

**TOWN OF HOPKINTON
BOARD OF SELECTMEN
Meeting Date: January 6, 2004
MINUTES**

Members Present:

Ronald M. Clark, Chairman
Leonard A. Holden, Vice-Chairman
Mary C. Pratt
F. Eric Sonnett
Paul J. Nelson

Others Present:

Comcast Technician: Russ Phipps; Hopkinton Independent: Sarah Duckett, Editor; MetroWest News: Dave McLaughlin, reporter; Maureen Dwinell: Town Treasurer/Collector; Planning Board and Affordable Housing Task Force: John Coolidge, Chairman; Fire Chief Gary Daugherty; O'Toole's North Pond House: Frank O'Toole, owner, and Trish O'Toole, Manager; DPW: Eric Carty, Water/Sewer Manager; Capital Improvement Committee: Finley Perry, Chairman; Human Resources Department: Amy Downing, Director; Senior Center: Cindy Chesmore, Director; Public Library: Carol Walsh, Director, and Linda Kimball, Hopkinton Public Library Trustee member; Marathon Committee Candidates: Kimberly Collins, Kathleen Cusanelli, RoseMary Kelley-Wiseblood, Brian Cann, Sue O'Keefe; Youth Commission Candidates: Anna Nolin, Benjamin Halpern, Michael Torosian, Sr.; Board of Health: Nancy Peters, Chairman, Jeff Hersh and Richard deMont; EMC Corporation: Richard H. Elliott, Project Manager; Rizzo Associates: Brendan M. Sullivan, Construction Manager; Residents: Richard Cummins, Muriel Kramer, Beth Herlihy, Carol DeVeuve, Brian Herr, Paul Graham, Cynthia Esthimer; Selectmen's Office: Theodore D. Kozak, Executive Secretary, and Geri Holland, Executive Assistant.

Public Meeting Opened/Move into Executive Session (Litigation):

6:15 p.m. VOTE: Mr. Clark opened the public hearing and entertained a motion to move into executive session for the sole purpose to discuss litigation. So moved Mr. Sonnett. Second Mrs. Pratt. **Mr. Clark: yes; Mr. Holden: yes; Mrs. Pratt: yes; Mr. Sonnett: yes; Mr. Nelson: yes. Unanimously voted.**

7:00 p.m. Re-Open Public Meeting

Mr. Clark re-opened the public meeting and asked everyone to stand for the Pledge of Allegiance. Town bills were approved for payment. Town warrants were signed as follows: Town manual check #04-40 for \$45,301.91 (run date: 1/6/04), School payroll #04-13 for \$798,869 (pay period: 12/11-12/24/03); Town accounts payable #04-39 for \$42,423.17 (run date: 1/6/04); Town payroll #04-25 for \$125, 269.93 (FICA: \$1,330.68) pay period: 12/14/03-12/20/03); Taxpayer refund #04-37 for \$3,460.13 (run date: 12/23/03); School accounts payable #04-0032 for \$3,827.75 (run date: 12/23/03); Town accounts payable #04-36 for \$860,855.60 (run date: 12/23/03); School accounts payable #04-0034 for \$146,188.46 (run date: 12/23/03); Town payroll #04-27 for \$124,455.08 (pay period: 12/28-1/3/04); Town payroll #04-26 for \$116,924.97 (pay period: 12/31/03); Town accounts payable #04-38 for \$135,165.19 (run date: 12/30/03).

Selectmen Minutes: 11/18/03

Mr. Clark asked if the Board had any comments about the November 18, 2003 Selectmen minutes. There were no comments.

VOTE: Mr. Clark entertained a motion to approve the November 18, 2003 Board of Selectmen minutes. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

EMC Flammable Liquids Storage (117 South Street)

7:05 p.m. Mr. Clark read the public hearing notice on the application of Kevin Biernacki for EMC Corporation, 228 South Street, Hopkinton, MA to amend the current license for the aboveground storage of flammable liquids to be stored at 117 South Street, Hopkinton, MA from 10,000 gallons diesel fuel to 16,000 gallons diesel fuel. Mr. Clark read the abutter's list and noted that there were no abutters present.

VOTE: Mr. Clark entertained a motion to open the public hearing. **So moved Mrs. Pratt. Second Mr. Sonnett. Unanimously voted.**

Kevin Biernacki, EMC Corporation, explained the request. Mr. Clark reviewed a letter from Lt. P. Kenneth Clark, Operations Officer for the Fire Department, stating that he reviewed the application and said that the new storage tank is needed to maintain business continuity during prolonged power outages and extended severe weather conditions. He placed the following restriction: *Permit shall be required from the Fire Department for tank installation, Permit paperwork shall include all pertinent specifications and information regarding the tank. Motor vehicle protection shall be installed as needed and the tank shall be designed, installed and tested per 527 CMR 9.00 and 14.00.*

There were no further comments at this time.

VOTE: Mr. Clark entertained a motion to close the public hearing. **So moved Mr. Sonnett Second Mr. Holden. Unanimously voted.**

VOTE: Mr. Clark entertained a motion to grant the request to amend the current license for the aboveground storage of flammable liquids to be stored at 117 South Street, Hopkinton, MA from 10,000 gallons diesel fuel to 16,000 gallons diesel fuel with the restriction per the Hopkinton Fire Department as follows: *Permit shall be required from the Fire Department for tank installation. Permit paperwork shall include all pertinent specifications and information regarding the tank. Motor vehicle protection shall be installed as needed and the tank shall be designed, installed and tested per 527 CMR 9.00 and 14.00.* **So moved Mrs. Pratt. Second Mr. Sonnett. Unanimously voted.**

EMC Flammable Liquids Storage (171 South Street)

7:10 p.m. Mr. Clark read the public hearing notice on the application of Kevin Biernacki for EMC Corporation, 228 South Street, Hopkinton, MA to amend the current license for the aboveground storage of flammable liquids to be stored at 171 South Street, Hopkinton, MA from 4,000 gallons diesel fuel to 16,000 gallons diesel fuel. Mr. Clark read the abutter's list and noted that there were no abutters present.

