



TOWN CLERK

TOWN OF ACTON
472 MAIN STREET
ACTON, MASSACHUSETTS, 01720
TELEPHONE (978) 929-6620
FAX (978) 264-9630
clerk@acton-ma.gov

DECEMBER 12, 2022

MIDDLESEX, SS:

ON THE ABOVE DATE, I POSTED ATTESTED COPIES OF THE AMENDMENT TO THE GENERAL BYLAWS, ARTICLE 10 WHICH PASSED AT THE ANNUAL TOWN MEETING THAT CONVENED ON MAY 16, 2022. THE ARTICLE MENTIONED FOR THE GENERAL BYLAWS WAS APPROVED BY THE ATTORNEY GENERAL, MAURA HEALY ON DECEMBER 9, 2022 AND IS POSTED AT THE FOLLOWING LOCATIONS IN THE TOWN OF ACTON:

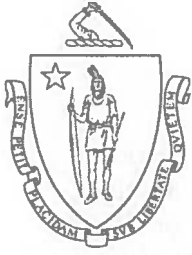
NAGOG WOODS POST OFFICE, TOWN HALL, WEST ACTON FIRE STATION, WEST ACTON LIBRARY, SENIOR CENTER, ACTON WOODS PLAZA, VETERANS FIELD, ACTON TV;

AS WELL AS THE TOWN WEB PAGE.

CONSTABLE

CLAIMS OF INVALIDITY BY REASON OF ANY DEFECT IN THE PROCEDURE OF ADOPTION OR AMENDMENTS OF THESE BYLAWS MAY ONLY BE MADE WITHIN NINETY DAYS (90) PER CHAPTER 40, SECTION 32, OF THE GENERAL LAWS OF THE COMMONWEALTH.

EVA K. SZKARADEK
TOWN CLERK



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

December 9, 2022

Eva K. Szkaradek, Town Clerk
Town of Acton
472 Main Street
Acton, MA 01720

**Re: Acton Annual Town Meeting of May 16, 2022 -- Case # 10650¹
Warrant Articles # 15, 16, 17, 44, 45 and 46 (Zoning)
Warrant Articles # 10, 13, 14 and 48 (General)**

Dear Ms. Szkaradek:

Article 10 – Under Article 10 the Town amended the general by-laws to add a new Chapter entitled “Preservation of Archaeologically Significant Resources” for the purpose of surveying and documenting archaeologically significant features and resources in the Town prior to certain land disturbance activities. See Section 1, “Intent and Purpose.” We approve Article 10 from the May 16, 2022 Acton Annual Town Meeting, except for certain text in: (1) Section 3.1 regarding the by-law’s effective date because it conflicts with G.L. c. 40, § 32; and (2) Section 4.2 that authorizes the withholding of a future building permit because the text conflicts with the State Building Code and G.L. c. 40A, § 7.

In this decision, we briefly describe Article 10; discuss the Attorney General’s limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 10 in part. We also offer comments for the Town’s consideration on the remaining approved text under Article 10.

I. Summary of the Bylaw

Under Article 10, the Town added a new general by-law, “Preservation of Archaeologically Significant Resources” for the purpose of surveying and documenting “archaeologically significant features” and resources in the Town prior to certain land disturbance activities. (Section 1). To accomplish this purpose, the by-law authorizes the Acton Historical Commission (Commission) to review certain proposed land disturbances that occur

¹ In a decision issued September 9, 2022, we approved Articles 13, 14, 15, 16, 17, 44, 45, 46 and 48, and by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended the deadline for our review of Article 10 for 90-days until December 11, 2022.

within lands designated on the Town's Archaeological Sensitivity Maps.² (Section 1). Section 2 defines several terms used in the by-law. Section 3 of the by-law requires that, before any land disturbance of 15,000 square feet or more in an "Archaeological Protection Area/High," or a land disturbance of 1 acre or more in an "Archaeological Protection Area/Moderate," the proponent must first submit an "Archaeological Protection Permit Application" (Application) to the Commission describing the proposed disturbance and land.

