

Town of Acton

Special Town Meeting Warrant



Tuesday, June 23, 2009

**The Special Town Meeting will convene at 7:00 PM in the
Acton-Boxborough Regional High School Auditorium
36 Charter Road**

Meeting Notice

**Special Town Meeting
Tuesday, June 23, 2009
7:00 PM**

**Acton-Boxborough Regional High School Auditorium
36 Charter Road**

Table of Contents

Consent Calendar	3
Special Town Meeting Warrant	4

Article Index

<u>Article</u>	<u>Title</u>	<u>Page</u>
	* Article is on Consent Calendar	# Article submitted by Citizen Petition
1	Borrowing Authorization – Tuttle-Flint Sewer District Extension	5
2	Amend Zoning Bylaw – Child Care Facilities in Residential Districts.....	6
3	Resolution – South Acton Commuter Rail Station	8
4	Home Rule Petition – Lease of Town Facilities for Renewable or Alternative Energy.....	9
5	Use of Town Facilities for Solar, Renewable or Alternative Energy Projects	10
6	* Amend Zoning Bylaw – Definition of Manufacturing.....	11
7	* Amend Town Charter – Commission on Disabilities	12
8	* Amend Town Bylaws – Corrections and Clarifications.....	13
9	* Accept Sidewalk Easement – 442 Massachusetts Avenue.....	14
10	* Accept Land Gift – Conant Street.....	14
11	* Transfer of Funds for Overlay Deficits	15

Consent Calendar

In an effort to streamline Town Meeting, the Board of Selectmen and Town Moderator use the concept of a Consent Calendar. The use of this Calendar speeds the passage of articles which the Selectmen feel should generate no controversy and can be properly voted without debate. Its purpose is to allow motions under these articles to be acted upon as one unit and to be passed without debate.

The Consent Calendar will be taken up when the when the first article “on Consent” is reached (for example, if Article 3 is the first Consent article in the Warrant, there will be a motion after Article 2 to take up the items on the Consent Calendar). At this time, the Moderator will call out the numbers of the Articles, one by one.

If **two or more** voters object to any particular Article being included in the Consent Calendar, they should say the word “**hold**” in a loud voice when the number is called. The Article will then be removed from the Consent Calendar, to be debated and voted in the usual manner.

After the calling of the individual items in the Consent Calendar, the Moderator will ask that all remaining articles be passed **as a unit** by the voters. Any articles held from the Consent Calendar will be taken up immediately following this vote.

Please carefully review the list of articles and motions proposed for each Consent article that follows. Complete summaries are included with each article printed in this Warrant. If you have any questions about the Consent articles, motions or procedure, please feel free to contact the official listed in the summary of the article or to contact the Town Manager’s Office, by e-mail at **manager@acton-ma.gov** or by telephone at (978) 264-9612, before Town Meeting.

Consent Calendar Articles and Motions

Article 6 Amend Zoning Bylaw – Definition of Manufacturing

Move that the Town adopt the zoning bylaw amendments as set forth in the Article.

Article 7 Amend Town Charter – Commission on Disabilities

Move that the Town adopt the Charter amendments as set forth in the Article.

Article 8 Amend Town Bylaws – Corrections and Clarifications

Move that the Town adopt the general bylaw amendments as set forth in the Article.

Article 9 Accept Sidewalk Easement – 442 Massachusetts Avenue

Move that the Town authorize the acquisition of the easement as set forth in the Article.

Article 10 Accept Land Gift – Conant Street

Move that the Town accept the gift of land as set forth in the Article.

Article 11 Transfer of Funds for Overlay Deficits

Move that the Town transfer \$220,000 from Overlay Surplus for the purpose of funding overlay deficits.

Donald MacKenzie
Town Moderator

Special Town Meeting Warrant



Town of Acton
Commonwealth of Massachusetts, ss.