VOTE: Mr. Clark entertained a motion to open the public hearing. **So moved Mrs. Pratt. Second Mr. Nelson. Unanimously voted.**

Kevin Biernacki, EMC Corporation, explained the request. Mr. Clark reviewed a letter submitted by Lt. P. Kenneth Clark, Operations Officer for the Fire Department, about the application which said that the new storage tank is needed to maintain business continuity during prolonged power outages and extended severe weather conditions. Lt. Clark placed the following restriction: *Permit shall be required from the Fire Department for tank installation. Permit paperwork shall include all pertinent specifications and information regarding the tank. Motor vehicle protection shall be installed as needed and the tank shall be designed, installed and tested per 527 CMR 9.00 and 14.00.*

There were no further comments at this time.

VOTE: Mr. Clark entertained a motion to close the public hearing. **So moved Mrs. Pratt. Second Mr. Nelson. Unanimously voted.**

VOTE: Mr. Clark entertained a motion to grant the request to amend the current license for the aboveground storage of flammable liquids to be stored at 171 South Street, Hopkinton, MA from 4,000 gallons diesel fuel to 16,000 gallons diesel fuel with the restriction per the Hopkinton Fire Department as follows: *Permit shall be required from the Fire Department for tank installation. Permit paperwork shall include all pertinent specifications and information regarding the tank. Motor vehicle protection shall be installed as needed and the tank shall be designed, installed and tested per 527 CMR 9.00 and 14.00.* **So moved Mr. Nelson. Second Mrs. Pratt. Unanimously voted.**

O'Toole's North Pond House (alteration of premises)

7:15 p.m. Mr. Clark read a public hearing notice on the application of Galway Five O's Ltd, d/b/a O'Toole's North Pond House to alter the premises to add a function dining room on the 2nd floor with a capacity of 40 persons at 25 Hayward Street, Hopkinton, MA. Mr. Clark read the abutter's list and noted that there were no abutters present.

VOTE: Mr. Clark entertained a motion to open the public hearing. **So moved Mr. Holden. Second Mr. Nelson. Unanimously voted.**

Mr. O'Toole, President of Galway Five O's Ltd, d/b/a O'Toole's North Pond House, explained the request and showed the seating plan of the new room. He said that the function room would be available during normal business hours. Mrs. Pratt asked about the need of an elevator in the building. Mr. Shepard said that the establishment became exempt from having to install an elevator six years ago, which is still in place. Mr. Shepard stated a concern of patrons carrying alcohol outside on the platform. Ms. O'Toole responded that the door leading to the outside platform is a fire escape, so patrons would not be allowed on the platform for the purpose of leaving the establishment, other than for the purpose of using it as a fire escape. Mr. Clark noted that Police Chief Irvin has no comments or objections to the Board's approval of this request. There were no other comments at this time.

VOTE: Mr. Clark entertained a motion to close the public hearing. **So moved Mrs. Pratt. Second Mr. Sonnett. Unanimously voted.**

VOTE: Mr. Clark entertained a motion to approve the application to alter the premises of O'Toole's North Pond House located at 25 Hayward Street with the provision that proper steps are taken so that alcohol is not permitted on the second floor deck. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

Water/Sewer Main Extension Policy: Eric Carty, Water/Sewer Manager (see attachment)

Mr. Clark explained that the Water & Sewer Extension Policy needs to be updated and that Mr. Carty would begin the process by giving an overview of the present policy. Mr. Carty gave an update of the Water & Sewer Extension Policies including the history of when they were established, restrictions, current and future projects. The Board had a discussion regarding the implementation of the Water & Sewer Commissioners and about the Town's water supply needs. Mr. Clark proposed a schedule in reviewing the policy, which the Board agreed to. The Selectmen's meeting schedule is as follows: 1. February 24: Mr. Carty will present a revised Water & Sewer Extension Policy with recommendations; March 30: A public hearing would be held, with the BoS will vote on the proposed policy amendments at the April 13 Selectmen's meeting.

Sewer Betterment (92 W. Main Street): Eric Carty, Water/Sewer Manager

Mr. Carty explained that the DPW Advisory Committee recommended to the Board of Selectmen to authorize sewer connection of property located at 92 West Main Street once the sewer system became available, which the Board did vote to authorize at their February 15, 2001 Selectmen's meeting. Mr. Clark further explained that Town Counsel had prepared the Order of Sewer Construction and Schedule of Estimated Assessment for the property at 92 West Main Street that needs to be executed by the Board.

VOTE: Mr. Clark entertained a motion to sign the Order of Sewer Construction and Schedule of Estimated Assessment for property at 92 West Main Street. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

Chapter 90 Note: \$80,713 (see attachment)

Mr. Gaucher explained the State Aid Anticipation Note for Chapter 90 for \$80,713 at an interest rate of 1.49% and Mrs. Dwinell recommended that the Board vote to approve signing the Note.

