

SETTLEMENT AGREEMENT

This Settlement Agreement is made this 20th day of October, 2009, by and between the City of Newton ("Newton"), the 10 Resident Group Petitioners, and the Abutter Petitioners (collectively "the Parties").

WHEREAS the 10 Resident Group Petitioners and the Resident Abutter Petitioners (collectively "Petitioners") are both represented by Guive Mirfendereski, 24 Carleton Street, Newton MA 02458;

WHEREAS Petitioners appealed a Superseding Order of Conditions ("SOC") issued on June 5, 2009 by the Department of Environmental Protection ("DEP"), DEP File No. 239-0590 pertaining to a renovation project located at Newton South High School (the "Project"). Petitioner's appeal is currently pending before DEP's Office of Administrative Appeals and Dispute Resolution designated as OADR Docket No. WET-2009-030, DEP File No. 239-0590, Newton MA entitled "In the Matter of City of Newton" ("Petitioner's Appeal");

WHEREAS Newton sought approval of the SOC and the issuance of a Final Order of Conditions from the DEP;

WHEREAS Petitioners sought the issuance of a Final Order disapproving the permitting of the Project;

WHEREAS the Parties to Petitioners' Appeal now wish to resolve their differences and settle Petitioners' Appeal;

NOW THEREFORE, for good and valuable consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Newton and Petitioners do hereby agree as follows:

1. The Parties agree to the following conditions as they apply to the Project.
 - a. Newton shall inspect the trench drain and in-line catch basins every 6-months for a period of 18-months for crumb rubber granules. If crumb rubber granules are found, the crumb rubber granules will be removed.
 - b. Newton shall inspect the vinyl screening on the 4' high chain link fence in proximity of the bordering vegetated wetlands every 6-months for a period of 18-months for crumb rubber granules. If crumb rubber granules are found, these crumb rubber granules will be removed.
 - c. If a significant accumulation of crumb rubber granules are found within the trench drain or at the base of the vinyl screen, or in both locations, Newton shall continue to inspect along the wetland line at 6-month periods for an additional period of 18 months to detect crumb rubber

granules. If a significant accumulation of crumb rubber granules are detected, Newton shall take steps to further prevent the crumb rubber granules from reaching the wetland.

- d. Newton shall perform an EPA approved lead wipe test on the installed synthetic turf to determine the amount of lead dust or bio-availability of the lead in the specified products. The synthetic turf product installed shall meet or exceed the lead wipe testing standards adopted by the EPA for bare soil in children's play areas.
- e. The initial wipe test done of the surface of the synthetic fields shall be performed within 90 days of the issuance of the Final Decision and SOC final permit of record in this matter, without the benefit of irrigation or precipitation preceding the test by three days followed by annual wipe tests performed during the month of September for a period of five years.
- f. No herbicides, pesticides, or insecticides shall be used on the fields within the 100 foot buffer zone to the wetlands, pursuant to Newton's Integrated Pest Management Policy, maintained and executed by the City of Newton's Department of Parks and Recreation, and as may be amended from time to time.
- g. Newton shall collect no less than three (3) grab samples of the substrate from the bordering vegetated wetland adjacent to the proposed work in the buffer zone. These samples shall be analyzed by a certified laboratory for the presence and concentration of heavy metals, to include: zinc, iron, manganese, barium, lead, chromium, copper, and cadmium.
- h. Newton agrees that at the future time of full replacement of the synthetic turf carpet, Newton shall consider the use of alternative in-fill material other than crumb rubber in-fill, including in-fill materials made of natural ingredients that are biodegradable which is demonstrated to have performance viability comparable to crumb rubber, if then available.
- i. Newton shall test the water from the Well #1 only of the two wells used to irrigate the fields which constitute the project for the presence of metals including zinc, iron, manganese, barium, lead, chromium, copper, and cadmium. Well #1 is indicated on a plan of land attached hereto as Exhibit "A" which is hereby incorporated by reference into this Settlement Agreement. The baseline test of water from Well #1 shall be conducted within ninety (90) days after the issuance of the Final Decision and SOC final permit of record in this matter, followed by annual tests for five years following the initial test.
- j. Newton shall conduct all tests required by this Settlement Agreement using EPA methods.

k. All test results, reports, and studies performed by Newton pursuant to the Final Decision and SOC final permit of record and this Settlement Agreement shall become public records as governed by M.G.L.c. 66 §10 and M.G.L.c. 4 §7, clause 26 and the Petitioners shall be entitled to copies of said public records as provided thereunder upon request.. Such records shall be kept and maintained by the Engineering Department of the City of Newton, in conformity with the public records retention policy of said Engineering Department.

