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Town of Acton
Board of Selectmen Meeting
October 4, 2010
Acton Town Hall
Francis Faulkner Hearing Room, Room 204
7:00 P.M.

Present: Chairman Lauren Rosenzweig Morton, Selectmen Mike Gowing, Terra Friedrichs, Janet Adachi, Pam Harting-Barratt, Town Manager Steve Ledoux, Town Counsel Steve Anderson and Environmental Consultant Jim Okun.

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Citizens Concerns: None

I. Public Meeting to report on the environmental finding of the Caouette/Simeone Property, Stow Street

Chairman Rosenzweig Morton presented the FAQ sheet regarding Caouette/Simeone Property. The FAQ sheet is available to the public.

Mr. Gowing reviewed the one-year history of the project. At the 2010 Town Meeting the Town voted to authorize the Selectmen to pursue the purchase the Caouette property under the Town's 120-day right of first refusal under Chapter 61A, which allowed the Town to match the written offer of developer Westchester Company. Town Meeting authorized the use of CPA funds for the purchase.

The Selectmen went forward with an appraisal, and Phase I of an environmental study, which revealed that there had been a factory on the premises. The Selectmen negotiated with the family to lease back and keep the land in agricultural use for ten (10) years. The Selectmen authorized a Phase II environmental study and a second appraisal, which disclosed that there was less acreage than originally thought due to the division of the Mill Pond area of the property and there would be a need for remedial environmental work on the property. The appraised value of the reduced acreage was \$1.04M .

The Selectmen authorized a further Phase III environmental study. The family agreed to an extension of the July closing. The Selectmen agreed to propose to Town Meeting that the Town pay up to \$200K for cleanup; to date the Town has expended \$34,000 with respect to the proposed purchase. There is an ongoing attempt to continue to work with the land owner. The Selectmen have set a Special Town Meeting for October 12, 2010 to have a Town vote on the cleanup, with the closing date October 26, 2010. The Town has incurred expenses in extending the closing date, counsel fees, title search fees, survey expenses and other related transaction fees.

Jim Okun, the environmental consultant, presented a slide show on the results of the Phase I, II and III environmental studies. He noted that ASTM methodology has been used for the environmental site assessment. Mr. Okun advised that the Superfund law does not require perfect testing and if an owner has done reasonable due diligence he will not be held responsible if there is a delayed discovery of something on that property. The ASTM standards that the Town has used provide as follows:

1. Consult historical records.
2. Search other like sites – Standard Environmental Record Sources
3. Check current or potential drinking water supplies
4. Site Reconnaissance – look at the property on foot.
5. Recognized Environmental Conditions (RECS), presence or likeable presence of any petroleum products.

FINDINGS, Phase I:

Total property is 15.7 acres.

2 Stow Street, 7.5 acres

90 Martin Street, 3 acres –residence, garage and farm land

Mill Pond and Fort Pond Brook, 5.2 acres

Not potential water supply area

Pesticides used in accordance with law

Eastern portion of the property has an industrial history.

Recommendation: That Phase II (Recognized Environmental Conditions) testing to be undertaken based on the findings of past industrial use.

FINDINGS, Phase II:

Industrial Mill Pond area testing included soil, groundwater and sediments.

The groundwater was relatively free of contamination with low levels of naphthalene, below state standards.

Low levels of fluorine (a PAH) found in the pond sediments at levels slightly above screening criteria.

In shallow soil concentrations found arsenic, lead, PAH and Chromium all above Mass DEP allowances.

Recommendation: To undergo further testing to better define the extent of the concentrations.

TESTNG: Phase III

PAHs found due to coal, coal ash and wood ash.

Coal tar present in surface soils.

Chromium found in plus3 valance state, low; no longer of concern.

Lead and arsenic greater then Mass DEP reportable variance.

Arsenic present in three locations equal or greater than DEP Imminent Hazard default level of 40 mg/kg (meaning a 2 hour reportable level) and has been fenced by highway.

REMEDICATION, Possible Next Steps:

First option: Secure contamination site – grub out indigenous shrubs, cover with geotextile.

Put clean soil over it and replant.

Large trees and shrubs would remain.

Activate a deed restriction.

This option would cost approximately \$50,000.

Second option: Remove contamination – After permitting the first step is to remove all of the trees, shrubs and remaining foundations.

Build a temporary Road to excavate and transport materials.

Clean soil brought in to re-vegetate and re-grade.

This option would cost approximately \$100,000.

Deborah Simes 109 Concord Road: Concern that vegetation takes up some of the contaminants. Jim Okun said it gets washed off for the most part. Ms. Simes is worried about the risk to animals.