To either of the Constables of the Town of Acton, Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify the legal voters of said Town of Acton, qualified to vote at Town Meetings for the transaction of town affairs, to meet at the Acton-Boxborough Regional High School Auditorium in said Acton on **Tuesday, June 23, 2009 at 7:00 PM**, then and there to act on the following articles:

One or more of the following symbols may follow an Article number:

<u>Symbol</u>	<u>Description</u>
*	This article is on the Consent Calendar
#	This article submitted by Citizen Petition

ARTICLE 1 BORROWING AUTHORIZATION – TUTTLE-FLINT
(Two-thirds vote) **SEWER DISTRICT EXTENSION**

To see if the Town will raise and appropriate, appropriate from available funds, or borrow a sum of money to be expended by the Town Manager for the purpose of financing the planning, design, and construction of sewers and related infrastructure for the Tuttle-Flint Extension of the Middle Fort Pond Brook Sewer District including without limitation, all costs and any related expenses thereof, as defined in Section 1 of Chapter 29C of the General Laws; or take any other action relative thereto.

SUMMARY

This article would fund the design and construction of Low Pressure Sewers for Durkee, Road, Flint Road, Lothrop Road, Mallard Road, Spencer Road, Tuttle Drive, Torrington Lane and Wayside Lane. The Low Pressure Sewer lines will connect to the existing public wastewater system on Prospect Street. The funding for the project will be through the Water Pollution Abatement Trust, which is using stimulus funds from the American Recovery and Reinvestment Act to forgive a small percentage of principal and to reduce the interest payments of the 30-year loan. As required under Chapter D-10 of the Town Bylaws, the loan will be fully paid back through betterments by the owners of the properties on the aforementioned streets. These properties were identified by the Comprehensive Water Resources Management Plan as within a High Priority Needs Area.

Direct inquiries to: Doug Halley, Health Director: health@acton-ma.gov / (978) 264-9634
Selectman assigned: Lauren S. Rosenzweig: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>
	Recommended	Deferred

ARTICLE 2 AMEND ZONING BYLAW – CHILD CARE FACILITIES
 (Two-thirds vote) **IN RESIDENTIAL DISTRICTS**

To see if the Town will vote to amend the zoning bylaw as follows:

1. In Section 5 – Dimensional Regulations, delete subsection 5.3.9 and replace it with a new subsection 5.3.9 as follows:

5.3.9 Child Care Facilities in Residential Zoning Districts - In addition to the standards set forth in the Table of Standard Dimensional Regulations, the following standards shall apply to Child Care Facilities located in Residential Zoning Districts:

	R-2	R-4	R-8 & R-8/4	R-10 & R-10/8	R-A & R-AA	VR
Minimum OPEN SPACE not including outdoor play areas	35%	35%	35%	35%	35%	35%
Maximum FLOOR AREA RATIO	0.10	0.07	0.04	0.03	0.20	0.17
Maximum NET FLOOR AREA	2500 sq. ft.	3500 sq. ft.	5000 sq. ft.	5000 sq. ft.	5000 sq. ft.	2500 sq. ft.

[Note: Subsection 5.3.9 currently reads as follows:

5.3.9 Child Care Facilities in Residential Districts – In addition to the standards set forth in the Table of Standard Dimensional Regulations, the following standards shall apply to child care facilities located in Residential Districts:

<i>Minimum OPEN SPACE not including outdoor play areas</i>	<i>- 35 percent;</i>
<i>Maximum FLOOR AREA RATIO</i>	<i>- 0.10;</i>
<i>Maximum NET FLOOR AREA</i>	<i>- 1000 square feet.]</i>

2. In Section 6.3 – Minimum Parking Space Requirements by USE, add a footnote (1) to section 6.3.1.5 – Child Care Facility, and place the footnote at the bottom of the table after section 6.3.1.17 as follows:

(1) The number of parking spaces for a Child Care Facility in a Residential Zoning District shall not exceed the minimum requirement.

, or take any other action relative thereto.

