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**BOARD OF SELECTMEN AND SEWER COMMISSIONER'S MEETING**

**January 23, 2017**

**Francis Faulkner Hearing Room 204**

**Acton Town Hall**

Present: Peter J. Berry, Janet K. Adachi, Franny Osman, Katie Green, Chingsung Chang, Town Manager Steve Ledoux, Attorney Jeffrey Roeloff and Shannon Hurley, Recording Secretary

**Citizen's Concerns**

Terra Friedrichs West Acton: Concerned about federal government telling police what to do and wants to reaffirm whom the police work for. Mr. Berry stated that this is an item on agenda for next meeting February 6<sup>th</sup>. Meeting with Eldridge, may need a Town Meeting vote. Federal dollars may be an issue. Ms. Friedrichs asks what the procedure is to go with from here. Mr. Berry will follow up.

Terra Friedrichs West Acton: Concerned about Kelley's Corner Committee meeting during the day and separated from Acton 2020. Suggests changing term "preferred developer" to "applicant", treat applicants like clients. Also, to try to make the meetings in the evening so working people can attend. Also, concerned about zoning articles.

Peter Ashton, Town Moderator: Updated the Board regarding League of Women Voters having a public forum on February 9<sup>th</sup>, EEOC at the Public Safety Facility to solicit input from town meeting members, how we operate town meeting, possible improvements, more input from folks, electronic voting. More publicity coming out soon. Mr. Berry states that there is also a Community Preservation Committee meeting scheduled for that night.

**Chairman's Update/ Operational Update**

Mr. Berry – With Town Manager, attended Mass. Municipal Association (MMA) annual meeting last weekend. Friday morning. Lt. Governor Karyn Polito spoke, former Selectman from Shrewsbury, about community compact. Mr. Berry explained what community compact is. Governor put into place soon after he came into office. Resulted in passage last session of Municipal Modernization Bill, 100 changes in state statutes, free up cities and towns, allows them to operate most efficiently, without antiquated state oversight. Friday night speech was former pitcher from Red Sox Dennis Eckersley, started out pitching for Cleveland Indians, traded to Red Sox, wife left him for center fielder Payton Manning, family videotaped him in alcoholic state as intervention, he got on the road to recovery, traded to Oakland Athletics, switched to Relief Pitcher which saved his arm and led him to amazing career and Baseball Hall of Fame. Someone asked how he keeps it together, he talked about surviving adversity, going through recovery, deals with it every day, try to do right thing, live in moment, lives in Weston or Wayland, works with special needs Olympic athletes, spoke about his life story. Saturday morning speakers Elizabeth Warren and Ed Markey, spoke against President Trump's initiatives, Governor Baker spoke.

Estimate budget 3.9% increase in revenues in next fiscal year. Funding local aid will increase at the same level. Mr. Berry continued to speak about his MMA annual meeting and the speakers. Several Gold Star Families in Acton – James McRae includes all relatives from veterans who were killed, even cancers for 20 years after they served in the military. Mr. Berry led the pledge of allegiance in honor of those Gold Star Families. Funding for more bike racks. Refunded at decent levels, funds construction in local cities and towns, improvements to the streets and sidewalks, and Kelley’s corner.

Mr. Ledoux – Spoke about the MMA annual meeting, went to a few workshops. Was very well attended. Acton has signed a community compact for its transportation program, CrossTown Connect, with Littleton, Boxborough, Maynard, Westford and Acton. Ms. Osman explained that since they did this it has also been helpful for applying for funding with multiple towns in the compact to comply together to the recent state Stormwater Act.

### **Public Hearings and Appointments**

None.

### **Selectmen Business**

Clarion Partners; Brookside Shops: Clarion Partners is New York based investment real estate properties. New owners of Brookside Shops on Great Road. 35 years in business, developing or acquiring new buildings, apartment, residential, and office buildings in Boston. Residential projects in down town Boston. Alisha from Key Point Partners is the eyes ears feet on ground, community matters, tenants are happy and obeying the town rules. They are asking for support for a rezoning of Brookside shops. It is a retail center, tax revenue for the town: zone it commercial. Brookside is an asset to Acton and they are partners, good to great retail center – allow Clarion to do all property management. It is a “vibrant place,” they want the flexibility to stay ahead of tenants moving and their creativity. Clarion has \$8 billion in retail properties, pay attention to details, curb appeal, landscaping, security.

Ms. Green – no questions, early to support warrant article, property manager should do outreach to the town and Planning Board and come back to the board with your findings to support articles.