VOTE: Mr. Clark entertained a motion to approve for signature the State Aid Anticipation Note for Chapter 90 for \$80,713. **So moved Mr. Holden. Second Mrs. Pratt. Unanimously voted.**

Affordable Housing Plan Proposal (see attachment)

Mr. Clark gave an overview of a request submitted by the Board of Appeals that there be a plan to accomplish the monitoring and oversight of affordable housing units to low and moderate income families which is required under MGL c.40B. He described the types of programs that presently exist in Town and how they would be overseen as follows: 1.) 40 B units that include Pinecrest Village and Wood Hollow; oversight by the Planning Department, with assistance from the Selectmen's Office, as needed; 2.) Town-created Units (LIP) i.e., EMC House, Fruit Street Property, Local Affordable Housing Task Force projects; oversight by the Planning Department, or CHAPA, depending on the size and complexity of the project; 3.) New Ch. 40 B Comprehensive Permits rental units and ownership; oversight by CHAPA or similar organization under contract with the Town paid for by developers, which would be reviewed and administered by the Planning Department; 4.) New Ch. 40 B Comprehensive Permits ownership units; oversight is same as the rental units; and 5. Housing Authority (rental or senior units) on Davis Road; oversight by the Housing Authority. The Board had a discussion regarding the Planning Department's role in overseeing the program. Mrs. Pratt, Selectmen's liaison to the Affordable Housing Task Force, recommends the approval of the plan as submitted. There were no other comments or questions at this time.

VOTE: Mr. Clark entertained a motion to establish the Affordable Housing Plan recommendations as recommended by Mrs. Pratt. **So moved Mr. Sonnett. Second Mr. Nelson. Unanimously voted.**

Local Initiative Program Application Announcement: John Coolidge, Affordable Housing Task Force

Mr. Coolidge announced that the Local Initiative Program application for the EMC House located at 56 Hayward Street has been approved. Mr. Coolidge gave a brief summary of the Lottery process that would be used in the sale of the EMC House. He said that the Affordable Housing Task Force (AFHTF) would present the details at a future meeting. The Board thanked Mr. Coolidge, Chief Daugherty and other members of the AFHTF for their efforts in preparing the application.

Inter-Committee Revenue Enhancement Dialogue: Finley Perry, Chairman Capital Improvement Committee (See attachment)

Mr. Perry presented a proposal for an Inter-Committee/Board Dialogue on ways to increase income for the Town. He said that the Capital Improvement Committee is sponsoring a forum that will be facilitated by the Voices for Vision Civic Engagement Committee at the Hopkins School Library on January 29th at 7:30 p.m. Mr. Perry gave a brief overview of the format for the “brainstorming” session. Mr. Perry invited the Board of Selectmen’s participation along with various other Boards and Committees. The Board thanked Mr. Perry for his presentation.

TOWN DEPARTMENT SERIES: Human Services (Personnel, Senior Center and Public Library)

Amy Downing, Human Resources Director, gave a PowerPoint Presentation of the Human Resource Department. Cindy Chesmore, Director of the Senior Center, and Carol Walsh, Director of the Public Library, gave an overview of their departments. (See attachments)

Marathon Committee Interviews: (one vacancy; term to 2006): *Kimberly Collins, Brian Cann, Sue O’Keefe*

Mr. Clark explained the interviewing process. He said that after all interviews had been completed, the committee would nominate candidates and cast their vote by ballot, and the candidate with the majority vote would be appointed to the three year term, with the other two terms going to the next candidate with the most votes. He added in the event of a tie, the Board would revote until a candidate received the majority vote.

Each candidate gave an overview of his or her background. The Board had a chance to present their questions. The candidates gave their viewpoints about various issues. Each candidate said that, if appointed, they had the time to serve.

VOTE: Mr. Clark entertained a motion to nominate all candidates: *Kimberly Collins, Brian Cann, and Sue O’Keefe*. **So moved Mr. Sonnett. Second Mr. Nelson. Unanimously voted.**

VOTE: The Board cast their vote by ballot as follows:

1. **Kimberly Collins:** Mrs. Pratt and Mr. Nelson
2. **Sue O’Keefe:** Mr. Clark, Mr. Holden, and Mr. Sonnett

Ms. O’Keefe received the majority votes and was appointed to the Marathon Committee for a term to 2006.

Youth Commission Interviews: (three (3) vacancies: terms to 2006): *Michael Torosian, Sr., Amy DeVeuve*

Mr. Clark explained the voting process. He noted that candidate, Amy DeVeuve, was unable to attend this evening's meeting. Mr. Torosian gave an overview of his background. The Board had a chance to present their questions. Mr. Torosian gave his viewpoints about various issues including performing community service and how he would find activities for the youth to help keep them occupied. Mr. Torosian said that, if appointed, he had the time to serve.

VOTE: Mr. Clark entertained a motion to appoint *Michael Torosian* to the Youth Commission for a term to 2006. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

Board of Health: Legal Assistance

Mr. Clark gave a recap of the Board of Selectmen's (BoS) December 16, 2003 meeting, which the Board of Selectmen authorized five hours of Town Counsel, Attorney Faiman, to provide legal advice to the Board of Health (BoH). The BoS asked Attorney Faiman to update them about his opinion on Condition 16, which is important to the Board of Health, and if the condition had or had not been met. The BoS asked Attorney Faiman to advise them if he needed outside expert legal advice, as the BoH had requested. Mr. Clark referred to a letter dated December 16, 2003 to the BoS (see attachment A), which the BoH had been given a copy. Attorney Faiman indicated that he has conducted considerable research relative to the issues involving the Site Assignment issued by the BoH, and he concludes that E.L. Harvey had met Condition 16. Mr. Clark paraphrased Attorney Faiman's letter as follows: "I (Attorney Faiman) am confident that with that assistance, I can provide adequate representation to the Town and its various boards in this matter." Mr. Clark added that Attorney Faiman also stated that he has "expended far more than the five hours allotted for this matter". Mr. Clark commented that it seems clear to him that Attorney Faiman is stating that he doesn't need a legal expert to assist him in deliberating these issues.

