

EXECUTIVE SESSION MINUTES - CONFIDENTIAL

SOUTHBOROUGH CONSERVATION COMMISSION THURSDAY, DECEMBER 1, 2005 TOWN HOUSE 2nd FLOOR MEETING ROOM

The Conservation Commission of the Town of Southborough held an Executive Session on Thursday, December 1, 2005 at 7:00 p.m. at the Town House 2nd floor meeting room.

Members present were: John Leeds, Rhonda Russian, Richard Upjohn, Louis Bartolini, Ann Leavitt and Mark Possemato

Absent was: Phil Bevins.

Others present were: Selectman Bonnie Phaneuf, Board of Health Chair Dr. Louis Fazen, Town Planner Vera Kolias, and Special Counsel Susan Crane.

The meeting commenced at 7:00 p.m. with John Leeds as Chairperson.

Upon motion by Ms. Russian, seconded by Mr. Upjohn, the Commission moved to enter into Executive Session by roll call vote:

Ms. Russian – yes

Mr. Upjohn – yes

Mr. Leeds – yes

Mr. Possemato – yes

Mr. Bartolini – yes

Ms. Leavitt - yes

Ms. Russian presented a brief overview and the reason for executive session and turned the floor over to Special Counsel Susan Crane.

Ms. Crane provided the background history of the Breakneck Hill conservation land farm dump; recent events that have triggered its resurgence and placed it on the Commission's agenda; summarized the various legal issues and discussed the LSP proposal and recommendations. She explained the distinction between a hazardous waste (21E) site and an un-permitted landfill. She detailed her latest conversation with Dr. Denis D'Amore, a licensed site professional (LSP) that the Commission hired to do a preliminary investigation and to write the Scope of Work, presented a possible alternative and lower cost option, and shared her recommendations.

Background History:

88 acres acquired by the Town 25 years ago from Ray Davis, who recently passed away. Dump site likely dates back decades before then and is on northern part of Breakneck Hill behind Fallon's Pond. Anecdotal information is that Davis continued to use the dump site after sale of land to the Town. 1987 - Conservation Commission earliest records include a letter to Davis about chemical storage concerns at the orchard.

1988 – Commission records and legal research show concerns about location of dump on stream, near reservoir. Identified nature of debris at dump and mentioned pesticide mixing area.

1990 – Neighbor complained to Commission about dump but didn't want issue publicized.

1991 – BOH requested Commission's involvement, which in turn had water testing done.

3/5/92 – Stream surface water test results: elevated levels of oil, grease and TPH; low levels of various metals. No testing for Volatile Organic Compounds (VOCs), sediment, groundwater, soil or private wells.

4/23/92 – Follow up testing shows levels to be below the maximum amount permitted to be discharged into any body of water.

Recent Events:

- Found by Conway School of Landscaping Design when reviewing Breakneck Hill for development of Master Plan. Identified on maps in Master Plan presented at a public forum.
- Neighbors raised concerns again; discussed in a public meeting with a reporter present (no mention appeared in print).
- Commission visited and confirmed a large area of visible debris, including 55 gallon drums, near a pond and stream leading to Reservoir on Rt. 9, 1/3 mile away.
- Commission retained Dr. D'Amore, hydrogeologist, to visit site and develop a proposed Scope of Work (SOW) for a consultant's evaluation for closure.

Dump site currently (per Dr. D'Amore's observations, 8/16/05):

- 450' wide; unclear how far back it goes; 10-12' deep at northern end
 - Debris:
 - Rusted metal
 - Many 55 gallon drums in various stages of decay
 - Large motor parts
 - Building parts
 - At least one vehicle
 - DEP/Bureau of Solid Waste concerns expressed to D. D'Amore (without identifying site)
 1. physical hazards
 2. hazardous waste

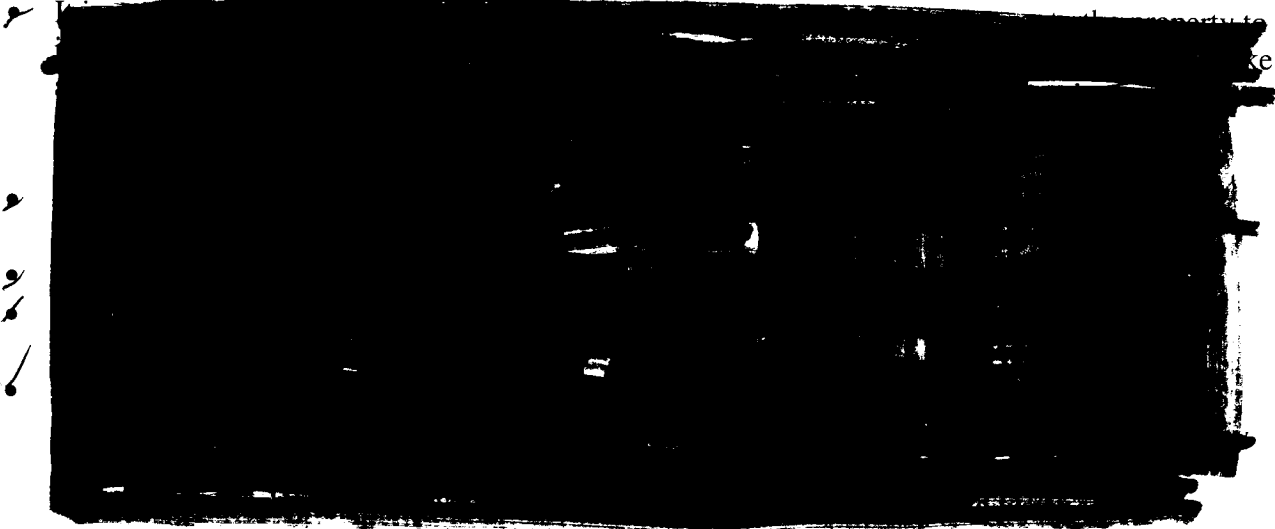
Licensed Site Professional (Dr. D'Amore's) recommendations:

- [REDACTED] Would go through BWSC (Bureau of Waste Site Cleanup). Solid waste group would prefer this be managed by hazardous waste group at DEP.
- If no hazardous waste found: need to close site properly as an un-permitted landfill. Would probably want it managed by local BOH. Remove dumped material (or at least physical hazards) and restore site to natural conditions.
 - SOW for next assessment phase to:
 1. Determine physical extent of the dump by clearing the area in leaf down conditions
 2. Remove and stockpile surface debris in dumpsters
 3. Determine whether there has been a release of oil or hazmat
 4. Estimate volume of fill to be removed or disposed
 5. Compare with cost of removal of surface debris plus capping, if allowed by authorities
 6. Prepare site restoration plan
- Practical Issues:
 1. Physical access for vehicles and heavy equipment
 - Harding has denied access
 - Fallon – should Town try to negotiate access through northern farm road closest to dump site?
 2. Costs – how to fund?
- Possible alternative (Simple Sampling):
 - <\$5,000 assessment (leachate and sediment sampling from stained area of wetland, plus installation and sampling of one down gradient monitoring well)Then, if the samples were clean and if the Town decided to do nothing further, that would be helpful data for the Town to keep in its files [REDACTED]
[REDACTED] This option would not address un-permitted

landfill issues. But if sampling showed reportable levels of contaminants, these would have to be reported to DEP and a cleanup undertaken.

Legal Issues:

- Town has a legal obligation to investigate further predicated on either its actual knowledge of a release (1992 data, unless erroneous or source is not the landfill) or a threatened release (based on our observations of the dump and the hearsay information we now have about what might be buried in the dump) under chapter 21E of the Mass. Gen. Laws and under common law tort principles. Test data from 13 years ago might be inconclusive based on potential ongoing source (rusty containers that might have once held oil or hazmat).



Special Counsel Crane recommends:

- Obtain legal Access
- Retain LSP consultant to implement D'Amore SOW

Possible Risks:

- Costs. Groundwater would be subject to most stringent standards due to private and probably also public water supply proximity issues. [Redacted]
- [Redacted] risk of doing nothing [Redacted]
 - Exacerbation of any plume (possible, if any continuing leachate)
 - [Redacted]
 - [Redacted]
 - [Redacted]
- **Recouping Costs:**
 - [Redacted]
 - [Redacted]
 - Generators: Ray Davis – 1 year Statute of Limitations against estate (M.G.L. C. 197, sec. 9); cause of action under hazardous waster statutes, but not solid waste. At a minimum, estate asset will be proceeds from sale of Davis property to Bourdons.

Dr. Fazen suggested that testing of well water nearby should be done. Ms. Phaneuf suggested doing Simple Sampling first. Attorney Crane shared the best and worst case scenarios of this action. Mr. Possemato stated that it was essential to identify the point source of any contamination found. If the dump is the source, then the responsibility would fall to the Commission to take further action. Attorney Crane felt it is the Town's responsibility for restoring area. Mr. Possemato stated that if the Simple Testing comes back negative, the results are still inconclusive and meaningless due to the narrow scope. [REDACTED]

Ms. Russian stated that the Commission needs the Board of Selectmen to assist with cleanup costs and further legal assistance to pursue Davis estate. Ms. Phaneuf stated that Board of Health has responsibility for bringing issue to the attention of the BOS, and the question is cost. Attorney Crane discussed [REDACTED]

[REDACTED] Ms. Phaneuf questioned what position the Commission has taken, and what process should be followed. Attorney Crane recommends going further than the Simple Testing and following the SOW,

Ms. Phaneuf stated that the Town would need the testing results within one year of Davis' death before deciding whether to pursue the estate for costs. Mr. Possemato reiterated that access is needed to do the testing which we do not have now. Ms. Phaneuf stated that the choices were to use Commission funds, or go before Advisory. Attorney Crane stated that sending out the SOW for bidding will give us a sense of the cost of assessment, but not the cost of the cleanup. Mr. Leeds said that a decision needed to be made tonight on which direction to go in. Dr. Fazen stated that if the Board of Health takes over jurisdiction, then the first item is going to BOS for funds.

Upon motion by Ms. Russian, seconded by Mr. Upjohn, the Commission voted (5-1, Mr. Bartolini voted no) to go forward with preliminary Simple Testing proposed by Dr. D'Amore as long as able to access. Upon motion by Ms. Russian, seconded by Mr. Upjohn, the Commission voted (5-1, Mr. Bartolini voted no) to pursue access to dump site with Fallon family so that further testing, if needed, can be done.

Attorney Crane reminded the group that if testing comes back with positive results, then the responsibility is to move forward with the SOW.

Mr. Bartolini moved to amend the motion and give jurisdiction now to the BOH. No second, motion fails.

Mr. Leeds stated that the BOH has no budget, yet agrees that cleanup responsibility should fall within the jurisdiction of the BOH and with the Conservation Commission as owners of the land. Dr. Fazen stated he will place this issue on the next agenda of the BOH, and was reminded that it must be kept in Executive Session [REDACTED]. Ms. Russian stated that the Davis estate issue cannot be assessed until 21E assessment is confirmed. Access issue is second legal impediment needing to be cleared up. Ms. Phaneuf requests these meeting minutes be distributed to BOS. Ms. Russian said a legal access agreement is needed, and moved to exit from Executive Session, seconded by Mr. Possemato and voted (5-1, Mr. Bartolini voted no). Executive Session closed at 8 p.m.

Respectfully submitted,

Beth Rosenblum