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145 Ash Street
Hopkinton, MA 01748
October 7, 2005

Board of Selectmen
Attention: Chairman Eric Sonnett

Zoning Board of Appeals
Attention: Vice Chairman Robert Foster

Town of Hopkinton
Town Hall
18 Main Street
Hopkinton, Ma 01748

Subject: Appeal of Selection of Consultant and Fee

Dear Chairman Sonnett and Vice Chairman Foster:

I appeal to the Board of Selectmen the September 29, 2005 Notice of Imposition of Consultant Review Fee per the Zoning Board of Appeals (ZBA) Procedural and Administrative Rules Section C.5.

I appeal the imposition of a fee for a consultant for the following reasons:

1. The ZBA did not follow Town By-law Section 28-E in establishing the need for a legal consultant and does not have the authority to hire an attorney with out approval of the Board of Selectmen.
2. The ZBA's selection of Attorney John V. Fernandes raises some questions. He has no conflict of interest with me; he is an attorney and likely a fine one; however, when I did an internet search on attorneys specializing on zoning practices in the area, his name did not appear while many others did. Has the ZBA met the requirement for the required qualifications and has selected an attorney that has direct experience in our Zoning Bylaws or similar ones? I believe that the Town Counsel usually makes the recommendation on the attorney to the Board of Selectmen to be used if outside legal assistance is required by any town boards and the procedure should be followed.
3. Further I do not think that the ZBA has met the requirements of Paragraph C.1. of the ZBA Procedural and Administrative Rules. A. ZBA rules allow an outside consultant only when technical advice is unavailable form municipal employees. Town Counsel has a long history of providing advice on this by-law and should be made available for ZBA assistance in my appeal. B. ZBA rules state that a consultant maybe required when there

is a complexity of issues. If you look at the details of my appeal the issues are not very complex and were prepared with out a lawyer's assistance. I am certain that the members of the ZBA have the proper command of the English language and the common sense needed to rule the points that I raised. If the citizens of the Town can draft and vote of the Zoning Bylaws in open Town Meeting, the members of the ZBA, selected from the citizens and appointed for their qualifications should be able to interpret them. C. ZBA rules state that they should notify the Appellant in writing of this need for a consultant and whenever possible the Board should work cooperatively with the Appellant to identify the proper consultant. This has not occurred and I was not even notified of the meeting where this was discussed. While ZBA rules allow unilateral action, I am disappointed that the ZBA took this approach. The ZBA set a zero dollar application fee to encourage discussion of this action and now apparently wants to limit discussion by imposing high consultant fees. D. ZBA rules state that the fees should be paid by the Applicant or Appellants. Should not the Applicant, Mrs. Kramer, be assessed a significant portion of the consultant fees as it was her action that has started the process?

One of the key civil rights that any citizen of Hopkinton has is the right to vote. The right to vote is meaningless if a town employee or board does not carry out the decisions of the voters. Our open Town Meeting has approved the purchase of the land for the stated purposes; Town Meeting approved the site plan for the property; At a town election the voters raised our taxes and approved the purchase of the property for the purposes stated; Town Meeting voted to fund and direct the Water and Sewer Commissioners to add to our water and sewer infrastructure; Town Meeting and the voters at a Town election voted to fund and start the design of a school on the property; and Town Meeting approved funds for the engineering for the athletic fields. Clearly the town has voted for these projects and usually with the same 2/3 majority requirement that we need to change our Zoning By-law.

In the research for this appeal, I became aware of a recent land court case that ruled against a town for not establishing the boundary of a Water Resources Protection Overlay District based on scientific grounds. I know from personal experience that the map was roughly drawn with out scientific study of the areas that are needed to protect our municipal water supplies. If we include more land in the WRPOD then what is required to serve the public purpose of protecting the municipal wells, this is a very unfair taking of property rights. I am certain that the ZBA is especially concerned about the protection of both civil rights and property rights of the citizens of Hopkinton.

I request that the Board of Selectmen determine that the consulting fee is not justified and that Town Counsel can provide the necessary services to the ZBA on my appeal. Further if Town Counsel is not available, that the ZBA be required to make a proper request for outside legal services for the Board of Selectmen and be requested to consult with me, the Appellant, prior to making a decision to seek a legal consultant. I note that the ZBA has separated the hearing on my appeal from the appeal of the other three Town Boards. I do not have a problem with the ZBA using Town Counsel in my appeal as I recognize his expertise in our Zoning By-laws.

I am waiting for your decision prior to paying the requested amount or revised. I am willing to meet with either the ZBA or the Board of Selectmen to discuss this further. I am hopeful that I will not be asked to pay for a ZBA legal consultant in my Appeal to protect the rights of the majority of voters of the Town of Hopkinton.

Sincerely,

A handwritten signature in cursive script that reads "Ken Weismantel". The signature is written in black ink on a light-colored background.

Ken Weismantel