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**BOARD OF SELECTMEN AND SEWER COMMISSIONERS'
MEETING**

TOWN CLERK, ACTON

October 8, 2010

Acton Town Hall

Francis Faulkner Hearing Room

8:15 A.M.

Present: Lauren Rosenzweig Morton, Michael J. Gowing, Terra Friedrichs, Janet K. Adachi, Pamela Harting-Barrat, Town Manager Steven Ledoux, Town Counsel Stephen Anderson, and James Okun, Environmental Consultant. Recording Secretary: Christine Joyce.

SIMEONE- CAQUETTE FARM TRANSACTION

Ms. Rosenzweig Morton discussed the October 12th Special Town Meeting and need to change the date to October 25th and add another article.

Mr. Okun reviewed the results of arsenic and lead testing done since the Board's meeting on October 4th. The farm field samples did not exceed the state residential standards; the industrial property has three areas with levels in excess, including one area in excess of the state imminent hazard standard for arsenic, as well as lead.

Mr. Okun estimated that an additional 10 yard x 10 yard area of soil will have to be removed from the site if the Town goes in that direction. Testing for hazardous waste was negative.

Mr. Okun went over the calculation of cleanup costs. Originally 660 tons of soil were to be taken off site, encompassing a 2' depth of soil for an estimated \$100,000. The additional areas will add 130 tons to be removed for off-site disposal at a cost of \$130,000. The estimate is conservative, allowing for contingencies along the way.

Ms. Rosenzweig Morton noted the concern of the Open Space Committee, which met this morning in this room just before the Board, as to whether that would be the extent of the cleanup, and the concern that the parcel needed to be safe for people to use and farm.

Mr. Okun said that remediation by capping would cost half as much as removal of the soils.

Mr. Anderson said the appraisal would go down if the materials were left on the property, with \$740,000 being its pre-cleanup condition taking in to account

\$100,000 of cleanup. If the parcel were cleaned up to residential use, the appraised value would be \$830,000. Removal of the soils is necessary to obtain the \$830,000 value.

Ms. Adachi said it made sense to use Community Preservation Act funds for a cleaned up parcel, which would reduce the delta between the CPA funds and the asking price, presuming a full cleanup. Cleaning it up completely is what we should do as responsible citizens. She noted that she is having difficulty recommending that the Town spend general funds to meet the purchase price and also cover clean up costs, and is concerned about the precedent that it may set.

Ms Friedrichs had the same concerns that Ms. Adachi has. Ms. Friedrichs asked if all the sites located will be remediated. Mr. Okun noted that there may be other sites on the property; a hundred years ago some one may have emptied a pail outside the areas tested. Ms. Friedrichs asked about the potential financial impacts and worst-case scenario if the site is more polluted.

Mr. Anderson said that in the worst-case scenario, assuming high levels of lead, arsenic in untested pond sediments, and a dam break, the financial impact would be very high. Mr. Okun said the likelihood of a worst-case event or release is low, much lower than the possibility that testing has missed an area with arsenic, but the impact would be huge. A release might already have happened years ago that we don't know about. Ms. Rosenzweig Morton asked about the risk vs. benefit. Mr. Okun said the risk is low if the Town makes sure the dam is safe.

Mr. Gowing noted that the Erickson's own the dam and are currently in the process of repairing it.

Ms. Friedrichs asked about insurance to cover the Town if an issue arose after the Town cleaned up the parcel. Mr. Anderson said that there is environmental insurance coverage that he is looking into. Other ways for the Town to mitigate risk are applying the Attorney General for a covenant not to sue to provide protection if additional problems, previously undiscovered, should appear; and using the eminent-domain takings power to do a "friendly" taking to provide protection from liability under the federal Superfund Law, 42 U.S.C. § 9607..

Mr. Gowing asked what happens if cleanup is over \$200,000. Is the first \$200,000 the Town's and any excess the seller's? Mr. Anderson said that assuming Town Meeting approval, the Town is on the hook for the first \$200,000 and anything over and above that is an open issue.

Ms. Rosenzweig Morton said that saving this farm means agriculture in Acton, and if the deal doesn't go through the owners will need to have the fields to till and they will have to lease land out west to expand their farming if they cannot use this land.

Ms. Friedrichs asked if the dam soils could be tested to see how bad it could be.

Mr. Okun noted to test the pond sediments could cost another \$3-5,000 to take the samples using a boat and to perform the testing.