SUMMARY

This article adjusts dimensional controls for child care facilities in residential zoning districts. In 1990 the State Legislature amended M.G.L. Ch. 40A (the Zoning Act) with the following insertion in Section 3:

“No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.”

Shortly after the enactment of the new State exemption, the Town adopted a zoning amendment in accordance with the new State statute. Child care facilities are allowed in all Acton zoning districts (except ARC – Agriculture Conservation Recreation), and no special permit is required. In non-residential districts, reasonable dimensional regulations apply to child care facilities in the same manner as to any other allowed uses. The amendment envisioned an accessory use to a residence in a residential zoning district. As a result, dimensional regulations adopted for child care facilities in residential districts are fairly stringent.

The courts have since provided some guidance as to the meaning of “reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements”. As a result, some of Acton’s restrictions now appear overly restrictive and potentially vulnerable to challenge. The article as proposed will amend the dimensional regulations to reasonably accommodate stand-alone child care facilities in residential zoning districts, while also maintaining a reasonable and proportionate relationship to residential buildings in Acton’s residential zoning districts.

This article is not intended to facilitate or to thwart Next Generation Children Center’s recent child care facility proposal for a location at 348 Main Street, and this article by itself would do neither. However, Next Generation’s proposal strongly suggested that the Town needed to review its zoning regulations for child care facilities and consider any necessary amendments to ensure its zoning rules are reasonable and defensible.

Direct inquiries to: Roland Bartl, AICP, Planning Director: planning@acton-ma.gov / (978) 264-9636
Selectman assigned: Terra Friedrichs: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u> Recommended	<u>Finance Committee</u> Deferred	<u>Planning Board</u> Recommended
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ARTICLE 3 RESOLUTION – SOUTH ACTON COMMUTER RAIL STATION

(Majority vote)

WHEREAS, the MBTA is making improvements to the Fitchburg Commuter Rail line to improve service, including reconstructing the South Acton Train Station; and,

WHEREAS, the Acton Board of Selectmen appointed the South Acton Train Station Advisory Committee to review the proposed Station changes, solicit public comment and make recommendations to the Board; and,

WHEREAS, the Advisory Committee advised the Board of Selectmen that the MBTA’s proposed design for changes to the South Acton Station: will create an unsightly system of ramps that are out of character with the Historic Nature of South Acton; will create a Station that will limit accessibility to the disabled; is generally unfriendly to pedestrian and bike riders; cuts off pedestrian access from the South side of the tracks; and will lengthen the commuting time of all MBTA patrons using the station.

NOW THEREFORE, BE IT RESOLVED, as follows:

1. Acton Town Meeting supports the alternative design for the Station reconstruction as presented at the Meeting; and,
2. Acton Town Meeting requests that the Board of Selectmen take every action the Board considers appropriate to have the MBTA revise its design plans for the South Acton Station to have a Station that respects the Historic Nature and Integrity of South Acton and improves the access for all patrons of the MBTA.



Direct inquiries to: Peter J. Berry, Selectman: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u> Recommended	<u>Finance Committee</u> Deferred
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ARTICLE 4 HOME RULE PETITION – LEASE OF TOWN FACILITIES FOR RENEWABLE OR ALTERNATIVE ENERGY
(Majority vote)

To see if the Town will vote to petition the General Court for an Act authorizing the Board of Selectmen to lease, for a term of up to 25 years, municipal land, buildings and facilities for the purpose of installing renewable or alternative energy facilities to defray the cost of energy borne by taxation, in substantially the form set forth below, or take any other action relative thereto:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Notwithstanding any general or special law, rule or regulation to the contrary, the Town of Acton is hereby authorized to lease Town-owned land, buildings or parts thereof, and facilities for a term of not more than 25 years, for the purpose of installing and operating solar, renewable or alternative energy facilities to defray the cost of energy borne by taxation, and to enter long-term power purchase agreements and utility easements in conjunction with and of even term with such leases, on such terms and conditions as the Board of Selectmen may determine.