The by-law also addresses the Permit process and provides that within thirty-five days of receipt of the Application, the Commission will make a written determination of whether additional investigation is needed regarding potential Archaeological Resources or the need for an Archaeological Sensitivity Assessment (as defined in Section 2) (Section 3.2). If the Commission determines the land disturbance "will not adversely impact any significant Archaeological Resource(s)," the Commission will issue an archaeology permit within 14 days. (Section 3.2.2.1). Conversely, if the Commission determines that an Assessment is required, then the Commission will undertake the Assessment and decide regarding whether the land alteration could adversely impact any Archaeological Resource. (Section 3.2.2). The applicant will not be responsible for any Assessment costs. (Section 3.2.1).

If the Commission determines that the land disturbance "may adversely impact any significant Archaeological Resource(s)," then the Commission will issue a recommendation to the Applicant to consider undertaking a "Threatened Archaeological Resources" study. (Section 3.2.2.2). However, "regardless of that finding, the Commission shall issue an Archaeology permit at this time" along with a request for the Commission to conduct an "Intensive Archaeological Survey" of the property. The applicant is authorized to proceed with the proposed land disturbance after the Commission grants the permit. (Section 3.2.2.3). If the applicant agrees to proceed with an Intensive Archaeological Survey, the applicant will not be responsible for any Assessment costs. (Section 3.2.2.3).

Section 4 pertains to enforcement of the by-law and authorizes the Commission and the Building Commissioner to institute any and all proceedings they deem necessary in order to obtain compliance with the by-law. Lastly, Section 5.1 exempts property owned by the Town or "private owners receiving state funding or licensing" from the by-law because these property owners must instead comply with G.L. c. 9, §§ 26A and 27C and 950 CMR 70, *et seq.* that authorizes the Massachusetts Historical Commission (MHC) to impose certain requirements, including permit requirements, to facilitate the conservation of archeological resources.

II. Attorney General's Standard of Review of General By-laws

Our review of Article 10 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32 the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every

² According to the Summary for Article 10 provided in the Town Meeting Warrant, in 2021 the Town Meeting voted to approve Community Preservation Act (CPA) funding for "a Preliminary Archaeological and Historical Review to study the likelihood of finding significant archaeological or historical assets on private property when development is proposed." The Warrant Summary provides that the purpose of the by-law is to establish a procedure to implement the CPA project but that the by-law "does not require any excavation of private property and does not prohibit development" but instead allows the Commission to "document and identify locations of potential archaeological resources prior to their removal."

presumption is to be made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986). The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws of the Commonwealth. Id. at 796. A municipality has no power to adopt a by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6. Moreover, where the Legislature intended to preempt the field on a topic, a municipal by-law on that topic is invalid and must be disapproved. Town of Wendell v. Attorney General, 394 Mass. 518, 524 (1985).

III. Section 3.1’s By-law Effective Date Provision Conflicts with G.L. c. 40, § 32

Section 3.1 (A), “Procedure; Archaeological Submission,” provides that: “**Effective no earlier than July 1, 2022**, any person proposing to disturb” certain land shall submit an Archaeological Protection Permit Application.” We disapprove and delete the effective date text in underline and bold because it conflicts with G.L. c. 40, § 32. Section 32 establishes that a by-law approved by the Attorney General must be posted or published before it goes into effect:

Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town.

Because the by-law amendment adopted under Article 10 will not take effect until the requirements of G.L. c. 40, § 32 have been satisfied, we disapprove and delete the text in underline and bold above (“Effective no earlier than July 1, 2022”). The Town should consult with Town Counsel with any questions regarding the bylaw’s effective date.

IV. Section 4.2’s Provision Authorizing Withholding of a Future Building Permit Conflicts with the State Building Code and G.L. c. 40A, § 7

Section 4.2 seeks to authorize enforcement of a violation of the new general by-law by withholding a building permit as follows:

For any Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of this Bylaw, no Building Permit shall be issued for a period of three (3) years after the date of the completion of such unauthorized Alteration unless permitted by the Commission pursuant to Section 4.4.

We disapprove and delete the text in Section 4.2, shown in underline and bold, that authorizes the withholding of future building permits as a penalty because this text is inconsistent with the State Building Code (Building Code) and G.L. c. 40A, § 7. The Building Code is comprehensive in nature, and the Legislature has clearly expressed an intent to create uniform, state-wide standards for construction and construction materials. See St. George Greek Orthodox

Cathedral of Western Mass. v. Springfield, 462 Mass. 120, 128 (2012) (The Code “preempts inconsistent local regulations.”)

