



SELECTMEN'S MEETING
MARCH 18, 1997

The Board of Selectmen held their regular meeting on Tuesday, March 18, 1997 at 7:30 P.M. Present were Chairman Nancy Tavernier, F. Dore' Hunter, Wayne Friedrichs, Herman Kabakoff, Town Manager Don Johnson and Assistant Town Manager John Murray. William Mullin was not present. William Mullin is on an extended business trip.

{The meeting was televised by cable}.

CITIZENS CONCERNS

None expressed.

PUBLIC HEARINGS AND APPOINTMENTS

AMENDMENT TRAFFIC RULES AND ORDER

CENTRAL AND ELM STREET

Presently there is an existing yield sign located on Elm Street. It has been proposed to add a stop sign at this location. An amendment from the existing traffic rules and orders need to be voted by the Board in order to install this stop sign. HERMAN KABAKOFF - Move to approve. WAYNE FRIEDRICHS - Second. UNANIMOUS VOTE.

NEW LONDON STYLE PIZZA

CHANGE OF LOCATION

New London Style Pizza, 11 Spruce Street, seeks a change of location Beer and Wine liquor license as a Common Victualler License to 555 Mass. Ave. This hearing was scheduled prior to the site plan hearing which is scheduled for April 1, 1997. Therefore, the Board opened the hearing and will take this under advisement until the April 1, 1997 meeting. Mr. Nicolas Bottos was present to discuss this requested change of location. Mr. Bottos stated that it will be the same operation as before, serving only two (2) drinks to any one person and only with the purchase of food. Mr. Bottos stated that he has held this Beer and Wine License for 10 years and has had no problems. DORE' HUNTER - Move to take Liquor License transfer from 11 Spruce Street to 555 Mass. Ave. under advisement. HERMAN KABAKOFF - Second. UNANIMOUS VOTE.

SELECTMEN'S BUSINESS

JENKS FUND

Nancy stated that the applications have been submitted by the Board and that they need to be reviewed by a Board member for recommendations for disbursement. The available balance is \$1,386.00 and the total applications reach \$2,800. Herman volunteered to review the applications and will submit his recommendations for the next Board meeting, April 1, 1997.

ASSABET RIVER RAIL TRAIL

The members of the Assabet River Rail Trail are holding a public meeting, March 20th and have asked that a member of the Board of Selectmen attend. The public hearing is being held to answer any questions that abutters and citizens may have. Wayne stated that he might be able to attend. Nancy stated that if Wayne was unable to do it then she would attend.

TOWN MEETING DISCUSSION

Nancy encouraged Board members to get Don a list of items needed for Town Meeting presentation.

MORRISON PROPERTY

Don stated that he met with Will Hill, Rep. Resor, Sen. Durand, Attorney, Rep. from Trudy Cox's office to ask for any state monies available for the purchase of the Morrison property. Don was told that our project would be weighed against other projects from other towns. Don was also told that if we were to get a grant we could not use it to enhance our offer.

RECREATION

The Board commented on the fine job with respect to the "White Paper", developed for North Acton Recreation. The Board questioned whether they should consider a vision statement. The Board stated that they would like to wait until Bill returns. Herman also stated that he would like to reactivate the Recreation Commission by stating that there are openings for volunteers.

SPECIAL ELECTION

Nancy asked staff to put together some dates for a possible special election.

EARTH DAY BANNER REQUEST

A letter was received from Denise Schwartz, Treasurer of the '97 Earth Day Committee, seeking permission for banners to be located at the Transfer Station, Sagoff property, Arboretum and Edwards Square. The Board discussed these locations and stated that some areas might pose a distraction. The Board also questioned what size banners and wondered whether they were really signs. This request is not within the scope of the banner policy and the Board stated that a lot of time was spent on the policy and that we should encourage requests to fall within the policy. The policy does allow four (4) - A-Frame type signs or banners hung across the roadway at two (2) specific locations. The Board stated that more information is needed regarding the size of the banners. John Murray was asked to telephone Ms. Schwartz to find out what size banners she planned on using. John left the meeting and called Ms. Schwartz and returned to report that the banner sizes are as follows: one (1) 9' X 2', one (1) 5' X 3', and two (2) 2' X 3'. Ms. Schwartz also stated that they hoped to generate enough money this year to purchase a banner that will hang over the road for next year to eliminate the need for this approval next year. All Board members agreed that placing a sign at the Arboretum was acceptable and the Committee should speak with Dick Howe regarding the Transfer Station sign. The Board also stated that the Sagoff Property is private property. The Board stated they would recommend the 9' X 2' sign be placed at the Arboretum, the 5' X 3' sign at the Sagoff property and the 2' X 3' at Edward's Square and the Transfer Station. WAYNE FRIEDRICHS - Move to approve the 2' X 3' sign to be displayed at Edwards Square beginning after town meeting, HERMAN KABAKOFF - Second. 3 -1 WITH DORE' ABSTAINING. MOTION PASSES.

