

**MINUTES OF THE TOWN COUNCIL
ENVIRONMENTAL COMMITTEE
Town Hall Council Chambers
SEPTEMBER 6, 2011 - Monday**

Present: Brian McDonald, Chairperson
Thomas J. Lacey, Vice Chairperson
Ed Harrington, Councilor
Victor Pap III, Councilor

Also Present: Michael Smart, Councilor

Recording Secretary: Mary Barker

Chairman Brian McDonald called the Environmental Committee meeting to order at 6:30 PM. He reported that this is an informational only meeting, with no input from the general public.

Continue discussion of the United States Naval letter dated March 21, 2011 in addition to the cleanup plan for the Naval air base

Chairman McDonald reported that he and Councilor Smart toured the three sites that still have significant remedial issues on the base. Their concern is that Weymouth is doing everything possible to ensure that the property is transferred in the manner in which the town and residents envisioned when the process began. It was to be restored to an unrestricted use without requiring further remediation and that the parcels will be usable for the designated uses. Chairman McDonald noted his concern with the letter dated March 22, 2011 that indicates the Navy may be changing the standards by which they were to clean the base. The Navy is by law a self-regulating body, with no enforcement mechanism under which the town can hold it to a timeframe. There appears to be a difference in the reuse conditions as defined by the Navy and the conditions in the re-use plan. He believes the Navy is trying to skirt whether or not they have to clean to a level of unrestricted use. The intent is to obtain further information by which the committee can then make a recommendation to the Council. The purchase and sale is due to be signed in November and that is the last document in place which will hold the Navy accountable for whatever is left to the citizens of Weymouth, Rockland and Abington. The future of the base is an economically viable entity and the towns need to be sure it's done correctly; once the document is signed, sealed and delivered, the towns are left with the problems that may result.

He invited Councilor Smart, who has been involved from the beginning, to address the committee before asking representatives from LNR and Tri-Town for input.

Councilor Smart reviewed; he toured the base with Chairman McDonald and has attended numerous Restoration Advisory Board (RAB) meetings over the years regarding clean-up of the base. He understands from the Navy letter that they are now taking a different

direction with regard to the cleanup of the Solvent Release Area (SRA). The Navy has always before indicated that whatever hazardous materials they put there, they intended to clean up and now what he is hearing for the SRA and Buildings 81 & 82 is a different direction. Long-term monitoring and leaving solvents in place is certainly not something Councilor Smart is comfortable with. Although the property is in his district, it is a regional issue. The Navy's current direction is not a solution. They were lax in their cleanup efforts and in the manner in which they handled the solvents and fertilizers and the manner in which they left floor drains to allow the material to leach into the bedrock and subsequently into other parcels. The SRA is yards away from the area zoned in 1995 as multi-use. It raises concern that the procedure is changing because of the cost. It is not something Councilor Smart is happy with; he thinks that they should get it cleaned and not have a 15-year monitoring program or transferring everything around that parcel so that everything except that parcel is being utilized-- while waiting for a solution by the Navy. Putting it off while waiting to see if the contamination further leaches will only cost the Navy more money when they do come back later to address it. Councilor Smart was not happy with these comments. He commended Chairman McDonald for bringing the matter to the committee's attention.

Vice Chairman Lacey, Councilors Harrington and Pap reserved their comments until after the representatives from LNR and Tri-Town are heard.

Robin Daniels provided a handout of the plan for three non remediated sites at the base. Jim Young, Project Manager of Tri-Town introduced the others: Brent McDonald, Mary Kay Ryan, from Nutter, McLaren & Fish, legal counsel to LNR, Robin Daniels, Bill Ryan and Attorney Curtis Toll from Greenberg Trowig.

He also noted the attendance over the years by Councilor Smart. He reported that the remedial process and the Feasibility Study which evaluates the methods and the future exposure based on reasonable scenarios for the future use of the property, using the Re-use Plan and uses contemplated in the Re-use Plan. Tri-Town has also submitted comments to the Navy, particularly around the three sites in question. They've also seen the regulator's (MA DEP, US EPA) submitted comments. Some of the recent correspondence has been provided to the committee. They are receiving favorable feedback from the regulators. They intend to use the regulators for the resource that they are.

