

# **BOARD OF SELECTMEN & SEWER COMMISSIONERS' MEETING**

## **MINUTES**

### **INFORMATIONAL SESSION**

*Room 204 Town Hall*

*March 24, 2009*

*7:00 PM*

Present: Chairman Rosenzweig, Selectmen Knibbe, and Friedrichs, Town Manager Steven Ledoux, Assistant Town Manager John Murray and Recording Secretary Maryjane Kenney, Town Counsel Stephen Anderson and Health Director Doug Halley,

## **Agenda: Proposed Settlement of Lawsuit Regarding the Betterments Owed by WR Grace**

Presentation by Paulina Knibbe:

### **The Sewer Betterment Assessment**

297.5 units valued at \$3.66 M which they chose to pay off over time.

Why now are we dealing with this now at this town meeting? The deadline to go to trial is this summer; the court will not extend the deadline again. The Board has tried to run a substantial public informational session.

### **Settlement**

Acton will reduce Grace's SBU by \$1.5 M

Grace will give Acton a conservation restriction on 15.3 acres of Grace's land in Acton that will not need to have surface remediation.

No development will occur on this land and all liability remains with Grace. The parcel is adjacent to the North lagoon area.

### **The Issue for Town Meeting is that \$1.5M in Infrastructure Costs Need to be Covered.**

#### **Option 1 Article 49**

The cost would be \$163K for a period of 3 years or \$73K a year until 2031. The average homeowner would pay \$22 annually for 3 years or \$10 annually until 2031. It is recommended by the Board and Finance Committee that payments come out of the General Fund and not the Sewer district. Avoiding going to trial at a cost of approximately \$200K means that settling will save the town money. The Town will also limit our risks of a trial where the outcome might not be to our advantage.

The Benefit to the Town is this option gives us sewer betterments for other areas of town which can be sold to other users and help pay down some of the costs by being transferred back into the general fund.

#### **Option 2 Article 50**

This option would call for a redetermination of the "per SBU" cost to approximately \$66 SBU annually until 2031. Returning 140 SBU's for future use.

The major problem with this option is the complexities of the issues. People in the district that have already paid in full would possibly be responsible if betterments were redetermined and, for those houses subsequently sold, the original owner now has to pay the delta of the determination. Then there is the question as to how would the town pay off new infrastructure costs and it's share of the new cost for a sewer plant.

If both options fail at Town Meeting then the case will proceed to trial. The proposed conservation restriction will not occur and W.R. Grace will be able to develop those 15.3 acres in addition to their other land. Given the possible trial outcome, the town would be responsible for a six figure number to pay Grace their overage amount that they have paid to date on their betterment fees. For additional information please direct questions to Paulina Knibbe.

Collin Young of Lexington Drive asked for an explanation of the method that will be used to determine how and to who we sell the unused betterments to, as CWRMP has some expressed some thoughts on the subject.

Sean Towey, 143 Prospect Street, stated that the betterment is coming out of his mortgage. Why can't our utility fee (which already comes to his house once a month) have the betterment fee or redistrict the area of the betterment as other payment options? Town Counsel spoke on Operation and Maintenance law: it is not legal. Betterment and usage charges for operations and maintenance need to be kept separate. Will he need to pay more if the town adds SBU's to the district? Why are we in the district charged for Grace? Selectmen Knibbe replied that Grace is part of that district. If the expansion is outside of that district it would be divided by a different group of users. The problem is since Grace is not using all their betterments a smaller group is paying for that district's use. The additional housing coming in now is paying for the additional use or the super sizing. Later Mr. Towey asked will they use technology zoning; Counsell replied the property zoned for industrial. They can claim it as their open space, but Grace can only use the betterments they have or they can buy more from the Selectmen. In assessing their SBU's the Sewer by-law is valid; the zoning by-law has not been challenged. It is the application of that by-law on the undeveloped superfund site with a landfill, a toxic lagoon, a sink hole, a non remediated pond and groundwater plum with only access being secondary roads of Parker, Independence, and Lawsbrook and no access or emergency access to Route 2 or to Route 62 through Concord with a railroad across the property that makes evaluation of this property complex.

Hillary Dorner Tenney Circle. She does not want and did not hook up to the sewers even though she is paying the fee. Why can't she sell her units like Grace if she wants to stay on septic. She was told every house on the line must be able to hook up, but may choose not to. Her hope is for the town to pay Grace's overage with the general fund and resell the betterments, but in truth she feels the district is not a large enough to have a fair vote. Selectmen Knibbe stated that with a 2/3 vote at Town Meeting the town can fund it from general revenue and that is the Board's recommendation. We can't just make it happen because of how the sewer by-law is written; it must go to Town Meeting.