Section 2. Notwithstanding any general or special law, rule or regulation to the contrary, the Board of Selectmen is authorized to issue a request for proposals for such purposes, to determine the terms and conditions of such request, to accept any proposal or negotiate changes in any proposal, or to reject all proposals, as it determines to be in the best interests of the Town, and to take all others actions as may be necessary or desirable to carry out such project or projects.

Section 3. This act shall take effect upon its passage.

SUMMARY

If approved, this Special Act would allow the Town to lease space at municipal facilities (such as the Wastewater Treatment Plant) to a vendor that would install equipment capable of generating energy from renewable or alternative sources, and in turn re-sell that electricity to the Town at a reduced rate. Such installations would be subject to applicable zoning and historic district conditions.

Direct inquiries to: John Murray, Assistant Town Manager: manager@acton-ma.gov / (978) 264-9612
Selectman assigned: Paulina S. Knibbe: bos@acton-ma.gov / (978) 264-9611

Recommendations: Board of Selectmen Finance Committee
 Recommended **Deferred**

ARTICLE 5 USE OF TOWN FACILITIES FOR SOLAR, RENEWABLE OR
(Two-thirds vote) ALTERNATIVE ENERGY PROJECTS

To see if the Town will vote to authorize the Board of Selectmen to enter into any leases, licenses, easements, and/or other agreements allowing the use, for a term allowed by law, on such terms and conditions as the Board of Selectmen may determine, of any Town-owned lands, buildings, facilities, or portions thereof, for the purpose of installing and operating solar, renewable or alternative energy facilities to defray the cost of energy borne by taxation, and to enter long-term power purchase agreements, energy management services agreements, utility easements and similar instruments in conjunction therewith and in furtherance thereof, all on such terms and conditions as the Board of Selectmen may determine, or take any other action relative thereto.

SUMMARY

Article 5 is an alternative to Article 4. If it is determined by Town Counsel that the Home Rule petition cited in Article 4 is not needed for the lease of Town facilities for renewable or alternative energy, Town Meeting will be asked to consider this article. If the Home Rule petition is needed, this article would be passed over.

Direct inquiries to: John Murray, Assistant Town Manager: manager@acton-ma.gov / (978) 264-9612
Selectman assigned: Paulina S. Knibbe: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>
	Recommended	Deferred

ARTICLE 6 * AMEND ZONING BYLAW – DEFINITION OF MANUFACTURING
(Two-thirds vote)

To see if the Town will vote to amend the zoning bylaw, section 3.6.3 – Industrial Uses Definition for Manufacturing, by inserting after “... services related to the environment;” the following new phrase:

“development and manufacturing of renewable energy or alternative energy (RE/AE) equipment and systems;”

[Note: Section 3.6.3 currently reads as follows:

3.6.3 Manufacturing – A manufacturing facility, such as a printing or publishing plant; manufacturing of building systems and components; fabrication and assembly of electronic components, precision instruments, or other high technology products; manufacturing of metal products or office supplies; software or hardware development or manufacturing; research or testing of new and emerging technologies and technological devices; establishments engaged in services related to the environment; or similar USES and activities; including office, administrative, laboratory, and support facilities related to the foregoing; but excluding scientific USE as defined in Section 3.6.4. All operations shall confine disturbing smoke, fumes, dust, noise, and other emissions within the premises. No research or testing shall be conducted outside of a BUILDING. In the KC District, the maximum NET FLOOR AREA of an establishment that is classified as a Manufacturing USE shall not exceed 10,000 square feet.]

, or take any other action relative thereto.

SUMMARY

This article amends the zoning bylaw’s use definition for Manufacturing to clarify that the development and manufacturing of renewable energy or alternative energy equipment and systems is an allowed use under Acton’s Manufacturing definition. The Town’s zoning and planning office believes that this is already allowed without the amendment. However, the Massachusetts Department of Energy Resources requires specific zoning language for Acton to be eligible for economic stimulus grants and this change will satisfy the DOER requirement.

