

City of Cambridge

NEIGHBORHOOD AND LONG TERM PLANNING

In City Council October 15, 2001

COMMITTEE MEMBERS*Councillor Marjorie C. Decker, Chair**Councillor Kathleen L. Born**Vice Mayor David P. Maher*

The Neighborhood and Long Term Planning Committee held a public meeting on July 24, 2001, beginning at 6:10 p.m. in the cafeteria of the Banneker School, 21 Notre Dame Avenue, for the purpose of discussing W. R. Grace plans for dealing with asbestos on its site in relation to its planned excavation of a utility trench.

Present at the meeting were Councillor Marjorie C. Decker, Chair of the Committee, Vice Mayor David P. Maher, Councillor Kathleen L. Born and City Clerk D. Margaret Drury. Also present were Harold Cox, Cambridge Chief Public Health Officer, Lisa Peterson, Commissioner of Public Works, Sam Lipson, Environmental Health Director, Department of Public Health, Don Drisdell, Deputy City Solicitor, Nancy Glowa, First Assistant City Solicitor, Susanne Rasmussen, Director of Environment and Transportation, Community Development Department and Robert Bersani, Director of the Inspectional Services Department.

Councillor Decker convened the hearing and explained the purpose. She introduced the city staff present and explained that while the advance notice for the meeting was short, it was important to have the meeting prior to the one City Council meeting of the summer, in case there was a need for City Council follow-up after this meeting. Councillor Decker then invited Harold Cox, Chief Public Health Officer, to begin the discussion. Mr. Cox introduced Sam Lipson, Director of Environmental Health for the Public Health Department.

Mr. Lipson provided background information. He was notified by W. R. Grace by telephone last fall that W. R. Grace wanted to do some work on its property, the first work to fall under the asbestos protection ordinance. W. R. Grace did sampling using the methodology prescribed by the ordinance. The results did not identify any asbestos. W. R. Grace submitted a management plan. At this time he had to make a decision as to how to interpret the ordinance. He had to decide whether the work was exempt from the ordinance under Section 8.61.060 and he also had to decide whether tenting and venting was required for work in an area where the required tests showed no evidence of asbestos. Also, the work plan as submitted did not include emergency work stoppage methodology. He required a protocol for emergency work stoppage if asbestos is identified during the work or other emergency issues arise. With respect to the exemption issue, he concluded that W. R. Grace would need to give him additional information about the nature of the work. However, regarding the issue of whether tenting and venting is required when the specific area of the work was tested as required in the ordinance and no asbestos was found, he initially decided it was not. He then sent notification to all abutters and members of the public who had requested notification.

Mr. Lipson did not receive comments from the public. At that time there were no comments requesting tenting and venting. Later, when W. R. Grace started work, there was much public concern. He went to look at the work and also sought the City Solicitor's legal opinion as to whether he could make a distinction for a part of the property where the test revealed no asbestos and was told he could not. The City Solicitor's opinion was that if asbestos was found on any part of the property, the ordinance required the remediation specified.

At the present time, W. R. Grace has received a letter from him saying that the work is still subject to the ordinance even though no asbestos was found in that portion of the property and that if W. R. Grace wants to pursue its claim of exemption, it must submit information regarding possible exemption. He next heard from W. R. Grace by a letter he received today. (Attachment.) They have made a commitment to submit any further documents by the end of the week. Thus he will be able to make a decision quickly.

Councillor Decker asked whether the depth of testing is as deep as the trench. Mr. Lipson said yes, the ordinance is very specific as to that requirement and the records of testing indicate that the departmental requirement was met.

Councillor Decker then invited questions from the public.

Representative Alice Wolf asked what it would cost to do tenting and venting of the area proposed to be dug. Susanne Rasmussen said that she has a general familiarity but cannot just answer on the spot. Representative Wolf said that if the cost isn't too high, she would expect it is the best policy to go ahead with the tenting and venting. Mr. Lipson said W. R. Grace has said that the cost will be \$250,000 to \$500,000.

Daniel Kuman, 69 Harvey Street, asked whether if W.R. Grace does voluntary tenting and venting here where no asbestos was found in the tests, would they have to do it again. Attorney Drisdell stated that it would not create a legal precedent but W. R. Grace may be perhaps covered about creating a perceived precedent. If the ordinance requires tenting and venting here, it requires it everywhere on the W. R. Grace property.

David Bass, Norris Street, asked for Mr. Lipson's impression of the nature of the proposed work. He read the report and didn't see much about present utilities. Mr. Lipson said that there are utilities underground now that date back to the 1940's. There is also telecommunications wire and conduit but the conduit is not big enough to run electrical wires. The work also does appear to be an upgrade. Mr. Bass said that samples showed both fill and native material, which shouldn't be there if it was already dug up. Mr. Lipson said that he does not know the answer. It may be because the trench is wider. Mr. Bass said W. R. Grace proposed the OSHA level industrial standard for exposure to asbestos. The number is much higher than the background asbestos that

W. R. Grace found. He is concerned about what would cause work stoppage.

Mr. Lipson said that the ordinance does not speak to threshold levels. He left this to the state and the state took a conservative approach in setting the threshold.

Councillor Decker said that the City has to rely on documents from W. R. Grace. What can the City do to find out the truth?

Mr. Drisdell explained authority of the Cambridge Department of Public Health to investigate. Mr. Lipson said the area is presumptively contaminated.

Joe Joseph, Kassul Park, thanked city staff and Representative Wolf for being here. He said that the issue of W. R. Grace being able to carve out a section is inappropriate. The ordinance definition references the federal standard. It is not really necessary to amend the ordinance. The neighbors want this area tented and vented. He congratulated city staff on their narrow interpretation of the ordinance.