The Building Code governs the issuance of a building permit. See State Building Code, 9th Edition, 780 C.M.R. §§ 105.3.1. Under G.L. c. 143, § 94, the Building Code governs the “issuance and revocation of permits...” The Building Code requires the Building Inspector (as Code Enforcement Officer under the Code) to issue a building permit where the applicant has demonstrated compliance with the Building Code and the town’s zoning by-laws. 780 C.M.R. § 105.3.1; see also G.L. c. 40A, § 7. In addition, G.L. c. 40A, § 7, authorizes the withholding of a building permit only if the applicant’s proposed project is in violation of the town’s zoning by-laws. There is no provision in the Building Code that authorizes a Building Inspector to withhold future building permits as a penalty for a general by-law violation.

Because a town cannot withhold a future building permit for the failure to comply with the town’s general (non-zoning) by-law requirements, we disapprove and delete the text shown in underline and bold above from Section 4.2 (“**For any Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of this Bylaw, no Building Permit shall be issued for a period of three (3) years after the date of the completion of such unauthorized Alteration unless permitted by the Commission pursuant to Section 4.4.**”) The Town should consult with Town Counsel with any questions on this issue.

V. **Additional Comments for the Town’s Consideration**

A. **The By-law Cannot be Applied in a Manner to Delay Projects**

Although the by-law provides that an Archaeology permit will be issued regardless of whether the Town recommends that the Applicant consider an Intensive Archaeological Survey of the property (Section 3.2.2.2), the Town should consult closely with Town Counsel to make sure that the new by-law does not unduly delay development projects in the Town. This is particularly important when applying the by-law’s requirements to a multi-family housing project because Acton is one of the MBTA Communities required by G.L. c. 40A, § 3A to adopt at least one zoning district of reasonable size in which multi-family housing is permitted as of right. In addition, the Town must ensure that the by-law is not applied to a solar development project in a way that would constitute an unreasonable regulation in violation of G.L. c. 40A, § 3. The Town should consult with Town Counsel on this issue.

B. **The By-law Cannot Interfere with the Authority of the Massachusetts Historical Commission**

The by-law states that its purpose is to survey and document archaeologically significant features within the Town prior to large land disturbance activities in “archaeologically sensitive areas” as a means of understanding the cultural and historical heritage of the Town. Section 1. The Town must ensure that its application of the by-law does not interfere with the authority of the MHC.

The MHC was established by the legislature to “identify, evaluate, and protect important historical and archaeological assets of the Commonwealth.” See <https://www.sec.state.ma.us/mhc/mhcabout.htm> (last visited Dec. 7, 2022). The MHC is authorized to review any construction projects or existing building renovations that “require funding, licenses, or permits from any state or federal governmental agencies” to determine impacts to historic or archaeological properties. See <https://www.sec.state.ma.us/mhc/mhcrevcom/revcomidx.htm> (last visited Dec. 7, 2022); see also 950 CMR § 70, et seq. (The regulations establish a system for compliance with G.L. c. 9, §§ 26-27C to standardize the procedures for conducting archeological field investigations to ensure the conservation of archeological resources.)

General Laws Chapter 9, Sections 26-27C requires that any project receiving funding, licenses or permits from any state agency must be reviewed by MHC for potential adverse effect on any property listed in the state register of historic places. Although Section 5.1 of the by-law exempts any “[r]eal property owned or operated by the Town of Acton...or private owners receives state funding and licensing” under G.L. c. 9, §§ 26A, 27C and 950 CMR 70 *et seq*, the Town must ensure that the by-law is applied consistent with G.L. c. 9, §§ 26-27C, and the attendant regulations. Moreover, the Town must ensure that the by-law is not applied a manner that would interfere with the jurisdiction of the MHC or the State Archeologist. The Town should consult with Town Counsel and the MHC with any questions on this issue.

