

Mr. Petersen – Speaking as a resident. Requested that the second study be made available on the Town website one week prior to the Board's taking any action, to allow citizens to review.

Steve Noone, Washington Drive - Asked Mr. Anderson whether non-school Town employees could be separated from APS employees for purposes of adopting a change: No, the study must encompass Town employees, school and non-school. Mr. Gowing confirmed that the

Final

second study would focus only on the Town and APS because that is the limit of the Board's jurisdiction.

Mr. Petersen – Requested that the study clearly identify savings associated with changes for non-union employees as well as union employees, given anticipated union negotiations. Mr. Anderson recommended against abiding by that request because Chapter 69 relates to the union process.

Vote on the second-report proposal: Two Ayes (Gowing, Harting-Barrat), Nays (Clough, Adachi).

Ms. Adachi said that she does not understand the compelling need for the second study. She can see that there will be some tension on the municipal side where there are school employees as to which the school committees are concerned about maintaining equity. There also are the ongoing tensions between the municipal side and school side where negotiations are concerned, with the Board sometimes feeling as if what happens on the school side affects or limits what the municipal side can do; perhaps the Regional District has a similar concern that what the Board does that affects Town employees in the school system will affect what the Regional District does.

Mr. Gowing said that the first study includes the Regional District, whereas the second study will address only the Town employees, including APS. Regardless of what the union feels as to the Regional District and APS, there are two separate contracts.

Mr. Anderson expanded on Mr. Gowing's comments. He noted the public comments tonight that the Board needs to do as much preparation as possible and needs very good data to present to everyone; the Chairman's comments that the HIT vote had been split and that the Segal report had been released prematurely, which puts a cloud over that study; and Mr. Lewis's allegation of a statutory violation as the Chapter 69 process is just starting. Mr. Anderson said that the Town would be best served as an independent political authority in the statutory process to get its own independent study of the information that is pertinent to the Town and the Town can use in its decision respecting the Town as a separate entity. The HIT has representatives of the Town and the Regional District and the study covers both the Town and the Regional District. The Town can better maintain its independent authority by commissioning a separate study, in a way that is not possible without the study and with the irregularities.

In response to Ms. Adachi's query, Mr. Anderson confirmed that it would be better to do an independent study than have HIT go back and do a second study. HIT has a role to play but before an inter-municipal organization such as HIT can implement changes under Chapter 69, Chapter 69 says that separate entities in a town must go through the Chapter 69 process separately. Plus regardless of whether the Town goes through the process, the Town must submit its own report to the state by the statutory deadline. So for a lot of reasons, it makes sense to do a second study—do more preparation, collect more data, make it available to other boards and the public, and then decide at the November meeting whether the Town should move forward.

Ms. Adachi expressed the hope that the process with the schools still could be friendly, whether via informal discussions or at the November 7<sup>th</sup> meeting. She withdrew her Nay and voted Aye. Motion for the second study passes, 3-1.

Board of Selectmen Minutes  
October 3, 2011

Final

Mr. Clough asked Mr. Anderson whether the Regional District also must submit its own report to the state: yes, whether or not it goes through the Chapter 69 process.

Mr. Clough would like to share the second study with the Regional District and have a joint meeting after the second report is available. Mr. Clough - Moved. Ms. Adachi agrees with Mr. Clough regarding a joint meeting. Ms. Adachi - second.

Mr. Petersen asked Mr. Anderson what the deadline was for submitting the report to the state: June 30, 2012.

Mr. Noone asked Mr. Gowing what the cost of the Segal study was: \$32,000. The estimated cost of the new study? Under \$5,000. Mr. Noone said that the Segal group could split their existing study into two separate reports, with one covering the Regional District and one covering the Town. He would rather spend time understanding what the Segal study says than getting a new report.

On the motion to share the second study and hold a joint meeting with the Regional District, UNANIMOUS VOTE.

Mr. Gowing - Moved to continue discussion of the general issue to November 7, 2011. Ms. Harting-Barrat – second. UNANIMOUS VOTE

## **SELECTMEN'S BUSINESS**

### **DISCUSSION OF MASS HISTORIC LETTER RE: 6 PIPER ROAD**

Mr. Gowing and Mr. Ledoux reviewed the status of 6 Piper Road. Since the last Board meeting a week ago, the MA Historical Commission has managed to locate its misplaced file and has concluded that the house does have historical significance and should be protected by a historic preservation restriction; at the same time, the fact that the house has been relocated indicates that it is ineligible for the National Register.