Direct inquiries to: Roland Bartl, AICP, Planning Director: planning@acton-ma.gov / (978) 264-9636
Selectman assigned: Paulina S. Knibbe: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>	<u>Planning Board</u>
	Recommended	Deferred	Recommended

ARTICLE 7 * AMEND TOWN CHARTER – COMMISSION ON DISABILITIES

(Two-thirds vote)

To see if the Town, pursuant to Article 8-3(b) of the Acton Town Charter, will vote to amend section 4-2 of the Town Charter by reducing the number of members of the Commission on Disabilities from nine (9) to five (5) and by creating two (2) positions for associate members of the Commission on Disabilities each with a length of term of three (3) years, or take any other action relative thereto.

SUMMARY

This Article is the first step in amending the Town Charter to redefine the membership of the Commission on Disabilities. This article is proposed due to the difficulty in achieving a quorum with the existing membership count. Should Town Meeting approve this Article it will be submitted to the voters at the next regular town election.

Direct inquiries to: Steven L. Ledoux, Town Manager: manager@acton-ma.gov / (978) 264-9612
Selectman assigned: Terra Friedrichs: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>
	Recommended	Deferred

ARTICLE 8 * AMEND TOWN BYLAWS – CORRECTIONS AND CLARIFICATIONS
(Majority vote)

To see if the Town will vote to amend the General Bylaws of the Town as set forth below, or take any other action relative thereto:

1. In Chapter B, renumber the section titled “Commission on Disabilities” as B23.
2. In Chapter N, Section N3, delete Subsection 3.1 and replace it with a new Subsection 3.1 as follows:

3.1 Within seven (7) days of receipt of an application for a demolition permit for a significant building the Building Commissioner shall forward a copy thereof to the Commission. The Building Commissioner shall also notify the Commission (by email or similarly expedient means) when such a permit has been sent to the Commission for consideration. No demolition permit shall be issued at that time.

3. In Chapter N, Section N3, delete Subsection 3.2 and replace it with a new Subsection 3.2 as follows:

3.2 Within sixty-five (65) days of receipt of the application from the Building Commissioner the Commission shall conduct a public hearing and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within fourteen (14) days of said hearing, mail a copy of said notice to the applicant.

SUMMARY

This article makes corrections to typographical errors appearing in 2009 Annual Town Meeting Articles. The intent of Town Meeting being unambiguous, the corrections were made in the bylaws submitted for the Attorney General’s review. This article seeks to ratify those amendments to ensure no future dispute over technicalities.

Direct inquiries to: Steven L. Ledoux, Town Manager: manager@acton-ma.gov / (978) 264-9612
Selectman assigned: Mike Gowing: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>
	Recommended	Deferred

ARTICLE 9 * ACCEPT SIDEWALK EASEMENT – 442 MASSACHUSETTS AVENUE
(Two-thirds vote)

To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise and to accept a deed of easement interest for a sidewalk along Massachusetts Avenue (Route 111) for all purposes for which streets, sidewalks and ways are now or hereafter used in the Town, on such terms and conditions as the Selectmen may determine and in a final location as the Selectmen may determine, on, across, over, and/or under the land at 442 Massachusetts Avenue (Town Atlas Map F-2 Parcel 120), n/f of 442 Massachusetts Avenue, LLC of 69 Great Road, Acton, MA 01720; and further see if the Town will raise, appropriate, transfer from available funds or accept gifts for this purpose, or take any other action relative thereto.