Mr. Clark referred to another letter dated December 31, 2003 to the BoH (see attachment B) in which Attorney Faiman provided feedback on issues that the BoH had discussed with him. Attorney Faiman stated that initially the BoH thought that the comprehensive site characterization referred to in Condition 16 had not been met by E. L. Harvey. Attorney Faiman indicates in his letter to the BoH that he reviewed the requirements conducted by E. L. Harvey and that he has determined that E.L. Harvey has complied with each of the requirements.

Secondly, Mr. Clark said that in regards to the second landfill that had been previously utilized by the Town of Westboro, the BoH indicated that they had no previous knowledge of the existence of this landfill. Mr. Clark referred to a letter dated December 22, 2003 from the Department of Environmental Protection regarding the CRWSC, Westboro and Hopkinton E.L. Harvey Landfill (see attachment C). Mr. Clark referred to Attorney Faiman's letter to the BoH dated December 31, 2003 and paraphrased the letter as follows: "In any event, it would appear that this second landfill was the subject of prior proceedings and has been closed in accordance with the requirements of the DEP. The Board (BoH) had notice of those proceedings since copies of correspondence relevant thereto were provided to it. A copy of that correspondence is enclosed herewith and marked "B" (see attachment). Future monitoring will be required by DEP to disclose whether additional procedures must be undertaken by Harvey to prevent contamination."

In regards to the third issue relative to a change in the description of the site specifically, a small triangular parcel at the most northerly corner of the site, Mr. Clark said that Attorney Faiman reviewed this issue and indicated in his letter dated December 2003, as follows: "From his perspective, it is not apparent what significance the inclusion or exclusion of this parcel would have on the site assignment. While it is always preferable to have all documents perfectly in order, an error of this magnitude would appear to me to be de minimus and of no material effect."

Lastly, Mr. Clark accounted that the BoH had concerns that E.L. Harvey used premises owned by the MDC/DCR pursuant to a "license" rather than a "lease", and that initially the premises in question are not within the site assigned area. Mr. Clark indicated in the letter to the BoH dated December 31, 2003 by Attorney Faiman that he researched this issue with Earth Tech consultants, and that they advised him that they had no indication that the DCR land was intended to be used for any of the purposes of the site assignment", and in his opinion, "the issues relating to the use of the DCR land are not relevant to the concerns of the Board". Lastly, Mr. Clark summarized by paraphrasing from Attorney Faiman's letter as follows: "In summary, therefore, Earth Tech has indicated that in its opinion, the proposed examination and characterization of the site in light of past, present and proposed uses, is adequate and appropriate. It is believed that (E.L.) Harvey has established a proper basis for the characterization of the site and, provided (E.L.) Harvey conducts the additional round of tests of the monitoring wells and installs the monitoring wells at the second landfill as indicated by the DEP letter, a firm basis shall have been established to develop any specific recommendations concerning the facility as might become necessary."

In lieu of the two letters aforementioned, Mr. Clark asked Ms. Peters to explain the BoH's latest request for legal assistance.

Ms. Peters replied that the BoH's legal assistance request has not changed from needing an environmental lawyer. She added that in regards to the site characterization report, it confirms that the BoH needs an expert in the solid waste area. She commented that she had not yet had a chance to review the letters from Attorney Faiman, nor have the other members of the BoH read them, as the BoH just received the letters today at 3:30 p.m.

She commented that it is surprising that Earth Tech changed its opinion; and in regards to Condition 16, Ms. Peters said that had the BoH been aware that there was a second landfill, they would have had a well placed there. Ms. Peters said that she is not in the position to respond to the letter point by point, without studying the information further. She commented that Attorney Faiman has a lack of knowledge of solid waste regulations, which concerns her about Attorney Faiman making any decisions and opinions in this area. She added that she realizes that since the time Attorney Faiman met with Mr. Richmond (attorney for E.L. Harvey) and talked with Earth Tech, and that Earth Tech has become unavailable to her since Christmas (2003) and their opinions have changed. She stated that the BoH would still like to have advice from someone who is knowledgeable in this (solid waste) area.

Mr. Clark asked if the BoS had any questions or comments.

Mrs. Pratt commented about the DEP not monitoring this area in years and questioned if the BoS can depend on what DEP is telling them today. She added that if an expert had looked at this issue six months ago, maybe this issue would be solved today. Mrs. Pratt referred to a citizen's petition to allow the BoH to obtain a legal expert and that she feels that they are the voters and should give the BoH what they request.

Dr. Hersh asked to speak at this time. He agrees that the BoH should not do anything lightly. He pointed out that E.L. Harvey believes the BoH's request is reasonable. He added that if the BoH could obtain a specialist, this issue could be "put to rest". He believes that the BoH's request is reasonable, but the BoS denying the request is irresponsible. He asked if it is standard procedure for letters concerning the BoH to go to the press before members of the BoH have had the opportunity to read them. He commented that he believes it is inappropriate for the BoS to read the letters out before all BoH members have prepared themselves for the meeting.

Mr. Clark responded that Attorney Faiman's letter was delivered to the BoS Monday morning on January 5, 2004, and that Mr. Kozak made a copy of the letter for Mr. Ryder, Public Health Administrator. He added that the second letter to Nancy Peters from Attorney Faiman arrived at the Town Hall this afternoon at 3:00

p.m. He said that the letters are public information and that the BoS were in the “same boat” as the BoH in reviewing the letters. In lieu of this, Mr. Clark said that he asked Mr. Kozak to ask Mr. Ryder if the BoH wanted to postpone this discussion until everyone had a chance to review the letters, but that Mr. Ryder didn’t want to pursue postponing the request for an expert in solid waste.

Mr. deMont asked “what boat are we all in?”

Mr. Clark responded, the letters being dispersed to both Boards at the same time.

Mr. deMont made a comment about “separation of powers”. He also commented that Mr. Sonnett and Mrs. Pratt have attended BoH meetings, but that the other members have no first hand knowledge of what is going on. He said that he doesn’t know why the BoS is involved with the BoH’s business, as they are an independent Board with an independent budget.