C. Assessment Costs

Section 3.2.1 provides that if the Commission wants to undertake an Archaeological Sensitivity Assessment, then “[a]ll costs of such Assessment shall be paid by the Town.” In addition, if the Applicant voluntarily agrees to undertake an Intensive Archaeological Survey, Section 3.2.2.3 provides that the costs of such survey “may be paid by the Town, to the extent that appropriations are available.” We approve these Sections, but they cannot be applied in a way that requires the Town to appropriate money for these costs. The decision whether to appropriate funds for a particular project or use is left to a vote of Town Meeting. See Wright v. Town of Bellingham, 2007 WL 1884657 (Mass. Land Ct.), quoting Town Meeting Time, 2d Ed. 1984 (Town Meeting is “vested the traditional powers of the legislative branch of any level of government, i.e., the power to make laws (by-laws) and the power of the purse.”) The by-law itself cannot mandate or require the appropriation of funds for this purpose. The Town should consult with Town Counsel with any questions about this issue.

D. Rules and Regulations

Section 5.3, “Rules and Regulations,” authorizes the Commission to adopt rules and regulations related to the submission and administrative process necessary to implement the by-law. Any rules or regulations adopted by the Commission must be consistent with state law. See American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006) (“A town may not promulgate a regulation that is inconsistent with State law.”) The Town should discuss with Town Counsel any proposed rules and regulations adopted pursuant to Section 5.3 to ensure that they comply with state law.

VI. Conclusion

We approve the by-law adopted under Article 10 except for the text in Section 3.1 regarding the by-law's effective date that conflicts with G.L. c. 40, § 32 and the text in Section 4.2 authorizing the withholding of a future building permit because it conflicts with the Building Code and G.L. c. 40A, § 7. The Town should consult with Town Counsel with any questions on the proper application of the by-law.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel Nina Pickering-Cook



TOWN CLERK

TOWN OF ACTON
472 MAIN STREET
ACTON, MASSACHUSETTS, 01720
TELEPHONE (978) 929-6620
FAX (978) 929-6340
clerk@actonma.gov

EXCERPT OF THE ANNUAL TOWN MEETING HELD
MONDAY, MAY 16, 2022, 7:00 P.M.
ACTON-BOXBOROUGH REGIONAL HIGH SCHOOL
AUDITORIUM AND UPPER GYMNASIUM (ALL-INDOOR SEATING)

Article 10 **Amend General Bylaws – Preservation of Archaeologically**
(Majority vote) Significant Resources

To see if the Town will vote to amend the General Bylaws by adding a new Chapter titled "Preservation of Archaeologically Significant Resources" to read as follows, or take any other action relative thereto.

PRESERVATION OF ARCHAEOLOGICALLY SIGNIFICANT RESOURCES

Section 1. Intent and Purpose

This bylaw is adopted for the purpose of surveying and documenting archaeologically significant features and resources within the Town prior to large areas of land disturbance of currently Undisturbed Land in archaeologically sensitive areas. Archaeologically significant features and resources explain the significant cultural heritage and provide a material record to understand how people lived and used the land, and thereby enrich and enhance historical knowledge of this region.

Therefore, to achieve the above stated purposes, the Acton Historical Commission is empowered to review proposed development when land disturbance occurs within certain lands located in sensitive areas as specified in the Acton Archaeological Sensitivity Maps: Acton Town-Wide Survey Post-Contact Archaeological Sensitivity and Acton Town-Wide Survey Pre-Contact Archaeological Sensitivity, prepared by the Public Archaeology Laboratory, Inc. (PAL), dated July 15, 2008 and revised March 12, 2009 (the "Sensitivity Maps").

Section 2. Definitions

2.1 "Alter" or "Alteration" – Any activity that modifies the natural or existing topography and conditions of real property in such a manner that it may adversely affect any Archaeological Resources located on, at or under such property. These activities may include, but are not limited to: removal (excavation or grading) or placement (filling) of soil, sand, gravel, stone or other earth materials; removal of ground cover vegetation or trees; dredging or filling of wetlands; the construction, modification, or expansion of subsurface utilities (e.g., septic systems, telephone, television, electrical, gas, security services, or water supply), roadways, parking or other paved areas; and the development and construction of

proposed buildings, structures or any other improvements on any Undeveloped Land.