Ms. Adachi asked what the scope of the Attorney General's covenant not to sue would be. Mr. Anderson said that it was up to the Attorney General.

Ms. Rosenzweig Morton noted that the Simeones (Stonefield Farm owners) want to continue farming the land for 10 years. Therefore, a trail around the perimeter would be used for recreational uses, and the site where the factory was could be used for Assabet River Rail Trail parking.

Ms. Adachi noted that in defining the proposed uses of the parcel, the Town probably should provide that if the Town proposes to change to uses involving disturbance of the soil, the Town take measures to ensure that people may engage in those uses safely.

At 9:35 a.m., Ms. Harting –Barrat left the meeting.

Ms. Rosenzweig Morton made a series of motions relating to the October 25th Special Town Meeting and warrant. Community Preservation Act funds can only pay for the appraised value of \$830,000. So an additional \$170,000 from Free Cash will be needed for the purchase, and the Town also will pay for the clean up costs. Approval of the purchase requires a two-thirds vote.

Ms. Rosenzweig Morton – Moved to call a Special Town Meeting on October 25, 2010, at 7:00 pm in the ABRHS Auditorium pursuant to the Warrant to consider the supplemental appropriation article for a portion of the purchase price for the Simeone-Caouette land purchase, and that the Warrant for the meeting be posted forthwith. Ms. Friedrichs – second. UNANIMOUS VOTE

Ms. Friedrichs Moved to close the Warrant – Mr. Gowing – second.
UNANIMOUS VOTE

Ms. Rosenzweig Morton – Move that the Warrant shall contain the following brief explanation to voters:

Note to Town Meeting Members:

The acquisition of the Simeone-Caouette Property was approved by Annual Town Meeting in 2010. The \$1,000,000 purchase price was to be paid from CPA funds. After that approval, the Town discovered through its due diligence activities that (a) there are environmental problems at the Property that will require remediation, and (b) the Property contains less acreage than originally anticipated because of the delineation of the lot lines in the Mill Pond. The Selectmen initially called a

Special Town Meeting for October 12, 2010, to consider the appropriation from general funds of up to \$256,500 toward environmental testing and remediation costs and other transaction costs associated with the property. However, after receiving a supplemental appraisal report of the property, the Selectmen are now calling a Special Town Meeting also to consider a supplemental appropriation from general funds of \$170,000 toward the purchase price of the Property. The reason for this is that CPA funds above \$830,000 cannot be used to purchase the property by virtue of the updated appraisal results. The Selectmen are recommending that both appropriation articles be considered by Town Meeting on the same evening (October 25, 2010) to simplify and expedite consideration of these matters.

Ms. Rosenzweig Morton noted the prices should be taken out. Ms. Friedrichs felt it should list a range of money.

Mr. Ledoux noted \$140,000 spent to date and that the warrant seeks funds for Phase III testing and the payments to Caouettes. The Town is going to pay \$100,000 in ancillary costs.

Mr. Gowing - Move that t the statement have a more general wording with monies left blank. Ms. Friedrichs – second. UNANIMOUS VOTE

Ms. Rosenzweig Morton – Move to recommend that the October Special Town Meeting(s) approve both appropriation articles relating to the Simeone-Caouette land, including (a) \$170,000 for the balance of the purchase price above \$830,000 to be used from CPA funds toward its purchase, and (b) \$256,500 toward environmental remediation costs, environmental testing costs and P&S extensions, for a total additional appropriation of \$426,500, and to recommend that the Special Town Meeting(s) consider the articles on the same evening (October 25, 2010) and in that order.

The Board agreed that some of the detail about the appropriation articles could be omitted. Ms. Friedrichs moved to approve the motion, as amended - Mr. Gowing second. Ayes: 3, Nays: 0, Ms. Adachi abstains. Motion passes

Ms. Rosenzweig Morton -Move to authorize the Town Manager in consultation with Town Counsel to submit an Application to the MA Attorney General's Office to Enter into a Brownfield's Covenant Not to Sue Agreement pursuant to M.G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.00 with respect to the Simeone-Caouette land transaction. Ms. Friedrichs – second. UNANIMOUS VOTE

Ms. Rosenzweig Morton -Move to authorize the Town Manager in consultation with Town Counsel to draft for future consideration by the Selectmen a proposed vote or order in an effort to effectuate the liability exemption afforded to a government entity pursuant to 42 USC § 9601(35)(A)(ii). Ms. Friedrichs – second. UNANIMOUS VOTE. Mr. Anderson noted that this does not have the Town entering into Eminent Domain in any form.