Maria Cox Olde Surrey Road. If our district is too big can we re-sell our overage and make our betterments smaller. Selectmen Knibbe stated after paying for the infrastructure costs to get the lines elsewhere there is a possibility to do a redetermination of your betterment.

Steven Serabian Gerald Circle. Why is the feeling if we go to trial we are going to lose. Town Counsel stated that they likely will challenge how they paid betterments on undevelopable land. What would the deal look like without the restriction on building? Counsel stated it could be more expensive if Grace put in a dense development. They are going to get the most out of the losing land they have left. Grace has spent thousands of dollars to remediate that land; in time they want the most back from it. Why is the town

benefiting, shouldn't that be separate from the sewer question. Reality is I (the district) am paying so no one builds on that land. Town Counsel spoke of the process of mediation.

Paul Gaboury Assabet Crossing. How much in total will the district pay? Most of us will sell our property before 22 years. That total will have to be paid in full, looking more like \$14K for each owner not the \$66.00 a year. Selectmen Knibbe stated correct. The owner is responsible for hook up into the system. Is it the same for Grace? How can they sell their betterments? Steve Anderson stated that the Title V application for hook-up is different for residential and commercial property.

Virginia Travers Silver Hill Road., How was the SBU cost determined? The rationale was based on the level of development that could better the property with the addition of sewers. What was determined by the town and determined by Grace 2 different figures. 297.5 acres was used to determine the betterments. There is a common formula used to estimate potential, converting future home building and what the worth as commercial units would be. It did not come to pass; it was undeveloped and the potential was not ever realized. The town is getting betterment payments on property that cannot be developed.

Dore Hunter of Foster Street. As a former Selectmen and second career trial litigator, this as Steve Anderson says, is a good way to settle by mediation. Mr. Hunter is in favor of saving cost to the town. He has always preferred Option 1 use of the general fund as the Town as a whole benefits from sewers.

Curt Cannata Gerald Circle. Value of the restriction, what would it be? What is the value of the conservation land: 15 acres of forest land in Acton with frontage both ways? Counsel responded the restriction can be appraised for those who question the value. But now remember we cannot develop the land, we are just restricting it. We will lose some of that tax base which was about \$10K. Mr. Cannata questioned if Option 2 has a possibility to open litigation against the town. Counsel stated that Option 2 is there because it is the default of how the by-law is currently written.

Mary Michelman Magnolia Drive. As a member of ACES, it is her job to review technical documents for the projects. The North Lagoon has had a good deal of soil remediation; but the wetland has high levels of arsenic. Grace is only promised cleaning to an average of the standard, this means some areas will be higher in toxicity and some will be lower. It is good that there be as little use as possible of this land as it is dangerous and trespassing would be dangerous. Everything we can do to limit the land use would be a benefit to Acton. Her understanding is the delta increase is \$66 and that delta might get reduced but not the original district betterment fee; \$13,700 is the new cost per betterment. Will this set precedent that we are no longer user funded. Selectman Knibbe stated, no.

Helen Probst, 9 Putter Drive She has served on the Water Resources Advisory Committee, CWRMP, and the Sewer Action Committee. This topic is covered at Town Meeting on Monday the 13<sup>th</sup>. This is a time-certain and the judge from the mediation will come to speak to the town. Ms. Probst asked if this passes are we done with Grace? Counsel responded, no just on this issue of Sewer Betterments. Ms. Probst asked if there will be Public Access easement. That is not clear at this point; we are under negotiations. We will know the answer to this question by Town Meeting.

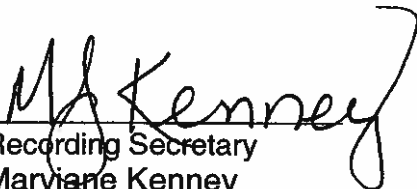
Charlie Kadlec, Paul Revere Road. Can you guarantee that this deal will go through, as it is historically likely but not positive. Steve Anderson, every recommendation to bankruptcy court has been approved. Is the town liable for legal expenses or is the sewer district. Judgement of court must be paid for by the Town.

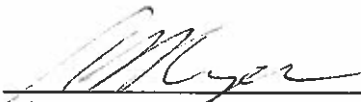
Allen Nitshcelm, Merriam Road. Grace brought their betterments current in fall of last year when litigation said they must, November 14, 2008. Does the town have any insurance? No, according to the Town Counsel, we do not for this kind of suit. The bankruptcy filing stays the Town taking action for ownership.

Ann Chang. We need to get people to come to town meeting.

Dore Hunter. April 2 pre-town meeting that people should be encouraged to attend.

Gerald Circle. The land is dangerous. No signs no fences it is really bad and the town needs to do due diligence.

  
Recording Secretary  
Maryjane Kenney

  
Andrew D. Magee, Clerk  
13 April 2009  
Date