Jerry Berke 49 Winthrop Ave.: Said that fats take up pollutants, and for the most part vegetables have so much water that contaminants get diluted. It is important to wash vegetables. Why is the price not going down commensurate with the cost of environmental work? Steve Anderson replied that the Town has asked J. Avery for a reappraisal in time for the Finance Committee meeting tomorrow.

John Petersen 6 Jackson Drive: How many samples were taken? Jim Okun: 67 plus 20 pending. Coal tar is related to the railroad? Mr. Okun: probably. What is the source of arsenic? Mr. Okun: We don't know.

Clare Siska, 14 Stow Street: What is the difference between coal contaminants? Mr. Okun: Coal ash is residue after coal is burned--bottom ash denser and sinks to the bottom and fly ash is lighter and gets caught in traps or goes into the air. Coal tar was used for making manufactured gas before natural gas. Coal was heated up in water and as it decomposed, it gave off gas and produced a coal tar residue with toxic qualities. Is it reasonable to cap the contaminated area and put in parking for the Rail Trail? Selectman Gowing said that was one consideration in the decision to move forward to purchase the property.

Steve Wolfe 28 Mohawk: Stated his support for open space but would like to be prudent. What might trigger the need for additional sampling? Mr. Okun: You can never know everything about a property. But you do a reasonable job. One sample would not give me a comfort level but eighty-seven is a pretty good reflection of what is there. I am comfortable with that. In sampling, we look at the areas that seem problematic. Many of the pending samples are from the farm area, which will give a better sense of the easterly end of the current field area. Mr. Wolfe asked whether a developer be required to do a sampling on agricultural land. Mr. Wolfe thinks that

the tannery is the cause of the arsenic, and asked about the analysis of the sediment and the water? Mr. Okun: Sediment samples have been done in the pond and only fluorine was above detection limits. Mr. Wolfe said the deepest part of the part would be the place to test. Mr. Gowing noted that the pond is fed by a brook and has continuous movement, so if anything were to be caught it would have to be in the elbow. Mr. Okun said that sediments closer to shore were more likely to be of concern to the environment and human health. Mr. Wolfe asked if later sampling uncovered contamination, would the Town be liable. Mr. Anderson said it was a possibility but not likely.

Carol Stone 24 Liberty Street: The farm has been going for 24 years and produce is sold in many places. Once something is in the muck of the pond it is past history. Does not mean there is contamination there now.

Bill Klauer 70 Piper Road: How deep is the contamination? Mr. Okun: The top foot of soil, surface contamination. Mr. Klauer: Kimballs has been out a century can't you just cap it? Mr. Okun: Yes

Rob Houghton, 92 Martin: If you have done due diligence by the ASTM standards, do you stand by these results and feel it is a problem that can be solved? Mr. Okun: Yes, well within my comfort zone

Anne Forbes, 25 Martin Street: Can we craft a two- part restriction: agricultural restriction on the farmed area and conservation restriction on the contaminated area? Mr. Anderson: Town Meeting approved a conservation restriction on all or a portion, with the Selectmen to decide how much. So there is flexibility for the Selectmen to decide that some land should be outside of the conservation restriction, or inside with agricultural provisions.

Ms. Siska: Given the agricultural history of the town, isn't it possible that many of us live in homes on land onced farmed and containing contaminants?

Terry Maitland , Martin Street: The FAQ sheet is very good. Given the higher cost if the soil is hazardous, where between \$100K and 200K do you honestly think this will be? Mr. Okun: The soil is not hazardous so the price range is now \$50K – 100K.

Mr.Stone: We have a horse farm and Stonefield Farm uses our fertilizer. If Caouette turns into housing his farm might not survive and it would be a loss for the Town.

Leigh Davis-Honn 105 School Street: Last year's citizen survey showed the priority is to preserve open space, particularly this farm. Now that the cleanup cost potentially will be much lower, what will the Selectmen use for criteria in deciding whether to support the article for Town Meeting? Mr. Gowing: The Selectmen are trying to take the larger view. The farm is an important part of history of the town. But we are trying to exercise fiduciary responsibility. The article is going to Town Meeting because it really is your choice, and requires a 2/3 vote. Ms. Davis-Honn:

What is Fincom's role? Chairman Rosenzweig Morton: Fincom probably will base its decision on CPA money, local tax monies, state monies, using the farm for farming instead of housing which would differently affect the tax base.