Mr. Clark responded in regards to the BoS’s involvement with the BoH’s business is that the BoH has made a request to the BoS, and asked Mr. deMont to please address the issue on the agenda, which is a request for legal assistance. Mr. Clark commented that the BoS has not received any letter from the BoH requesting any constitutional questions, but that the business at hand is to address the BoH’s legal assistance request for up to \$5,000 with Kopelman and Paige.

When Ms. Peters asked to whom the legal assistance request is for, Mr. Clark responded that the BoH’s legal assistance is for Kopelman and Paige and is signed by Public Health Administrator, Tom Ryder. Ms. Peters said that Mr. Ryder might have written that law firm on the legal assistance request, as the BoH was looking at several different firms with expertise in the area of solid waste, and that Kopelman and Paige was one of those firms. She added that that was fine.

Mr. Clark asked the members of the BoS if they had any comments or questions.

Mr. Sonnett said that he has attended virtually all of the BoH meetings as the BoS liaison to the BoH. In regards to the statement made by Ms. Peters about Earth Tech changing their opinion, he commented that he has not seen any change in Earth Tech’s position on the site assignment or anything else. He added that Attorney Faiman has been very thorough in his function as the attorney in this process. He said that Attorney Faiman attended the 35 hours of the public hearing and crafted Condition 16. He believes that Attorney Faiman’s experience is very relevant. Mr. Sonnett commented that he would have difficulty supporting the legal request as submitted.

Mr. Holden agreed with Mr. Sonnett, as he too attended the public hearings and also believes that Attorney Faiman has the experience from attending the 35 hours at the public hearing.

Mr. Nelson said that he doesn’t have an issue with a legal assistance coming before the Board, but that he doesn’t understand why the BoH thinks that Attorney Faiman would be an incompetent counselor. He asked the BoH to explain this.

Dr. Hersh presented the example of if a patient had a general ailment he would consult a general practitioner, versus consulting a “brain specialist” if a person has a brain tumor. He commented that with all due respect to Attorney Faiman, he doesn’t know the field and he is not a specialist in the area of waste disposal issue. He added that Attorney Faiman doesn’t know his limitation and for the BoH to have such a crucial issue before them, they need to get advice that specializes in this field. He said that by not doing this means that the BoH is not doing the job as representatives to the public. He said that this is the reason why the BoH is requesting a specialist. He commented that the BoS has an agenda and Mr. Faiman is trying to support that agenda. Dr. Hersh said that he believes that the BoH is being fiscally responsible and that it is appropriate to

put a limit (financial) on this request. He added that this is a crucial issue, and he doesn't see the downside to obtaining a specialist. He commented that the BoH wants to do the right thing for the right reason. He reiterated that not allowing the BoH to get expert advice is inappropriate.

Mr. Nelson responded that a patient should see a general practitioner first who would then call in a specialist if he sees that it is necessary. He added that Attorney Faiman acknowledges that he is not a specialist in this area, but could access one, if he deems it necessary.

Mr. deMont commented that he too is an attorney and has the "utmost" respect for Attorney Faiman, but pointed out how necessary it is for the BoH to consult a specialist who has the technical background. He believes that Attorney Faiman doesn't have sufficient expertise. He added that he doubts if Attorney Faiman would be insulted if he is referred to as not being an expert in environmental matters. As an attorney, he said that it appears to be a conflict of interest and that as Attorney Faiman works for the BoS and that if the BoS doesn't like him, then he's gone. Mr. deMont referred to Attorney Faiman's letters as being "equivocal" and "do not contain a lot of technical opinions". He said that the BoH is looking for someone who can write a letter who has "intestinal fortitude" to say what it is. He believes that the BoS is putting Attorney Faiman on the spot. He said that this (discussion) is too much of a "waste of time" and that this is interference of this Board (BoH) and is hurting the process. He added that this is not the BoS job.

Mr. Clark responded to Mr. deMont to address the issue of the legal assistance request by the BoH, and said that it is inappropriate to question Attorney Faiman's integrity.

Mr. Clark asked for a motion.

Mrs. Pratt commented that she is very upset and believes that the Harvey's want what is right. She said that the BoS has a petition by 250 taxpayers requesting the BoS to allow the BoH to seek an environmental lawyer, and doesn't want to be seen as one selectman that stands in the way of a solution.

Mr. Clark requested to move forward on the (legal assistance) request.

Mr. deMont made a point of order. He referred to the BoH's request on the agenda and made a request in conjunction with that request. He said that the BoH would like clarification of jurisdiction between Boards and questioned separation of powers. He said that the BoS has no authority to restrict the BoH's ability to do their job, and that the BoS is interfering with their due process. He requested a legal opinion that would clarify the various roles in town government.

Mr. Clark commented that Mr. deMont is trying to include another agenda item for discussion, and that the BoS can only discuss what is submitted, which is the legal assistance request. Mr. Clark added that the BoH submitted nothing to the BoS about constitutional law or anything else. He said that if the BoH is having an issue with this then they have an issue with their own staff because nothing has been presented to the BoS regarding constitutional law. He asked to please focus and get back on the issue of the legal assistance request, which is for up to \$5,000 with Kopelman and Paige. He added that the BoS has no information from the Chairman of the BoH or from the Public Health Administrator of any other issues of discussion other than the legal assistance request. He suggested going back and getting their house in order. He asked Ms. Peters to please explain the BoH's request to Vice-Chairman deMont.

Ms. Peters said that the BoH asked for a person who is experienced in solid waste. She believes that the BoH could have probably included a part of what Mr. deMont is asking.

Mr. Clark asked the question, "could have"?