Mr. Clough, Historical Commission liaison, said the Historical Commission will revisit the issue, but its understanding from the MA Historical Commission is that a deed restriction is inappropriate unless a property is eligible for listing on the National Register, and the Piper Road property is ineligible for a National Register listing. Mr. Clough feels that if the Acton Historical Commission does not wish to push for a deed restriction, the Board should not push for it. Mr. Clough moved to postpone discussion pending further guidance from the Acton Historical Commission. Ms. Harting-Barrat – second. Mr. Gowing expressed concern about having the Town carry the house for another year and said that getting the property sold would be better for all interests.

## **SELECTMEN'S REPORTS**

Mr. Clough attended the Acton 2020 meeting on affordable housing. He also attended the multiple informational meetings in West Acton about the Sign Bylaw; the turnout was modest.

Ms. Harting-Barrat – No reports.

Board of Selectmen Minutes  
October 3, 2011

Final

Ms. Adachi – The Acton Boxborough Cultural Council (ABCC) is hosting the Art of Recycling sculpture exhibition at Sargent Memorial Library in Boxborough, 10/15-11/19. The ABCC booth at Oktoberfest on 10/1 included photos of creations from recycled materials. The Commission on Disability had a booth at Oktoberfest. The Acton Community Housing Corporation will hold a public information session on the proposed Chapter 40B project at 263 Great Road, on Thursday 10/6, 6:30 p.m., Room 204.

Ms. Adachi also attended the Acton 2020 meeting on affordable housing. She noted that there had been a Selectmen quorum problem; although Mr. Sonner as Acton 2020 liaison had asked the other Selectmen to let him know if they planned to attend so the meeting could be posted; not everyone told him, so Mr. Sonner was unable to participate in the discussion. To avoid that problem at the remaining Acton 2020 meetings this month, Ms. Adachi suggested posting preventively regardless of whether a quorum of the Board actually planned to attend.

Mr. Clough – Moved to post Acton 2020 meetings as Selectmen's meetings to address the possible quorum issue. Ms. Harting-Barrat – second. UNANIMOUS VOTE

Ms. Adachi noted that Senator Jamie Eldridge was at the Acton 2020 meeting and summarized the provisions of the proposed Comprehensive Land Use Reform and Partnership Act (CLURPA). The prior Board was supposed to hear a presentation by him but never did. Senator Eldridge remains interested in presenting to the Board. Planning Director Roland Bartl thought the Planning Board should hear the presentation, too. Ms. Adachi suggested that the presentation could include other participants.

Ms. Harting-Barrat said the CLURPA presentation was her project and she would make arrangements with Mr. Bartl and Senator Eldridge for the Senator's presentation to the Selectmen and other boards. Presentations of other viewpoints could come later.

Mr. Gowing reported on the proposal by proponents of the West Acton Village Ecology (WAVE) project to provide space for the Council on Aging expansion.

## **CONSENT AGENDA**

Ms. Adachi held Item 7, 9/12/2011 minutes, and Item 8, Caouette-Simeone Conservation Restriction (CR). She wanted to be sure that all Board members had seen Mr. Sonner's late-arriving edits of the minutes. She asked whether the approval of the CR under the Consent Agenda was just a formality to receive the final report or was an approval of the substance; she was not prepared to approve the substance so as she had not had time to study the recommendations. Mr. Gowing said that the CR did not belong under the Consent Agenda and should be moved to the Board's 10/17 agenda, 8:00 p.m.

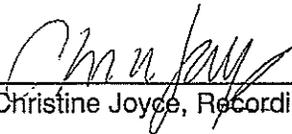
Karen O'Neil, Central Street Acton, Chairman of the Caouette-Simeone CR Committee, outlined the process the committee used and said the background information was available on DocuShare. The CR essentially is done and can move forward for Town Counsel review.

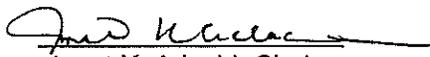
Ms. Adachi – Moved to continue this item until the next meeting October 17, at 8:00 p.m. Ms. Harting-Barrat – second. UNANIMOUS VOTE

Final

Staff will forward the CR to Town Counsel for review.

