

On Wednesday evening, May 19, 2010, the City Council Members met in the Council Chamber for the purpose of acting as the Board of Health.

Present: Mayor Hooper; Council Members Sherman, Weiss, Hooper, Golonka and Sheridan; also City Manager Fraser and Attorney Steven Stitzel. Council Member Jarvis had recused herself from participating as the law firm she works for represents Mr. Hammer and Vermont Compost Company.

Call to Order by Mayor:

Mayor Hooper called the workshop portion of the meeting to order shortly after 6:30 P.M. She explained to member of the viewing public that the Montpelier City Council will convene as the local Board of Health at 7:00 P.M. The city attorney is going to review the conduct and procedures for the hearing

Attorney Steve Stitzel said he looks at this session they are having right now as somewhat in the nature of a deliberative process for the Council to understand exactly what is expected of them in this proceeding and how to conduct the proceeding in accordance with the requirements of state law. Typically, this sort of session would occur not in an open public forum. He has reviewed with the City Manager the substance of what he wants to share with the Council and he does not see that it would compromise the city's interest or the ability of this Board to act in accordance with law by having this in open session. He said this only to point out to Council Members that it would not be appropriate in this portion of the proceeding to be entertaining questions or comments from members of the public. This really is a session being conducted very much as if we are the only people in the room.

He prepared about 10 days ago what he identified as a pre-hearing notice, which the Council approved a week ago, and this has since been sent to the parties in this proceeding for their review. The pre-hearing notice really sets out and defines the parameters in which the Council acting as a Board of Health tonight needs to conduct the proceeding and to expand beyond what is in the pre-hearing notice – one, as a matter of law, moves beyond what is the jurisdiction of the Board of Health in this particular matter, but also it becomes a matter of fundamental fairness to the participants who received this pre-hearing notice. They were provided this for the purpose of enabling them to prepare for and address the specific issues in the pre-hearing notice. They would have the reasonable expectation that issues beyond those identified in the pre-hearing notice would not be something that would be open to discussion and could reasonably claim that if the Council were to open the

proceeding more broadly that they are being prejudiced and that they would be entitled to have a continuation of the hearing and come back at another night, if necessary, to be prepared to respond fully and completely to what is presented that was beyond the scope of the pre-hearing notice.

The next thing he wanted to say is that even though this will be conducted in the open with the public present it is in the nature of a contested case proceeding under state law. The statute is clear. He mentioned in the pre-hearing notice on the second page that the Council will conduct it in accordance with the requirements of 18 V.S.A. § 128(a), and that is a statutory reference that ties into the Vermont State Administrative Procedures Act which sets up rules for the conduct of what are called contested cases. A contested case is a proceeding in which a governmental body, in this case the Board of Health or the City Council sitting as the Board of Health, has a statute, law, ordinance or rule that is being applied to a specific set of facts in a specific instance. The role of the Council in a contested case proceeding is to hear evidence that is relevant on the issue or issues that are before the Council. After hearing the evidence to deliberate on the evidence presented, apply the legal standards to the evidence presented and then render a written decision.

The purpose of the hearing tonight is to hear that evidence that is relevant to the legal issue that is before the City Council. Under the Administrative Procedures Act it says in general the rules of evidence as applied in the courts of the state of Vermont are applicable. Nonetheless the law contemplates that there is more informality in this type of hearing conducted before a lay body as opposed to something that occurs in a court of law. But it is appropriate to keep in mind with that as a standard that this Council is really sitting as judge and jury on the matter that is before it tonight, and there is an expectation, a requirement under the state statute, that you are going to afford the parties that appear before you the same fairness, constitutional fairness and the same compliance with legal requirements in applicable statutes, that these participants would be afforded were they in a court of law. There is a certain strictness that needs to be observed even in the context of this being a more relaxed proceeding before a lay board.

The critical issue that the Council is looking into at this time, as he identified in the memorandum he sent, is whether or not there is evidence at this time to suggest to the Council that there may be a public health hazard or public health risk occurring with this particular property. If it concludes that there is some evidence of that, there is a more formal proceeding that the Council would need to initiate, so this is very much preliminary and investigatory in terms of the process. He didn't put it in his memo, which was an oversight, but handed out to each of them tonight a copy of the definition of "public health hazard" as it appears in the state statute. This is photocopied out of the applicable state statute which is in Title 18. He wants to go over the definition because this really defines the scope of the evidence that the

Council needs to be looking for as people provide testimony for the Council tonight. Public health hazard means potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. Here is the key part. In determining whether a health hazard is public or private, the Commissioner (this definition is written in a section of the statute that applies to the Commissioner of Health and the same definition is then included in the provisions that apply to a local Board of Health).

The Commissioner shall consider at least the following factors:

- (A) the number of persons at risk;
- (B) the characteristics of the person or persons at risk;
- (C) the characteristics of the condition or agent which is the source of potential harm;
- (D) the availability of private remedies;
- (E) the geographical area and characteristics thereof where the condition or agent which is the source of the potential harm or the receptors exist;
- (F) department policy as established by rule or agency procedure.