Mr. Chang – This is housekeeping, rezoned to commercial, did not pass at the last town meeting, relates to property management and their relationship with the area. Outreach to be done on Clarion Partners’ side in order to do so. Already have a strip mall on property. Problems in past need to be resolved. Move forward together and get the right provisions into the zoning and resolve concerns of local community and neighbors.

Ms. Adachi- Echoed what Ms. Green and Mr. Chang had said. Rectify problems that predecessors created. Planning Board to come back to the board, keep in mind what the current zoning stops you from doing. Ultimately agree zoning needs to be changed.

Ms. Osman- Agrees for the property to work and be thriving. Love to see this issue resolved. Not familiar with the zoning details, can it include mixed use?

Mr. Bartl, Planning Director, explained its current use is all commercial, zoning is residential. Proposal done in past to make it “limited business” zoning district, which includes commercial property and single family residences.

Ms. Osman – What about housing above buildings?

Mr. Bartl – It is residential next to commercial, multi-family zones.

Ms. Osman – (to Clarion) What would you do differently, what is limited and what is your vision for this property?

Clarion – Dining may be an important component, would not be able to do that the way it is zoned now. That brings value-added to the property, but they would now not be able to act upon the proposal.

Ms. Osman encourages the company to talk to Cross Town Connect to get the van to come to Brookside.

Mr. Bartl – Nimble for retail shopping center owner – changing uses from one to another. Can down-spiral very quickly. Re: rezoning, the Planning Board agreed to put it out at a public hearing on Feb 21<sup>st</sup> – advertised. Individually notify the neighbors. Example was if Eastern Mountain Sports goes bankrupt you can replace it with a retail store but not a restaurant.

Talk ensued about what kinds of places can and cannot be in Brookside Shops.

Ms. Osman- local people working there even if it is a chain. Try to keep open mind about existence of chains, still play a local social role.

Mr. Bartl – Change in ownership makes this a great opportunity.

Terra Frederichs, West Acton- Concerned with lack of restaurants in town, decided on a case by case. Consider more local businesses- Staples: 80% money of money goes out of town, whereas Quill and Press: 60% stays in town.

**Acton Leadership Group Budget Update:** Mr. Ledoux refreshed the board's memory regarding the Town Manager's recommended budget and the Superintendent budget from last meeting. Also, refreshed the Board's memory regarding Budget Saturday FY18 budget. He presented a 4% budget increase and a 3.5% budget increase as opposed to the Town Manager's recommended budget of 4.5%, which includes operational and capital budgets. Next ALG meeting is on January 26<sup>th</sup>. If budget changes to 4% there would be a reduction of total spending by \$168,553. In lieu of bonding \$1.45 million for Acton Memorial Library roof/HVAC systems and Fire Station, HVAC improvements, he proposed requesting that the Assessors release the Overlay Surplus to fund those two projects. There is currently \$2M in overlay surplus. This recommendation would reduce Interest cost in the FY 18 to \$48,250. This proposal saves future operating budgets in debt service. The operational budget would be 3.26%. To reduce the budget to 3.55%, it would require budget further cuts of \$191,000, including the Utility Task Vehicle (UTV) vehicle, dump truck, and laborer position. UTV may be essential to our EMS operations (i.e. NARA, town conservation lands, Bruce Freeman Rail Trail for example injured hikers.) A 3.5% total budget would mean a 3.01% operational budget. The Town Manager recommends a 4% package to Finance Committee. There are still some unresolved issues such as the Health Insurance Trust, which has not finalized the FY18 rates. A 5% increase was budgeted for health benefits. The Governor is finalizing his FY18 budget. Including changes, the effect on ALG plan, which currently shows a \$876,000 deficient, would reduce the deficit by \$116,000. The Selectmen must vote 60 days before town meeting under the Charter to transmit a budget to the Finance Committee.

Ms. Green – recommended keeping the Municipal Properties Laborer position as she felt it would be shortsighted to remove the position from the budget. She supports the proposal to reduce the budget by removing the purchase of the UTV and dump truck. She noted, however, that this would still leave a gap in the ALG plan but felt that we should go back to the schools to see if they have wiggle room in their budget to bring reductions to the table. She was also supportive of using a portion of the unused tax levy to make up the difference, as opposed to solely increasing the use of reserves. She felt it would be better to use a portion, or half, of the unused levy and fill the rest of the gap with either cuts in the school budget and/or increased use of reserves so that we don't end up in a position in a future year of needing to use all of the unused levy in one year or needing to make drastic cuts. This would be better for tax payers than using all of the unused levy in one year.

Mr. Chang – Generally agreed with Ms. Green regarding overall budget. 4% reasonable place to go. Saves money down the road. Important to see what schools come back with since their budget is huge portion of what we pay out. Budget neutral status would be great.