Ms. Peters responded that the BoH has several questions, but didn't outline all of them in their request. She added that they didn't specify all questions when they asked for the legal assistance, as they are too numerous. She said that she would also like to respond to a comment made by Mr. Sonnett about the need for expertise. She said that if Attorney Faiman had the expertise he wouldn't have offered the opinion that he did. She referred to a memo from Earth Tech dated October 5, 2003, which has since changed.

Mr. Clark recognized resident, Beth Herlihy.

Ms. Herlihy asked the BoS if they are going to recognize the voice of 250 residents who submitted a petition to allow the Board of Health to obtain an environmental lawyer?

Mr. Clark commented that the BoS is very concerned about the Town's finances, the amount of legal expense, as well as the safety and welfare of the community. He added that the BoS has provided legal assistance to the BoH and that Attorney Faiman has responded back to the BoS saying that he would advise if expert advice were required. Mr. Clark seeks a motion.

VOTE: Mrs. Pratt motioned to give the Board of Health what they requested. She commented that Attorney Faiman doesn't represent the Town, but rather the BoS whoever happens to be on the Board at the time.

There is no second to Mrs. Pratt's motion.

Mr. Sonnett commented that the legal assistance request is denied.

Mr. Nelson asked if the BoH could be allowed a certain amount of hours with Town Counsel.

Mr. Clark responded that either the request is approved or not approved.

Mrs. Pratt asked how many times does the BoH have to ask for legal assistance?

Mr. Nelson said that at the Selectmen's December 16, 2003 meeting, the BoS allowed Attorney Faiman and asked if this could be allowed again.

Dr. Hersh said that he believes it to be inappropriate to request Attorney Faiman, as he doesn't have the expertise. He paraphrased Attorney Faiman's letter dated December 16 where Mr. Faiman said that he is not an expert in the area.

Mr. Nelson commented that Attorney Faiman has every capability.

Mr. Kozak commented that the Board of Selectmen amended the legal assistance at the December 16 2003 Selectmen's meeting to authorize legal assistance with Attorney Faiman and to give him authority to seek expert advice if needed.

Mr. Clark said that since there is no second to Mrs. Pratt's motion, he asked the BoH members if they care to change their request to Town Counsel.

The Board of Health discussed this amongst themselves.

Mr. deMont said that the BoH would like the flexibility to go to a lawyer with the technical ability and to give Attorney Faiman the ability to use other legal resources to come up with the answers that the (BoH) is looking for.

Mr. Clark gave the scenarios that the BoH is looking for time with Attorney Faiman and that he could use another expert attorney if he deems it necessary.

Ms. Peters explained that it would be a conflict of interest if Attorney Faiman were to use Attorney Richmond, E.L. Harvey's legal counselor.

Mr. Sonnett said that Attorney Faiman is Town Counsel who is the BoH's attorney as much as the BoS's attorney. Mr. Sonnett said that Attorney Faiman has no agenda and that no members of the BoS have discussed with Earth Tech any of the BoH's dealings other than clarification of billing. He commented that he finds the BoH's innuendos insulting and in poor taste.

Mr. deMont does not agree that the BoH has made any innuendos, but that there is an inherent conflict of interest. He said that he has the utmost respect for Attorney Faiman.

Dr. Hersh commented that the letters from Attorney Faiman are addressed to the BoS only and not even copied to the BoH when the letter is about BoH issues.

Mr. Clark responded that at the Selectmen's December 16, 2003 meeting, the Board asked Attorney Faiman to update them about Condition 16 and that the letter was in response to the BoS's request. He said that when the letter arrived, he asked Mr. Kozak to deliver a copy of the letter to Mr. Ryder, Public Health Administrator. He commented that the BoH is reading too much into this and that there are too many shots taken against Attorney Faiman. He said that he would like to find a common ground between the two boards and would like to authorize the BoS to approve Attorney Faiman to obtain outside legal expert assistance, if needed.

Ms. Peters requested up to \$5,000 for legal consultation and to insure that Attorney Faiman could obtain legal experience in the solid waste area. Ms. Peters also wanted to clarify that Attorney Faiman did not write the decision and that she wrote Condition 16. She added that Attorney Faiman modified it.

Mr. Clark recapped the legal assistance request. Mr. Sonnett asked Ms. Peters to clarify the request. Ms. Peters said that the BoH requests up to \$5,000 from Town Counsel and to allow Attorney Faiman to utilize a specialist in solid waste issues but that he could not use the applicant, E.L. Harvey, as a resource. Mr. Clark disagreed with not being able to use E.L. Harvey as a resource and said that he would need the applicant as a resource.

VOTE: Mr. Clark entertained a motion to authorize the Board of Health to use Town Counsel as a legal resource for up to \$5,000; and to allow Town Counsel to use, if in his opinion he requires additional outside legal expertise, he may contact that legal expert for assistance in his response to the Board of Health. **So moved Mr. Sonnett. Second Mr. Holden. Mr. Clark: yes; Mr. Holden: yes; Mrs. Pratt commented that this legal assistance is a total waste of money and will not vote in favor of it. Mrs. Pratt voted no; Mr. Sonnett: yes; Mr. Nelson: yes. So voted.**

Board of Health: Engineering Funds

Mr. Clark began a discussion regarding the funding of engineering services. He said that all Boards, including the Board of Health (BoH), do not need to seek approval for engineering expenses from the Board of Selectmen (BoS) if they are paying for the services from their own means. He said that the BoH has the option for paying engineering funds as follows: 1. The BoH has a line item that is for engineering activities which is reviewed by the Appropriation Committee and then voted for at Town meeting; 2. There is the option of the BoH to approach the Appropriation Committee to request a reserve fund transfer for more funds to be put into their budget account. (Mr. Clark commented that the BoS will probably have to go to the

Appropriation Committee to request a reserve fund transfer to cover expenses spent already out of the Selectmen's budget.); 3. The BoH has asked why they cannot use the 53E½ account and that there have been letters dated this past December to the BoH from the Town Treasurer, Town Accountant, and Town Counsel that clearly explains why they cannot use the 53E½ account according to State law; 4. An option for all Town Boards is to establish a 53G account during their review process, which was used by the BoH during the E.L. Harvey review process and spent \$46,337 of E.L. Harvey's funds for the review of which \$18,492 goes for engineering support. He explained that this is the reason why the BoH is here tonight; as they are not using those four options. Instead, the BoH previously came to the BoS to request funds for the E.L. Harvey engineering review.