The first five items he read are the key items that the Council needs to focus on in its receipt of evidence tonight and in its questioning of the people who offer testimony so that when the Council having heard all the evidence deliberates on what it hears tonight it is able to formulate answers to these various questions. You want to keep focused on that as you listen to the testimony this evening.

He outlined in the pre-hearing notice an order of testimony to be offered to the Council tonight, which appeared on the second page. He would look at in terms of the initiation of this matter before the City Council is an action taken by the Health Officer for the city in entering into an agreement with Vermont Compost regarding certain operations that are occurring at the Vermont Compost facility in Montpelier. He pointed out in his memo to the Council that under state law health officers are encouraged to work cooperatively with persons who may be contributing to the creation of a public health hazard or public health risk, and wherever possible seek some corrective actions that may prevent something from becoming a public health hazard or risk, or even if it is a public health hazard or risk that would abate it short of requiring the initiation of formal health order proceedings or proceedings in court to obtain compliance.

He looks at the agreement that was entered into with the Health Officer as being authorized under that statutory provision and being a major consistent with that statutory provision. That said, at least one neighboring property owner in an e-mail to the City Council does not believe that the agreement is adequate to address the

situation currently existing on the property. Tonight they will hear evidence about what exists on the property, what impact that agreement is having on what exists, and whether there are still problems that need to be addressed and how they might best be addressed.

He has ordered things in a way that first the Council would hear from the Health Officer as to exactly what the Health Officer has done, and then next hear from Vermont Compost regarding what they have done in connection with the agreement, and then from the neighboring property owners. Everyone presenting evidence testimony to the Council tonight needs to be sworn in. This will be sworn testimony to the Council. He is able to administer an oath and he will do that with those persons who are going to provide testimony at one time so it is more orderly.

Documents that are submitted to the Council, while in court they would refer to them as exhibits, they don't need to engage in that degree of formality but it is important that we keep track of all documents that are submitted to the Council so that we have a complete stack and the parties can be assured they can have a copy of everything the Council is considering in making its decision on this. At the end of the day the key to keep in mind is that the Council will have received information on the matter before it in the form of testimony and in the form of documents that are provided to the Council in this proceeding.

All participants in this proceeding, principally the neighboring property owners and Vermont Compost, need to have had an opportunity to hear all of that testimony and respond. They need to be assured they have copies of everything that the Council has before it for consideration so when a decision is rendered by the Council it will refer to only information that was provided the Council at this hearing tonight. Consequently, they can know there were no surprises and nothing going on behind the scenes and that they had a full and complete opportunity to address the issues that were raised and any of the evidence presented.

There has been a request to the Council that it conduct a site visit. It is always within the discretion of a body, in this case the Council or a judge to decide whether a site visit is necessary or not. It is not a requirement that because one participant in the proceeding requests a site visit that the Council has to conduct a site visit. Frequently, what occurs in court proceedings is that a judge will defer to the end of the hearing to decide whether in the judge's mind it would be helpful to have a site visit based on the information that was presented. In cases of multi day hearings a judge may conclude at the end of the first day that they will have a site visit in mid stream. At least tonight the Council does not need to decide at the outset whether they are going to have a site visit or not but wait and see what the evidence provides them.

Finally, the Council has before it a motion challenging the authority of the Council to conduct this proceeding in the first place and claiming it has no authority or jurisdiction over this matter at this point because the Health Officer has not issued a notice of intent to seek a Health Order starting what would be a formal health order proceeding. In this type of proceeding he recommends that as to legal objections to the proceeding that the Council note the objections but otherwise generally proceed with the taking of evidence and then when the Council renders a decision it needs to address procedural or jurisdictional questions and the Council has the ability at the conclusion of this to say they really had no authority to be doing this in the first place and that is their decision. It is clear that an objection has been made. It is properly before the Council. It is preserved even though the parties show up and present evidence and the Council proceeds with the taking of evidence, that that does not mean that the Council does not have an obligation to give full and fair consideration to those legal issues and address them in any final decision.

At the end of tonight's hearing hopefully they will have received all of the evidence. The Council will have to decide whether they want to take a site visit or not if they defer to the end of the hearing. If the decision is that you will take a site visit, then that will be arranged. Typically, that should be scheduled at a time when all of the parties can be present at the site. The site visit is not for the purpose of hearing any testimony or comment. It is solely for the purpose of the Council being able to see physically where things are to put the evidence in a better context in some instances. Specifically, in this case he knows there have been photographs that the Council has seen previously about different things, but the parties may want a site visit so they get some physical sense on the ground of the proximity of this activity. But it is for the Council to decide whether it will need that site specific information. The key is that everyone needs to be present so that everyone participating can be there and see what the Council sees when the Council sees it, but it is not for the purpose of taking evidence. After the site visit the Council would then be able to deliberate on this matter. When the Council gets together to deliberate it does not need to do that at a public meeting subject to the Vermont Open Meeting Law. The deliberations of a public body in a quasi judicial proceeding, which is what this is characterized as, a contested case under state law, are not subject to the Vermont Open Meeting Law so they don't need to publicly announce when they are deliberating but simply schedule it among themselves and then ultimately prepare a written decision that will be released publicly when they reach that decision. They do not need to come back into an open meeting to issue the decision. They simply need the consensus of the Council or a majority of the Council members, to concur on a particular result and then the decision can be issued without coming back into an open session.

