

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT



W. MICHAEL SULLIVAN, Director
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Plaintiff,

v.

C.A. No. 05-2553

CITY OF PROVIDENCE, RHODE ISLAND
By and through its agencies the PROVIDENCE
DEPARTMENT OF PUBLIC PROPERTIES
and the PROVIDENCE SCHOOL
DEPARTMENT,

Defendant.

PROVIDENCE REDEVELOPMENT
AGENCY,

Defendant – Intervenor

YMCA OF GREATER PROVIDENCE

Defendant – Intervenor

CONSENT ORDER (Parcels B & C)

This matter came before the Court on March 15, 2006, before the Honorable Daniel A. Procaccini. After hearing thereon, it is hereby:

ORDERED, ADJUDGED AND DECREED:

WHEREAS, the Rhode Island Department of Environmental Management (“RIDEM”) filed a complaint in this matter against the City of Providence (the “City”) relating to the City’s development of a public high school at a property located at 333 Adelaide Avenue, Providence, Rhode Island, Providence Tax Assessors Plat 51, Lot 170, Parcel B (“Parcel B”);

WHEREAS, Parcel B is one of four parcels (Parcel A, B, C, and D), including Mashapaug Cove, that together comprise what is known as the “Former Gorham Manufacturing” property, a 37-acre former industrial site at 333 Adelaide Avenue, Providence, Rhode Island (the “Site”). The City, by and through the Providence Redevelopment Agency, is the owner of the entire Site and is a “Responsible Party” pursuant to R.I.G.L §§23-19.14-6 and §3.60 of RIDEM’s “Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases” (the “Remediation Regulations”) and a “Performing Party” pursuant to §3.49 of the Remediation Regulations.

WHEREAS the Site is known to be contaminated with a variety of hazardous chemical compounds relating to its prior use as an industrial manufacturing facility and is listed in the U.S. Environmental Protection Agency's ("EPA's) Comprehensive Environmental Response Compensation and Liability Information System ("CERCLIS") database as EPA ID No. RID982542318;

WHEREAS, pursuant to a lease with the City, the YMCA of Greater Providence (the "YMCA") began plans in 2000 to assess the remedial measures necessary to build its proposed 14,500 square foot one-story recreational community resource Providence Metropolitan headquarters facility on approximately five acres of what is known as the "main" portion of Parcel C of the Site;

WHEREAS, Parcel A was investigated and is undergoing remediation pursuant to a RIDEM-approved remedial action work plan ("RAWP"), and has been developed with a supermarket shopping plaza. There are still ongoing remedial issues involving contamination on Parcel A;

WHEREAS, the northwestern portion of the Site, adjacent to the Mashapaug Pond includes Parcel D and the remaining portion of Parcel C (the "Park Parcel"). The portion of Parcel C included in the Park Parcel is hereby defined to incorporate all areas of Parcel C that have not been investigated or are not proposed to be remediated pursuant to a RAWP submitted by the Greater Providence YMCA, dated February 9, 2005 (the "YMCA RAWP"). The portion of Parcel C included in the Park Parcel is delineated and defined on a map of the Site, which is attached as Exhibit A;

WHEREAS, Textron, Inc. ("Textron"), a "Responsible Party" under R.I.G.L. §§23-19.14-3(m) and 23-19.14-6 and §3.60 of Remediation Regulations, agreed to remediate contaminated soil and groundwater at the Site pursuant to an April 2001 RAWP, approved by RIDEM on October 10, 2001;

WHEREAS, the YMCA was granted intervenor status in this action on February 16, 2006;

WHEREAS, in February 2005, the YMCA submitted a RAWP to RIDEM proposing to remediate and to develop a portion of Parcel C for its headquarters and recreational facility (the "YMCA Parcel"). The YMCA Parcel is defined as that portion of Parcel C that has been investigated and is proposed to be remediated pursuant to the YMCA RAWP, as depicted on Exhibit A. The YMCA's proposed remedy, which has conceptually been approved by RIDEM in a May 24, 2004, Remedial Decision Letter, involves capping site soils and installing an active sub-soil ventilation system to prevent vapors from entering the YMCA building, and recording an environmental land use restriction (ELUR) to ensure that these controls are maintained for the YMCA Parcel;

WHEREAS, the YMCA has timely responded to RIDEM requirements and RIDEM comments on the YMCA's RAWP, including all public notice requirements, and is currently waiting for RIDEM's issuance of an "Order of Approval" for the RAWP;

WHEREAS, the City has proposed to remediate and develop Parcel B as a public high school and is currently addressing RIDEM requirements for developing a RAWP for Parcel B that is similar to the YMCA RAWP. On September 26, 2005, RIDEM issued a Program Letter for Parcel B to the City, wherein RIDEM indicated that the site investigation was complete and reviewed the City's preferred remedial alternative, which includes capping site soils and installing an active sub-soil ventilation system to prevent vapors from entering the school building, and recording an environmental land use restriction (ELUR) to ensure that these controls are maintained for Parcel B;

WHEREAS, RIDEM has determined that the construction can begin of the buildings, associated parking, and landscaping on the YMCA Parcel and Parcel B, once RAWP approvals are issued for each of the Parcels, and once a physical barrier that prevents access to the Park Parcel, as detailed below, is in place;

WHEREAS, both the YMCA and the City have an urgent need to begin construction and occupy their buildings, and will in fact start construction activities at their respective parcels in accordance with the timelines set forth in this Order;

WHEREAS, the City has expressed that it needs to use and occupy the school on Parcel B by January 1, 2007;

WHEREAS, the Parties and the Court wish to establish a schedule that will permit removal actions, site investigation work, remedial activities and the construction of the YMCA headquarters and the school to proceed on a pace that will both provide for compliance with all applicable statutory and regulatory requirements and meet the requirements and needs facing the YMCA and the City, and permit both parties to obtain the necessary financing;

NOW, THEREFORE, it is ORDERED:

A. Barrier to Prevent Access to Park Parcel

Within 45 days of the date of this Order, the City shall complete the installation of a Barrier to prevent access to the Park Parcel.

The Barrier shall, at minimum, include a chain link fence at least eight feet (8') in height and shall be planted at the base on the developed side of the fence with briars or other deterrent vegetation so as to discourage climbing or cutting of the fence.

The Barrier shall be installed as indicated by the markings on the map of the Site, attached as Exhibit A.

The fence should include one or more locking gates placed at appropriate locations and of a sufficient size to allow for the entry and egress of personnel and equipment necessary to investigate and remediate the Park Parcel. Signs in both English and Spanish shall be affixed to the fence at regular intervals stating: "Warning -- Keep Out -- Environmental Clean-Up In Progress."

The City shall continue to maintain and keep in place the Barrier until such time as the Park Parcel has been remediated to a level that is sufficient to safely permit limited public recreational activities.

B. YMCA Construction on "Main" portion of Parcel C (the "YMCA Parcel")

By April 15, 2006, RIDEM shall complete its review of the YMCA's February 16, 2006, Response to Comments on the February 9, 2005, YMCA RAWP, and issue to the YMCA either: (a) a written Order of Approval of the YMCA RAWP, or (b) written comments that list any deficiencies in the Response to Comments. Within fourteen (14) days of the YMCA satisfactorily addressing the RIDEM comments, if any, RIDEM shall issue its Order of Approval of the YMCA's RAWP.

Upon (1) completion of the installation of the Barrier, and (2) RIDEM's Approval of the YMCA's RAWP, RIDEM agrees that the YMCA may proceed to initiate construction activities and to implement the approved YMCA RAWP.