Ms. Rosenzweig Morton - Move to approve the Frequently Asked Questions – Environmental Investigation and Land Purchase Simeone-Caouette Property, Stow and Maple Streets, Acton, Massachusetts as of October 4, 2010. Ms. Friedrichs – second. UNANIMOUS VOTE.

Ms. Rosenzweig Morton - Move to authorize the Chairman of the Board in consultation with the Town Manager, Town Counsel, the Town's LSP and Staff to update the Frequently Asked Questions as they may deem appropriate prior to the Special Town Meeting on October 25, 2010. Mr. Gowing – second. UNANIMOUS VOTE

Mary Michelman asked if a permanent solution required sampling toward the pond, and about filing requirements for the covenant not to sue and eminent domain. The covenant not to sue requires a filing. Mr. Okun said that capping is deemed a permanent solution. DEP currently does five-year reviews of cap conditions.

David Stone asked if there were a way to get CPA funds for clean up via a motion from the Town Meeting floor. Ms. Rosenzweig Morton said the Community Preservation Committee had recommended the use of \$830,000 of CPA funds. Mr. Anderson explained that Town Meeting cannot appropriate CPA funds except by recommendation of the CPC and then the Board.. Mr. Anderson met with CPC and posed the question of using the excess \$170,000, from the original \$1 million approved at April Town Meeting, for cleanup but CPC members were not willing recommend the use of the excess \$170,000 for cleanup.

Mary Ann Ashton was concerned about having two special meetings and suggested that the October 12th meeting be opened and all articles for the 12th be addressed on the 25th. Board members agreed.

Ms. Michelman asked whether the Board would include in the Frequently Asked Questions a protective provision about future uses, restricting uses and/or requiring testing. Board members agreed.

Ms. Friedrichs felt that there should be more testing, and wondered if the Board could change its recommendation at Town Meeting if additional testing disclosed something new.

Ms. Rosenzweig Morton felt that the Board had done what was reasonably required and was comfortable presenting the recommendation to Town Meeting and working on trying to reduce the cost, which was a concern to some CPC and OSC members.

**BOARD OF SELECTMEN
MEETING AGENDA**

**October 8, 2010
8:15 a.m. Room 204**

I. PUBLIC HEARINGS AND APPOINTMENTS

NONE

II. SELECTMEN'S BUSINESS

1. Simeone-Caouette Transaction – Stow Street

Latest Environmental and Appraisals

Special Town Meeting Articles

Board of Selectmen Vote as to Form of Acquisition

Board Recommendation on Special Town Meeting

Timing of the Special Town Meeting

Enclosed please find materials in the subject regard

2. Selectmen to Approve FAQ'S, Simeone-Caouette Property

III. CONSENT AGENDA

None

EXECUTIVE SESSION

None

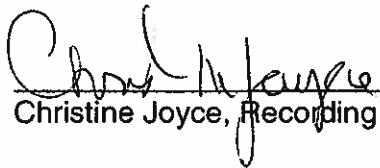
Ms. Friedrichs moved to do further testing of the pond. Mr. Gowing – second .
,Ayes: 1, Nays: 3. Nays , Motion fails.


Mr. Gowing said that he thought the testing level was adequate.

Ms. Rosenzweig Morton - Moved to have a Selectmen's Meeting on November
1st. to accommodate the loss of the October 25th Regular Board Meeting. Mr.
Gowing – second. UNANIMOUS VOTE

Ms. Friedrichs - Moved to adjourn. Mr. Gowing – second. UNANIMOUS VOTE

Meeting adjourned at 10:30 a.m.


Christine Joyce, Recording Secty


Clerk, Board of Selectmen
11/22/16
Date

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<input type="checkbox"/>		020 (1) Memo From Town Counsel re: Simeone-Caouette Property	admin	10/07/10	125 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>		030 (1) Draft Special Town Meeting Warrant, October 25	admin	10/07/10	300 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

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<input type="checkbox"/>		010 Agenda Posting Notice, October 8, 2010	admin	10/08/10	27 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>		010 Invitation from DOER to Attend The Harvest Energy Fair	admin	10/08/10	108 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>		020 Memo from the ABCC regarding their upcoming Event "Dessert Cabaret"	admin	10/08/10	59 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>		020 Follow-up Letter to Ms. Barnett, Dog Issue	admin	10/08/10	105 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>		030 Middlesex Community College Invitation to Attend Meeting on October 22, 2010	admin	10/08/10	96 KB	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

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