In deliberations they only may have present Members of the Council, legal counsel if they want legal counsel present, and then clerical assistance if there is someone who is going to be responsible for drafting a decision other than Council Members. No one

else can be present in a deliberative session if you conduct it in private. That would include the City Manager and the Health Officer and the parties to the proceeding. It would be conducted with everyone excluded so that it is clear there is no additional information being presented during the deliberative session.

After the decision is issued, depending upon what the decision is, there is a right to appeal that decision to the State Board of Health.

Health Officer Schneider said he had a question.

Attorney Stitzel told the Chief he may not ask a question.

Health Officer Schneider said it is a point of order for his role as Health Officer.

Attorney Stitzel said it wasn't appropriate. He had to object because if there is a comment from one individual then it opens it up to others.

Health Officer Schneider said the statute defines him as the guardian of the local health ordinance so he has to know if he is excluded as part of the local Health Board from participating in the process other than giving evidence.

Attorney Stitzel said he is. He said that was what he wanted to review in terms of the process before the Council.

Council Member Sherman asked if they were only talking about events after February 5, 2010.

Attorney Stitzel said the issue before the Council is whether right now there exists a condition on the property that presents a public health hazard. The relief that is available to a Board of Health in the context of a health order is what he would call all prospective or corrective relief. There is not ability under this particular statute for the Council to go backward and assess some sort of penalties, fines or sanctions for conditions that may have existed previously. The real issue is what currently exists. Does that give the Council reason to suspect there may be a public health hazard and then pursue the formal health order process to address that, or if it concludes that such conditions do not exist then there is nothing further for the Council to do in the matter. That is why looking backward doesn't give the Council any information that helps the Council to address whether today there is a public health hazard.

Council Member Sherman said they are only talking about today.

Attorney Stitzel replied that is correct, currently. He would put this in the context of situations that he has been involved in where individuals are maintaining unsanitary conditions on their property and attracting rodents and a health officer issues a notice of intent to issue a health order. Following the issuance of that but before the hearing before the City Council or Select Board the property owner says he gets it and the whole property is cleaned up so when it comes before the Council the property owner says here is the condition of the property today. Then the Council asks the Health Officer if that is correct and is this an accurate depiction of what is there today. Has the health hazard been addressed? Yes, it has. The corrective action that has been taken has eliminated that so there is no reason for the Council to issue a health order at this point.

Council Member Golonka asked during testimony if it is appropriate for Council Members to ask questions or should they wait for the end.

Attorney Stitzel said what he would suggest as an order of questioning is that first the individual who is providing testimony that they provide the testimony they are going to provide. Secondly, a participant in the proceeding, and there are only three people who are participants in this proceeding tonight, that they be offered an opportunity to ask any questions in the nature of clarification of the information that has been presented by that individual. In this type of proceeding it is generally not considered productive for there to be formal cross examination of witnesses. If one party has questions of the other party it is more that they ask a question of the Council saying they would like to hear from this witnesses about this and this instead of a direct question. After those questions are asked it is appropriate for the Council to ask any questions it then has remaining about the matter. If the Council has questions, then after they have asked their questions it is appropriate to ask the parties if they have any follow up questions based on the information that was elicited from the Council's questions. Generally, in this type of proceeding there are not formal objections to testimony that is being offered. The one exception that is fairly common is if the testimony of a particular witness begins to go outside the parameters of what appear to be the focus of the proceeding. If somebody does get outside the parameters of the hearing, then it is appropriate to hold things on course.

Mayor Hooper asked Attorney Stitzel to describe his role.

Attorney Stitzel said his role is to advise her as Mayor and Chair of the proceeding so she is the one who is responsible for controlling what is occurring publicly. If there are issues raised or questions asked more of a procedural nature, not of an evidentiary nature, he is here to assist the Mayor and the Council in addressing those. He is not here to ask questions or act as some sort of inquisitor on behalf of the Council. He will not be asking substantive questions of any witness. If it appears that some important area about which the Council should have evidence to address what it

needs to decide he might suggest to the Council that it may want to ask some additional questions on a particular matter, but it would be for the Council to decide whether or not to pursue that information. He would do that only because he has been involved in proceedings where a board goes through the evidence, get into deliberations and then discover they never followed up to get answers to particular matters and then they have to reconvene and continue the hearing to get that information. It is certainly much more efficient if everything can be accomplished in one proceeding.