ACTON 2001

At the last 2001 meeting an agreement was met between all Boards for proposed funding for capital planning for the next five (5) years. The proposed capital funding discussed includes the possibility of School and Library Expansion, Sewers, Morrison Land, and Police and Fire Stations. The Board also agreed to use this 5-year plan as a model. The Board also stated that they did not advocate for any proposed projects, stating that ultimately the citizens will be the decision makers.

GIRL SCOUT REQUEST

Members of the Girl Scout Troop 2015 are seeking permission to sell Girl Scout Cookies at the South Acton Train Station during the week of April 14th. The sale hours will be between 3:30 PM to 6:30 PM. and hopefully only for one or two days depending on sales. In keeping Girl Scout tradition, two adults will be present. DORE' HUNTER - Move to approve. HERMAN KABAKOFF - Second. UNANIMOUS VOTE.

BOSTON EDISON

Boston Edison has submitted an internal review conducted by them to the Board of Selectmen. Edison has stated that they have decided to give the Town a \$5,000 credit to make up for losses incurred by residents during the December storm. Boston Edison also stated that their

automated system is up and running and available to all residents. The Board questioned the outcome of the citizens petition that was filed at the Department of Public Utilities (DPU) by the citizens asking for an investigation. It was stated that nothing has been received from the D.P.U. Some Board members expressed their displeasure of the \$5,000 energy credit stating that it was not enough.

CONSENT AGENDA

DORE' HUNTER - Move to accept the consent calendar as printed. WAYNE FRIEDRICHS - Second. UNANIMOUS VOTE.

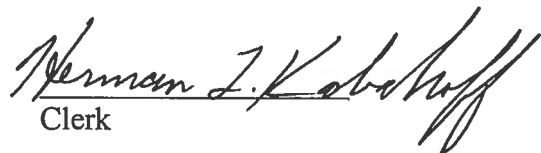
TOWN MANAGERS REPORT

MEMORIAL LIBRARY EXPANSION

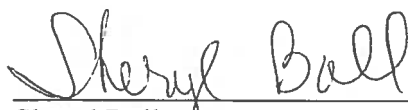
The Board of Selectmen received minutes from the Historic District Commission (HDC) noting some conflicting issues regarding the certificate of appropriateness issued for the expansion of the Acton Memorial Library. Don, Ann Forbes, Dean Charter, Nancy Tavernier and Wanda Null met earlier today and resolved the HDC issues. A legal notice was placed in the Beacon for a public hearing on April 3, 1997. The HDC evaluated the property from two vantage points due to our need for a conceptual approval last year which Don did not agree with. Time was limited due to the deadlines imposed for the grant application. The site plans were not ready. If the HDC did not do this preliminary review the Library would have missed the grant application deadline. The Board thanked the HDC for it's fast work and the HDC thanked the Board for meeting to resolve these issues in a timely manner.

The Board adjourned regular session at 9:10 PM.

WAYNE FRIEDRICHS - Move to go into executive session for the purpose of discussing potential litigation and real property. DORE' HUNTER - Second. All Ayes.


Clerk

Date


Sheryl Ball
Recording Secretary
3_18_97.DOC

Minutes of the
March 18, 1997
NESWC Board of Directors Meeting

This meeting of the NESWC Board of Directors was called to order at 12:05 after it was determined that a quorum was present. Those in attendance then or who joined the meeting later were:

John Murray, Acton	David Cressman, Tewksbury
Robert McQuade, Andover	Glen Fratto, Westford
Donald Marquis, Arlington	Hal Schreiber, Westford
Joseph Loyacano, Arlington	C. A. Stepnitz, Westford
Melvin Kleckner, Belmont	Michael Caira, Wilmington
Peter Castanino, Belmont	Robert Palmer, Wilmington
Teresa H. DeBenedictis, Carlisle	Edward Gilman Barker, Winchester
George Woodbury, Lexington	Ruth Ellen Fitch, Palmer & Dodge
Peter Johnson-Staub, Lexington	Steven M. Rothstein, Executive Director
Robert Moroney, Chr., Manchester	Shawn Worster, Deputy Executive Director
Robert Halpin, North Andover	Mary DeLai, Senior Project Manager
Richard Carnevale, Peabody	Lisa Gagnon, Executive Assistant

Approval of the February 25, 1997 minutes

Mr. McQuade made a motion, seconded by Mr. Loyacano, to approve the minutes of the February 25, 1997 NESWC Board Meeting. The motion passed unanimously.