Ms. Adachi – Separate out Capital within the operating because FinCom wants to access \$1.6M reserves towards Capital.

Ms. Osman – Skilled laborer, makes sense to have that person. Agree with adding that in and approaching 4% and going to the schools. Hears concerns about tax bills, try to limit it.

Conversation ensued about location on documents of percentage of overall spending. Mr. Ledoux explained it was in the packet from Budget Saturday.

Mr. Ledoux: Was not worked into the ALG plan, not much change.

Ms. Green recommends a budget of \$338,555,390 to the finance committee. Taking out utility and dump truck and keeping the laborer. Mr. Chang seconded. All ayes (5-0)

Mr. Berry – Keep skilled laborer between 3.5% and 4% - primary vote on Friday

Ms. Osman – What is the difference between 3.5% and 4% on the effect on people's tax bills?

Jason Cole – Do both the 3.5 and 4% options make use of the untaxed levy capacity?

Mr. Ledoux – Yes.

**Review List of Warrant Articles:** Mr. Ledoux explains changes to the warrant articles 35-36 - Planning Board decided to not move forward with those articles. Tax increment with Insulet Company, need to be added after town meeting vote. 1<sup>st</sup> 17 articles, standard articles. #10 \$35,000 utilized for additional parking in West Acton and potential for sewers. #18 Acton Community Housing Committee (ACHC) investigating 4 Cherry Ridge Road, back taxed, authorization to sell for affordable housing at town meeting, dispose of the property. #19 43-45 School Street - Housing authority interested in building there, Acton Community Housing Comm. also interested, in collaboration with Habitat for Humanity; it was a duplex at one point, needs a lot of work. There are old easements in Flag Hill subdivision, property owners to do, release easements. #22 Chapter 111F reimbursements, Police and Fire do not get Workers Compensation – Police and Fire, create revolving fund – lawsuit reimbursed their salary to help overtime payment for when another employee is off on injury. Handicap parking -- have not accepted that statute - parking fines would be used by commission on disability for expenditures that assist

people with disabilities. #24 Municipal Modernization Act, town flexibility for affordable housing up to 75% tax abatements for the housing project, incentive. #25 bylaw method for negotiating affordable housing, will get more information. #28 3 citizen petitions, offshoot of Concord Water issue. Ron Beck, Terra Friedrichs, collected 200 signatures to force a town meeting. If residents generate 200 signatures, the Board of Selectmen must call a meeting within 45 days from when the petition was turned in. Zoning articles, typical consent calendar for Highway reimbursement. All numbers are temporary at the moment.

**Citizen Petition, Arlington Street Conservation Restriction:**

Matthews: 11 Lincoln Drive - Convert to conservation land. At Newtown Road and Rt2, this is 25-27 acres, already owned by the Town. Purchased in 1962 for a school, was never made into a school. Mostly wetlands. School does use this land for science classes. Clear stated Town goal, it meets the Acton Open Space and Recreation Plan. Meets many Acton 2020 goals. Tom Tidman gave option that this is a wildlife corridor. Is a green space connector, undisturbed soil helps prevent flooding. Potential uses – walking trails, continued science class visits, education environments plaques. Saving approximately \$20,000 since the Town already owns the land.

Terra Friedrichs, West Acton – In favor, make note for land preservation next to large houses. Reassess value of homes next to open space, paying for increase in value. Shifting the cost to folks who are enjoying space.

Jim, West Acton- In favor of protecting land, great step forward to take on town article, whatever gets them to town meeting. Technical point, most conservation land doesn't have conservation restrictions. Consider proposing an Article 97 protection instead of a CR, difficult to undo CR.

Ms. Adachi – Question for Jim- Is there the possibility of the land becoming part of the consideration and purview of the Land Stewardship Committee, someone willing and able to take it on as a steward?  
Jim- doesn't remember any discussion about the land, as a member of the committee of what he's seen of the enthusiasm, it wouldn't be a problem to find help.

David, 25 Lincoln Drive – Neighbor, lot of potential for passive recreation. "They aren't making more land." Don't have to purchase it; just have to figure out what to do with it. Doing something that is free to the town is a good opportunity and would be a shame not to take advantage of it.

Ms. Osman – Confused between article 97 and CR regarding reserving possibilities for the future and building. Interested in this question of legally making it under a conservation restriction or not. Does not have an opinion on it at this point.

Mr. Ledoux- Petition article, should be recommended as for or against.

Ms. Green – No final decision, supportive of protecting open space, it is our own land, under an Article 97 plan we could keep it as conservation land - protected land. Don't want to tie our hands for municipal needs. Torn, not completely supportive, seeing some protection as Article 97 plan.