Mayor Hooper explained what the Council has been doing is receiving advice from the city's attorney as to how to conduct a hearing and what the rules of procedure are. As noted earlier this is a new process for the Council and they wanted to make sure they were doing it correctly. The City Attorney has advised the Council that this is very limited in scope as to what they are hearing this evening. They are simply hearing as to whether or not there is a health hazard existing today that requires the Council to take further action. The question before the Council is do they have reason to believe that there is a health hazard. If there is, then the Council will convene as a Board of Health and take the appropriate steps to abate the health hazard. Right now they are going to hear from the City's Health Officer. They are going to hear from Vermont Compost and from one of the adjacent property owners.

Attorney Stitzel said the people who are the parties to this proceeding at this point are Vermont Compost, the Health Officer as an individual who has taken an action, and the one neighboring property owner the LaRosas. The LaRosas and Vermont Compost have authority in the presentation of their cases to call witnesses to provide testimony in addition to what they are providing. If Vermont Compost or the LaRosas have other persons that they wish to call as witnesses they would be able to do that.

Mayor Hooper convened the Montpelier Board of Health hearing on the inquiry concerning the Vermont Compost Company's Main Street facility and whether or not there is evidence of a health hazard at that site. They would like to begin with the Health Officer. She noted that the sixth member of the City Council is Sara Jarvis who is a member of the firm which is representing Vermont Compost Company and Council Member Jarvis has consistently recused herself from any matter related to this.

Mayor Hooper said Attorney Stitzel has referred to the pre hearing notice which lays out how the Council is going to proceed. The City Council has received several e-mails, a memo from Daniel Richardson who is representing Vermont Compost Company, a copy of the document that was an agreement between the Health Officer and Vermont Compost back in February; they have also received the e-mail which

was the appeal of Steven LaRosa to that agreement. There is a meeting notice and some additional documents which are a letter, an e-mail and a memo from the attorney representing Vermont Compost Company.

Health Officer Schneider was administered the oath by Attorney Stitzel.

Mayor Hooper told Fire Chief Schneider the particular question the Council would like to hear from him is a general description of the conditions that the February agreement with Vermont Compost Company have attempted to address and what has occurred since the execution of the agreement.

Health Officer Gesualdo Schneider said he had to go back to December 2009 when complaints started to come in of food waste deposits on the LaRosa property. This was an issue they have dealt with on and off for a period of time prior to that, but it became clear after about two weeks of observing the situation that a fair amount of the garbage – the definition he is using for “garbage” is from the Vermont Health Department Residential Housing Rules. “Garbage” mean animal, vegetable or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food and containers and cans that have contained food unless such containers or cans have been cleaned or prepared for recycling. It was apparent that an amount of food was starting to be deposited back on the LaRosa property, which primarily appeared to be by crows, from the operation at Karl Hammer’s Vermont Compost Company.

On January 11th it became clear that Mr. Hammer through information received by e-mails from Barbara LaRosa that the situation was obviously serious enough and he was at the point he was going to have to talk to Mr. Hammer about that also. He stopped feeding the crows at that location. Then, the LaRosas came to the City Council meeting at the same time expressing their concerns. At that time he decided he would reserve time at the February 10th Council meeting to discuss the issue. On January 14th he sent out an e-mail to Karl Hammer and the LaRosas which basically told them that at the February 10th meeting he would have to do one of two things, which is to ask the City Council to review and if appropriate approve a binding contract on Mr. Hammer concerning the impact on the LaRosas, or if he wasn’t willing to go into a contract he would go ahead and recommend the issuance of a health order that would cause the problem to cease.

He advised specific recommendations for a contract or the health order. Those conditions specifically gave an objective to stop the transport of fresh food waste on the LaRosa property, keeping him and the LaRosas informed of any changes in any use on his property basically not receiving food waste between November and February 1st with the exception of mulching as long as it was well buried immediately, and also an exception for feeding of chickens with the fresh food waste if he could

construct and maintain a structure that would keep crows from getting to the food waste. He came up with an agreement that met all of the Chief's requirements so he signed the agreement and went forward to the City Council to provide a report of what happened.

His basic assessment was that garbage by itself is not a health issue. The accumulation of garbage over a period of time could become a health issue primarily through the feeding of either rodents or insects, but garbage by itself is not a health issue.

Following the agreement at that time he went up on a regular basis observing the area and had observed the area from Christmas on and there was a considerable crow population in the area during that time. Once the changes were made and the new feeding facility was put in basically within a week or two there were virtually no crows in the area so he gave up regular visits and asked the LaRosas or Mr. Hammer to inform him if there was any problems or issues. He has not heard from either party. Last week he sent out an e-mail asking if there was any condition and he has not received an answer back from the LaRosas indicating there were continuing problems. Mr. Hammer has informed him that he has continued to feed under the shelter not taking advantage of the open feeding option after May 1st.

Mayor Hooper said he has not been informed of or observed himself any garbage which leads him to believe that as of today there is a foundation for a health hazard.