The Board agreed to discuss only the items on the agenda that were not bolded and underlined with the exception of 5(b).

Status of Host Community Issues

Mr. Rothstein said that we sent the letter as the Board authorized last month. A meeting has been set up with North Andover, Wheelabrator, NESWC, and a third party mediator for March 24. Mr. Halpin said that while Mr. Rothstein has communicated NESWC's position well, he is concerned about the rigidity of the direction. He said that if Mr. Rothstein has to leave as soon as NESWC is asked to share a cost, then the process will not be very constructive. North Andover has agreed to pay for the services of the mediator, and Wheelabrator has offered to pick up a share of the expense. Mr. Halpin said that Wheelabrator will probably ask NESWC to pick up part of the cost as well. Mr. Halpin said that he hoped that there would be a willingness to remain through the first session even if NESWC is asked to pay for something. Mr. Murray said that Wheelabrator has already implied that NESWC should pay for part of the mediation. Mr. Murray moved that NESWC should not pay for any costs. Mr. Fratto seconded the motion. Mr. Rothstein said that, as point of information, NESWC has already paid Palmer & Dodge some \$10,000 in legal costs in conjunction with this issue. Mr. Kleckner said that Mr. Rothstein should just say no, not walk out of the room. Mr. Woodbury said that we may come to some amicable agreement and does not understand why we would not consider sharing some of the expenses. He said that he is not sure we should have a motion that is so strong. Mr. Murray said

that we could always change our minds later. He said that North Andover has not asked us to share costs, Wheelabrator has. The motion passed unanimously.

Energy Agreement and Deregulation

Mr. Rothstein said that when we signed the Power Purchase Settlement Agreement in 1994, we agreed that we would not go back to New England Power again to change the agreement. About a month ago, New England Power announced that it would be selling off its power plants and power purchase agreements. Mr. Rothstein said that after rereading our agreement, he discovered that NEP cannot assign the contract unilaterally, but we cannot stop them from assigning the contract unreasonably. NEP wants to sell all of its power purchase agreements and power plants as part of a package. Mr. Rothstein asked NEP if they would consider selling our contract separately if we wanted to buy it back. NEP asked us to make us an offer. Mr. Rothstein said that legally, he could not negotiate with NEP, but NEP agreed since they made the announcement that they would be selling the contract Mr. Rothstein could enter into negotiations to buy the contract back without breaking the original contract. Mr. Rothstein said that we now have a small window of possibility to buy our contract and sell it for about 10% more than we currently make. We could probably make even more money later. He recommended that the Board examine this issue while we are waiting for resolution in the Davis County court case. He said that in conjunction with this, we want to reallocate up to \$10,000 of strategic funds for this matter for Mr. Werlin, who negotiated the Power Purchase Settlement Agreement for us a few years ago, to work with us on this issue. Mr. Rothstein said that EFI has a contract with Mass Electric related to their pilot program, and while Mass Electric is a separate entity, he is concerned that a perceived conflict of interest may arise. He would like the NESWC Board to establish a subcommittee to guide the process. Mr. Moroney asked if Mr. Rothstein had asked Ms. Fitch if there would be a conflict of interest. Mr. Rothstein said that he had not asked Ms. Fitch officially. Ms. Fitch said that she would have to think about the structure of the contracts to determine if there would be any conflict of interest.

Mr. Woodbury volunteered to be on the Electricity Subcommittee.

Mr. Marquis asked what the wholesale market rate for electricity is. Mr. Rothstein said that it is almost 3¢. Mr. Marquis said that with deregulation, he questions the ability to get higher rates. He asked how much more we could actually get. Mr. Rothstein said that while in the short-term it would not be very beneficial, many people predict that in the next three to five years, the price of electricity will increase if the economy continues to grow at the current rate and no new power plants are built. He said that he does not want to suggest that there is a great possibility for profit. He said that he wants us to be on top of the situation and even if we are not able to buy back the contract, we can at least take an active role in the process. Mr. Halpin asked what the affects would be beyond 2005. Mr. Rothstein said inherently, nothing. Most contracts being signed now are short-term contracts. Mr. Halpin said that part of the general discussion North Andover has had with Wheelabrator is some sort of side deal involving electricity revenues.

Mr. Woodbury said that the opportunities here are mind-boggling. He said that wholesale electricity prices are kept down because of the added cost of electricity delivery, access costs and stranded costs. He said that the AT&T facility located next to the North Andover plant uses

about the same amount of electricity that NESWC produces. If we had a direct relationship with AT&T, there would be no access fees or stranded costs. We could sell our electricity for 4.5¢ and still save them money. He said we could also sell the electricity to North Andover in the same way.

The motion to reallocate \$10,000 passed unanimously. Mr. Murray and Mr. Loyacano volunteered for the subcommittee.

Mr. Schreiber asked for Palmer & Dodge's comments on assignment. Mr. Moroney asked what our rights would be in the assignment as well as what they would be beyond 2005.

Contract Renegotiation Update

Mr. Worster said that we are waiting for the judge to decide whether the Clean Air Act rules would be vacated or remanded. The parties anticipated a 6-week time frame from EPA's filing for a decision, but there is no statutory deadline. Mr. Marquis said that if the compliance deadline is extended because of this delay, we may be forced to pay for scrubbers that we only use for two or three years. He said we should reinvigorate the push for federal and state funding for the scrubbers. Mr. Schreiber said that unconscionability relates to Mr. Marquis' comments. He said that if the compliance deadline is pushed back, it would be worth the expense to tie up the retrofit in the courts until 2006.

Mr. Murray asked what the cost differential would be if we had the MRI facility classified as a small facility. He said that the amount of trash NESWC generates would qualify us as a small user if we could change the capacity. Mr. Rothstein said that we would be much worse off if we did that, assuming we could get Wheelabrator and the DEP to agree to change our classification. We would still lose millions from lost private hauler tonnage. Mr. Murray asked what the break-even point would be. Mr. Murray said that furthermore, if we ask for reclassification and they refuse, we would have added clout in an unconscionability suit. Mr. Rothstein said that if we get to the point that we have two years left and no scrubbers, we will review all of our options. Mr. Worster said that a 498 ton per day facility may not be able to support NESWC's needs. NESWC trash delivery spikes and may at times exceed that limit.

Mr. Marquis said that we should remind Wheelabrator, State, and Federal legislators that NESWC is being asked to assume all the cost for scrubbers that we will only be using for a fraction of the time.

Mr. Worster said that we are still waiting for the Davis County decision to be made before we proceed with finalizing the agreements. Mr. Cressman asked how much longer we would work on contract renegotiation before we recognize that it is not going anywhere, that it was a nice try and we learned a lot. He said that most communities went through the Town Meeting process and received authorization to make a decision on the contracts. He said we have made no progress in the last four months and that it is getting costly. Mr. Rothstein said that the judge's ruling in Davis County changed everything. When we decided to resume negotiations, the North Andover issues were raised. Mr. Rothstein said that it is important to wait for the court to decide. If we have a few more years before we have to comply with the EPA guidelines, the new

deals may or may not make sense. While we have not done anything in the past few months on renegotiation, we have not spent any money, either. The principles we discussed while developing the new contracts, reducing risk and cost, still make sense. Mr. Fratto said it seemed to him that a number of communities would remain in the current contract. He asked if we would be able to buy-out the contract before 2000. Mr. Marquis said that debt service is about 75% of our tip fee. He does not think it would be possible to cover the cost of paying our debt and bringing our trash elsewhere. Mr. Fratto said that we may be able to extend the debt. Mr. Rothstein said that he would be happy to reexamine the alternative. Mr. Murray said that the potential reassignment of the power purchase agreement is a new wrinkle to the buy-out alternative. Mr. Caira echoed Mr. Cressman's concerns.

Mr. Rothstein asked for the Board's advice. He asked if putting the negotiations on hold until the resolution of Davis County was a mistake. Mr. Caira said that he did not think it was a mistake to wait, but that NESWC is much more divided now than it was three or four years ago and it is much more difficult to act as a unit. Mr. Moroney said that Mr. Caira is not alone in his feelings. He said that his gut feeling is that the deal will die of its own volition within six months because of the APC issues. Mr. Moroney said that it would be to our advantage not to be the deal breaker, especially from a PR standpoint. Mr. Murray said that he does not understand why there has been a halt. NESWC is responsible for paying for the scrubbers in all three contracts. Mr. Rothstein said if the judge rules against the EPA, then the 2000 deadline is no longer in affect and NESWC would then argue not to pay for the entire cost of the scrubbers. The only other major outstanding issue was looking at the cash flows that neither wanted to spend the money to examine.

Mr. Cressman said that he thinks we should focus on obtaining funds from the State or the Federal government. He said that the entire NESWC Board could agree that it would be a beneficial course of action

Mr. Marquis said that the delay also creates the possibility that the Town Meeting will take the authority to decide on a contract away from the Board of Selectman. He agreed with Mr. Cressman's point that NESWC should work on the issues that are most likely to be obtained.

Mr. Kleckner said that we should let the agreements die naturally, but would not mind having a fact sheet explaining the delay. Mr. Rothstein said that he would be happy to write one and would also be happy to meet with any committees or Boards of Selectmen.

Updated Reconciliation

Mr. Worster said that the updated reconciliation should be sent to the Board next week.

Air Pollution Control Retrofit Update

Mr. Worster said that we met with Barbara Kwetz and Bob Donaldson from the DEP. In the meeting, they indicated they were fairly far along in the process of developing the State Implementation Plan. They anticipated that there would be a public hearing in June. The DEP is continuing with the process in spite of the Davis County case. Under that scenario, the facility could have a compliance requirement from the State that is different from the Federal

regulations. Mr. Schreiber said that based on Proposition 2½, the State would have to pay for the retrofit under mandate rules. Mr. Rothstein said that we have four letters that we would like the Board to authorize us to send so that we could be on record saying exactly what Mr. Schreiber had said. Mr. Murray asked that we send a letter to the State Auditor for their opinion. If it is a mandate, then he would encourage the State to proceed. Mr. Cressman said that the State has ruled in the past that solid waste is not a mandated service. The State would not have the obligation to pay for any improvements.

Mr. Moroney asked if the Board would authorize sending the letters to the State. Mr. McQuade said that we should approach the auditor first. Mr. Rothstein asked the Board to authorize sending the letters now in case we need to send them before the next Board meeting. Mr. Woodbury made the motion, seconded by Mr. McQuade. The Board passed the motion unanimously. Mr. Murray said that even if NESWC left the trash business, he would still be required to pay for the retrofit. In that sense, it would be a mandate.

Mr. Rothstein and Ms. DeLai have met with all of the new NESWC members of the State legislature with the exception of Representative Clark. Representative Clark has been a member of the delegation before and is familiar with the issues. Ms. DeLai said that we have sent him an update.

Air Pollution Control Reimbursement

The legislative working session is March 26 at the State House, Room 511. All NESWC Directors are welcome to attend. Ms. DeLai said that we would discuss the DEP's actions, the \$22 million reimbursement, and the request to add a \$4.5 million line item to the operating budget. Ms. DeLai said that this line item is a result of a meeting with Representative Hall. Representative Hall agreed to send a letter to Representative Haley, the Chairman of the Ways and Means Committee, to add the line item.

Mr. Rothstein said that there have been some conversations about extending the debt. Mr. Kleckner said that Belmont has been authorized to enter the amended 10-year deal. Belmont has been examining extending the debt over a longer period of time through special legislation. Mr. Kleckner said that he knows that Mr. Rothstein is concerned that this may interfere with the other NESWC legislation. He said that extending the debt is certainly not an ideal solution, and does not think that the legislature would view extending the debt as the solution over giving the communities money. Mr. Rothstein said that Belmont's request should not have an impact on anything else, but that it may confuse the issue. The legislature may view extending the debt as the solution. Mr. Rothstein asked that Belmont and other communities would consider asking to extend the debt next year.

Mr. Halpin said he had asked whether a community could extend a debt via special legislation at the beginning of the contract renegotiation. Mr. Hale at that time offered the opinion that it would amount to a second refunding and that there would be significant tax consequences. Mr. Halpin said that if there was a way to do it, he would be interested because he thinks it is a better solution than the 2015 deal. Ms. Fitch said that there is a federal tax issue, but that she would ask Neil Arkus, Palmer & Dodge's tax expert, to look at the issue. Mr. Kleckner said that

Belmont is not averse to issuing taxable debt, but that it is a complicated issue. Mr. Moroney asked if the issue was pending on Belmont's warrant. Mr. Kleckner said that the warrant closes Friday, but the Board of Selectmen can still add special items. He said that Belmont is still considering asking for authorization to file legislation, but may not file legislation. Mr. Halpin said that it would be important to determine if the communities can extend the debt without incurring too much tax liability. Extending the debt could be another arrow in our quiver, and we could package it as part of a total solution, along with reimbursement from the State and/or Federal government, to our problem.

Mr. Rothstein and Ms. DeLai met with Gary Barrett, the district director for Congressman Tierney. The Congressman is extremely sympathetic, and Ms. DeLai met directly with the Congressman and Mr. Barrett and spoke again about the NESWC issues.

Mr. Worster said that we have had conversation with some people in Washington, D.C. in an attempt to find an authorizing statute to introduce NESWC reimbursement into the operating budget. He said that we would probably need to spend a few thousand dollars to pay for Washington-based consulting in the search for the authorizing statute. Mr. Rothstein said that we would not need to appropriate any more funds from NESWC, and that we will need to file as a lobbyist.

PMA Landfill Issues

Mr. Worster said that we are moving forward with using the existing manhole as a mixing chamber. The capital cost is about \$25,000. Mr. Carnevale clarified a point made in one of the letters. He said that at the point the water enters the public sewer, the pH has been measuring 10.5. The second test location referred to in the memo is a quarter mile into the public system. Mr. Moroney asked if an appropriation was necessary at this time. Mr. Worster said no.

Status of Ferrous Recovery Issues

Mr. Worster said that W-T-E may be interested in buying our ferrous material while we wait for Wheelabrator to choose a bidder in its nationwide process. W-T-E will buy two loads of material at \$15 per ton to evaluate the material. Mr. Worster said that we hope that it will lead to a short-term contract.

Bypass RFP Status

Mr. Worster said that we held a pre-bid meeting last week. The responses are due on March 28.

FY98 Tip Fee

A memo describing the level tip fee was included in the Board's handout. The minimum recommended is \$80.92. A letter from Palmer & Dodge confirming that a community could pay less than \$95 per ton was also included in the packet. Mr. Schreiber said that as the dollars begin to rise, we need to take a hard look at our discretionary spending. Mr. Rothstein said that we will need to know by May what level the communities would set their tip fees. Mr. Halpin said that the memo should emphasize that \$130 is recommended, mainly from a public relations standpoint. Mr. Rothstein noted that the tip fee memo in the Board package did reference the

\$130 recommendation. Mr. Halpin wanted to make sure that the current tip fee memo would be the only one sent to North Andover.

Lexington's Request to Transfer Funds

Mr. Worster said that Lexington is asking to transfer money from the Community Stabilization Fund to the Tip Fee Stabilization fund. Mr. McQuade made the motion, seconded by Mr. Cressman. Mr. Murray said that deposits into the Community Stabilization Fund are a voluntary contribution and should not require a vote of the Board. Mr. Murray asked Ms. Fitch to comment on this. Ms. Fitch said that maintaining a balance of \$750,000 is an obligatory requirement, but that Mr. Murray is ultimately correct. Mr. Rothstein said that previously, Ms. Fitch had said that moving money out of the Community Stabilization Fund would require a vote from the Board. Ms. Fitch said that having gone through the steps of breaking down the tip fee, she now believes that each community has the right to do what they want with the money that exists in the stabilization fund. Mr. Kleckner supported Lexington's request and asked Ms. Fitch for more clarification on this issue. Ms. Fitch said that the answer to the question has evolved through the process of examining the tip fee. She said that communities have a right to direct the money that is in excess of the tip fee in any way they want. Mr. Moroney said that at this point in time, every member of the Board could request a transfer out of the Community Stabilization Fund to the Tip Fee Stabilization Fund as long as we do not go below the balance of \$750,000. Mr. Moroney asked if he could direct the extra \$15 in Manchester's tip fee to go in the Tip Fee Stabilization Fund. Ms. Fitch said he could. Mr. Moroney asked if we were better off philosophically to have the money in the Tip Fee Stabilization Fund instead of the Community Stabilization Fund when we approach the State legislature for money. Mr. Rothstein said no, but that he would want to think about it some more.

Ms. Fitch said that the Community Stabilization Fund has been used when expenses need to be paid. She said that if communities start allocating money out of the Community Stabilization Fund, they may not have enough to cover expenses when they arise. Mr. Moroney asked if we need to look at the by-laws. Ms. Fitch said that she has done that, and the communities need to consider how they will handle the account. Mr. Marquis asked if the Community Stabilization Fund had anything to do with the indenture. Ms. Fitch said that the Board decided by a vote that the fund must have a balance of at least \$750,000. Ms. Fitch said that that could change by a vote of the Board.

Mr. Moroney said that originally, all interest earned in the Base Fee Credit Fund was to be siphoned into the Community Stabilization Fund. That money would stabilize the tip fee. The funds do not mesh the way they are supposed to. Now, the Base Fee Credit General Fund receives the extra interest. Mr. Rothstein said that if the CSF was kept at its minimum, there would be months when it would pose a problem. Some communities would not have enough money and would essentially spend some other community's money. We could conceivably be in default. If every community withdrew funds so that only \$750,000 would remain, and a large withdrawal was required like it has been for the past few months, then you would be below the \$750,000. Mr. Moroney said that you would not be in default when you first go below the \$750,000. The marking point for the balance is at the end of the fiscal year. Ms. Fitch said that it was her impression that the \$750,000 would be enough to stabilize the tip fee for the communities throughout the year. Mr. Rothstein said that a year ago, there was in the winter

months a total withdrawal of over \$1.2 million with no deposits. If there had been only \$750,000 in the fund, there would not have been enough to cover the withdrawals. Ms. Fitch said that the communities would have to make up for the shortfall in the following month. Mr. Worster said that you would then have to tell the communities to pay more than their levelized tip fee on a monthly basis.

Mr. Caira said that we need to look at this before deciding what we can or cannot do without a vote. He said that he had a private discussion with Mr. Moroney and Mr. Rothstein about this matter, and it was his impression that it would require a vote from the Board to move the money. Mr. Caira said that it appears that Westford has less than its minimum requirement now. Mr. Rothstein said that he does not look at these balances on a monthly basis, but does check periodically through the year. The last time we checked, everyone was okay. Mr. Caira said we need to be careful before we start moving things around.

Mr. Woodbury said that he wants to use the money to build a permanent HHW facility. The State will reimburse the construction cost in less than a year, and he already has a plan in place to replace the money he has withdrawn.

Mr. Rothstein asked the Board to vote even though we may not need to legally. Before the next Board meeting, he and Ms. Fitch will work out the legal and operational issues involved in the CSF.

Mr. McQuade said that we should include what our minimum requirement is on the CSF balance sheet. Mr. Rothstein said that we could do that.

Mr. Murray said that this is not a Board decision, that it is an individual community's decision. He said that the motion is out of bounds.

Mr. Halpin said that we put the money in a commingled CSF under the assumption that it would take a Board vote to withdraw it. He supports Lexington's motion, but firmly believes that there should be a Board vote. Mr. Woodbury cautioned the Board that they should not look at the CSF as a place to raid for money. He said that it is important to keep the fund level high in order to pay off the costs we are anticipating over the next few years. Lexington will repay the account within one year.

Mr. Murray said the Board does not have the legal authority to do what Mr. Halpin does. Mr. Moroney said that Mr. Halpin suggests that we vote whether we have to or not, and then come up with a new set of policies. Ms. Fitch said that there would be no harm in taking the vote. Mr. Murray said that he will request a withdrawal, and he expects his request to be honored without a vote from the Board.

Mr. McQuade asked to whom letters would be addressed requesting withdrawal from the Community Stabilization Fund. Mr. Murray said that he addressed his letter to Mr. Rothstein as Executive Director in case the amount requested is incorrect.

Mr. Halpin maintained that it is the Board's prerogative to move funds. Mr. Rothstein said that this is a fundamental change, and previous to today it has always been his understanding from Ms. Fitch that it would require a vote from the Board to move money out of the Community Stabilization Fund. Mr. Rothstein asked that the Board hold off on making a major policy decision until he and Ms. Fitch had more time to look at the issues.

Mr. Moroney asked Mr. Woodbury if his request could be put off for a month. Mr. Woodbury said that he could not, that his Town Meeting starts Monday and he needs to know before then.

Mr. Murray asked Ms. Fitch if the Board could legally block Acton's request to move money from the Community Stabilization Fund. Ms. Fitch said no. Mr. Rothstein said that that opinion was very different from the opinion she expressed a month ago in response to Mr. Caira's question. Ms. Fitch said that this is a matter of law only in that a component of the tip fee is not NESWC's money. The CSF is made up of a Town's deposit that the Town can control in much the same way as the TFSF. She said that this issue has not come up before. It was determined that the CSF will stabilize the tip fee as long as a minimum balance of \$750,000 is maintained. NESWC cannot be in the position of blocking an individual community's request to transfer money out of the CSF. Mr. Rothstein said that Ms. Fitch had said just the opposite previously. Ms. Fitch said that her opinion evolved after examining the structure of the tip fee, and that she is concerned that the Board will begin acting as twenty-three separate communities instead of one entity. Mr. Rothstein said that on most issues, one or two members may not want to proceed. He asked what would happen with appropriations in those cases. Mr. Rothstein asked for a month to formulate an integrated policy on this issue.

Mr. Schreiber said that until NESWC counsel says differently, then a vote is inappropriate and Lexington can have its money. Mr. McQuade said that the counsel only gives advice. Mr. Caira said that questions of legality are answered by courts. Mr. Caira said that legal counsel may be correct, but that it begs a bigger picture. NESWC is becoming more and more splintered. Mr. Caira said that he does not understand Acton's reasoning. Historically, NESWC has been very good to the Town of Acton. He asked why Acton was in such a big hurry to get funds and why they were looking for every loophole when all of the communities are in the same basic situation. Mr. Caira moved the question. Mr. Loyacano seconded Mr. Caira's motion. The Board passed the motion to move the question. The motion passed with Acton abstaining.

Mr. Fratto asked as a point of information if the motion to move Lexington's money could be in phrased in such a way that no larger decision was being made. That way, Acton's concerns could be addressed.

The motion passed with Acton abstaining.

Ms. Fitch said that this issue deserves a subcommittee. Mr. McQuade moved that the Chairman appoint a subcommittee to discuss the issues. Mr. Woodbury seconded the motion and offered to chair the committee as treasurer of NESWC. Mr. Schreiber, Mr. Moroney, Mr. Murray and Mr. Caira also volunteered for the meeting.

Mr. Caira asked if a letter requesting money came to Mr. Rothstein before the subcommittee has made a policy decision, would the request be put before the Board. Mr. Moroney said yes. He said that he has seen nothing that has been set up that would unilaterally allow a transfer.

Household Hazardous Waste Program Update

Mr. Worster said that we had a very productive meeting with the DEP. He said we are finishing the support materials that would be submitted to the DEP for internal review. The DEP indicated that they did not believe there were funds available for the current fiscal year, but they were optimistic that funds would become available in subsequent years. Mr. Worster said that we need to identify interested communities and ask them to help with the operations costs. The construction cost would be covered by the State.

Interim Mercury Reduction/Battery Collection Program Update

Ms. DeLai said that the Board should have received a proposal discussing a pilot battery collection program. Palmer & Dodge will be hosting a meeting of interested parties to get their input and assistance both financially and technically. Mr. Halpin said that our plant is often cited as the biggest emitter of mercury. He asked how much of a reduction there would be as a result of this program. Ms. DeLai said that the plant emits 2000 pounds of mercury annually. This pilot-scale program would probably remove about 200 pounds of mercury annually. Mr. Halpin asked what is different about our trash. Ms. DeLai said that it is not a waste issue. The North Andover plant is the only plant without some form of scrubbers. Mr. Rothstein said that while we are the largest emitter of mercury in the state, the levels have come down significantly over the past few years because there is not as much mercury in the waste stream. Mr. Halpin said that it would be helpful to get some assessment back on what reduced emissions would be. Ms. DeLai said that that is the objective of the pilot. Mr. Moroney said that the shelf-life of mercury batteries has exceeded the expectations of battery producers. Still, battery manufacturers expect the mercury batteries to be out of the waste stream in a couple more years. This program would cover the interim.

Energy Audit Program

A draft RFQ was passed out in the Board meeting. Ms. DeLai said that we hope to send the RFQ in early April. After the responses are received, two vendors would be selected who would do proposals for any interested communities. Formulating these proposals will obviously cost the vendors money. The RFQ offers to pay up to \$20,000 of the costs of the losing vendor. An alternative would be to allow each community to pick a vendor to avoid the "winner takes all" situation. Mr. Kleckner asked how we would determine that each vendor was making proposals on equal footing. Ms. DeLai said that the State requires the vendors to fill out a detailed cash flow report that ensures that each vendor is on equal footing.

Mr. Schreiber said that he had asked Palmer & Dodge about the statute of limitations on the contract. Ms. Fitch said that she would look into the issue. Mr. Schreiber said that it would help us narrow the scope of negotiations.

Mr. Rothstein said that one of the Citizens subsidiaries, Citizens Lehman Power, was purchased by The Energy Group, a British company. Citizen's Lehman and EFI are not legally affiliated in any way.

Mr. Marquis asked if NESWC would examine electricity aggregation again. Mr. Moroney said that a subcommittee has been set up to look at those issues. Mr. Woodbury said that the appropriate way for communities to enter aggregation is through Section 34 of general law 164 which requires two two-thirds majority vote at Town Meeting to set up a municipal light company. There is a specific exemption for municipalities that towns need to go through in order to be granted the flexibility to use green energy, for example. Otherwise, municipalities must go with the lowest bid. Mr. Woodbury said that Lexington has proposed legislation through the MMA and through Lexington's legislators to modify this requirement. Mr. Woodbury said that he is happy to share the language he used at his Town Meeting and that Lexington already has a draft RFP. He said that Lexington will be ready to issue the RFP within 30 days. He said that if any other communities were interested in joining Lexington, he would be delighted to have them join. If another community does join Lexington's efforts, he would expect that they would help defray the \$30,000 that Lexington has already spent in formulating the RFP. He said that if we do this as a group, our costs will be relatively small.

Mr. McQuade moved to adjourn the meeting, seconded by Mr. Cressman. The motion passed unanimously. This meeting of the NESWC Board of Directors adjourned at 2:10 p.m.