C. City's School Construction on Parcel B

On or before March 30, 2006, the City shall submit to RIDEM its response to RIDEM's response to public comment on the technical feasibility of the City's Site Investigation Report for Parcel B. Within ten (10) days of RIDEM's receipt of the City's response, RIDEM shall issue a (a) Remedial Decision Letter for Parcel B, or (b) written comments that list any deficiencies in the City's response. Within ten (10) days of the City satisfactorily addressing the RIDEM comments, if any, RIDEM shall issue a Remedial Decision Letter for Parcel B.

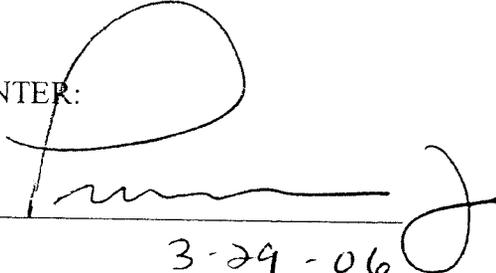
Upon receipt of the Remedial Decision Letter for Parcel B, the City shall submit to RIDEM, the state senator and state representative representing this district, and the Knight Memorial Library, in both hard copy and electronic format, its proposed RAWP for Parcel B. Within thirty (30) days of RIDEM's receipt of the City's RAWP, RIDEM shall complete its review of the City's proposed RAWP and issue to the City either: (a) a written Order of Approval of the RAWP for Parcel B, or (b) written comments that list any deficiencies in the proposed RAWP. Within ten (10) days of the City satisfactorily addressing the RIDEM comments, if any, RIDEM shall issue its Order of Approval of the City's RAWP for Parcel B.

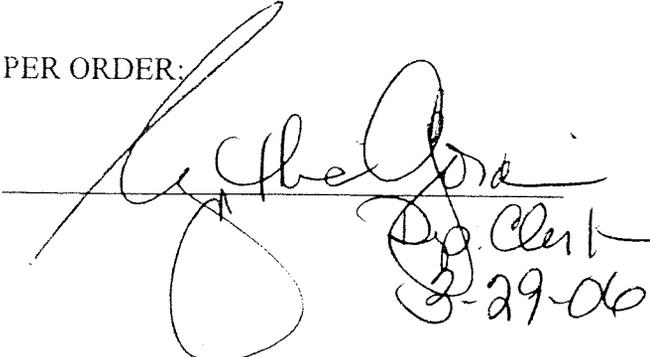
Upon (1) completion of the installation of the Barrier, and (2) RIDEM's Approval of the City's RAWP for Parcel B, RIDEM agrees that the City may proceed to initiate construction activities and to implement the City's Approved RAWP on Parcel B.

D. Ongoing Involvement of the Court

The Court shall retain jurisdiction over the Site and implementation of this Consent Order, and will entertain requests from the parties or from representatives of the public to convene status conferences regarding the implementation of this Consent Order.

ENTERED as an Order of this Court on this 29th day of March, 2006.

ENTER: 
3-29-06

PER ORDER: 
Dp. Clerk
3-29-06

704714



APPROXIMATE SLAG
REMOVAL AREA



NEW FENCING TO TIE
INTO EXISTING FENCING

EXISTING FENCING

PARCEL C/D BOUNDARY

PARCEL B BOUNDARY

PARTS PARCEL AREA (INCLUDES PARCEL D
AND PORTION OF PARCEL C)

WASHBUDG POOL

PARK PARCEL

PARCEL D

PARCEL D

PARCEL C

PARCEL C
YMCA DEVELOPMENT

PARCEL D

PARCEL B
SCHOOL
DEVELOPMENT

PARCEL A
EXISTING STOP & SHOP
SUPERMARKET

EXISTING
RETAIL

ABLAIDE AVENUE

CRESCENT

DOWNING

NOTES:
1) NOT TO SCALE

FORMER GORHAM MANUFACTURING FACILITY
PROVIDENCE, RHODE ISLAND
EXHIBIT A