Health Officer Schneider replied that is true. He has not observed anything. He went up a couple of times this last week and he has virtually observed no crows in the area.

Mayor Hooper said she noted he was careful in choosing the words by saying that the garbage itself is not a health issue but the concern would be the transport or the feeding of the garbage by insects or rodents.

Health Officer Schneider said he would compare it with human waste or sewage where by itself that is a health risk because human sewage probably contains e-coli bacteria. Garbage, food waste, as defined are themselves not necessarily harmful.

Council Member Golonka said the Chief has indicated he had been notified that the feeding of the chickens will continue under the pen even after the May 1st deadline.

Health Officer Schneider replied that was correct.

Council Member Golonka asked if it was the Chief's intention to monitor that continuously. Is that process going to continue? Is the process for feeding the chickens under the pen as testified by Mr. Schneider intended to continue?

Health Officer Schneider said they would have to ask Mr. Hammer whether or not he would attempt to use the option of the outside feeding from May 1st to November 1st, but at this point he has not taken advantage of it.

Council Member Golonka asked if he does not do it according to the agreement, do you intend on monitoring that more frequently.

Health Officer Schneider said he is going to monitor primarily based on any complaints. It is up to the parties to provide him if the situation has changed significantly.

Council Member Hooper asked if there was any other vector for creating a health issue with that many crows depositing food waste on the LaRosas property.

Health Officer Schneider said as he testified back in February he thinks there is a bunch of serious problems that are related to the properties. He thinks there are property issues. The only specific health issue that was raised was the crows. There was one time when he talked with Mrs. LaRosa about the possibility of rats. However, even though they know there are rats at the Hammer facility we know the LaRosas do have horses so it would be hard to identify. She did have one problem for a short period of time when she complained about rats getting into some containers in her garage area and she changed the containers. That was when they were first involved over two years ago.

Mayor Hooper said as they described earlier before they formally convened this hearing this is a matter that is limited to the parties. They described they would also give the two parties involved an opportunity to ask our Health Officer and each other questions associated with this. At this point she would like to turn to representatives of Vermont Compost and also to the LaRosas to see if there are any questions they would like to ask of our Health Officer.

Dan Richardson, an attorney at Tarrant, Gillies, Merriman & Richardson, said he represents Vermont Compost in this matter. He asked Chief Schneider to review a document and identify it.

Health Officer Schneider said the document is Mr. Richardson's response that includes an e-mail he initially sent to him on May 18, 2010.

Attorney Richardson asked if it was fair to say it covers the question of whether there had been additional sightings of any further public health problems.

Health Officer Schneider replied yes and that he had asked if he had received any answer from the LaRosas to indicate whether there was anything going on, and his answer to him was back on May 19th was he had not received any communication from Steve or Barb LaRosa.

Attorney Richardson said he would like to submit that as an exhibit. The only other question he has for Chief Schneider concerns the report he gave on February 10th to the City Council which was recorded in the minutes that were later adopted by City Council. Has he had an opportunity to review those minutes?

Health Officer Schneider replied he did a couple of months ago.

Attorney Richardson asked if the minutes were accurate.

Health Officer Schneider said the minutes seem to be very accurate and complete.

Attorney Richardson asked if he stands by his report that he gave which was reflected in the minutes of February 10th to City Council.

Health Officer Schneider said he presumed so.

Mayor Hooper asked Chief Schneider from his observations could he tell the Council where he saw food waste being deposited.

Health Officer Schneider said that he would have to turn over specifically to Barb LaRosa. He primarily relied on the fact that she was collecting the information and passing it on to him, but the information as she gave it to him was pretty much over all of her whole property and around the house area specifically.

Mayor Hooper said his finding garbage was based on the testimony that he received from the adjacent property owner the LaRosas, and that was where the garbage was noted. It was not noted in other areas.

Health Officer Schneider said they heard some complaints from a few other areas in East Montpelier and occasional individual complaints from other locations.

Mayor Hooper said in fact in addition to the LaRosas the Council did receive complaints from others that there was garbage being deposited on their property.

Health Officer Schneider replied yes.

Mayor Hooper asked if he did not observe it himself but was relying on the testimony of these individuals.

Health Officer Schneider replied that is correct. He said he was relying specifically on what Mrs. LaRosa was telling him about the locations around the house that she found and collected garbage each day.

Mayor Hooper said the next party they would like to hear from is the Vermont Compost Company.

Attorney Richardson said maybe it is fair for him to make his objection about Vermont Compost going first. They have heard testimony from Chief Schneider. At this point he would note an objection that we have heard from Chief Schneider that there is no evidence of any food residuals being moved by crows and deposited on neighbors' property since February. In the original appeal of the LaRosas that started this process there was no allegation that there was any current issue with the food residuals being moved? To put them on at this point is somewhat irregular in a judicial proceeding in that someone seeking to challenge what has already been established is usually the one with the burden of production in going forward first. If the Council would not choose to move and reorder this hearing as far as testimony is concerned, they would simply ask and reserve that they have an opportunity to recall witnesses after the LaRosas testify. If there is information that heretofore has not been put out into the public record despite repeated requests they should have an opportunity to respond to that and those allegations should they venture beyond what they understand to be the scope of this present hearing.