SUMMARY

Said easement is shown as a “Sidewalk Easement” on a Plan of Land for 442 Mass. Ave., LLC, dated April 27, 2009, prepared by Stamski and McNary, Inc. It would memorialize in a recorded deed and plan an easement over the property at 442 Massachusetts Avenue for the existing sidewalk on Massachusetts Avenue. A recent development plan before the Board of Appeals brought to light the sidewalk encroachment. The Board of Appeal’s permit conditions that the applicant offers the Town this easement, which the applicant has done. This article would accept the easement so that it can be recorded at the Registry of Deeds.

Direct inquiries to: Roland Bartl, AICP, Planning Director: planning@acton-ma.gov / (978) 264-9636
Selectman assigned: Paulina S. Knibbe: bos@acton-ma.gov / (978) 264-9611

Recommendations: Board of Selectmen Finance Committee
 Recommended **Deferred**

ARTICLE 10 * ACCEPT LAND GIFT – CONANT STREET
(Two-thirds vote)

To see if the Town will vote to authorize the Board of Selectmen to acquire on such terms and conditions as the Selectmen may determine, by purchase, gift, eminent domain or otherwise and to accept the deed of a fee simple interest in a certain parcel of land on Conant Street shown as Lot 4 containing 41,079 square feet, more or less, on a plan entitled “Plan of Land, Main Street & Conant Street, Acton, Massachusetts, Owned By: Colonial Path, LLC, P.O. Box 2170, Acton, Massachusetts 01720” dated: August 28, 2007, scale: 1”=40 prepared by Foresite Engineering, 16 Gleasondale Road, Suite 1-1, Stow, Massachusetts 01775, recorded at the South District Registry of Deeds as Plan 986 of 2007 and shown on Town Atlas Map I-2 as Parcel 17, for general municipal purposes, and further to see if the Town will raise, appropriate, transfer from available funds, or accept gifts for this purpose, or take any other action relative thereto.

SUMMARY

The current owner has offered to convey this parcel containing 41,079 square feet, more or less, of land to the Town. This parcel is part of the new development on a private way named “Centennial Lane”. The lot is mostly forested and abuts a large wetland area containing Pratts Brook.

Direct inquiries to: John Murray, Assistant Town Manager: manager@acton-ma.gov / (978) 264-9612
Selectman assigned: Mike Gowing: bos@acton-ma.gov / (978) 264-9611

Recommendations: Board of Selectmen Finance Committee
 Recommended **Deferred**

ARTICLE 11 *
(Majority vote)

TRANSFER OF FUNDS FOR OVERLAY DEFICITS

To see if the Town will vote to transfer from Overlay Surplus a sum of money to fund any overlay deficits in fiscal year 2009 as provided in Massachusetts General Laws, Chapter 59, Section 25, or take any other action relative thereto.

SUMMARY

These deficits are the result of the Town's recent property tax abatement settlement with W.R. Grace and due to Appellate Tax Board case disposition:

Fiscal 2007	\$ 169,000
Fiscal 2005	\$ 34,000
Fiscal 2004	\$ <u>17,000</u>
	\$ 220,000

Direct inquiries to: Brian McMullen, Assistant Assessor: assessor@acton-ma.gov / (978) 264-9622
Selectman assigned: Paulina S. Knibbe: bos@acton-ma.gov / (978) 264-9611

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>
	Recommended	Deferred

And you are directed to serve this Warrant by posting attested copies thereof fourteen days at least before the time of said meeting, in not less than six public places in Town, to be designated by the Board of Selectmen.

Hereof fail not, and make due return of this Warrant, with your doings thereon, to the Town Clerk, at or before the time of said meeting.

Given under our hands at Acton this ninth day of June, 2009.

Paulina S. Knibbe, Chair
Peter J. Berry, Vice-Chair
Lauren S. Rosenzweig, Clerk
Terra Friedrichs
Mike Gowing

Board of Selectmen

A true copy, Attest:

Constable of Acton



**Town of Acton
472 Main Street
Acton, MA 01720**

**BULK RATE
U.S. POSTAGE PAID
PERMIT #67
ACTON, MA 01720**

**POSTAL PATRON
ACTON, MA 01720**