Mr. Chang – Agrees with Ms. Green – keeping our options open, hard to understand conservation restriction since we already own the parcel, don't need to take on other costs. Wants to put it on town meeting warrant. Prefer to have Article 97 protection because it can be undone if deemed necessary.

Mr. Berry- Mr. Tidman sent an email speaking about wildlife, mentioned recreation uses such as golf Frisbee course and dog park, etc. Wetland protection is already there. Has been held for general town purposes. Senior center looked at it and it was buildable but they did not go forward with it, opposed by town members. Mr. Tidman's bottom line, keep it open for whatever may come up but keep it as passive recreation. Skeptical about putting restrictions on it, Article 97 is a possibility.

Ms. Adachi- With only 5 acres of the 25 that are buildable, not able to develop most of it. When time comes, there will be opportunity for input. Passive recreation could be a viable option that doesn't consist of a building. Understands concerns of neighbors for it to be protected.

**Commencement of Deliberations Regarding Concord's Applications for Site Plan Special Permit/Use Special Permit #11/20/2015 – 459, Nagog Pond Water Treatment Facility:** Mr. Berry opens the deliberation. Board of Selectman takes all of this seriously possible final decision in this matter, no idea what other board members think. 4 of 5 members to issue special permit. Opens questions:

Ms. Green- Would additions to future fencing require applicant coming back to BOS?

Mr. Roeloff- Generally yes, but you can make that clear. You can put in your plan to make sure that any changes go back to BOS for changes.

Ms. Green – Can you give us some case history or guidance about something other cases where similar things were considered “detrimental or injurious”?

Mr. Roeloff- May be able to find some cases to give idea of these criteria, but would be case specific, site specific. Slightly different context. e.g. Non-conforming structure or use, special permit application associated with that change to the use, e.g. an expansion of a trailer park, criteria whether or not expansion was more detrimental to neighborhood. Went up to Supreme Judicial Court, each court changed. Every case is different, nuances in standards and facts, I would be reluctant to do it. Certain parts would be worth seeing from some of the cases.

Ms. Green: Would be helpful, even with caveats.

Ms. Green: If we find it isn't appropriate for the neighborhood but don't deny, can we include the history of our conversation, and reservations, in the permit?

Mr. Berry: That would be a good way to go.

Mr. Chang – Have questions about general process of conditioning a site plan, what are practical conditions. We have mentioned, for example, the process of fence maintenance. I don't want to get into

a position where we have a permit with 90 conditions on it. What do you feel is a practical level of the amount of areas of condition?

Mr. Roeloff - If you feel the condition makes sense, include it. Don't not include it because you don't think you can enforce it. If it adds value to project, include it. If it becomes a problem for the neighborhood, the Town can enforce it. If not, they won't have to. There is guidance in the zoning bylaw; it provides the clearest road map on what to do. Read it all. e.g. Special permits 10.3 – instructs you to find purpose, lay out criteria, specifically authorizes you to impose such conditions, safe guards and limitations to protect the neighborhood and town, included and not limited to, ... several examples. There is always a reasonableness. Parameters must be able to tie conditions to standards set forth in the bylaw. Require Concord to provide water to Acton – inclined to propose as a condition but must tie into zoning law. You may be as specific as you want but it must tie in to the bylaw- also can be as general as you want. Think hard Abeyances of property, requiring services to towns... those get into challenging areas re: supporting them in the context of a zoning decision.

Mr. Chang: Follow up...any limit to level of specificity?

Mr. Roeloff: No limit. Also can be as general as you want.

Ms. Adachi – Vote by super majority, right? What happens if we have 3 and 2?

Mr. Roeloff: Yes, if it is not a super majority, it becomes a denial.

Ms. Adachi – Agrees with Ms. Green's point about language of detrimental to the neighborhood. Same question about "neighborhood." Also, should we narrow down conditions and eliminate some? I hear you say if germane, include. Worry about enforcement.

Mr. Roeloff – If ever went to appeal, the way the court looks at interpretation, generally speaking any guidance in bylaw, everyday interpretation of the words, different interpretations – court will defer to the Board of Selectmen. You have level of deference as to interpretation of bylaw, and of "neighborhood". Court gives you deference. You are the local authority in interpreting bylaw and applying the facts.

Ms. Osman: Re: "Appropriate to site", I would want more insight and guidance from counsel. If the Board is not exerting enough of our authority, counsel should tell us. What puts us over the edge to say no?

Mr. Roeloff- Once you are in deliberations, I can give you guidance as to whether you are acting within your authority, using your judgment. If pushing the boundary, I will let you know.