Mayor Hooper said she has the right to authorize that. Yes, they recognize both the contest of the facts and also the right to come back.

Attorney Richardson said this will limit who they are going to call as witnesses. Joe Bulely, Joe Ferris and Rosanna Vestuti will be witnesses for Vermont Compost.

Attorney Stitzel administered the oath to the witnesses for Vermont Compost Company.

Attorney Richardson said they have both requested a site visit as well as have submitted two memoranda. One is procedural objections and history they seek on a legal basis, and would offer it into the record. There is also a second memoranda that is only offered conditionally if the limited scope of this hearing should go beyond its boundaries simply because it does deal with some of the past issues that were initially raised in the LaRosas appeal letter that generated this hearing. They simply prepared that as a summary of expected testimony, and they submit it conditionally not to open the door to that issue but to have it at the Council's disposal if that issue arises.

Karl Hammer said he has a farm on Main Street and operate a business there called the Vermont Compost Company. He would like to read his own non-legal message to the Council and to the neighbors in his community.

Dear Neighbors,

We are here this evening at a special meeting convened by our City Council to discuss the concerns that some neighbors have about the health and other effects of our farming and composting activities on life in our neighborhood.

I would like to invite this Council and any one else with interest to come and take a guided tour of our farm so that we may talk about specific concerns on the land.

Our farm is one of the original farms in our community. Animals and crops have been raised here continuously at least since the end of the 18th century.

I embraced a responsibility to care for this land seventeen years ago when I first walked, mowed, fenced, pastured, manured, plowed, planted, and harvested and dreamed of the food this farm could and should continue to produce into the next generations.

I acknowledge that we steward a watershed.
Farming is about water as much as it is about soil.
We welcome honest discussion about this responsibility.

I believe that the health of a community depends on the health of its soil.
A community that cannot harvest food to feed itself is vulnerable and cannot be said to be either safe or free.

I am proud of our farming and composting craft, proud to be at work on this land providing food for our neighbors and food for their soil.

I am proud of the people who work at Vermont Compost and of the community of farmers we serve.

I hope that we can reassure neighbors with honest concerns that we are good land and water stewards contributing to the health of our community.

Sincerely

s/ Karl Hammer

He doesn't know how many Council Members have actually been to the farm. He knows that none of them have ever really walked all the way around it and understood what it is they are doing, and that is true of many of their neighbors. We have certainly failed to communicate adequately and effectively with you, and for that he apologizes.

Mayor Hooper said she wanted to be clear that they are limiting to whether or not there is evidence that a health hazard exists today, nothing else to do with the operation and procedures up there. That would be an entirely different discussion.

Attorney Richardson asked Karl Hammer how many people he employs at Vermont Compost Company.

Mr. Hammer said there are nine people besides himself.

Attorney Richardson asked if he sold outside of Vermont.

Mr. Hammer replied they do.

Attorney Richardson asked where.

Mr. Hammer said they sell products in the upper Midwest. Actually, two-thirds of their revenue now comes from out of the state of Vermont.

Attorney Richardson asked Mr. Hammer if he understood this is a hearing about a public health issue surrounding food residuals with the crows. Could you describe to the Council why food residuals are brought on to the Vermont Compost Farm on Main Street and what purpose it is for?

Mr. Hammer said they receive source separated community food residuals at the farm to provide part of the feed that they provide to their laying hen flock and the roosters involved. They bring food residuals in and combine them with other farm and forest residuals and provide that forage opportunity to hens and they lay eggs, and they harvest those eggs and sell them in the community. Then, they manage the combination of those food residuals, mammal manures, etc. and the chicken excreta and make compost from that. Then, they make other products that are based on that compost.

Mayor Hooper said the question they have here deals with the health hazard and whether or not there is one, and specifically whether or not the agreement that Vermont Compost entered into with our Health Officer is eliminating that issue. That is what they would like to hear evidence about.

Attorney Richardson said it is fair to say that in late December or early January that Mr. Hammer was made aware by the Health Officer for Montpelier that food residuals from his property were being deposited on to neighboring properties.

Mr. Hammer said yes, that is so.

Attorney Richardson asked Mr. Hammer what steps did he take to ameliorate that situation as part of the agreement.

Mr. Hammer said pursuant to the agreement that he reached with the Health Officer he constructed a 48 foot long 30 foot wide steel framed structure covered with an assortment of chicken wire, clear plastic and curtains of bird netting at the end walls. Their intent was to make an enclosure that the chickens would have access to that wild birds would be reluctant to enter or at least be unable to leave with residuals. They developed a strategy for feeding the incoming food residuals in that structure and they observed they were very effective at preventing crows and ravens in particular from taking food away and ultimately they got frustrated and dissipated. Immediately there were far fewer crows once they developed the feeding protocol in the building.