Chairman McDonald asked Mary Kay Ryan to outline on the plan the specific sites in question, which she deferred to LNR as they have been working with many of the specifics. She has been involved in the project since 1998 and has worked in the field of environmental law for thirty years. She urges the committee to carefully consider the role that EPA can play. There is an enforceable agreement between the Navy and EPA called the Federal Facilities Agreement (FFA). There is a separate section of the Superfund Law which deals with federal facilities, and while it is true that in some respects a segment of the Department of Defense, like the Navy may have some more authority over cleanup than a private party, ultimately under the FFA, if the EPA disagrees with the Navy, they can force a dispute over a remedy to dispute resolution and the EPA administrator has the

option of determining what the cleanup is. From the point of South Shore Tri-Town, the objective has primarily been with good cause, to look to EPA and DEP to exercise their regulatory leverage over the Navy. Brian Olson, the Federal Facilities Manager, has responded to the letter from the committee and she believes the DEP and EPA will force the Navy to do what is necessary to facilitate the Re-use Plan and to allow the uses authorized by the Re-use plan, both in a timely fashion.

The superfund process begins with site identification and that happened immediately upon closure of the base. Sites are then classified based on how serious they are. The three sites with groundwater contamination are clearly acknowledged as the three major problem areas, principally because contaminated groundwater is very hard to clean up. It's not feasible in many cases to reach background level, but the process is first-remedial investigation to make certain that the scope and extent of contamination has been fully identified. She referred to the 21-E process, which the committee may be familiar with, but the superfund has the same objective. Once the site has been fully delineated, which this has not, it will be the subject of ongoing discussions.

Chairman McDonald asked what the impact of the signing of a purchase and sales agreement is to the Navy timeline. He is under the impression that the Navy will do what it wants, and when it wants to. Ms. Ryan disagreed. The EPA will have ultimate authority here and they have committed to the towns that they will be fully protected. This is EPA's major commitment to the public, and in sites across the country. Anyone who has contaminated property by the DOD can expect it to be cleaned to reasonable future uses. There was some discussion of groundwater irrigation, and the west gate landfill.

Chairman McDonald asks who holds the Navy responsible and enforces the timeline. Ms. Ryan responded that the Navy will be required to submit a Site Management Plans, which have deadlines. They must have a Record of Decision next year, and they do have the right to ask for an extension from the EPA. In terms of remedy, Mr. Olson noted that when it comes to remedy, there will be a comparison of timelines. The Navy will not be allowed an extended timeline if it can be done sooner at a higher cost. There is a specific schedule, and there will be a specific remedy. It can't be left alone. Once the P&S is signed, the title will be transferred independent of the cleanup. Chairman McDonald noted he isn't concerned that the process will continue as part of the process, but that it will continue ad infinitum and land can't be developed.

Attorney Toll, counsel for LNR was then invited to speak. Chairman McDonald asked if EPA will be the ultimate arbiter, then why shouldn't the towns have some sort of guarantee? He reviewed his qualifications. He noted that they are not deferring entirely to EPA. Many comments have been submitted to the regulators. Optimally, LNR would like to see many of the issues addressed within a contractual setting. Ultimately over a long period of time, they will likely prevail. There are checks and balances, although perhaps not an ideal result. Chairman McDonald asked if the Navy is changing its standards at other sites across the country, similar to Weymouth, or are they adhering to original re-use plans put in place. Mr. Toll responded that the Navy and DOD have backed away in the last three years from long-term "pump and treat" style remedies, but there are

numerous sites where they are performing active groundwater remediation. This is in the feasibility study process, which looks at a broad range of remedies. They will choose an option, but he does know that there are sites in the country where they are doing remediation that they do not want to choose for the base.

Chairman McDonald asked if it is true that once the P&S is signed the towns have very little leverage as communities, as developers, as an organization, and what are the town's options? Attorney Toll responded that the town has options; the optimal result would be to work out a contractual agreement which would allow some flexibility as well as provide assurance to Tri-Town and LNR of the reusability of the intended purpose of this ground. With respect to the P&S, they would welcome a dialog with the Navy and they are working towards that goal. Ms. Daniels noted that there is a broad array of cleanups, some of which would come with land use restrictions, and could diminish the value of the property. The appraisal value agreed to pay the Navy did not take that into consideration. The appraisal is based on a clean property with no land use restrictions. If it cannot be worked out in the P&S, alternatives will be pursued but carry associated risk, time and cost.

Chairman McDonald noted that the town thought when it was obtaining the property for unrestricted use, then that's what it should be. Councilor Smart noted he would prefer not to go the dispute process, but as a local authority have something in place, which tells the Navy, that it expects no less than any other remediated site, and settle for no less. There was a brief discussion of the WestGate landfill.

Chairman McDonald noted that the committee's job is not to make them like them, but to live up to what they have sold the towns- --clean property.

Vice Chairman Lacey noted the Navy has sat on the land for fifteen years, taken for defense purpose and what was supposed to have been a zero cost transfer back to the communities, and now they are offering it back at a multimillion dollar price without a cleanup of hazardous areas that they caused. He is frustrated. He heard that the town needs to leverage the EPA through this process and it's a challenge. He asked that they press on. He asked if it would be helpful to bring in Brian Olson. Councilor Lacey questioned if it is a money issue. Attorney Ryan responded that is partially about policy; mostly about cost. There was a brief discussion on the methods for cleaning solvent plumes. Attorney Ryan noted that at the end of the day, no one's health is going to be at risk--the public will be protected.

Councilor Harrington said that he suspected that whether or not the Navy says it will clean to any kind of re-use standards will not be deal breaker. Attorney Daniels responded that the parties have until November 15th to conduct a due diligence of the property. Additional sampling will be taken prior to that date.

Ultimately, the law is correct and Attorney Toll is concerned that the Navy's recent position is contrary to the legal statements and they don't seem to be making any

headway in getting the Navy to acknowledge these basic differences exist. They are in full agreement with the DEP and EPA on the key legal points that have been discussed.

Chairman McDonald noted this is the last opportunity the town has without it built into the P&S. The town wants this to be a viable project.

Councilor Pap reported that the clean- up technology is always evolving. He is concerned that the Navy is considering minimal remediation and its economic detriment to the area. He reported on the belief that the Weymouth Neck area was not completely remediated and the rumors that cancer rates are high in that area reflect this. He also noted that if the town signs a P&S and decide down the road there should be further resolution, the matter would be expensive and timely. He also asked if the remedies being proposed by the Navy are legal. If the Navy is willing to take care of similar sites in the rest of the country, then Weymouth, Rockland and Abington deserve no less. He believes testimony tonight indicates that it's more an issue with the cost than with policy. Although he hasn't always supported the project, he does believe it will be a key economic development for the area and the towns should be able to use it as they see fit, and not the Navy.

Attorney Ryan responded that the Navy will have to clean up to the Re-Use Plan, and each site is judged by itself. She reviewed the Feasibility Study, which provides the range of resolution for each identified area. The Navy cannot use a land use restriction as its sole remedy. There will be three or four solutions from none to full remediation, and somewhere within that scope will be the remedy which is selected. Each level will have a timeline, a level of reuse and a cost. A less costly solution will be easier to get through, but she believes the Navy will do what it needs to do, and not over ten years. Attorney Toll added that the dispute resolution process is in the Federal Facilities Agreement.

Chairman McDonald noted it's time to ramp up the pressure on the DEP and EPA and to solicit assistance from the congressional delegation including Congressman Keating and Senators Kerry and Brown.

Councilor Lacey noted the dispute resolution process is good to have in place and will provide some protection to the towns as triggered by noncompliance. Attorney Toll also noted that there are also private causes of action that can be done.

Attorney Ryan responded that under the Superfund Law, the Navy promises to come back and do whatever needs to be done under the Circular Warranty. Under the Defense Act, they also indemnify interested parties from any future liability. There are a number of legal protections in place.

Councilor Lacey asked if the town was late to act, since this letter was dated in March and here it is September. Attorney Ryan responded that they were not, but that the November 15th signing date is quickly approaching.

Councilor Smart commented that he wished he was as confident in the process as Attorneys Ryan and Toll; the Navy has been cleaning the property for years. He reviewed

the cleanup of a single parcel. The town needs to put some pressure on the congressional delegation and the administration. This process has been going on too long, and once the P&S is signed, there is no longer any leverage. The towns should demand no less than any other cleanup site in the country that the Navy is involved with.

Councilor Conlon asked if there are any Navy studies concerning illness among servicemen stationed on the base and whether there are any cancer studies. Attorney Ryan responded that typically you would find any incidences among workers with long-term exposure to carcinogens; however, there was a high turnover rate on the base. She is not aware of any formal study being conducted by the State Department of Public Health, which normally handles these and not by the State Department of Environmental Protection. Robin Daniels responded that there is a study underway that does not include service members, but surrounding residents in Plymouth County. Councilor Conlon would be more comfortable if a survey substantiated that there are no problems.

Councilor Smart reported that something does exist. The Navy facilitators attempted to contact past reservists, grounds workers, employees, and maintenance workers to study this subject. He believes Mr. Barney has brought it up at meetings and can provide the information.

A MOTION was made by Councilor Lacey that the Town Council draft correspondence to the Massachusetts congressional delegation; Senators Kerry and Brown, Congressman Keating to urge pressure put on the MA DEP, the EPA and the Navy, advocating their support to holding the Navy accountable to clean up the property to the satisfaction of the three towns, to the standards set in the Re-Use Plan, and was seconded by Councilor Harrington. UNANIMOUSLY VOTED.

Adjournment

At 7:40PM, there being no further business, Councilor Lacey made a MOTION to ADJOURN the meeting and was seconded by Councilor Harrington. UNANIMOUSLY VOTED.

Respectfully submitted by Mary Barker as Recording Secretary

Approved by Brian McDonald as Environmental Committee Chairman