Mr. Roeloff – About use being appropriate for the site, there won't be guidance besides me telling you to use your judgment, be reasonable. These criteria are intentionally vague and broad because the Town legislatures wanted you some discretionary authority in terms of deciding if you should be allowed or not. There is a second question about what factors should be included... historical uses, residents living closer than before, lots of questions about this use now as proposed. It is factual. I don't want to give my personal opinion.

Ms. Osman- I would want you to tell us if we are not exerting enough of our authority.

Mr. Roeloff- I can comment if I think we aren't talking about something that is relevant.

Ms. Osman- I keep thinking, "Is there a more appropriate site?" I keep thinking we can only look at this particular site.

Mr Roeloff- Huge variation town to town, some towns specifically say that this alternative is better than another, more in wetlands permitting than special permits. But in special permits, what often comes up is whether or not the proposed use benefits the community. In some towns, that is an explicit criteria. That criteria is not explicit in this list, it is up to you if it can be built in through the Master Plan references or general purpose.

Ms. Osman- If doesn't fit with master plan, isn't that a definition of being not beneficial?

Mr. Roeloff: It is a big Master Plan. You have to read the whole Master Plan. It isn't the kind of document that dictates results. It is a road map. You should review the Master Plan (MP), the question of whether the proposed use is consistent with MP. The MP doesn't dictate results, doesn't say what you can't do with your property. Review the master plan and the question is whether or not the proposed use is consistent with the MP, does it advance the directives of the MP.

Ms. Osman – How can we bring in bigger issues, such as working as a watershed, and towns working together more?

Mr. Roeloff – The decision will include a few different components: there will be findings of fact; there will be findings as to whether or to what extent the uses comply with criteria, whether they do or don't; and then there are conditions. In the findings section it is Ok to include narrative that expresses concerns you have, or characterizes your decision so that there is no confusion about what you are intending to do and not intending to do. For example – a lot of these things don't come up in the context of a denial, so I keep coming back to an approval, though I am not recommending an approval necessarily -- in an approval decision, you can say this decision does not in any way limit or impair the right Acton has to use the water from Nagog. You can say that in your decision so later no one can say you approved this in 2016...but no, we didn't give up rights because we specifically said we weren't including that here, can include expectations or impose conditions, conditions you may in the end debate whether or not it is in your authority, the line is not clear, people will have different views. The challenge will be to include conditions that you feel would bring it within the scope of the criteria, if you are in the context of approval, without stepping over the line, or decide if more aggressive, take chances?

Ms. Osman: If we make a condition and they don't live by it, don't monitor, for example, as was in condition, can you take away the permit?

Mr. Roeloff: If you said violations mean you will rescind or revoke permit, you have to specifically say you have that right to enforce as you said. If it is so important that if they violate, can say the special permit automatically rescinded. Include provisions to dictate options down the road.

Fair to say, allow this use, if it doesn't adversely affect our wells, if it does we will revoke the permit. Even if we didn't say that, if it adversely impacts the wells we could have other remedies as well, but this would provide a remedy within the context of the zoning condition.

Ms. Osman: And about conditions such as working together with other towns?



Mr. Roeloff: You can impose a condition that requires them to work participate in discussions with others, meet with certain people. Fair game. If get really out there, you are getting further from zoning and into the world of protecting archaeological and historic resources... there are so many tangents here through the references to Master Plan and the purposes of intent, you... want to articulate how you are tying the conditions to the criteria.

Mr. Berry – Question has come up whether it would be appropriate for you to draft a sample denial and as well as some document that expresses our concerns and possible conditions that might mitigate those concerns?

Mr. Roeloff – Appropriate to do that, but I would want more guidance from the board on this; it is difficult to draft a denial without more feedback from the board, can do it generically. Speak freely tonight with preliminary reactions. But with respect to drafting a denial, it would help to know what criteria is problematic. You won't go through every criteria and say why it doesn't meet it, would hone in on certain ones.

Mr. Chang- Feels that best reasonable basis for a denial of special permit would be that approving is not consistent of master plan of protecting Acton resources. Reason is that even though they will not run at peak capacity usually, we have to assume it will be at times. Withdrawing a lot of water from Nagog could total impact of water quality and quantity. With no agreement in place, we have little idea of what total impact of facility will be on future availability of water resources to the town. Strongest basis for denial would be that Town of concord hasn't given us enough to say that Acton will continue to have water resources, particularly from Nagog, to maintain resources we need. I recommend we use that as basis of a draft denial.