Attorney Richardson said that feeding protocol is consistent with the agreement that Vermont Compost entered into with the City of Montpelier signed by the Health Officer.

Mr. Hammer replied yes to his belief.

Attorney Richardson asked when that feeding protocol begin. On what date?

Mr. Hammer said they finished the building around the 8th or 10th of February. They started construction on the structure at the end of January. It was very cold and both the crows and chickens were very concerned about getting to food. There wasn't much else around. Their activities in building the building immediately eliminated the crow presence because they are very responsive to changes and habits. They observed they were not getting away with food from about the time they started the construction, which was the last week of January.

Attorney Richardson said since the protocol has been in place, has he observed any crows or other wild birds removing food residuals from his property?

Mr. Hammer said he had not. There are also some seagulls around right now and of course they do carry things, but the only seagull he see carrying he was unable to identify what he was carrying.

Attorney Richardson said he hasn't heard any reports.

Mr. Hammer said he has not heard anyone report that food was being removed from their feeding enclosure and they are very attentive to that.

Attorney Richardson said as far as Mr. Hammer understands there has been no further distributions of food off your property by wild birds.

Mr. Hammer replied that was his understanding.

Attorney Richardson said he had no further questions.

Council Member Hooper said Item 7 in the agreement of February says : Clean Up: The Vermont Compost Company with permission of the landowner shall provide personnel to clean up any food residual acquisitions reported on a neighboring property in a timely manner. He is curious how many times food depositions have been reported since the February agreement.

Mr. Hammer replied none that he is aware of.

Council Member Golonka said part of the scope of the agreement lists May 1st as a date where Vermont Compost will be able to feed the chickens outside of this enclosure that has been constructed. Is it the intention of Vermont Compost to utilize that portion of the scope of agreement and now start feeding the chickens outside of this pen?

Mr. Hammer said they have not decided. Currently, they are managing the entire feeding within the confines of that structure.

Council Member Golonka said his testimony is that it is working inside that enclosure.

Mr. Hammer said at this moment he doesn't envision a reason they would want to change that. They are under very little bird pressure. The biology of crow activity as they understand it is that the period when they are congregating in winter is called pre-roosting. It is a time when they are very socially active and they are meeting each other and it is about getting together and go off to make a nest to make babies. In the normal course of events at a certain point in the spring they have met somebody and go off, and then the seriousness of their life changes. They are obligated to provide food to babies so they don't actually have the opportunity to party and distribute food in the neighborhood.

Council Member Golonka said he has a second question with regards to the agreement under Section 5 communication. It basically says if you decide to change those practices or Vermont Compost changes their procedures you would notify the Health Officer as well as the LaRosa family. Does that include the period from May 1st to November 1st? You indicated the scope of the agreement is just from November 1st to May 1st. Does that preclude communication as a section from being enforceable? Will the Fire Chief be informed if you are deciding not to feed the chickens in the impound?

Attorney Richardson said this was drafted and his testimony is not that Vermont Compost would deviate from this agreement from November to May. The reason there is an outside of the scope of the agreement was that after the Chief's investigation he determined that the time which there was this crow activity was limited to a period in the fall and the winter and early spring. He developed and requested this agreement with buffers on either side, such that he saw there was no evidence of any kind of threat of this public health hazard during the times outside the agreement. It would be his understanding that this agreement wouldn't necessarily cover those periods outside that time simply because that is the limit of the agreement, but that is the evidence that was shown in the report as Chief Schneider's minutes from further attempts indicate.

Council Member Golonka said his question goes more to the fact that they are trying to determine actions today based on a scope of agreement that in essence expired three weeks ago, and is it being followed through this period so we can determine.

Attorney Richardson said it hasn't expired. This is a continuous agreement. That obligation doesn't necessarily cover certain periods of time, but come November this agreement is still valid and this agreement is still binding.

Council Member Golonka said the agreement for communication and the agreement for feeding and notification seem to be precluded in the period from May 1st to November 1st. He just wants to hear from Vermont Compost what the intention is.

Mr. Hammer said their intent is not to spend a lot more time involved in discussing this matter if possible. They recognize without going to the question of whether a significant public health risk exists when small amounts of food are distributed on frozen pasture. We recognize that it is offensive to neighbors and that it is unacceptable. Their intent is to continue to manage this valuable resource in such a way that it does not offend neighbors. They have this feeding structure, and if he had to guess he would say more feeding structure is in the offing. It would be more and larger to accommodate the bird population they intend to have.

Mayor Hooper said one of the items is that the residue will also be buried if necessary. Has he been doing that?

