

TOWN OF GROTON

Groton Board of Health
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September 14, 2004 Special Session Minutes Surrenden Farms Town Hall, Groton, Massachusetts

Board of Health Members Present:

Dr. Susan Horowitz, Chairman; Matthew Waterman; Robert Hanninen

Others Present:

Debra Butcher

Meeting Called to Order:

Chairman Horowitz called the meeting to order at 7:35pm.

Minutes:

The minutes of August 3, 2004 and August 23, 2004 were tabled.

Septic Permits Signed/Approved:

- *250 Forge Village Road (Lot 2); Fox Meadow Realty Trust
- *248 Forge Village Road (Lot 3); Fox Meadow Realty Trust
- *Candice Lane; Lot 3; Brian Lavalley

Bills Signed/Approved:

- *Ayer Auto Parts-\$19.71
- *Mobile Consultants-\$10.08
- *Airgas-\$23.26
- *Myette Power Equipment-\$21.62
- *ApparelMaster-\$77.28
- *Covanta-\$5482.45
- *Belmont Springs-\$27.76
- *Boxes & Bags-\$11,326.44
- *Lamarre & Son-\$5401.44
- *Moore's Lumber-\$37.49
- *Walnut Printing-\$803.00
- *GeoInsight-\$9892.52

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Surrenden Farm: Present: See attached

Chairman Horowitz opened the meeting by stating that the applicant has proposed an agenda for the meeting to follow. She stated that she didn't have a problem with it but felt some of the items were redundant. She said that she would allow the applicant to present first and then have the town's consultants speak.

David Cooper, attorney for Newbury Street Development, said that he would like to summarize the documents that have been presented to the Board since the last meeting on August 3, 2004. He stated that on August 3, 2004, the Board's consultants issued its report on the background risk assessment and metals correlation. Attorney Cooper stated that his client's consultants responded to the town's consultants and the response was submitted.

Attorney Cooper stated that it was his desire that the Board evaluate the results according to the standards of the Massachusetts Contingency Plan and not deviate from that standard. Mr. Cooper acknowledged that the MCP doesn't always apply through its legislative mandate because there was an exclusion that applied to this project. He urged the Board to follow the guidelines that the MCP has adopted when dealing with hazardous materials. He stated that if this is done, debates over the interpretation of the MCP could easily be resolved.

Discussion continued regarding background in this case and the averaging techniques used. Mr. Cooper stated that by using the MCP standard, there would not be concern among Groton landowners that there were some new standard that they would have to abide to when they were replacing their septic system or dividing their lots.

Mr. Cooper stated that the Board of Health had been correct in the past several years in applying MCP standards to the Angus Hills subdivision and to the Boutwell School. He stated that the Board's consultant was also correct in applying the MCP standard in her evaluation in Chestnut Hill. He said that GeoInsight was correct when he advised clients in his firm's newsletter that background concentrations of naturally occurring arsenic do not require remediation.

Mr. Cooper introduced Mr. Bob Durand to the Board. Mr. Cooper stated that Mr. Durand served as the Massachusetts Secretary of Environmental Affairs from 1999 to 2002. He asked if the Board would recognize Mr. Durand and allow him to speak. The Board had no objections with him speaking.

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Mr. Durand stated that his former role was the Chair of the Natural Resources and Agriculture Committee before he was Secretary of Environmental Affairs. Mr. Durand stated that he was the chief sponsor of the revisions to the 21E legislation and that legislation ended up in the formulation of the MCP. Mr. Durand stated that by looking at all the science while on these committees, the MCP standard for arsenic was determined to be 30ppm. He urged that the Board follow Mr. Cooper's recommendation to use the MCP standard and to use the DEP as an arbiter for decisions that were difficult for the Board to make.

Chairman Horowitz stated for the record that she was in contact with Paul Locke from the Boston DEP. She said that Mr. Locke was the Director of policy for the MCP. Dr. Horowitz

stated that DEP was currently going to public hearings in order to change the standard from 30ppm to 20ppm. Mr. Durand stated that he was aware of the proposal to change the standard but said that changes are often not enacted.

A slide presentation from Drs. Stevenson and Shatkin followed. They covered the role of the MCP, data averaging in the MCP background and risk assessment. Dr. Stevenson restated their goals that they have as environmental consultants and stated that his client had every intention to protect the public health for future uses of the property. He said that his client is willing to have a strategy that will address soils which may present excess risk in some type of remedial reaction and some type of mitigation measure that will achieve no significant risk.

Dr. Stevenson stated that the project at Chestnut Hill was similar to Surrenden Farm in that the open space area at Chestnut Hill was going to be disturbed by water development and there were questions about the soils. He said that an evaluation was conducted by Dr. Sundstrom and shallow soils were assessed in the 0 to 3 foot zone with average concentrations. He said that contaminants were compared to the MCP background and average soil concentration was higher than at Surrenden Farm.

Dr. Shatkin made a presentation on the issues of background concerning naturally occurring arsenic. She stated that there was evidence of it in the deeper soils at Surrenden Farm. Dr. Shatkin said that the arsenic correlated with other metals at depth and they saw evidence that arsenic concentrations were consistent in all different areas of the site.

Dr. Shatkin spoke about the human health risks associated with this site. She said that based on her evaluation of the data, the background concentrations of arsenic of soil are above 20 ppm and average 22.4 ppm. She said that under the MCP guidelines, the risk associated with a lifetime exposure to 22.4ppm of arsenic in soils were not a significant risk to public health under residential

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exposure assumptions. She stated that her client proposed to remove surface soils that posed a risk to public health.

Chairman Horowitz asked that the Board of Health's consultants make their presentation.

Dr. Susan Sundstrom addressed the assertion by Newbury Street Development that they "picked portion of the MCP" with arbitrarily applied them to develop the 20ppm standard for remediation and some of the specific issues regarding the Chestnut Hill assessment.

Dr. Sundstrom stated that the risk calculations were not specific to the MCP, they were calculations that would apply to any of the State agencies (i.e. EPA). She said that the exposure assumptions that were used were consistent with DEP guidelines. Dr. Sundstrom stated that when they did their evaluation, they didn't include the inhalation of dust pathway or the contribution by other carcinogenic compounds such as DDP and dieldrin. She said that had they included that data, the 20 ppm would be somewhat below 20 ppm. She said they only looked at arsenic alone with the assumption that the other pathways and chemicals would be remediated to lower levels and the overall risk would be less.

Dr. Sundstrom addressed the Chestnut Hill site. She said that the applicant believed that they were advocating different procedures for the two sites and that the risk assessment for

Surrenden Farm was more conservative than Chestnut Hill. She reported that the same approach was used for both sites, however, they were done for different purposes. She said that the Surrenden Farm evaluation was to assess risk to future residents who could live at the property for a long period of time. The evaluation for Chestnut Hill was done to evaluate risk to construction workers who were installing a water system that would only take six months or less. She said that since the amount of exposure was different, the arsenic concentration that would pose a risk is different.

Mr. Cooper recommended that the Board vote the same sampling methods applied in Chestnut Hill be applied to the open space in Surrenden Farm. He urged the Board to apply the MCP method and use the 22.4ppm for residential standards. Mr. Cooper also asked the Board to consult with the DEP as a consulting authority on the normal and usual method of applying their rules and guidelines. He said his client would be happy with that outcome.

Chairman Horowitz said that the Board was using the MCP Method 3 standards to characterize this property. She said that she attended a Planning Board

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meeting where Larry Beals agreed to remediate to 11ppm. Mr. Beals disagreed with that statement and said that he was incorrectly quoted in the Planning Board meeting.

Chairman Horowitz stated that during conversations she had with Mr. Locke where he iterated again that this didn't fall into the MCP guidelines, when Governor Cellucci was in office, there was a bill going through the legislature that would make this kind of situation become part of the MCP.

Mr. Durand stated that no such legislature has passed only filed. He said that the DEP held a public process which is part of the process by which they made decisions.

Chairman Horowitz stated that Attorney Cooper tried to enforce the fact that this was all science, when in fact, there was a lot of politics involved.

Chairman Horowitz said that back in 2002, the Board of Health agreed to use the MCP process and she didn't see that the Board wasn't doing that. She asked the applicant whether their request was for the Board to consult with the DEP and ask for their help.

Mr. Cooper asked if the Board would make a decision tonight and that the MCP standard would be applied. He said that if there were disagreements on specific points between the consultants, those points would be submitted to the DEP for clarification.

Chairman Horowitz asked Town Counsel David Doneski for his opinion. Mr. Doneski recommended that if the Board was asking for the DEP's participation, it should be done in a 2-step process. He said the first step would be to have counsel or other representatives of the town and Newbury Street Development contact DEP to see if they would serve as a reference point or "facilitator" on how the MCP should be applied. Secondly to see if DEP would provide their experience and guidance once we know if they are willing to participate. If they are not willing to participate, the Board would have to make the decision.

Chairman Horowitz requested that Dr. Shatkin redo her calculation using zero to 2. Dr.

Shatkin agreed if DEP agreed that that was appropriate. She said that she didn't think of infants being exposed to soils as the same way as young children are.

Discussion continued regarding past uses in town and all the 350 parcels that the applicant has referred to. Chairman Horowitz stated that those parcels are not to be considered as far as remediation. She said that the Board must look at future developments coming before them and what's in the pipeline now.

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Member Matthew Waterman asked if the Board was going to use DEP as a facilitator or mediator, were they going to be able to answer the question on whether to use a site specific background as being 20 or 22.4?

Chairman Horowitz stated that they should be able to advise the Board whether the applicant's consultants must redo their calculations.

Member Waterman made a motion that the Board of Health directs both Town Counsel and Newbury Street Development to confer with DEP to determine if DEP will provide assistance and guidance should it apply and report back to the Board of Health. The motion was seconded and carried unanimously.

The meeting adjourned at 10:50pm.

GROTON BOARD OF HEALTH

Dr. Susan Horowitz
Chairman

Matthew Waterman

Robert Hanninen

Respectfully Submitted,
Debra A. Butcher