Ms. Green – There are a lot of potential areas with reasons for denial. I recommend going with Mr. Roelofs's recommendation. Want to make clear to public that putting together an approval with conditions, it gives a format to discuss, in no way we are approving any or all of these conditions. If we find that any of these criteria are not met, then we would have denial. Doesn't think Mr. Roelofs putting together a denial up front without the meeting in February, it is not a great use of time. A lot on your plate and expensive.

Mr. Roeloff- Reminds board that you do not have to vote on February 27<sup>th</sup> and March 6<sup>th</sup> – you have 90 days to make a decision. What would the approval look like and what criteria we need?

Ms. Green- Enough time after real deliberations to put together a denial. Let's put together what an approval would have to look like. Then if these findings aren't found, gives what we need for a denial.

Ms. Adachi – Agree that we should have draft approval with all conditions. Denial would be a waste of counsel's time. Unless we are ready to have a straw poll to see where we stand. But we haven't had time to review all of the record. Well aware counsel has other things Have to start with something. In

my experience, deliberate, then planning department goes and writes a draft approval. Having a draft approval will keep us focused on what the real issues are.

Mr. Roeloff - Anyone can come to deliberations between now and then. Obviously you shouldn't be talking amongst yourselves. Think through your thoughts, draft your concerns, bring them to the deliberations, and walk through them. Some people have 33 conditions. If not comfortable and wonder about articulating a denial, take a stab at it.

Mr. Berry – Concern about enforcement, 3<sup>rd</sup> party oversight, approve and put condition, keep the space under the fence free of debris, are you familiar with having any 3<sup>rd</sup> party to oversee that, require them to hire people to do this task? I have seen projects with so many conditions it was hard for the town to enforce them.

Mr. Roeloff - I have never seen a condition that allows private enforcement entities to require to come and inspect. It is common to require independent review by consultants. For example, peer review wildlife consultant, could have annual inspection to go out to property, make sure all was constructed properly, kept clear, come back to the Board--at applicant's expense. Procedurally, if you impose conditions that Concord doesn't like, their option is to appeal Acton's conditions or accept them; they are binding if they accept them. Trying to find line of what is reasonable. Asking them to pay for this. They will feel they have their own consultants. Certain oversight and inspection is more typical in large construction with two years of drainage issues, ongoing problems, etc. It's a question of what is reasonable and if there are concerns.

Mr. Chang – My biggest concern by far is the protection of Acton water resources. The info that has come out shows we don't know the effect of the withdrawal from Nagog pond on our downstream wells. I understand we have information about historical usage, but that has been low and recently we have the effects of climate change accelerating, difficult to project into future, 20, 30, 50 years. It is important to continue to have access to Nagog Pond water in addition to our wells. Like to see some condition that reflects that, direct access or negotiated agreement of use of the pond. Would be abdicating our responsibility to protect Acton's water resources if we don't have something in place to maintain our access to Nagog Pond water. I would like to see some condition that reflects that, whether that relates to direct access to it or a negotiated agreement among Concord-Acton-Littleton, don't know what is best or practicable. Last time Concord said their position was that the overall usage of Nagog Pond was not in the purview of this process, to some extent I understand that, but without that agreement in place I would be hard-pressed to say we would be executing our responsibility to protect Acton's water resources, not only because of the N Pond water itself but Nagog Pond's effect on our downstream resources. I expect my colleagues to cover the concerns of the community. I have concerns that we make sure the noise level is not excessive and making sure that as much as possible the traffic related to Nagog Pond doesn't impact the daily lives of the residents in the area. I will leave wildlife and archaeology to my colleagues.

Ms. Adachi – I approached this as proposed conditions. No construction or fence placement before PAL intensive/location archeological survey is completed and also in connection with that they need to get input from the Acton Historical District. Also Pinehawk, not necessarily residents, but know a lot about pre-contact history. Would like a condition that addresses timeframe of Acorn Park for deliveries, limit time frames, when kids are out of neighborhood. Address the pothole cover replacement. Service vehicles do not use Skyline Drive, may put up gate. This would be to minimize use of Skyline by service vehicles. If not hiring an independent consultant, monitoring of fence could be done by Natural Resources Dept. and related Conservation Committee and Land Stewardship Committee review. They are very aware of open space and habitat level. Also, because Breezy Point brought up issue of their access to a trail that crosses Concord land, perhaps they could work with Natural Resources and Stewards, who are good at deciding where trails can go, to satisfy both Concord and Breezy Point. Natural Resources staff can be very helpful on things like this because of their background and experience. I don't know if we have to have a reference to the fact that Conscom review is necessary as part of the approval of the project—they have to review the proposed fence line. I know sometimes there are conditions based on approvals from other committees.