Joe Robb 3 Hosmer Street: In some areas there has been lots of sampling, in other areas not. Are there plans for additional sampling? Mr. Okun: We are very close to done. We have a few outstanding samples that will fill in gaps and provide a better delineation.

Mary Michelman, ACES: My concern is the remainder of the site has not been looked at. In the future that might have to happen, to protect future users and limit exposure if the uses change. ACES would request a conservation restriction that would apply to the entire property and that would restrict uses of the property, with even more limits on the use of the area that requires remediation. If the property moves out of agriculture use there should be a trigger to test again for differing uses. ACES would like a mandatory integrated pest-management plan and reports to the Town during the lease period.

Peter Ashton 105 Olde Barn Way: Will the Selectman take a position tonight? Chairman Rosenzweig Morton: No, we have information pending on major issues. Mr. Ashton: Could the Board provide a draft conservation restriction or description of limitations on potential uses for this property before Town Meeting? Mr. Anderson: It is better to develop the language later via a public process.

Charlie Kadlec: Is the property no longer under 61A? Mr. Anderson: Depending on back taxes which I believe have been paid, a year from now the property will no longer be under 61A and the right of first refusal is up. Mr. Kadlec: Is the Town's option to buy over on Oct 26? Mr. Anderson: If the Town does not opt to buy, the property owner can go back to the developer and close on that deal. Or the developer, given the new information, can offer another deal, which would give the Town the right of first refusal again. The property owner can take the property off the market, wait a year and then put the property on the market again. The only certainty is that the Town has the property under agreement for a certain price with a timeframe that is certain. Mr. Kadlec: If the town gets a second bite due to a new offer from the developer, it would need to happen by next July? Mr. Anderson: Yes.

Mr. Gowing closes the hearing to the public.

Mr. Anderson: With the additional environmental samples and a revised appraisal coming, the Board should schedule another meeting. Open Space and FinCom will be meeting before Friday on this matter. On Friday morning the Selectmen should be able to reflect on a decision. The Board's recommendation needs to be done before Town Meeting. One technicality is that CPA monies can be used only up to the appraised value which is likely to be less than the amount Town Meeting originally approved. The delta between the revised appraisal and purchase price would need to come from the general funds. No motion to cover this is on the warrant. So the

Selectmen would need to extend the warrant to cover this. The Board would need to extend from Tuesday Oct 12th to Monday October 25th for a final vote.

Chairman Rosenzweig Morton: The balance from the CPA funds originally approved would go back to CPC. We will post all this information on the Town website.

Mr. Ashton: The Open Space meeting is on Friday morning from 7:30 to 8:30.

Chairman Rosenzweig Morton moves that the Board hold a special meeting regarding the Caouette/Simeone land on Friday the 8th of October at 8:15AM. Mr. Gowing seconds and the motion passes.

Ms. Friedrichs asked if the property can be classified as a Superfund site. Mr. Okun: No there is no to a very low possibility.

Ms. Friedrichs: I believe in open space. I believe that it maintains our quality of life, and preserving it where ever possible is the right thing to do. I understand that the appraised value, while we're held to it for CPC funds is often not the "real" market value of a property, as evidenced by a developer's willingness to pay more for a property than the appraised value. I am willing to pay more than the appraised value. How much more? I've looked at the studies which indicate the increase in nearby property values, up to 1,000 feet away from open space. And I believe that up to \$500K more for the property, above the appraised value, including clean up would still be well worth it. I have questioned our consultants and believe that the risks are low, compared to the rewards.

Ms. Harting-Barratt: When a property is contaminated and purchased what is the liability down the road? Mr. Anderson: The current owner has liability, the former owner has responsibility, the operator has responsibility, anyone transporting on the property has responsibility, and anyone who exacerbates the problem has responsibility. There is a wide variety of persons liable. No one can insulate themselves from the EPA. But the owner is the most conspicuous. We are trying to avoid liability by doing due diligence. The Town has agreed by testing to be responsible for the first \$200K. Ms. Harting-Barratt: Around the tracks did you find anything? Mr. Anderson: We did not test the tracks as they are not on the property. The testing near the track was too far away for any effect from leaching. Ms. Harting-Barratt suggested raised beds: you could bring in clean soil and test the soil.

Mr. Anderson noted Peter Ashton's suggestion that the Board propose conservation restriction language. Mr. Anderson highly recommends that that Board not have a conservation restriction defined for this vote. It should be voted later after public input and deliberation. The Board agrees with Town Counsel's advice.

Ms. Friedrichs makes a motion for Steve Anderson and Jim Okum to attend Friday morning's meeting. Mr. Gowing seconds, all voted in favor.