Ms. Adachi - Moved to approve excluding Item 8 Conservation Restriction Caouette-Simeone Property. Ms. Harting-Barrat -second, UNANIMOUS VOTE

  
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Christine Joyce, Recording Secretary

  
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Janet K. Adachi, Clerk

Date: 7 Novemb 2011

**BOARD OF SELECTMEN & SEWER COMMISSIONERS'**  
**MEETING AGENDA**

*Francis Faulkner Hearing Room*  
*October 3, 2011*  
*7:00 PM*

**I. CITIZENS' CONCERNS**

**II. PUBLIC HEARINGS AND APPOINTMENTS**

**1. 7:05 CHAIRMAN'S UPDATE**

The Chair will briefly update the Board

**2. 7:10 OPERATIONAL MINUTE**

The Town Manager will provide a brief report

**3. 7:25 SITE PLAN SPECIAL PERMIT #7/6/11-433, 65 POWDER MILL ROAD, MEETING AT THE REQUEST OF THE APPLICANT, WILL BE MOVED FORWARD TO DECEMBER 19, 2011 (MS. HARTING-BARRAT ASSIGNED)**

Enclosed please find materials in the subject regard

**4. 7:30 VOTE WHETHER THE TOWN WILL ENGAGE IN THE PROCESS TO CHANGE HEALTH BENEFITS UNDER M.G.L. c. 32B §§21-23.**

- Rule of Necessity motion and vote
- Discussion of evaluation of potential savings from implementation of plan design changes or upon transfer of its subscribers to the Group Insurance Commission

Enclosed please find materials in the subject regard

**III. SELECTMEN'S BUSINESS**

**5. DISCUSSION ON MASS HISTORIC LETTER RE: 6 PIPER ROAD**

Enclosed please find materials in the subject regard

**6. SELECTMEN'S REPORTS**

**IV. CONSENT AGENDA**

**7. ACCEPT MINUTES, BOARD OF SELECTMEN, SEPTEMBER 12, 2011**

Enclosed please find materials in the subject regard

**8. CAOUCETTE-SIMEONE CONSERVATION RESTRICTION COMMITTEE**

Enclosed please find materials in the subject regard

**9. TEMPORARY SIGN REQUEST, TOWN COMMON, ACTON  
CONGREGATIONAL CHURCH, FALL ARTISAN AND CRAFT SHOW,  
NOVEMBER 5<sup>TH</sup>**

Enclosed please find materials in the subject regard

**10. ONE DAY LIQUOR LICENSE, ACTON BOXBOROUGH UNITED WAY  
FUNDRAISING EVENT**

Enclosed please find materials in the subject regard

**11. ONE DAY LIQUOR LICENSE, SPRIG'S, WINE DINNER**

Enclosed please find materials in the subject regard

**12. DISPOSAL OF OBSOLETE MATERIALS, MEMORIAL LIBRARY**

Enclosed please find materials in the subject regard

**V. EXECUTIVE SESSION**

**ADDITIONAL INFORMATION**

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

**FUTURE AGENDAS**

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

**OCTOBER 17**

Veteran's Memorial Proposal  
Nstar's performance during "Irene"

**NOVEMBER 7**

Community Preservation  
Submittals for review

**NOVEMBER 21**

**MINUTES PENDING VOTES**

January 8, September 12 and 26

**PENDING COMMITTEE APPOINTMENTS**

NONE

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<input type="checkbox"/>		<b>020 (3) Continuation of Site Plan, Powder Mill Road</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	36 KB	    ▼
<input type="checkbox"/>		<b>030 (4) Rules of Necessity Motion, Chapter 69 - Health Insurance Benefits</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	137 KB	    ▼
<input type="checkbox"/>		<b>040 (5) 8 Piper Lane, Letter from Mass Historical Commission</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	144 KB	    ▼
<input type="checkbox"/>		<b>050 (7) Minutes, Board of Selectmen, September 12, 2011</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	376 KB	    ▼
<input type="checkbox"/>		<b>060 (8) Caouette Simeone Conservation Restrictions</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	733 KB	    ▼
<input type="checkbox"/>		<b>070 (9) Temporay Sign Request, Town Common Signs About the up Coming Fair</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	38 KB	    ▼
<input type="checkbox"/>		<b>080 (10) One Day Liqour License, A/B United Way</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	80 KB	    ▼
<input type="checkbox"/>		<b>090 (11) One Day Liquor License, Sprigs</b> Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet	admin	09/30/11	139 KB	    ▼



**110 (12) Disposal of Obsolete Materials, Memorial Library**  
 Scanned with FlowPort '2011 Meeting Week Cover Sheet' Cover Sheet

admin 09/30/11 41 KB



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Motion to Invoke Rule of Necessity Relative to  
Chapter 69 Process, Chapter 69 Evaluation and Chapter 69 Vote

Board of Selectmen's Meeting  
October 3, 2011

Whereas Chapter 69 of the Acts of 2011 and the Emergency Regulations of the Executive Office for Administration and Finance, 801 CMR 52.00, establish a process to change health insurance benefits under M.G.L. c. 32B, §§ 21-23 (the "Chapter 69 Process").