2. The Parties understand and agree that the preceding conditions, 1(a)-(k), are not part of the SOC final permit of record. The Parties understand and agree that there shall be no change, modification, alteration, deletion, or amendment to the SOC final permit of record. The terms and conditions set forth in this Settlement Agreement are in addition to the SOC final permit of record as between the Parties. DEP is not a party to this Settlement Agreement. The Parties have no jurisdiction or control over the contents of the SOC final permit of record.

3. The Parties voluntarily enter into this Settlement Agreement because each has mutually agreed that settlement of this matter is the most appropriate means of resolving this matter.

4. The Parties hereby agree that simultaneously with and contemporaneous to the execution of this Settlement Agreement, the Petitioners shall execute a Withdrawal of Petitioners' Appeal – Assented To (“Withdrawal”) hereto attached as Exhibit “B” which is hereby incorporated by reference into this Settlement Agreement. The Petitioners shall deliver said executed Withdrawal to City of Newton Assistant City Solicitor Richard Chmielinski for his written assent on behalf of Newton, who shall then forward said Withdrawal to DEP’s Office of General Counsel for written assent on behalf of DEP. The Withdrawal shall then be forwarded to DEP’s Office of Administrative Appeals and Dispute Resolution for filing and appropriate action. It is anticipated by the parties that DEP’s Office of Administrative Appeals and Dispute Resolution will issue a Final Decision based upon the filing of Petitioners’ Withdrawal. In any event, the parties agree that upon the filing of Petitioners Withdrawal, the SOC shall constitute the final permit of record. The terms and conditions set forth in this Settlement Agreement are in addition to the SOC final permit of record as between the Parties. This Settlement Agreement shall have full force and effect only upon Newton’s and DEP’s written assent to Petitioners’ Withdrawal, and upon the filing of said Withdrawal with DEP’s Office of Administrative Appeals and Dispute Resolution.

5. Petitioners, including each of its members, agree that it/they shall not bring, file, or pursue any further administrative or legal actions, claims, petitions, motions, and/or appeals relating to the construction of the Project under the Wetlands Protection Act, M.G.L.c. 131 §40. It is hereby agreed and understood by the Parties that this Settlement Agreement, Petitioners’ Withdrawal, and the SOC final permit of record shall resolve all

issues between the Parties arising under said Wetlands Protection Act, M.G.L.c. 131, §40.

6. The Parties understand and agree that the Department of Environmental Protection ("DEP"), a duly constituted agency of the Commonwealth of Massachusetts, is not a party to this Settlement Agreement. As such, the Parties agree and acknowledge that no recourse may be made to the DEP for enforcement of this Settlement Agreement.

7. The parties, in executing this Settlement Agreement, have not relied upon any inducements, promises or representations made by any other party, their representatives or their attorneys which have not been specifically incorporated in writing into the terms of this Settlement Agreement. Each party has read this Settlement Agreement and had its terms and consequences explained by their respective attorneys and voluntarily accepts the Settlement Agreement, with its terms and consequences, as written.

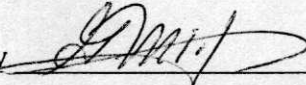
8. In conjunction with the matters considered herein, this Settlement Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Settlement Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Settlement Agreement and by no other means. Each party waives his right to claim, contest or assert that this Settlement Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

9. This Settlement Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter of this Settlement Agreement.


10. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement under seal in three original duplicates.


10 RESIDENT GROUP

By 
Title Rep of Petitioners
Date 10/20/09


CITY OF NEWTON

By 
Mayor David B. Cohen
Date 10/20/09

RESIDENT ABUTTORS

By 
Title Rep of Petitioners
Date 10/20/09

Approved as to legal form and character:


Richard G. Chmielinski, Esq.
Asst. City Solicitor
City of Newton