

**TOWN OF GROTON
Groton Board of Health
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SPECIAL SESSION MINUTES

September 26, 2005

Surrenden Farm Subdivision, Groton, Ma

Board of Health Members Present:

Robert Hanninen, Chairman; Dr. Susan Horowitz; Jason Weber

Surrenden Farm: Present: Donald Cooper, Esq.; Dr. Joanne Shatkin; Larry Beals; Joseph Falzone; Thomas Stephenson; Robert Orsi; David Doneski; Kevin Trainer; Joshua Degen

The meeting was recorded by a stenographer for the applicant for Surrenden Farm. The minutes were recorded from the transcript.

Chairman Hanninen opened the meeting by stating that Surrenden Farm was the only agenda item for the evening concerning the remediation plan. He stated that he had read the transcript from the meeting with Mr. Locke and he said he found it to be “balanced, filled with caveats and allowed for professional judgments”.

Chairman Hanninen reminded the audience that the process that the Board was following was not setting precedent for the Town. He said that the Board preferred the constancy of regulations but made its decisions on a “case- by- case” basis and that included the Title 5 reference made at the last meeting. He stated that a performance standard that he believes should be included is the evaluation of the eastern open space site to ensure that there is no degradation to off- site properties. Mr. Hanninen stated that he realized that some wanted to remediate to background, however, he preferred to maintain performance standards for arsenic and that each lot met one part in 100,000, which corresponded to 20 ppm. He felt that this was consistent with the questions answered by Mr. Locke of the Department of Environmental Protection. He asked that this is proved at the end of the remediation.

Chairman Hanninen provided a proposal for the site (see attached digital picture of the whiteboard):

Each lot - remediate or not - depending on the applicant’s choice – whatever method they chose.

Average, mix, cut the whole top foot, take samples from the pile and get an average of that top foot. Take a look at the analysis of that data and if it meets 20ppm, continue to develop.

Average the 3- foot level and if the analysis data meets 20ppm or 1 in 100,000, proceed further.

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If results are 20ppm, continue. If not, remediate again.

Member Horowitz stated that she felt that Dr. Sundstrom and GeoInsight have done a very good job of representing the Town and she resented that Attorney Cooper continues to disparage them. She said that the Town's consultants have consistently had public health as their focus.

Dr. Horowitz felt that it wasn't "Surrenden's business to mind Groton's business". She stated that over the past several years, the Board of Health has required that developments provide "land history". She said that each parcel is "an individual parcel and the 10% of housing that seemed to be threatened is not part of this business".

Dr. Horowitz stated that she reread the August 15, 2005 transcript when Mr. Locke was present and she interpreted his comments that both sets of consultants were advising their clients and both agreed with the MCP Level 3 methodology. She felt that the Board needed to decide whether to take their consultants' advice or not.

Dr. Horowitz stated that the Board should concern themselves with public health of those who will eventually live on that land and it didn't matter if they ate dirt for 30 years, had a low immune system or couldn't tolerate heavy metals. She said that the risk is 1 in 100,000 and that equated to 20 ppm.

Member Weber provided a recap of the analysis data that he collected and reviewed. He said that he took the raw data for all of the samples and relevant information and learned that lead arsenic existed in the top 10 inches of soil of orchard land. He said that he tried to "get a handle on what the background" might be and that there was a strong case for the background to be around 20. He said that if you aggregate the samples by the depths by the MCP in the 0- to- 1 foot depth across all the "9" series lots, the average was approximately 49 ppm.

Member Weber felt that by scraping the top foot of the property would solve the problems. He said that the data did suggest that there were "hot spots" and that they would need to be addressed individually.

Member Weber stated that he would hope that the Town would consider the economic issues and the cost of alternatives for this project. He stated that the data showed that there were some lots that showed lower levels of arsenic, specifically in the area intended for the age-restricted units. He felt that it would be helpful if the area that would be used for homes with children and families would be changed to the area used for the age-restricted units.

Attorney Cooper questioned whether Member Weber supported the remediation plan. He said that his client agreed to make sure that the top foot was 20ppm or less. He asked if Mr. Weber was proposing that the top foot be remediated. He stated that his team agreed with that. Member Weber stated "no" but was only offering alternatives.

Kevin Trainer of GeoInsight stated that it was his and Dr. Sundstrom's professional opinion that the background concentrations are lower than what they would consider the risk-based concentration (20ppm) and that this should be used.

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Mr. Trainer stated that ten (10) samples were collected from the age-restricted area and of those ten samples taken, the arsenic concentrations ranged from 4.4. to 13 and nine of the samples were below 10ppm with the median being 6.

Mr. Trainer stated that the samples were collected from the site that should be included in the background data set and from an area of the site that was outside the orchard area. He reported

that if you take the 10 samples and add them as a block to your background data set, they were going to be “poorly represented”.

Discussion continued regarding the sampling data sets and the issue about using clean soil as part of the remediation calculations.

Member Horowitz stated that based on the Town’s consultants’ advice to look at the risk based problems, she quoted Massachusetts General Law, Chapter 21E and the Massachusetts Contingency Plan and stated that the statute did not require remediation of chemicals present at levels consistent with background, even if such concentrations would otherwise pose significant risks of harm to health, safety, public welfare and the environment.

Member Horowitz stated based on the statute, she made a motion to accept Dr. Sundstrom’s and GeoInsight’s plan that was presented at the September 19, 2005 Board of Health meeting. Member Weber seconded the motion. Chairman Hanninen allowed for more discussion.

Member Horowitz stated that arsenic is a heavy metal and it is “dangerous” to public health. She stated that people living on this land will get sick and the Town would be liable if the Board allowed this to go forward.

Chairman Hanninen suggested that his performance standard plan would remediate to background of 20ppm arsenic and other determinants. He said that the difference in Dr. Sundstrom and GeoInsight’s plan and Dr. Shatkin’s plan, his plan would leave it up to the owner of the property to remediate in whatever manner they choose and prove to the Board of Health that the level of arsenic is the health-based risk.

Member Horowitz questioned Chairman Hanninen about the process of remediation. Chairman Hanninen stated that the applicant may choose to remediate any method they wanted. He said that they could scoop down to three feet out, take it all out and bring in fresh fill. He said that he “didn’t want to be in the business of telling them how to remediate”.

Member Horowitz questioned whether a final round of testing will be done after soil has been removed and clean soil has replaced it. Chairman Hanninen stated “yes”. He said that another final round of testing would need to take place prior to the lot being signed off. He cited the same process the Board used in regards to soil brought in for the Shaw’s Supermarket project.

Attorney Cooper requested that Chairman Hanninen repeat his proposal for the record so he would have a complete understanding of it.

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Chairman Hanninen proposed:

For each lot:

1. Remediate or not, Surrenden’s choice.
2. Top 12 inches – strip for home, pile and average it and take the top 12 inches. Analyze.
3. Dig footings, septic, etc. – another pile. Analyze.
4. Ask the question – 20ppm arsenic or not. No? Remediate again.

Attorney Orsi questioned whether the 12 inches has to meet 20ppm and the 2 to 3 feet has to meet 20ppm. Chairman Hanninen stated “yes”. Attorney Orsi asked about the number of testing the Board would be comfortable with. Chairman Hanninen stated “probably three or four”.

Chairman Hanninen asked if the Board was ready to vote on Member Horowitz' motion. The Board replied it was.

VOTE: Dr. Horowitz- Aye; Mr. Weber- No; Chairman Hanninen- No. The motion failed by a vote of one to two.

Attorney Cooper asked for clarification on three points in Chairman Hanninen's proposal. He questioned whether they would be able to average to meet the 20ppm standard over the entire 0-to- 3 foot level. Secondly, he questioned whether they could remediate any way they wanted to and the performance standard would be 20ppm. He asked if the proposal included bringing in clean material, mixing it and averaged in and counted. Thirdly, he questioned about oversight by GeoInsight at the applicant's expense. He stated that Mr. Falzone was going to have his own LSP on site and he was unwilling to pay for having two on site. He said that GeoInsight could monitor the remediation and sampling plan but it wouldn't be at Mr. Falzone's expense.

Chairman Hanninen stated that the clean fill would be averaged as part of the remediation to meet the 0- to- 3 foot level at 20ppm for future exposure. He said he would like to see the first 12 inches to be the 20ppm health risk standard. Chairman Hanninen responded to Attorney Cooper's question about an LSP on site and stated that as long as that person was an LSP, he had no problem with that.

Discussion continued regarding the averaging of clean soil. Attorney Orsi stated that he would appreciate it if the Board would take a vote with an outline of the concept. Chairman Hanninen proposed a performance standard and have the details worked out among the lawyers.

Chairman Hanninen made a motion to propose the following:

Surrenden Farm – Remediation, carcinogens, each lot designated open space shall be remediated at a level such that the carcinogenic risk is less than 1 in 100,000. For the purposes of arsenic, the Board believes that the level is 20 ppm, weight by weight, in soil.

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Non- carcinogens – Each lot shall be remediated to a cumulative hazardous hazard index of less than 1 when calculated by an accepted assessment method.

Lead – parcels shall be at or below a lead level where the US EPA for lead in children protects no significant increase in blood- lead levels from intended and reasonable use of the parcels by residents, visitors and casual trespassers.

The 2 to 3 foot average will be determined by piling all of the soil from footings, septic systems, driveways, surfaces other than the top 12 inches, subject to a separate average and analysis.

The standard shall be 20 parts per million for arsenic in both. For each pile of the 12 inches and the 2 to 3 feet, there shall be four samples taken of each and analyzed by a Licensed Site Professional.

For clarifications purposes, Attorney Cooper questioned whether an integrated 0- to- 3 foot average would count towards the 20ppm. Chairman Hanninen apologized for the mistake and stated that clean fill may be averaged.

The motion was seconded by Member Horowitz.

VOTE: Mr. Weber- Aye; Member Horowitz- No; Chairman Hanninen- Aye. Chairman Hanninen stated the plan is approved by a vote of two in favor, one opposed.

Attorney Doneski asked for clarification whether the applicant was amenable with Chairman Hanninen’s remediation plan as stated. Attorney Orsi stated “yes”.

The meeting was continued to October 3, 2005 at 8:30pm.

GROTON BOARD OF HEALTH

Robert Hanninen
Chairman

Dr. Susan Horowitz

Jason Weber