Denise Guerin, 125 Montgomery Street, requested further clarification on different levels: OSHA, background and residential.

Gretchen Von Grossman quoted the perimeter monitoring standard of no evidence of the chemical. Ms. Von Grossman said that there are many standards that are set as a baseline and it is expected that local government will set more stringent requirements so long as they at least meet the baseline. Why not use the strictest level?

Mr. Lipson said there is no particular reason for one standard. The state standard for tolerance of asbestos in the soil is 0. The issue is the administrative issue of the cost and time for one city staff person to administer a different standard when state is already regulating with conservative standards. The level for soil is 0 because they don't know what the level should be because there has not been much experience with asbestos in the soil. They have had a fair amount of experience with airborne asbestos because of removal from houses, etc.

Councillor Decker asked what triggers the exemption. Mr. Lipson said that he believes the original discussion was about emergency maintenance.

Councillor Decker asked about the time frame for determination of exemption. Mr. Lipson explained that there are no deadlines in the ordinance. In its letter, W. R. Grace has committed to get documents to him by the end of the week. He will make a decision within a week of receiving the documents.

Craig Kelly raised a question regarding the exemptions in the ordinances. Ms. Rasmussen stated that there are three exemptions: emergency repair, maintenance of underground utilities and soil-disturbing activities on residential property with no documented history of on-site industrial asbestos.

Mary White, 245 Harvey Street, noted that the utility work does not involve facilities providing power to the public, which she would expect the exemption maintenance of underground utilities is directed towards. She asked about training of workers. Mr. Lipson stated that they have to comply with state law regarding cleanup of hazardous material.

Mr. Lipson noted that the EPA has some concerns about using techniques involving wetting soil and tenting and venting at the same time.

Vice Mayor Maher asked how the public can have confidence in the samples. MR. Lipson said samples are not taken by the site owner, but rather by professional engineering firms, and involving licensed site professionals. It is true that the ultimate payer is the site owner.

Vice Mayor Maher asked if under the ordinance the City could deny permission to dig even if they tent and vent. Mr. Drisdell replied in the negative.

Mike Nakagawa, 51 Madison Avenue, said that the city ordinance was designed to be tighter than anything else around. He said that the EPA air standard is tighter than the state standard. He expressed a concern about using maintenance as an excuse to allow upgrading. The use of overhead utilities could obviate the need for any digging. He noted that W. R. Grace did work to remove an underground tank with no protective measures. Mr. Nakagawa asked for time for public comments after the Department of Public Health decision, for example, a draft decision. Mr. Lipson said he thought that was possible.

Thalia Tringo asked if there is any reason why the City cannot treat W. R. Grace differently and just tell them they have to take the most stringent projections because of their history of bad behavior. Mr. Drisdell explained that "due process" means they are to be treated like any other property owner with a substantial amount of asbestos on their property.

Gretchen Von Grossman, Jackson Street, stated that the neighborhood has organized to take samples at the same time as W. R. Grace, and in every case, their samples show more asbestos than the W. R. Grace samples.

Maura Cole, Dudley Street, asked whether allowing W. R. Grace to do this work means that it can then do development. Mr. Lipson stated that he cannot say.

Richard Clarey, Brookford Street, asked if a bond could be required. Mr. Drisdell stated that he would have to look at the ordinance.

Councillor Born asked about the criteria of work. Is there no distinction between this work and the work for a new building. Mr. Lipson answered in the negative.

Councillor Born asked whether, in the event that the work proceeds without tenting and venting, the licensed site professional (LSM) is responsible for perimeter monitoring. Will the City have its own licensed site professional? Mr. Lipson said that the City has a number of options for monitoring to which the property owner cannot say no. Mr. Lipson said he is already in the process of discussing with city staff what type of presence the City will have and what level of expertise will be required. At a very minimum, city staff will be present at regular intervals.

Representative Wolf said that one of the real issues is that there should not be any digging on the site. The most simple thing to do would be to get W. R. Grace to do the work above ground.

Mr. Lipson stated that that would still require soil disturbance.

Joe Joseph said the way to go is above ground work. He recommends specifically asking W. R. Grace whether they would do above ground work.

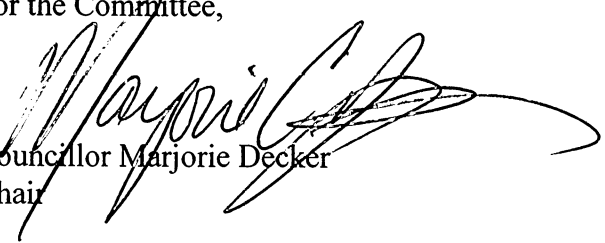
Councillor Decker thanked all those present for their attendance and work on this issue.

She noted the following:

- W. R. Grace is obviously not just any company, it has continued to violate the public trust, so the public has heightened concerns.
- There are city staff with a great deal of integrity trying to protect the public. She emphasized this point.
- It is very important that city staff ensure that soil management issues are articulated and explained to the citizens. It is important to understand the very real fear of W. R. Grace that exists in this neighborhood.

The meeting adjourned at 8:20 p.m.

For the Committee,


Councillor Marjorie Decker
Chair

3715

Committee Report #1

Committee Report from Councillor
Marjorie C. Decker, Chair of the
Neighborhood and Long Term
Planning Committee, for a meeting
held on July 24, 2001 for the
purpose of discussing W.R. Grace
plans for dealing with asbestos on
its site in relation to its planned
excavation of a utility trench.

In City Council October 15, 2001

Report Accepted

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