

Board of Selectmen  
October 3, 2016

THESE MINUTES ARE SUBJECT TO APPROVAL BY BOARD OF SELECTMEN

The Board of Selectmen held a regular meeting Monday, October 3, 2016 in the Council Chamber of the Newtown Municipal Center, 3 Primrose Street. First Selectman Llodra called the meeting to order at 9:00am.

**PRESENT:** First Selectman Llodra, Selectman William F.L. Rodgers, Selectman Herbert C. Rosenthal.

**ALSO PRESENT:** Town Engineer Ron Bolmer, one member of the public, one member of the press.

**VOTER COMMENTS:** none.

**ACCEPTANCE OF MINUTES:** Selectman Rodgers moved to accept the minutes of the regular meeting of 9/19/16. Selectman Rosenthal seconded. All in favor.

**COMMUNICATIONS:** First Selectman Llodra shared a copy of the Hamilton & Freedman agreement, letters and the cost of the case. (Att.) Selectman Rosenthal has further questions and requested this be added to the next agenda.

**FINANCE DIRECTORS REPORT:** none.

**NEW BUSINESS:**

**Discussion and possible action**

- Road & Drainage Work Agreement:** Ron Bolmer and Larry Edwards were present to discuss the road and drainage agreement and answer any questions. Selectman Rodgers moved that the Board of Selectmen authorize the First Selectman to enter into a Road & Drainage agreement for Beaver Dam Road as recommended by the Town Engineer (att.). Selectman Rosenthal seconded. All in favor.
- Driveway bond release/Extension:** Selectman Rodgers moved the driveway bond release for Garvin & Lisa Yu 33 Hi Barlow Road, in the amount of \$1,000. Selectman Rosenthal seconded. All in favor.
- Resolution:** Selectman Rodgers moved the resolution: RESOLUTION AUTHORIZING THE FOLLOWING INDIVIDUALS: ELLIN PATRICIA LLODRA, ROBERT G. TAIT, LESLIE MULDOON, PATRICE FAHEY, THE AUTHORITY TO ACT ON BEHALF OF THE TOWN OF NEWTOWN WHEREVER IT HAS RESPONSIBILITY WITH RESPECT TO THE TOWN OF NEWTOWN PENSION TRUST AND TOWN NEWTOWN OPEB TRUST INCLUDING RESPONSIBILITY UNDER THE GOVERNING TRUST/CUSTODY AGREEMENT, EXECUTED BETWEEN WELLS FARGO BANK, N.A. (WELLS FARGO) AND THE TOWN OF NEWTOWN. Selectman Rosenthal seconded. All in favor.

**VOTER COMMENTS:** none.

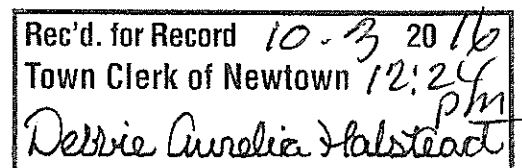
**ANNOUNCEMENTS:** none.

**ADJOURNMENT:** Having no further business the Board of Selectmen adjourned their regular meeting at 9:20am.

Respectfully submitted,

Susan Marcinek, Clerk

*Attachments: Hamilton & Freedman agreement, letters and costs; Beaver Dam Road, Road & Drainage memo from R. Bolmer*



## Agreement

The Town of Newtown (hereinafter the "Town"), the Newtown Board of Education ("Board of Education"), David Freedman and Kathy Hamilton, hereinafter referred to collectively as the "parties," agree as follows, in full and final settlement of the matters described in this Agreement:

WHEREAS, by letter dated November 20, 2015, the Newtown Board of Education referred to the Board of Ethics for the Town of Newtown (hereinafter the "Board of Ethics") certain questions concerning the conduct of: a) David Freedman with regard to the disclosure of a January 14, 2014 email communication that included an email from the Board's legal counsel, while David Freedman was serving as a member of the Board of Education; and b) Kathy Hamilton with regard to the disclosure of text messages sent to members of the Board of Education on June 24, 2015, while Kathy Hamilton was serving as a member of the Board of Education; and

WHEREAS, on April 18, 2016 the Board of Ethics conducted hearings concerning such questions and on May 5, 2016 the Board of Ethics issued findings and recommendations to the Board of Selectmen for the Town of Newtown (hereinafter the "Board of Selectmen") regarding the conduct of David Freedman and Kathy Hamilton; and

WHEREAS, on June 6, 2016 the Board of Selectmen declined to accept the findings and recommendations of the Board of Ethics, and issued a statement that included a determination that there were "a number of significant process and procedural errors" in the proceedings conducted by the Board of Ethics, including a lack of "basic fact-finding"; and

WHEREAS, the June 6, 2016 statement issued by the Board of Selectmen included a suggestion that David Freedman and Kathy Hamilton: "voluntarily prepare and publish a statement acknowledging that their actions in the release of [Board of Education] information via text and email [were] inappropriate and wrong-headed. That document is to be signed, dated, and submitted to the office of the First Selectman and entered into the public record"; and

WHEREAS, David Freedman and Kathy Hamilton have incurred attorneys' fees for legal representation by the law firm of Pullman & Comley LLC (the law firm retained by David Freedman and Kathy Hamilton) in connection with above-referenced referral to the Board of Ethics and the subsequent proceedings regarding such referral, in light of the fact that the Board of Education did not appoint legal counsel for David Freedman and Kathy Hamilton; and

WHEREAS, David Freedman and Kathy Hamilton were named as respondents in certain complaints filed with the Freedom of Information Commission for the State of Connecticut, including but not limited to Docket Nos. FIC# 2015-544 and FIC# 2015-771, and have incurred attorneys' fees for legal representation by the law firm of Pullman & Comley LLC (the law firm retained by David Freedman and Kathy Hamilton) in connection with the proceedings regarding such complaints, in light of the fact that the Board of Education did not appoint legal counsel for David Freedman and Kathy Hamilton; and

WHEREAS, David Freedman and Kathy Hamilton have asserted that the Board of Education and/or the Town have a statutory responsibility to pay the attorneys' fees described above; and

WHEREAS, all parties to this Agreement wish to bring full and final closure to the matters set forth above, in order to avoid further expenditures of funds, time and other resources in addressing the matters set forth above.

NOW, THEREFORE, all parties to this Agreement agree as follows:

1. Attached hereto are the statements of David Freedman and Kathy Hamilton in compliance with the June 6, 2016 statement issued by the Board of Selectmen suggesting that they "voluntarily prepare and publish a statement acknowledging that their actions in the release of [Board of Education] information via text and email [were] inappropriate and wrong-headed. That document is to be signed, dated, and submitted to the office of the First Selectman and entered into the public record." The provision by David Freedman and Kathy Hamilton of such statements is not and shall not be deemed to be an admission by David Freedman and/or Kathy Hamilton that their actions at issue were in violation of any statute, code or policy provision, including but not limited to the Town of Newtown Code of Ethics and the Connecticut Freedom of Information Act.
2. Within ten (10) calendar days of the execution of this Agreement by all parties, the Town and the Board of Education shall pay the amounts set forth below to the law firm of Pullman & Comley LLC, in full and final satisfaction of any and all claims by David Freedman and/or Kathy Hamilton for the payment of any and all attorneys' fees incurred by David Freedman and/or Kathy Hamilton for the matters described in this Agreement. In consideration of the provisions of this Agreement, David Freedman and Kathy Hamilton hereby waive any right to any payment by the Town and/or the Board of Education for any further attorneys' fees incurred by David Freedman and/or Kathy Hamilton after the execution of this Agreement in connection with any cases currently pending before the Freedom of Information Commission for the State of Connecticut, including but not limited to Docket Nos. FIC# 2015-544 and FIC# 2015-771, including but not limited to any appeals arising out of such cases.

|                | Total Fees Incurred | Amount to be Paid by Town | Amount to be Paid by Board of Education |
|----------------|---------------------|---------------------------|---|
| David Freedman | \$11,038.00         | \$5,519.00                | \$5,519.00                              |
| Kathy Hamilton | \$21,747.92         | \$10,873.96               | \$10,873.96                             |

The Town and the Board of Education agree to make such payment for legal fees incurred by David Freedman and Kathy Hamilton solely for the purpose of resolving

this matter without the need for further proceedings. The agreement by the Town and the Board of Education to make such payment does not constitute an admission by either of them that they would be legally obligated to make such payment in the absence of this Agreement. Similarly, the waiver of any right to further payment of fees in the cases currently pending before the Freedom of Information Commission does not constitute an admission by Hamilton and/or Freedman that they would not be entitled to such payment for said fees in the absence of this Agreement.

The Town (including the Board of Selectmen and the Board of Ethics) and the Board of Education, respectively, shall each be responsible for any and all attorneys' fees incurred by each of them with respect to the matters described in this Agreement.

3. (a) For and in consideration of the provisions of this Agreement, David Freedman and Kathy Hamilton each knowingly and voluntarily release and forever discharge the Board of Education and the Town (including the Board of Selectmen and the Board of Ethics) and all of the past, present and future members, officers, agents, attorneys, insurers, representatives, employees and any person acting on behalf of or in concert with the Board of Education and/or the Town (collectively referred to as the "Board and/or Town Releasees"), from any and all claims, demands, obligations, liabilities, arising out of or in any way connected to David Freedman's disclosure of the January 14, 2014 email communication from the Board's legal counsel, Kathy Hamilton's disclosure of text messages sent to members of the Board of Education on June 24, 2015, and any and all actions of the Board of Education and the Town (including the Board of Ethics and the Board of Selectmen) with regard to such disclosures, including, but not limited to: any alleged violation of any federal, state or local law, regulation, ordinance or policy; any obligation arising under any public policy; any obligation arising under contract (express or implied, written or oral); any obligation arising under tort or common law or other legal principle, including but not limited to defamation, intentional and/or negligent infliction of emotional distress. Accordingly, within five (5) calendar days of the execution of this Agreement by all parties, Kathy Hamilton shall withdraw the Freedom of Information Commission complaint she filed against the Board of Ethics in Docket No. FIC# 2016-0372.

(b) Should David Freedman or Kathy Hamilton commence, prosecute or join in any action or proceeding contrary to the provisions of the Agreement, David Freedman or Kathy Hamilton, as applicable, shall indemnify the Board and/or Town Releasees, as applicable, for all costs, including court costs and reasonable attorneys' fees, incurred by the Board and/or Town Releasees in defending against such action and/or in establishing or maintaining the application or validity of the Agreement or the provisions thereof in connection with such action.

4. (a) For and in consideration of the provisions of this Agreement, the Board of Education and the Town (including the Board of Selectmen and the Board of Ethics) each knowingly and voluntarily release and forever discharge David Freedman and Kathy Hamilton, collectively referred to as the "Individual Releasees," from any and all claims, demands, obligations, liabilities, arising out of or in any way connected to

David Freedman's disclosure of the January 14, 2014 email communication from the Board's legal counsel, Kathy Hamilton's disclosure of text messages sent to members of the Board of Education on June 24, 2015, and any and all actions of the Board of Education and the Town (including the Board of Ethics and the Board of Selectmen) with regard to such disclosures, including, but not limited to: any alleged violation of any federal, state or local law, regulation, ordinance or policy; any obligation arising under any public policy; any obligation arising under contract (express or implied, written or oral); any obligation arising under tort or common law or other legal principle, including but not limited to defamation, intentional and/or negligent infliction of emotional distress. In addition, the Town shall dismiss, and otherwise take no further action on, the afore-referenced ethics referrals regarding David Freedman and Kathy Hamilton.

(b) Should the Board of Education or the Town commence, prosecute or join in any action or proceeding contrary to the provisions of the Agreement, the Board of Education or the Town, as applicable, shall indemnify David Freedman and/or Kathy Hamilton, as applicable, for all costs, including court costs and reasonable attorneys' fees, incurred by David Freedman and/or Kathy Hamilton in defending against such action and/or in establishing or maintaining the application or validity of the Agreement or the provisions thereof in connection with such action.

5. All parties understand that this Agreement constitutes a full and final settlement of all matters described in this Agreement, that this Agreement shall be binding on the parties, and that following the execution of this Agreement, the parties shall have no right to pursue any claim, in any forum whatsoever, against any other party to this Agreement, arising out of or in any way connected to the matters described in this Agreement, with the sole exception of an action for breach of this Agreement by any party to the Agreement.
6. While the parties to this Agreement may be compelled by legal process and/or required by law to testify and/or produce records in actions or proceedings concerning the matters described in this Agreement that may be initiated by a person who is not a party to this Agreement (hereinafter a "non-party"), no party to this Agreement shall in any other way offer any assistance to, aid, abet or encourage any non-party in maintaining, prosecuting or pursuing such actions or proceedings. Nothing herein shall be deemed to limit any party to this Agreement from asserting any claim or defense against a non-party in any action or proceeding initiated against such party by a non-party after the execution of this Agreement.
7. The Agreement recites the entire Agreement of the parties. There is no written or oral understanding or agreement between the parties that is not recited herein. The laws of the State of Connecticut shall determine the validity, effect and operation of the Agreement.

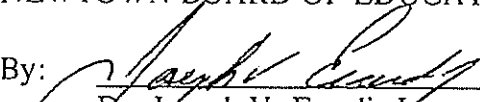
8. All parties affirmatively state that they have a full understanding of the contents of the Agreement and the effects thereof, and that they have executed the same voluntarily and of their own free will, without any coercion.

IN WITNESS WHEREOF, the aforementioned parties, intending to be legally bound hereby, duly authorized, have executed this Release and Agreement.

  
DAVID FREEDMAN

Date: September 1, 2016

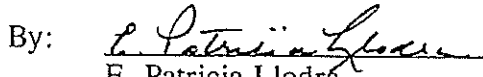
NEWTOWN BOARD OF EDUCATION

By:   
Dr. Joseph V. Erardi, Jr.  
Superintendent of Schools

  
KATHY HAMILTON

Date: August 31, 2016

TOWN OF NEWTOWN

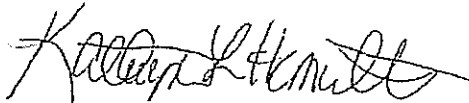
By:   
E. Patricia Llodra  
First Selectman

August 29, 2016

Dear First Selectman Llodra,

This letter is to address your June 6, 2016 request that I submit a letter to your office. I did not and still do not believe that I violated any Town codes or the Freedom of Information Act. However, I do regret that so much time, money and angst was spent on the issue that I released a copy of the June 24, 2016 text message conversation between Board of Education members, which is a public document, to people not on the Board of Education. If I were to do it all over again, I would have filed a formal complaint with the Freedom of Information Commission as they are the agency in Connecticut that is responsible for enforcing our FOIA laws and can take the necessary action to cure any problems. My hope is that we can all try to move forward. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathryn Hamilton".


Kathryn Hamilton  
18 Nunnawauk Rd.  
Newtown, CT

Dear First Selectperson Llodra

Over the past year, there has been quite a firestorm over one of my actions. I still do not believe that my release of the January 14, 2014 e-mail in question was in violation of the Town's Code of Ethics or any other law. However, just as I expect a lot of town elected officials, and seek to hold them accountable, I hold myself accountable and to a higher standard. The fact that I may not have broken the law is not a high enough standard. I made a mistake as to how I reacted to what I perceived to be violations of the FOIA by the Board of Education, and my frustration with over how persons were accusing other Town official of breaking the FOIA while doing so themselves. Instead of releasing the January 14, 2014 e-mail at issue to another citizen, as I did, I should have gone directly to the Freedom of Information Commission, whether to seek advice or to file a complaint. If I had done this, the agency in Connecticut that is responsible for enforcing our FOIA laws would have had a chance to offer advice and to correct any improper behavior.

Thank you for your consideration and service to our great Town.

Sincerely

A handwritten signature in cursive script, appearing to read "David Freedman", with a long horizontal line extending to the right.

David Freedman

Aug 12, 2016



**Total legal costs related to the Freedman/Hamilton FOI and Ethics matters**

**Board of Education:**

Shipman & Goodwin

Pullman & Comley

51,732 Board of Education legal support

16,393 Legal costs for Freedman/Hamilton (shared expense with Town)

68,125

**Board of Selectmen:**

Horton, Shields & Knox

Pullman & Comley

14,729 Board of Ethics legal support

16,933 Legal costs for Freedman/Hamilton (shared expense with Education)

31,662

Total

99,787

ENGINEERING DEPARTMENT  
4 Turkey Hill Road  
Newtown, Connecticut 06470  
Tel. (203) 270-4300  
Fax (203) 426-9968



RONALD E. BOLMER, P.E.  
Town Engineer

DAVID W. BRATZ  
Assistant Town Engineer

**TOWN OF NEWTOWN**  
OFFICE OF THE TOWN ENGINEER

DATE: September 19, 2016

TO: E. Patricia Llodra, First Selectman

FROM: Ronald E. Bolmer, P.E., Town Engineer *R E B*

RE: Road & Drainage Work Agreement, Beaver Dam Road  
Beaver Dam Subdivision, Samaha, LLC

As a condition of approval for the above subject subdivision the developer is required to do drainage and other improvements to Beaver Dam Road, an existing Town road. These improvements would include widening the existing road to a width of twenty four (24) feet and installing storm drainage. The road will remain a gravel road. I have reviewed the plans and estimate submitted by the applicant and have adjusted the required bond amount from \$45,500.00 to \$50,200.00. Upon action by the Board of Selectmen, notification should be sent to:

Douglas Samaha  
Samaha, LLC  
26 Arbor Meadow Drive  
Prospect, CT 06712