

Board of Selectmen Public Forum

With D.O.T. and D.E.S.

Contaminated Soil Issue

Newington Town Hall

March 28, 2006 – 9:00am

Approved 4/17/06

Present: Selectman Iocovozzi, Selectman Stuart, Administrative Assistant Beatrice Marconi, Town Planner Tom Morgan, Conservation Commission Members-Justin Richardson, Barbara McDonald, Vincent Frank; NH DOT Representatives-Dale O'Connell, Karen Gola, Jonathan Pitre; Steve LaBonte of the Attorney General's Office, Town Counsel-John Ahlgren, and Gary Lynn of the NH DES at 10:20am

Selectman Iocovozzi called the meeting to order at 9:14am

Pledge of Allegiance

Karen Gola opened the discussion by stating that the whole intent is to clear up any misinformation that has been circulating in regards to the soil that is being brought back to Newington.

Justin Richardson asked how much dirt if any has been brought back so far and where on the map is it being placed. It was pointed out on the map and the project began with 2700 yards being brought back the previous day. Mr. Richardson also asked the basis for the removal and whether this is a hazardous waste concern or a solid waste concern. It was answered that this falls under the hazardous waste rule and that Naphthalene is the only concern.

Barbara McDonald asked why Naphthalene is coming back into Newington Wetlands where it can leach into the water. Steve LaBonte stated that the soil will not be going in the Wetlands and also that in the future those Wetlands will be moved. Barbara then asked to be shown on the map where the dirt is going. Karen Gola added that engineers/environmentalists have come to Newington and flagged the limits of the Wetlands 20 feet out. Barbara read a letter asking the State to halt the soil movement due to concerns of the dirt being contaminated. She then added that maybe DOT could clean the dirt up before depositing it anywhere. Justin Richardson asked where the dirt came from originally and it was stated that it is from the Nimble Hill Road area and is deemed 'returning to site'.

The question was asked – does hazardous soil need to be treated before it is deposited? A representative answered by stating that it has less than 6% leach ability and it has been mixed a few times.

Vincent Frank then asked why this dirt was brought to Dover. Attorney Steve LaBonte stated that it was a surplus material from the project. Mr. Frank then asked why it wasn't tested. Steve LaBonte then stated that they had no reason to believe that it needed be tested and showed no characteristics. Vincent then asked how we know that the dirt taken from Newington is the same dirt being brought back and why the town should take it. Vincent Frank then stated that this is the State's problem and they should have to deal with it. Steve Labonte noted that Dover did not want it because they are in a sensitive ground water supply area and added that Newington's public drinking water supply area is no where near. Barbara McDonald then asked why the DOT wasn't putting the dirt somewhere other than in Newington. Attorney LaBonte said that it is going on a State site – with State jurisdiction. Someone asked if it was possible that this Naphthalene would leach into the bay. The response was "Not likely".

Selectman Iocovozzi read off a copy of the permit provided by the stated which stated that a closed drainage system runoff will be design to collect any runoff from rain, and he then asked if there was something put into place to keep anything from getting into the bay. Someone answered yes.

A discussion regarding the clay and clay mix took place. It was stated that the clay came from Newington with Karen Gola adding that the clay was evaluated. Karen stated that D.O.T. relies on DES answers.

Vincent Frank stated that he couldn't trust the DES, because he feels that DES has lied in the past.

Someone then asked if it was true that the dirt had some sort of ooze coming from it. Dale replied that there is no ooze or smell or anything to see and has been in this clay for decades. He continued by stating that DOT/DES will install permanent wells and will cap them to prevent exposure and will monitor it.

Justin Richardson asked if a characterization was done and if there could be a copy of the report. Karen Gola then stated that she presented the Board of Selectmen and the Conservation Commission a copy already.

Selectman Stuart asked when the soil is removed and it mixes with air does it dissipate in any way. Dale then answered that this was volatile & becomes less contaminated over time and the volume of hot spots dissipates. Dale then continued to say that considering the pile as a whole, it is really not of a high level of concern.

Tom Morgan asked if it was only 15,000 yards. They answered by saying that that was the original estimate but it looks to be about 22,000. Tom then asked if all the dirt came from Nimble Hill Road. It was answered that it came from the new Shattuck Way area, south bound and Nimble Hill – all from Newington.

Vincent Frank referred back to the soil being exposed to the air and that some of the particles are contaminated that can be air borne and then there is nothing that can be done about it and added it should be just cleaned before returned. Steve LaBonte stated that the soil is being returned to State jurisdiction. Vincent asked why the DES representative isn't present so that they could slam-dunk him with Attorney LaBonte commenting that this group had all gathered in good faith to answer questions and hear your concerns.

John Ahlgren referred to the phone call between DOT and the Conservation Commission Chairman Peg Lamson. This was a conversation about a letter from the DOT dated March 13, 2006. This letter was sent to the Town Clerk who then forwarded the letter to the Conservation Commission within the following few days due to the fact that the Town Election was going on. The Town upon receipt of this letter assumed that the DOT had already received the permit to this project and was planning to move forward with it. Mr. Ahlgren stated that there was no time for the Board of Selectmen to respond or investigate on behalf of any Commission who may have objected.

Karen Gola added that it is not a part of the permit process to go into detail about the details of the material being moved. It's just a generic 'we're crossing wetlands' request to the DES where they analyze just how or if the wetlands will then be effected with the crossing.

Barbara McDonald asked when/how the town would know about what the soil contains if it was not specified by the DOT in the permit? Justin Richardson stated that it's the way that the law is written that gives them the right to word it the way they did.

Barbara then asked again how the town would have found out about the contaminated soil if at all. Karen then went on to say that she spoken Selectman Iocovozzi.

Selectmen Iocovozzi stated that on March 21st is when the town received the soil test results and then phone calls were made.

Attorney Ahlgren stated the DOT is in a position to know more than the "Lay" person. This is a very common occurrence and he went on to ask how DOT deals with this as far as sharing information. Attorney Ahlgren went on to say that towns are obligated to be informed in cases where there are details that should be revealed.

Attorney Steve LaBonte stated that they don't intentionally keep anything from any Town and follow the rules and regulations as specified.

Selectman Iocovozzi felt as if the major problem is not only the notification but also the process and procedure itself. Iocovozzi stated that there is information lacking that we have been trying to obtain. What the town doesn't have is the order to bring the soil back. This caused much confusion.

Justin Richardson asked about back in 1997 regarding a pipeline crossing and how they ran into some issues with contaminants being in the soil, which caused them to treat their dredge fill as hazardous waste. He asked if the soil was put back. Selectman Iocovozzi stated yes as in projects such as these, one never tries to take the dirt off site. You try to put it back.

Vincent Frank asked once the hot top was removed why did you remove the rest of it? (soil)
The project manager answered that it wasn't acceptable to have the road on.

Vincent stated that he has been reading and that basically a lot of roads that have hot-top on them, the underneath is contaminated and during the summer when asphalt gets heated the crude contaminates what's underneath and he then asked why this soil was removed. Barbara McDonald asked why this project couldn't be stopped.

Karen stated that there is a deadline to put it back. Barbara McDonald stated that we're living in a very technical age and asked why it couldn't be cleaned. Barbara then asked why the soil wouldn't be cleaned up.

Steve LaBonte stated "I think, as we've tried to get the point across, we took a site characterization and we brought it to DES" Barbara then cut him off by saying "I understand that but why are you against cleaning it up so we don't have a hazardous waste issue". Justin then stated that he wanted to hear Attorney LaBonte's answer. Steve continued "DES looked at the characterization analysis and determined that this was the appropriate method to handle this material, looking at the risk involved they said yes this is the appropriate way to handle this material". Barbara then stated "And DES feels this is an appropriate manner to put it in a Wetland that could leach into a brook into the water sewer and yet they're not here today". Steve then asked, "Has there been any Hydro Geological studies that show this is correct?" Barbara stated "You'll have to ask someone other than me - it's not my technical experience, but you know what - don't start putting it back on the Town of Newington, because the Hydro studies should have been done by DES & DOT.

Selectman Iocovozzi then asked if it was part of their process on the original Dredge and Fill permit.

Justin answered no and stated that dredge & fill is wetlands. There is a proposal to put a permeable clay lining underneath and then it will be capped so it won't be like there will be run off.

Dale stated that the risks are very low on leaching. It will all be monitored and three years of data will be collected. The data will be shared with Newington. Barbara added that if a private person has an oil spill on their property, they are required to remediate it, not just bury it. Attorney LaBonte said that this is not an oil spill we are dealing with. Justin added that sometimes, that is exactly what you must do. Attorney LaBonte goes on to say that this site was designed by engineers that do this for a living. They are not just making a big stock pile and leaving it there.

Vincent Frank asked about plantings and it was stated that grass was planned to be placed there which will act as a natural remediation. Plants get into root systems and cause problems. Vincent Franks says that when plants and grass is placed there, the animals feed off of it as the plants absorb from the soil...then the animals and people get sick.

Vincent Frank began to say that knew what he was talking about due to the fact that he has 30 years of construction and he felt that the Town has never been listened to. He says some of this stuff he just doesn't

buy. We never once ever had any say. He said its time the State listens as we are not talking out of the sides of our mouths.

Selectman Stuart stated that she would appreciate it if Mr. Frank would be a little more respectful of the representatives that were there as they took their time to come to Newinton. Vincent stated that he respected every one of them and then Selectman Iocovozzi began to beat the gavel. He continued to say that he is tired of hearing this from the whole 'lot of you'. You and You. *Gavel Gavel*

Selectman Iocovozzi stated that the issue is on procedure. The Board of Selectmen want to know why procedures were not followed completely and why the order to bring back the dirt was not forwarded to the appropriate Committees. He also went on to say that he had hoped to have the well monitoring notification from the DES to pass along to the various committees.

Barbara McDonald stated that the Conservation Committee voted on the 21st not to accept the dirt back. The Conservation Commission wanted to ask DES/DOT to halt this operation and look at this project as the Town was concerned about 2 components found in the dirt and possible leaching. There was a brief discussion on what the Conservation Commission felt the Selectmen should have done. Cosmas Iocovozzi said yes, however the Board felt legal advice was also needed prior to sending any letter to halt the project to the State.

Vincent Frank apologized if he came across as disrespectful and that he only wanted to ask his questions.

Gary Linn of the DES arrived. He stated that there has been a fair amount of misinformation out there in the public regarding the contamination of the material. He then went on to explain what chemicals were contained in the material (classified as 'tar like' - a solid waste not a hazardous waste-possibly exempt from the petroleum rules.) In looking at the material & it's components, the concern was with direct contact, rather than leaching because of the make up of this soil. DES felt since it was road base and then planned to be used as road base, then covered over with asphalt, this seemed reasonable. Former road base going to road base on State property-all these factors taken into consideration made sense based on the characteristics. When DOT said what they were going to do with this dirt, DES felt it was a reasonable exercise - it was around clay - tar on tar. This whole area, where the dirt is being deposited will be entirely paved when the Spaulding Turnpike project proceeds. Attorney Ahlgren asked Mr. Linn how he might suggest the town become more involved in the process with clean up projects so we don't end up in this situation again. Mr. Linn stated there was an oversight on his part as the problem originated in Dover as the soil was there. The impact was there. He apologized. He then went on to say that Dover got the copies of all the correspondence in error as that was the Town in which the problem took place, that is, with this soil being placed too close to their water supply. The impact was in Dover, that Town got all the documents. Future actions with Newington will be taken with great care.

Cosmas asked if we should be concerned or more proactive about any more potential hot spots on Nimble Hill. Gary said that Nimble Hill isn't considered a high risk hot spot at least not any more than any other particular parts of the State. He said that road sweepings, when analyzed, basically has all the same compounds as what was determined in our dirt. As asphalt wears away, you find these particles left behind. He says we should not be overly concerned about Nimble Hill.

Barbara asked Gary why DES wouldn't just have the dirt cleaned. Gary answered that when you are dealing with broken up asphalt, you have to think in terms of what is practical in what to do with it. We have this sort of material all over the state and be it for better or for worse, it is the only practical thing to do with it.

Justin asked about the vapor analyzing procedure and Gary answered that this procedure involves very large soluble molecules. Laboratory analysis is much more aggressive than what you see happen during leaching.

Barbara asked if Gary felt as if there were any threats with the Nathalene leaching with Pickering Brook nearby. Gary answered by saying that after looking at the components, the water situation in the area, analyzing a matrix, etc, he felt there was little concern.

Gary added that there had been conversations between Geno and the Conservation Commission (Peg Lamson) and at that time, Geno had no idea of the sensitivity of this issue in Newington. He processed the application as a really small wetlands crossing application. 623 sq.ft. which he felt was common & routine.

Selectman Iocovozzi stated that it was more procedural issue than anything else. He stated that it was hard to pick up the newspaper or receive a phone call from fellow Selectmen and to find out that way that DOT is bringing back all of this contaminated dirt. Barbara McDonald also added that the Conservation Committee did not have ample time to respond to the letter that was sent out before the permit was issued and wondered how, now can they appeal. Gary responded by saying given the circumstances of this particular project and the controls that are going to be put in and how it is so minor with little or no impact, Gary didn't feel that an appeal would have merit. To deny a wetlands crossing permit for a wetlands that isn't even going to exist in the near future....Barbara said that it wasn't a matter of denying the wetlands permit, its what is being placed there.

After much discussion Selectman Iocovozzi asked the Vice Chairman Richardson of the Conservation Commission where he stood and what he wanted to do about the situation. Justin Richardson stated that there has to be a meeting on this and he doesn't see as being that big of an issue after having everything explained at the meeting. He stated that it is just a question of the weighing the benefits of this but he could not speak for the Conservation Committee and make a decision.

It was stated that on April 6, Chris Waszczuk, DOT project manager will be attending the Conservation Commission meeting. Barbara noted for the record that Peg Lamson, Chair of the Conservation Commission, who was out of town stated that she did not want this material being deposited here in the Town. So noted.

Summarize: Selectman Iocovozzi stated that the Selectmen had a problem with the procedure of this project and we want to rectify this so it doesn't happen again. The Town needs info from DES or DOT & Conservation will be discussing this again. Permits are correct but would like to see the order. Wetlands area of 623 sq ft will be discussed by the Conservation Commission. The project will continue on as DOT has the permits and authority to go on.

Selectman Stuart thanked everyone for coming and appreciated the information shared.

Being that there was no further issue to be presented, Selectman Iocovozzi adjourned the meeting at 11:00am.

Respectfully Submitted,

Beatrice Marconi
Administrative Assistant
Town of Newington

CC: Attorney General Ofc-Steve LaBonte; NH DES-Gary Linn; Attorney Ahlgren; Conservation Comm; NH DOT – Karen Gola