Mr. Clark recounted that the BoS originally approved \$6,000 to \$8,000 for engineering funds and there is now an invoice for \$15,000 from Earth Tech. Mr. Clark said that the BoS asked what was spent for the \$6,000 to \$8,000 and what activities caused the increase to \$15,000, and lastly, at the last December 16, 2003 Selectmen's meeting, the BoH requested to spend an additional \$10,000 more.

Ms. Peters commented that the \$4,000 that was spent on the hearing came out of the 53E ½ account and that there were no objections from anyone at that time.

Mr. Sonnett responded to Ms. Peters by saying that the Town Accountant had addressed that with her and was very specific that it was an error. Mr. Sonnett paraphrased from a letter (see attachment) dated December 24, 2003 from the Town Accountant as follows: "As the prior fiscal year's books are closed, it will not be possible to reclassify the invoices in question. I will be, however, implementing a system of safeguards to prevent this from occurring in the future and would appreciate your staff's cooperation in helping to develop this system. Please inform and train your staff on the proper use of the 53E ½ account. I would be glad to assist in this training and would appreciate the input of you and your staff on this issue. At your request, I would look forward to meeting with you and your staff in the near future to discuss the proper use of the 53E ½ fund."

Ms. Peters said that she did receive this letter from the Town Accountant, but her notes from speaking with Town Counsel, Attorney Faiman, the Town Treasurer and Town Accountant, it was felt that I could use the 53E ½ account. She added that as it turns out, it was in error.

Mr. Sonnett responded that those discussions were probably under the assumption that you had eligible funds under the 53E½ account to cover it.

Mr. deMont questioned how the BoH could determine how much the costs would be unless they have an expert to do the work that needs to be done.

Mr. Clark asked how does the BoH know that they need \$10,000.

Mr. deMont reiterated that it would be difficult to determine how much the cost would be as it might be more than the \$10,000.

Mr. Sonnett said that what was requested is very simple, and that it makes no relevance to the amount of the request. He said that the BoS is requesting what the scope of the work is and what the work actions are. He added that the BoS have a responsibility to spend funds wisely and that they just want to know what the funds are for.

Mr. Clark added that the BoS has a financial responsibility to the Town and that if the BoH were using the \$10,000 from their own budget or if they were requesting the funds from the Appropriation Committee for a reserve fund transfer, then they would not need to be at this meeting.

Mr. Sonnett said that in Mrs. Peters' letter dated January 6, 2004 to the BoS, it provides this information and outlines the plan to use the \$10,000 which was not in the original scope of the work. He said that there probably would be more expenses for private well testing, site characterization, etc. and that Ms. Peters estimates a cost of \$10,000. Mr. Sonnett said that in reading this letter, those items are well within the scope of what Earth Tech was hired for. Mr. Clark asked if Mr. Sonnett would like to present a motion.

VOTE: Mr. Sonnett motioned to continue the use of Earth Tech to evaluate the ground water monitoring flow, to assist the review to identify private well testing, to act as an expert witness with the Board of Appeals and to provide input on site characterization not to exceed \$10,000. **Second Mr. Nelson.** Mrs. Pratt asked if the \$10,000 includes everything for the ongoing Board of Appeals testimony. Ms. Peters replied yes and explained. **Unanimously voted.**

Mr. Clark gave a recap of the expenses totaling \$25,500, which includes the \$15,500 plus tonight's authorization to use another \$10,000. He said that the BoS does not have this money in their budget and that they will have to submit a reserve fund transfer to the Appropriation Committee. He said that if \$25,500 is still not enough for technical services, he suggested that the BoH act as an independent Board, as they wish to be, and go to the Appropriation Committee to request a reserve fund transfer.

Ms. Peters reminded the BoS that the BoH was offered the funds for technical support and that Mr. Sonnett has helped to facilitate this and that she was told not to worry as the services would be made available.

Mr. Clark responded that the BoS has been responsive, but that they are "tapped out". He reiterated that if the BoH wants to be an independent Board that they need to approach the Appropriation Committee for a reserve fund transfer.

Mrs. Pratt asked if the ZBA would request funds from their 53E ½ or 53G accounts. Ms. Peters responded no, as it's within the scope of the BoH budget.

There were no further comments or questions at this time.

Legal Assistance request: Planning Board

Mr. Clark read out a legal assistance request by the Planning Board for advice from Town Counsel relative to the issue of a developer of the Wildwood Glen subdivision requesting that a Title 5 Nitrogen Loading Restriction and Easement be placed on the open space, which is owned by the Town of Hopkinton. The Planning Board voted to approve the assessment pending review of the easement language of Town Counsel. The request is for three hours at an hourly rate of \$90 for a total of \$270. The request would be funded from the Selectmen's Account #10.