- 2.2 **"Archaeological Protection Area/High"** – Areas within the Town identified as "High" on the Sensitivity Maps for their likelihood of containing pre-contact or post-contact Archaeological Resources based on environmental attributes such as soils, proximity to wetlands or other water sources, documentary or cartographic evidence, written or oral tradition, and discoveries of historic and archaeological resources.
- 2.3 **"Archaeological Protection Area/Moderate"** – Areas within the Town identified as "Moderate" on the Sensitivity Maps for their likelihood of containing pre-contact or post-contact Archaeological Resources based on environmental attributes such as soils, proximity to wetlands or other water sources, documentary or cartographic evidence, written or oral tradition, and discoveries of historic and archaeological resources.
- 2.4 **"Archaeological Resource(s)"** – Locations or sites used for ancient or historical period occupation, subsistence, manufacturing, processing, industry, quarrying, trade/commerce, recreation, transportation, agriculture, graves, and other cultural purposes, containing material remains of ancient or historic human activity one-hundred (100) years old or older.
- 2.5 **"Archaeological Sensitivity Assessment"** – A preliminary, noninvasive assessment conducted by a registered professional archaeologist that determines the likelihood of finding significant archaeological or historical assets. Such engagements include historical research, environmental context review, and field inspection.
- 2.6 **"Commission"** – The Acton Historical Commission.
- 2.7 **"Intensive Archaeological Survey"** - Also known as a reconnaissance or intensive (locational) survey that identifies all archaeological sites in a project area. Such engagement includes systematic shovel test pit sampling employed to locate as many archaeological deposits as reasonably possible.
- 2.8 **"Permit"** – Any permit, order, order of conditions, license, approval or entitlement from a Permit Granting Authority that is required in connection with the Alteration of any Undeveloped Land.
- 2.9 **"Structure"** – A combination of materials assembled to give support or shelter, such as buildings, towers, masts, sheds, roofed storage areas, mechanical equipment, swimming pools, tennis courts, signs, fences; but not including driveways, walkways and other paved areas, underground storage tanks, septic tanks and septic systems, and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

- 2.10 "Sensitivity Maps"** – The Acton Archaeological Sensitivity Maps: Acton Town-Wide Survey Post-Contact Archaeological Sensitivity and Acton Town-Wide Survey Pre-Contact Archaeological Sensitivity, prepared by the Public Archaeology Laboratory, Inc. (PAL), dated July 15, 2008 and revised March 12, 2009. The Sensitivity Maps (and any subsequent amendment(s)) is incorporated into this Bylaw by reference, and are available for review by the public at the Town Clerk's office at Town Hall.
- 2.11 "Threatened Archaeological Resource(s)"** – Any Archaeological Resource that is likely to be adversely impacted, as determined by the Commission, by any Alteration of Undeveloped Land for which a Permit is sought.
- 2.12 "Undisturbed Land"** - Land area that is free of human disturbance due to clearing, grading, paving, building, landscaping or other site development activities, such as tilling and cropping, residential and commercial development, grazing, paved or gravel roads and mowing, but not including selected cutting of trees or removal of dead wood.

Section 3. Procedure

3.1 Archaeological Submission

Effective no earlier than July 1, 2022, any person proposing to disturb 15,000 square feet or more of currently Undisturbed Land within the Archaeological Protection Area/High, or 1 acre (43,560 square feet) or more of Undisturbed Land within the Archaeological Protection Area/Moderate shall submit to the Commission an Archaeological Protection Permit Application for alterations of land within an archaeologically sensitive area including: (1) address and area type, (2) survey with overlay of land to be disturbed and delineation of the Archaeological Protection Areas, (3) a brief narrative summary of the planned or proposed Alteration, specifying the proposed disturbance of the land (collectively, the "Archaeological Protection Permit Application").

3.2 Archaeological Sensitivity Assessment

3.2.1 Within thirty (35) days after receipt of the Archaeological Protection Permit Application, the Commission shall meet and make a written determination as to whether additional investigation is needed into the presence of Archaeological Resource(s) and potential impact from the proposed Alteration (the "Archaeological Sensitivity Assessment"). Such an Assessment may include a site visit by the Commission and the Commission procuring a preliminary non-invasive analysis of the potential Archaeological Resources at the site by a trained professional in the field. All costs of such Assessment shall be paid by the Town.

