

Town of Acton Board of Selectmen

Press Release

March 11, 2009

The Town of Acton has been engaged in a prolonged legal dispute with W.R. Grace & Co. – Conn. (“Grace”) about the 297.5 sewer betterment units that the Town assessed on 151.843 acres of Grace’s undeveloped property in South Acton, which resulted in a total sewer betterment of \$3.66 million. After years of litigation and negotiations culminating in two days of intense mediation under the auspices of Retired Appeals Court Justice Rudolph Kass, the Selectmen and Grace have arrived at a tentative settlement which will be presented for the consideration of Town Meeting in April.

The broad outline of the settlement is as follows:

Sewer Issues:

- Grace will be obligated to pay a total betterment of \$2.163 million on these 151.843 acres, regardless of whether the property is ever developed and regardless of whether the property is ever tied into the public sewer.
- Grace will be credited with a net abatement of \$1.5 million, the precise funding to be calculated based on the method of allocation selected by Town Meeting described below.
- Of the 297.5 Sewer Betterment Units (SBU) originally assessed to Grace’s property, the Town will take back between 121.84 and 139.54 SBUs, depending on the method of allocation described below.
- This Capacity will then be available for future sewer expansion in other priority sewer needs areas of the Town, and the new users will be charged sewer betterment fees as the capacity is used.
- The density of any future development of Grace’s bettered property using the public sewer will be limited by the SBUs retained by Grace: it cannot use more sewer capacity than the non-abated SBUs allow, without the consent of the Selectmen and without paying an additional sewer privilege fee for each additional SBU needed.

Conservation Restriction:

Over and above these sewer commitments, as part of the tentative settlement, Grace will grant the Town a perpetual Conservation Restriction on 15.3± acres of natural, forested land owned by Grace, located north of the MBTA tracks, abutting other open space of the Lexington Drive subdivision. This new conservation land has never been the site of Grace’s previous industrial operations and is not within the areas of Grace’s property requiring surface remediation under EPA’s Record of Decision. The public will be able to access the new conservation land for

passive recreation purposes by means of a pedestrian access easement from Laws Brook Road over a Grace-owned strip of land. The new conservation land will be off limits for future development by Grace or any successor owner of Grace's property. It will provide both a significant open space resource and an important buffer for the Lexington Drive residents from potential effects of any such future development.

Benefits of Settlement

This proposed settlement has several positive features:

- The case is settled at a known value. A court could make a decision which is much less attractive for Acton.
- The case is settled without incurring the substantial costs of a trial.
- The returned sewer betterment units can be used elsewhere in Town where there is desire for sewer expansion.
- Grace will be more limited in the density of development using the Town's sewer system.
- Fifteen (15) acres of natural forested land is protected from ever being developed.

Town Meeting Action:

Recognizing the importance of these issues to the Town, the Selectmen have required that the tentative settlement come before Town Meeting for approval and to determine the method to recover the cost of the returned sewer betterment units.

Thus, until sewer expansion occurs and the abated SBUs are used elsewhere, the Town will need to cover the cost of the returned SBUs. Town Meeting can choose to do this in one of two ways:

1. The Town can cover these costs out of general revenues. As the abated SBUs are used and paid for elsewhere in Town, the amounts recovered will (subject to Town Meeting's direction) be returned to the general fund.
2. The Town can re-determine the cost of each sewer betterment unit in the existing sewer district, and charge each bettered property an increased betterment to cover the cost of the SBUs removed from the Grace property under the settlement.

If Town Meeting does not approve the settlement, court proceedings will resume and the case will be tried in the relatively near future to an uncertain and potentially far more costly outcome. In any such trial, the Court will have the authority to order any abatement it deems appropriate; however, the Court will not have the power to require Grace to grant a Conservation Restriction to the Town. If the Court does order an abatement, it will be in the form of a cash refund to Grace, with interest, which must immediately be funded by the Town.

The Selectmen have voted unanimously to recommend approval of the tentative settlement to the Town Meeting. A majority of the Selectmen recommend allocation to general revenues; one member of the Selectmen recommends allocation to the sewer district; and the fifth member has abstained as to allocation as his property is situated in the sewer district.

Informational Session

The Board of Selectmen will hold an informational session before Town Meeting to answer questions concerning the tentative settlement. The informational session will take place on Tuesday March 24, 2009 at 7:00 pm at the Acton Town Hall.

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