Ms. Harting-Barratt: If the land is capped do we need monitoring wells? Mr. Okun: We are not worried about leaching, but there probably should be a yearly check by DEP..

Mr. Anderson asks that the Board vote tonight to authorize the Town Manager to make available the draft supplemental environmental study and draft supplemental appraisal of the Caouette/Simeone and possible draft articles and for those items to be placed on the web site for public review after forwarding to the property owners out of courtesy. Ms. Friedrichs moves such, Chairman Rosenzweig Morton seconds, all voted in favor.

II. Approval of Regulatory Agreement for 99 Parker Street

Ms. Adachi explained the need for the, agreement, whose provisions are boilerplate and ordinarily cannot be changed. Town Counsel has reviewed the document. Ms. Friedrichs stated that this is a LIP project under Chapter 40B. She wondered what happens if ACHC cannot find eligible buyers. Nancy Tavernier of the Acton Community Housing Corporation stated that if no eligible buyer can be found, a non-income-eligible buyer may buy, but the property will remain subject to the deed-restriction, which limits price increases. ACHC does its best to find buyers that meet the criteria for eligibility. It is rare that they can't find anyone, as there is often a waiting list. On a resale, the owner notifies ACHC and the process of finding a buyer begins. Ms. Friedrichs asked when the public gets to see the certified post-development profit report. Ms. Tavernier stated it is done by a separate accounting and is a public document that is available for anyone to see. Mr. Gowing moves to approve the Regulatory Agreement, motion passes unanimously. The Chairman will sign the regulatory agreement.

III. Selectmen to take positions on Special Town Meeting Warrant (Discussion of timing of the Town Meeting)

The Board discussed the articles in the October 12 warrant.

1. Take up discussion of recommendations on Friday.
2. Town Manager Steve Ledoux said there is no agreement on union contracts at this time; and he recommends passing over this article. Ms. Harting-Barratt moves, Mr. Gowing seconds, all voted in favor of passing over.
3. Mr. Ledoux recommends passing over this article as there is a petition pending for Municipal Property employees to break away from the Highway Union. Bargaining cannot occur until the petition is resolved. Ms. Harting-Barratt moves, Ms. Friedrichs seconds, all voted in favor of passing over.

4. This article is to allow the rail trail to be treated as a public way. Ms. Friedrichs: Has there been any feedback from property owners? Town Planner Roland Bartl: No, we held a public meeting that was not well attended and put a public notice in the newspaper. Ms. Friedrichs: Would this allow for the taking of more public land than necessary? Mr. Bartl: This is only a precautionary measure and would allow, for example, for grading, drainage or utilities etc. Until the design is further along, it is hard to say what would be affected. Mr. Gowing moves to recommend, Ms. Harting-Barratt seconds, 4 vote in favor, Ms. Friedrichs abstains. The article is recommended.
5. Amend zoning by-law for signs. This article allows for exceptions from sign zoning for certain situations, allows the Planning Board to grant a special permit in certain situations, and allows certain conditions for sign illumination. Ms. Friedrichs: How does this affect neon signs in the historic district? Mr. Bartl: It really does not change anything, but just inserts missing cross- references. Ms. Adachi moves to recommend, Ms. Harting-Barratt seconds, all vote in favor.
6. Rezoning of 28 Esterbrook Road and a neighboring property at 22 Esterbrook Road. The owners have agreed to a land swap that will allow the owners at 28 Estabrook to replace their home, and make both lots conforming lots. The Planning Board has recommended the article. Ms. Friedrichs asks if the change will allow a larger house to be built. Mr. Bartl says yes. Ms. Friedrichs would like to see a sketch of how big the house could be before she will vote for such a change. Ms. Harting-Barratt moves to recommend, Mr. Gowing seconds, 4 vote in favor, Ms. Friedrichs votes against. The article is recommended.

Ms. Adachi moves to adjourn, Mr. Gowing seconds, all vote in favor of adjourning.

Chairman of the Board, Lauren Rosenzweig

Date

Recording Secretary, Maryjane Kenney

**Town of Acton
BOARD OF SELECTMEN**

**October 4, 2010
7:00 P.M..**

Room 204 (Francis Faulkner Room) Town Hall

MEETING AGENDA

- 1. Public meeting to report on he environmental finding of the Caouette/Simeone Property, Stow Street**
- 2. Approval of the Regulatory Agreement for 99 Parker Street**
- 3. Selectmen to take positions on Special Town Meeting Warrant (Selectmen to discuss timing of the Town Meeting)**

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