3.2.2 If the Commission has determined that an Archaeological Sensitivity Assessment is required, such assessment shall be completed and the Commission shall determine whether the Alteration will adversely impact any Archaeological Resource within 45 days of the Commission's initial determination. The Commission and applicant may, by mutual agreement, extend the date for such preliminary Assessment. No Alteration shall commence, nor shall a building permit be issued during such 45-day period (or any authorized extension). Should the Commission fail to act or get the time extended within that initial 45-days, it waives the opportunity to do such Archaeological Sensitivity Assessment, and an Archaeology permit under this Bylaw shall be issued.

- 3.2.2.1** If the Commission determines that the Alterations will not adversely impact any significant Archaeological Resource(s), the Commission shall notify the Applicant in writing within fourteen (14) days of such determination and issue an Archaeology permit. Upon receipt of such notification or more than fourteen (14) days since the Commission's determination without any such notice, the applicant may commence the proposed Alteration, subject to the requirements of any other applicable laws, bylaws, rules and regulations.
- 3.2.2.2** If the Commission determines that the Alteration may adversely impact any significant Archaeological Resource(s), the Commission shall notify the applicant in writing within fourteen (14) days of said meeting that the proposed Alteration is identified as significant, and a detailed study to document any found Threatened Archaeological Resources is recommended. Regardless of that finding, the Commission shall issue an Archaeology permit at this time, with a request to conduct an Intensive Archaeological Survey.
- 3.2.2.3** Upon the grant of an Archaeology permit, the applicant may commence the proposed Alteration, subject to the requirements of any other applicable laws, bylaws, rules and regulations. If the applicant agrees to proceed with an Intensive Archaeological Survey by a qualified archaeological team to locate, identify, evaluate, and document archaeological resources, costs of such Intensive Archaeological Survey may be paid by the Town, to the extent that appropriations are available.
- 3.2.2.4** Matters pertaining to the locations of archaeological resources that are "not a public record" and "confidential" pursuant to M.G.L. c. 9, §26A(1) & (5), c. 9, §27C and c. 40 §8D shall not be disclosed for public review.

Section 4. Enforcement and Remedies

- 4.1** The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity as it deems necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.
- 4.2** For any Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of this Bylaw, no Building Permit shall be issued for a period of three (3) years after the date of the completion of such unauthorized Alteration unless permitted by the Commission pursuant to Section 4.4. For purposes of this Section 4.2, the term Threatened Archaeological Resource shall mean any Archaeological Resource that the Commission, in its sole discretion, would have determined to be a Threatened Archaeological Resource but which Archaeological Resource was voluntarily Altered before such determination could be issued.
- 4.3** Should the applicant or the owner of the subject Land, if not the applicant, fail to secure any Threatened Archaeological Resource as required under this Bylaw, the loss of such Threatened Archaeological Resources through fire or other cause shall be considered voluntarily Altered for the purposes of Section 4.2.
- 4.4** At any time, the applicant, or owner of the subject Land, if not the applicant, of Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of Sections 4.2 and 4.3 may apply to the Commission for an exemption to the provisions of those Sections. Such application must state with particularity the facts and circumstances such that the Commission can find that an exemption is warranted due to

exigent circumstances or disasters beyond the Permit applicant's or owner's control. The Commission may, in its sole discretion, determine that the request states sufficient grounds for exemption from the provisions of Sections 4 and authorize an exemption from Section 4.

Section 5. Miscellaneous

- 5.1** Real property owned or operated by the Town of Acton, including the Acton Boxborough Regional School District and the Acton Water District; or private owners receiving state funding or licensing must comply to requirements in M.G.L. c. 9, §§ 26A, 27C and 950 C.M.R. 70, *et seq.* of the Massachusetts Historical Commission and are therefore not subject to this bylaw.
- 5.2** The sections, paragraphs, sentences, clauses and phrases of this bylaw are severable, and if any phrase, clause, sentence, paragraph or section of this bylaw shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrase, clauses, sentences, paragraphs and sections of this bylaw.
- 5.3 Rules and Regulations**
The Historical Commission may adopt such reasonable rules and regulations with respect to the submission and administrative process as may be necessary or appropriate to implement the provisions of this bylaw.

MOTION:

Ms. Arsenault moves that the Town amend the General Bylaws as set forth in the Article.

MOTION CARRIES