Mr. Roeloff: It only adds value if you request

There was a request for a waiver for compliance with the lighting plan, I know that at Special Town Meeting in November, we were discussing LEDs' Kelvin temperature. exterior lighting potential lighting for neighbors and wildlife, limit strengths.

Mr. Roeloff – Take a look at the record. I had that in as a waiver request from beginning, actually unclear. I think in recent submittal they have provided updated lighting details. I think they are now saying they provided info to extent required for this project, but if you think they are asking for a waiver from the lighting plan requirements vs. standards, that is different.

I believe they are now saying we provided the info to the extent required by this project. If you disagree and say they are asking for a waiver from the lighting plan vs. requirements.

Ms. Adachi – Reiterate Mr. Chang concern regarding noise control, emergency generators, want to confirm resulting sound is within to DPE guidelines for suburban residential. At the 1/18 hearing, Concord discussed installation of the fence—certain months, fence monitoring monthly, floodway crossing weekly. There was a general aspirational commitment to cooperating with AWD. Should the following go in aspirational conditions? That we have the expectation that Concord will enter into regular discussions with water district and Acton on collaborative planning of water supply issues that affect both towns including but not limited to development of some other agreement to provide better coordination and coverage on water issues such as the Concord Water supplying water on Great Rd. Not reasonable for us to say they have to supply water for any development on Great Rd. But reasonable when we get a request for permitting for development or redevelopment on Great Rd. and there is a water supply issue, if our water district can't supply it we have to have a process whereby Concord gets consulted about it. We shouldn't be permitting projects where there isn't a clear cut water supply—not to leave it to developers who get permitted by us to go on hands and knees to Concord begging for

water which happened to one project we permitted. It should be a more orderly process worked out by the Water Supply authorities from both towns so it isn't a squishy arrangement. Both Towns should be monitoring water quality conditions and determining the impact of Pond withdrawals on Acton's water supply. Both entities ought to be monitoring re: impact on pond withdrawals. Doesn't seem to be big concern to AWD as to citizens at hearings. Would be nice to have clarification of Nagog Pond rights from 1884 legislation—vague, lay people's interpretation, no court interpretation so far. Have the three towns work together on this.

Ms. Green – Similar to Ms. Adachi, I thought of these as potential conditions, again with the caveat that I am not leaning toward an approval. Adding on to Janet's about PAL Arch. report, condition no work until Mass. Historical Comm. has approved that report and Concord has met all conditions Mass. Historical indicates in finding, and they have to consult with Acton Historical Commission, Acton Historical Society, and Pinehawk. Must present report to Acton Historical Commission for comment. Limits on time of deliveries of chemicals to plant, and any deliveries, and we should put a placeholder in for the time and BOS can discuss time. We always have standard limits on construction times, might these need to be more stringent? Put it in the approval to discuss. Oversight committee with neighborhoods and neighbors, not necessarily to enter private property but to report on other issues that report back to Board of Selectman re: noise, times. Don't know if it is independent consultant or staff that reviews operation and maintenance plan of fence, but Concord must submit any changes to the plan to the Board of Selectmen. In the findings section – language around those aspirational conditions, that we are not waiving our future rights to Nagog water, recognize the Act of 1884, it would be helpful to have both the aspirational findings of encouraging regional discussions vs. a condition about those, so we can think about those in each instance, what seems most appropriate given the context of what we are discussing.

Ms. Osman – These are concerns that need to be conditions or just need to be sorted out. I would want to see a minimized fence, only around the plant and the dam. I would want to arrange for monitoring of water levels in streams and aquifer, I have a concern that Concord... can't remember the answer to the question on the rate of recharge of the lake. Would have to listen back. As Ron Beck suggested, I would want that monitoring funded by Concord and water users. I have a concern about the increased water usage: from past seasonal use being about 4% of Concord's use, to a higher use year-round. I have concerns about the lack of analysis of feasibility of putting the plant elsewhere. I realize tonight that the water draw would be the same no matter where the plant is built, assuming the pipe is replaced. I wasn't thinking about that. That is interesting. I would like to see Great Rd. users being able to use the Pond water equally with Concord users, and in the same vein I would want our South Acton water to be able to be provided to Concord users nearby. I want to get away from the Town line definition and look more at what is practical re: what water serves what area. I want to keep a certain level of cynicism about the vulnerabilities map, the one that showed the problems, I don't want to give too much credence to that when thinking about protecting the watershed, don't see those risks to watershed as significant. I want to see coordination of the whole watershed and coordination among the towns. I wrote down that Alan Cathcart said Concord has concerns about their future needs, I want to check the record and understand what that was about. When the lake bed is empty, I would hope that the lake

