



TOWN OF HOPKINTON

OFFICE OF THE SELECTMEN

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TOWN OF HOPKINTON

OCT 12 2005

BOARD OF APPEALS

October 11, 2005

Robert W. Foster, Vice Chairman
Board of Appeals
Town of Hopkinton
Town Hall
18 Main Street
Hopkinton, MA 01748

Re: Appeal from letter of Zoning Enforcement Officer concerning
property at 66 Fruit Street – ZBA File No. 06-020

Dear Bob:

Thank you for your letter of September 29, 2005, with reference to the consultant review fee for the above application.

In your letter you indicate that the Board of Appeals voted on September 28, 2005, to retain John V. Fernandes as a consultant to assist the Board with respect to the above matter. You also indicated that the Board of Appeals voted to impose a consultant fee in the sum of \$500.00 upon the Board of Selectmen pursuant to G.L.c. 44, § 53G.

As you may know, on September 30, 2005, I wrote to Mr. Davies indicating that press reports had indicated that the Board of Appeals had taken the above action and had voted to make the above assessments. In that letter I indicated that Town Counsel had advised the Board of Selectmen that, though the Board of Appeals does have the authority to make assessments and to engage consultants pursuant to G.L.c. 44, § 53G, the Board of Appeals must, however, comply with the Town bylaws and policies relating to use of counsel. In this case, it is clear that Mr. Fernandes would be serving as a legal counsel to the Board and would be providing legal advice to it.

On that basis, you should be aware that the Town of Hopkinton Bylaws in Chapter 28-5, § E establish the Board of Selectmen as the authority to engage a town counsel. The bylaw further indicates that the Town Counsel shall be available for advice to all Town Departments under the supervision of the Board of Selectmen. The bylaw does not grant such authority to engage counsel to any of the other Town Boards or Departments.

As I indicated in my letter, to aid in its implementation of the bylaw, the Board of Selectmen has adopted a **policy** concerning the use of legal assistance. As you know, the policy requires all Town **Boards** or **Departments** which request the use of legal assistance to complete a form which must be **submitted** to the Board of Selectmen for its evaluation and approval. Irrespective of the authority to **make** assessments pursuant to § 53G, the Board of Appeals continues to be obligated to comply with the Town bylaws and policies concerning use of counsel. The Board of Appeals must, therefore, submit the request for legal assistance form to the Board of Selectmen for its approval prior to engaging counsel.

In your letter you indicate that the Board of Selectmen should forward a check payable to the Town of Hopkinton to the Office of the Board of Appeals within ten (10) days of the date of your letter, or execute the transfer of funds form. As you know, certain procedures must be complied with **prior** to the availability of funds by Town departments and agencies and the Selectmen must **comply** with those procedures. The funds which the Board of Appeals has requested will be transferred to the 53G account at the earliest possible time.

In summary, therefore, please be advised that Town Counsel has indicated that the law in Massachusetts is clear that absent special legislative authority, a department of a town has no authority to employ counsel. The Board of Appeals should, therefore, not engage counsel until the policies and procedures of the Town have been complied with. The Board of Selectmen will expeditiously review your request for legal assistance and advise you of its decision at the earliest possible time. In the interim, you should be aware that should the Board of Appeals incur any legal costs without approval of the Board of Selectmen in compliance with the Town bylaws and policies, the Town would not bear any responsibility for payment of those costs which may become the responsibility of the individual members of the Board of Appeals.

Furthermore, the Board of Appeals should be aware that if the Board of Selectmen does not approve the **request** for use of counsel by the Board of Appeals, any assessments made under § 53G must be returned to each applicant.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Thank you for your kind consideration.

Very truly yours,


F. Eric Sonnett, Chairman

cc: Laurence A. Faiman, Town Counsel