VOTE: Mr. Clark entertained a motion to approve the legal assistance request from the Planning Board for advice for three hours as submitted, relative to the issue of the developer of the Wildwood Glen subdivision. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

Ambulance gifts

VOTE: Mr. Clark entertained a motion to accept the gifts into the Ambulance Gift Account memory of David Hayward from Mary McCormack for \$100; Paul & Mary Ann Lorentzen for \$50; Rose Leveille for \$25; Helen Hamilton for \$20; Richard & Doris Kumlin for \$25; James & Judith Keefe for \$50; Ann Click for \$25; Case Management Systems, Inc. for \$50; Ted & Carol Gassett for \$25; Chuck & Sue Hill for \$50;

Kimball Sand Co., Inc. and Kimball Trucking, Inc. for \$50. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

VOTE: Mr. Clark entertained a motion to accept an anonymous gift into the Ambulance Gift Account for \$100 in memory of John DeStefano. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

VOTE: Mr. Clark entertained a motion to accept gifts into the Ambulance Gift Account in memory of Stephen Deletti from: Paul & Ruth Phipps: \$25; Robert & Suzanne Colella: \$15; Virginia Larkin, Inc.: \$20; Stephen Deletti family: \$106; Friends of Jeanette Murphy at Kimball Sand Co., Inc.: \$105. **So moved Mr. Sonnett. Second Mr. Holden. Unanimously voted.**

One-Day Liquor License request: St. John the Evangelist Church, 2/6; Annual Appreciation Dinner

Mr. Clark read a letter of request from Rev. James Degnan, Pastor of St. John the Evangelist Church, for a one-day all alcoholic license for their annual Appreciation Dinner scheduled in the Parish Center on Friday, February 6, 2004 from 6:00 p.m. to 11:30 p.m. Mr. Clark noted that Police Chief Irvin has no concerns or comments.

VOTE: Mr. Clark entertained a motion to grant the request from Rev. Degnan of St. John the Evangelist Church for a one-day alcoholic license on Friday, February 6, 2003 from 6-11:30 p.m. **So moved Mr. Sonnett. Second Mr. Holden. Unanimously voted.**

Accept Capital Improvement Committee resignation: Jack Speranza

Mr. Clark read a letter of resignation from Jack Speranza from the Capital Improvement Committee effective immediately, due to his appointment on the Conservation Commission. Mr. Speranza explained in his letter that the Conservation Commission's bylaw prohibits members from serving in any other official capacity within the Town.

VOTE: Mr. Clark entertained a motion to accept with regret Jack Speranza's resignation from the Capital Improvement Committee effective immediately. **So moved Mr. Sonnett. Second Mr. Holden. Unanimously voted.** The Board requests to send a letter of thanks to Mr. Speranza for his service on the Capital Improvement Committee.

Mr. Clark announced a vacancy on the Capital Improvement Committee for a term to 2008 and requested interested residents to send a letter of interest to the Selectmen's Office.

Accept Cable Committee resignation: Jim Cozzens

Mr. Clark read a letter of resignation from Jim Cozzens from the Cable Committee effective January 1, 2004.

VOTE: Mr. Clark entertained a motion to accept with regret Jim Cozzens's resignation from the Cable Committee effective January 1, 2004. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.** The Board requests to send a letter of thanks to Mr. Cozzens's for his service on the Cable Committee.

Mr. Clark announced a vacancy on the Cable Committee for a term to 2005 and requested interested residents to send a letter of interest to the Selectmen's Office.

Regional Housing Task Force Appointments (terms to 2004): Mary Harrington and Thomas Bond

Mr. Clark read out a letter from Mary Harrington, Chairman of the Affordable Housing Task Force (AFHTF), about an invitation to join a Regional Housing Task Force consisting of members from Ashland, Southboro, Holliston, Hopkinton, Medway and Sherborn. Mrs. Harrington explained that the AFHTF submit the names of members, Mary Harrington and Thomas Bond for the Board's consideration to be appointed to the Regional Housing Task Force.

VOTE: Mr. Clark entertained a motion to appoint Mary Harrington and Thomas Bond as the Town's representatives on the Regional Housing Task Force for a term to 2004. **So moved Mr. Sonnett. Second Mr. Holden. Mr. Clark: yes; Mr. Holden; yes; Mrs. Pratt: abstained from the vote; Mr. Sonnett: yes; Mr. Nelson: yes. So voted.**

Mezitt Agricultural Corporation: Sale of Front Street Property to Summit Realty Trust

Mr. Clark read a letter from Douglas Resnick, Attorney for the Mezitt Agricultural Corporation, R. Wayne Mezitt, and Roger N. Mezitt, in connection with the sale of their property off Front Street in Hopkinton, MA to Summit Realty Trust. The Purchase and Sale Agreement is in the amount of \$500,000 and the Buyer intends to develop this property as two residential lots. The letter explains that in accordance with the requirements of MA Gen. Laws. Ch. 61A, §14, the Town must be notified of the landowner's intention to sell this property for a non-agricultural use so that it can be determined whether or not to exercise its Right of First Refusal as provided in the statute. Mr. Clark explained that the Planning Board, Conservation Commission, Open Space Preservation Commission and School Committee have been notified by the Selectmen's Office requesting their comments and recommendations as to whether they anticipate a potential municipal or open space use for the land. He added that the Board would schedule a public hearing at a future Selectmen's meeting once all the necessary information has been received.

Selectmen's Future Agenda

Mr. Clark reviewed the Selectmen's future agenda list including the Quarterly meeting scheduled on 1/20/04.

Other:

Mrs. Pratt commented about potential affordable housing condominium units planned to be built on the Bird property in Holliston, and recommended writing letters to the Town of Holliston's Board of Appeals to state their concerns about this effort. Mr. Clark said that before the Board addresses this issue, he recommends obtaining more information from the Town of Holliston.

Public Meeting Adjourned

10:45 p.m. VOTE: Mr. Clark entertained a motion to adjourn the public meeting. **So moved Mr. Sonnett. Second Mrs. Pratt. Unanimously voted.**

Respectfully submitted,
Geri Holland
Executive Assistant

Date Approved: