



TOWN OF CONCORD
2229 Main Street Advisory Task Force
PUBLIC MEETING MINUTES

June 13, 2023

8:00 AM

Call to order at 8:10 AM

Members present: Boehm (Chair); Booth, Feeley (zoom), Flood, Hill, Herman (zoom), Ropeik, Seidman. Also present: Ms. Ackerman (SB), Ms. Escobedo (SB), Mr. Makarios (Town Counsel, Anderson Krieger), Ms. Miller (Planning Board), Ms. Nierenberg (EPA), Ms. Rockwell (2229 Monitoring Committee), Ms. West (SKEO).

Mr. Boehm noted that the focus of this meeting would be on legal issues. The next meeting (June 27 at 7:30) will focus on safety and risk, with Roux Associates, the Town's consultant under the Technical Assistance Grant (TAG), briefing the Task Force on their work and coordination with the Task Force. On June 28 at 1:00PM, the Task Force will have an opportunity to tour the site with the cleanup contractor, *de maximis*.

Starting in July, the Chair would like the Committee to review progress of each of the four work streams on a rotating basis. Each meeting would focus on one of the four work streams with brief updates by the others. It was suggested that each work stream prepare a short update for posting at least 72 hours in advance of the meeting.

There was a brief discussion of how the Task Force should communicate. In addition to the Task Force's open meetings, one important aspect should include reaching out to other Town Committees and Departments that may have an interest or concern about the site. On the topic of the public meeting or meetings in the Select Board's charge, Mr. Ropeik noted that simply holding a public input meeting and making Task Force discussions public would be inadequate, and that it will be necessary to have a more detailed public communications strategy. Additional discussions on this topic are needed.

The Committee then began a discussion with Mr. Makarios about the legal issues which will affect the Task Force's deliberations and conclusions. He noted that Counsel takes direction from the Town Manager and Select Board. Any acquisition of the site by the Town will require approval of the Select Board and likely at Town Meeting.

Mr. Makarios noted that there are separate but related legal issues which must be resolved if the Town is to acquire the site:

1. *How to acquire clear title to the site.* The owner that caused the pollution no longer exists. Various banks have liens on the site from loans made to the owner. As the major client for

the work formerly done at the site, the Department of Defense has a large lien. EPA has a lien for the clean up costs, and the Town has a lien for back taxes. A listing of the current amount of these liens was provided to the Task Force. It will be necessary to determine how to discharge these liens, whether the Town acquires the site for its own uses, or for resale to other entities. In general, the EPA may be willing to waive the lien it has for clean up costs in order to permit acquisition by the Town. The Department of Defense may be willing to do likewise. However, substantial legal work will be necessary to resolve these questions. Of additional concern is a so called "windfall lien," which might be created if the new owner (Town or other) generates considerable value from use or future sale of the site. All these issues must be resolved before making a recommendation on acquisition.

2. *What are the liabilities if the Town does acquire the site?* There is a distinction between liabilities from past operations at the site which can be known today----the site has been extensively tested for known pollutants and their migration----and future issues that may arise resulting theoretically in possible liability. There is also a question of "unknown unknowns"----the possibility that some form of hazard created by the previous site owners/operators will be identified in the future that is unknown today. EPA is responsible for those potential issues.

In acquiring the site the Town would have to conduct its due diligence to assure itself that it has identified legacy liabilities. However, this would basically be a standard paper exercise given that there is an extraordinary amount of data; therefore after review, the Town would draw on the existing information and it will not be necessary to redo the extensive site studies that have been performed by EPA and its contractors.

"Future liability" could theoretically be created by the new owner or users of the site, where the new owner may be responsible for any future contaminant releases from future operations at the site. The acquirer must have a plan for both avoiding any additional contaminant releases going forward through zoning, permitting, inspections, etc. and for maintaining "institutional controls" as specified in the Record of Decision (ROD).

Mr. Makarios concluded by saying that three legal tasks must be undertaken

1. Resolving all uncertainties about title to the site.
2. Laying out the legal options for acquisition of the site by the Town, and any subsequent resale or lease of some portion of the site to a third party
3. Recommending mechanisms to control post-acquisition liability.

Counsel will provide an estimate of the costs of this work to the Town Manager, who would actually commission the legal work.

A discussion followed about the extent to which communications between the Task Force and Counsel could be privileged, since the Task Force is generally subject to State and Town open meeting policies. Ms. Ackerman noted that the Select Board could decide to privilege certain communications, but that

specific Select Board permission would not be required if the Task Force wants to privilege matters which would normally be privileged. Counsel noted that communications around actual site acquisition from EPA could be privileged.

Ms Ackerman noted that, in addition to the three major legal tasks outlined by Counsel, the Town would be looking for advice on the legal form of any reuse options at the site, particularly if it is not all used for Town purposes.

Ms. Hill asked how long it would be before the site might be delisted from Superfund, and the EPA follow up would end. Given that groundwater remediation systems would be in place and would continue beyond the time that the site would actually be available for reuse, Ms Nierenberg noted the site would not be formally delisted (i.e., that all EPA activities would be completed) for a period of thirty years or more.

Before adjourning, Mr. Boehm reminded members to review the scope of work for the contract between Roux Associates and the Town.. Roux will be present to brief the Committee at the June 27 meeting. He also asked members to submit in advance any particular questions they have which they would like addressed during the June 28 site visit.