bed archeology should be taken advantage of. I thought they said they were only digging where the pipe is, but while it is empty I want them to take advantage. Neighbor Engell at Breezy Point wanted the agreement about trails and stewardship to be in writing, I would like to see that. I want them to come back to Acton if they want to increase size of fence. Times and days of deliveries limited. I want to be clear on the process by which Littleton and Acton will be able to access the water in the future, as needed, that it is clear based on the Act of 1884. With respect to Terra's comment about it not impacting our wells being in writing, I too want that to be recorded. Want to address part of Master Plan that says we should protect the quality and quantity of Acton water, I want to especially focus on that. I want to deal with the uncertainty of whether this will affect the quality or quantity of our water. I want to address the traffic through the neighborhood. One more thing. I actually do not like the design of this facility, when compared to the old designs in Newton and Brookline. This looks so modern and vanilla. If we do end up approving it and it is this big looming thing, it would be nice if it were really gorgeous. Ms. Adachi points out Design Review Board approved it, Ms. Osman says she doesn't always agree with their decisions.

Mr. Berry: I think H.H. Richardson designed the waterworks building next to Chestnut Hill Reservoir, I think; unfortunately we don't have that kind of talent around here, or put that kind of effort into our public structures as much as we should anymore.

Mr. Berry- I am going to repeat a lot of what people said. Regarding the fence, I want to hold them to their commitments and the wildlife experts' recommendations of no fence work during nesting season, to ensure they don't cut down any mature trees, keep away from wetlands, which they would have to do for Conservation Committee anyway. I am concerned about all that and I would like to see all that reflected in the conditions. The archeology study is related to zoning, part of the disturbance of the site, so, subject to your advice, I would want to condition the study on that, even though the state also oversees it, but I would repeat Ms. Green's recommendation that there be contact—and I am not sure Mass. Historic is compelling this--specifically with Acton Historical Society and Commission and Pinehawk should be consulted including Native Americans who might have historical knowledge of site. If possible, condition it to have a representative of one of those groups accompany PAL when they survey the site, make recommendations about where things should be done and point out artifacts that should be protected. I am concerned that Breezy Point neighbors first wrote us a letter and said they had come to an agreement with Concord and then came here and said that Concord had not lived up to that agreement, I would like to see conditions that require Concord to live up to that agreement and reach an accommodation with Breezy Point neighborhood that will finally be subject to this board's approval before construction starts. On the sound issues, we had a suggestion that it appears that the sound study meets the standards are required, we had a suggestion that after the building is built there be another sound study done to affirm that the final product is the same as the sound study predicted it would be. As to traffic through the neighborhood, agree there should be conditions on hours. Acton's vendors agree to certain hours. Notice to the neighborhood on the website so they know when to expect traffic and construction. Trash and noise are another issue. I would like to see a condition that Concord meet with neighbors, maybe weekly during construction, so open line of communication about

concerns, maybe even continuing after it gets built, so we have accountability of Concord to residents of the neighborhood.

Ms. Osman – tells Mr. Roeloff hearings are taped. Ms. Adachi points out difficulty in writing verbatim from the tape when needed.

Ms. Osman asks – Confirming, Concord cannot communicate with you (Mr. Roeloff) or the Board of Selectmen?

Mr. Roeloff- Depends on the conversation. They cannot communicate to you or persuade you through me, they can't. If the hearing were still open, they might have commented tonight. I am surprised there aren't more neighbors here tonight. If I were Concord's counsel I would definitely be here.

Mr. Roeloff will provide a draft approval in order to have meaningful discussions and deliberations.

It is ok for Selectman to communicate with Mr. Roeloffs directly with other concerns or conditions. Should not copy all other selectman on emails to keep confidentiality of opinions of other board members.

#### **Consent Agenda**

#13 Ms. Adachi - Hold - System to support senior citizens and disabilities, grant related reason?

Ms. Osman – Sharing many vehicles around town, priority is given to these types of people. Wants freedom to personalize the letter. Will check in with Mr. Halley. Approve with those questions in mind.

#14 Ms. Osman – Hold – The wrong version was put into docushare. Take off West Acton Sewer Charge and put on next meeting in order to see the copy.

#15 Ms. Green- Hold – Back up was not in packet, hold for next meeting.

Ms. Green moved to approve consent items 7-13, Ms. Adachi seconded. All Ayes 5-0

Ms. Adachi moved to adjourn, Ms. Green seconded – All Ayes 5-0. Meeting adjourned at 10:19 PM.

Respectfully Submitted,

  
Shannon Hurley, Recording Secretary

  
Franny Osman, Clerk