Whereas, M.G.L. c. 32B, § 21(a) provides that, "Any political subdivision electing to change health insurance benefits under sections 22 or 23 shall do so in the following manner: ... in a town, by vote of the board of selectmen ..." (the "Chapter 69 Vote").

Whereas, M.G.L. c. 32B, § 21(b) provides that, "Prior to implementing any changes authorized under sections 22 or 23, the appropriate public authority shall evaluate its health insurance coverage and determine the savings that may be realized after the first 12 months of implementation of plan design changes or upon transfer of its subscribers to the commission" (the "Chapter 69 Evaluation").

Whereas, Chapter 69 does not give any board or authority, other than the Board of Selectmen ("Board") of the Town of Acton ("Town"), the legal authority to take the Chapter 69 Vote, conduct Chapter 69 Evaluation and/or engage in the Chapter 69 Process for the Town to change health insurance benefits under M.G.L. c. 32B, §§ 21-23 and its implementing regulations.

Whereas the preamble confirms that Chapter 69's purpose "is immediately to authorize municipalities to implement local health insurance changes" and Chapter 69 "is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience."

Whereas the Board is therefore legally required to act as soon as possible on whether the Town should elect to engage in the process to change health insurance benefits under M.G.L. c. 32B, §§ 21-23.

Whereas two Board members currently have health (Mr. Gowing) or dental (Ms. Harting-Barrat) insurance coverage through the Town; a third Board member (Mr. Sonner) has a spouse who is employed by the Town as a teacher in the Acton public schools and who is a member of the teachers' union; and a fourth member of the Board (Mr. Clough) currently has health insurance coverage through the Acton-Boxborough Regional School District through his District-employed spouse, and the Town and the District are participating governmental units on health insurance matters under a Health Insurance Trust Agreement.

Whereas, up to four of the Board's members therefore have actual or potential conflicts and are disqualified from participation in the Chapter 69 Vote, Chapter 69 Evaluation and/or the Chapter 69 Process conducted by the Board on behalf of the Town; the Board lacks a quorum to act in a timely manner on the Chapter 69 Vote, the Chapter 69 Evaluation and the Chapter 69 Process;

and the lack of a quorum is solely due to members being disqualified by conflicts as set forth above.

Whereas, in these circumstances, Town Counsel has advised that the Board invoke the Rule of Necessity relative to the Town's Chapter 69 Vote, Chapter 69 Evaluation and Chapter 69 Process, and such advice is consistent with the advice provided by the General Counsel of the State Ethics Commission to the General Counsel of the Executive Office for Administration and Finance dated September 2, 2011 on the same subject.

NOW THEREFORE, Michael Gowing moves that the Acton Board of Selectmen invoke the Rule of Necessity to allow Board members, who would otherwise be disqualified, to participate in the deliberation of and action on the Chapter 69 Vote, Chapter 69 Evaluation and Chapter 69 Process relative to changing health insurance benefits under M.G.L. c. 32B, §§ 21-23 and its implementing regulations; and further moves that the Board's minutes shall reflect that the Board would otherwise lack a quorum to conduct such deliberations, take such action, take such vote, or engage in such process because of such disqualifications, and that the Rule of Necessity is being used to allow the Board to validly deliberate, act, vote and proceed with respect to these matters.

So Moved by Selectman Gowing  
 Seconded by Selectman Harting-Barrat  
 Record of Vote:

Selectman	Yes	No	Abstaining	Taking No Part
Mike Gowing	✓			
Janet K. Adachi	✓			
Pamela A. Harting-Barrat	✓			
John Sonner				✓
David Clough	✓			

The foregoing is an accurate record of the proceedings of the Acton Board of Selectmen on October 3, 2011.

Janet Adachi  
 Janet Adachi, Clerk