Mr. Hammer said there are two locations discussed in the agreement. The truck that brings food residuals is a Class A tandem axle roll off truck. It is quite large for the capacity of the structure they built which was constrained by time, money and the location. Because we have the capability to receive material and bury it deeply enough in non-food materials that they can prevent crows from getting to the recognizable food – it has always been a challenge. Not that they couldn't prevent crows from getting to food but they also had to provide access for chickens so anything that a crow can't get to it does reduce the amount of nutrition that the chickens get. Within the scope of the agreement because we now have the capacity to move somewhat more than half of the food residuals they will manage to another site they manage in East Montpelier where they don't have chickens. They receive food residuals once a week now and they receive that in the described receiving location that is not covered by the building. They immediately blend it with appropriate materials to constitute the feed regime they want because food residuals by themselves are not very wholesome for chickens. Then, they bury that and introduce it into the feeding building typically three to four times a week and maintain deep cover in the receiving area. That has been going on since they started using the feeding structure, although they did experiment with putting food directly from the truck into the feeding building. They decided it was too much for a single insertion.

Mayor Hooper said once a week they receive a large truckload of material that goes to a receiving area where it is blended with other material. Then, during the week some of it is brought into the feeding area and made available to the chickens.

Mr. Hammer said that is correct.

Mayor Hooper said the receiving area where it is blended with other material is managed in such a way that the crows cannot have access to that food.

Mr. Hammer said they would have access to the area but the procedure is to do the mixing, introduce the first charge into the feeding structure and then cap the remaining material that is to be saved for the next two to three insertions, cap it in such a way and dig deeply enough that there is no visible or available recognizable food. This has been the protocol since the completion of the food structure. To their knowledge the transport of small amounts of recognizable food off site has not continued through the period, that their receiving, lending and capping protocol is working to prevent the transport of food off site.

Mayor Hooper asked if he could describe for them the location of both the feeding area, receiving area and blending area .

Mr. Hammer said he brought some photographs with him.

Mayor Hooper said they know where they face on the highway so maybe he could describe it like they were standing down on the road looking up.

Mr. Hammer said the receiving area is about 200 feet south of the common boundary with the LaRosas. It is about 400 feet as the crow flies from the road. There were several attempts over time to move feeding further from the LaRosas. They move over time until they started to have a lot of trouble with the chickens who were finding the commute to the food sometimes fatal in the winter. It is an area which is out of direct sight of the LaRosas house. It is sheltered behind buildings. The feeding building itself is directly south of our original chicken barn. This is why he thinks a site visit makes a lot of sense.

Council Member Weiss said he is trying to understand this. There are two distinct operations here, the farm business and the compost business. Are they related and considered to be one total operation?

Mr. Hammer said their business is very much integrated.

Council Member Sherman said he says there is one delivery a week and they talked about the life cycle of the crows. Will spring and what chickens do in spring mean that he will take more than one delivery of food residuals? Will that increase?

Mr. Hammer said there are seasonal variations in the generation of food residuals. Norwich University, which is the biggest single generator, sometimes there is nothing and sometimes there is a huge amount of material. Different times of year change. Sometimes birds are hungrier than other times and they respond to their requests for food. They don't actually give them food but expect them to forage for their livelihood but they are very communicative. It is not their expectation that they would be taking more than one delivery right now. There is a new crop of young birds being incubated for us by a local incubator operator. They are intending to add some birds. They may decide they need more food for birds and at which time they would need to bring in more food. Currently, they feel like they are in pretty good balance with the one delivery a week.

Council Member Sherman said there is a possibility of an increased population of chickens and increased deliveries.

Mr. Hammer replied absolutely.

Council Member Sherman said there is also the possibility of more food residuals going to the other location.

Mr. Hammer said the other location being the East Montpelier Vincent Flats location. By other location they are talking about two places they put food residuals at Main Street. Does she mean the alternate location they operate in East Montpelier?

Council Member Sherman replied yes.

Mr. Hammer said there is an overall intent to increase the amount of food residuals collected. That has been an ongoing intent of the Solid Waste District and they also would like to manage more. They have the opportunity to balance the needs of the chickens at Main Street which is why they bring food residuals to Main Street. At Vincent Flats they have a permit to accept food residuals for composting directly into composting process. If they need more food for chickens and there isn't more food coming that will diminish what is going to Vincent Flats, but he doesn't anticipate that. He anticipate that they will see both an increase in food residuals collected and will need to bring more to Main Street as well.

Council Member Golonka said he is trying to focus on the present. He is trying to get testimony in regards to scientific reasons on how the dates were determined and why he feels there will not be an issue order. Crows are scavengers. He is trying to determine why those dates were chosen.

Mr. Hammer said he responded to an e-mail from the Health Officer and they gave him exactly what he requested. They were faced with two choices as they got untenable. One was to butcher the chickens and put them in freezers or stop managing food residuals at the farm. They have the capacity to meet their obligations for receiving food residuals at another facility where they can manage them legally and appropriately. They could attempt to make a technical fix for this technical problem of transporting food. There was the feeling on the farm that it was enough already and they should stop producing eggs, eat the chickens and solve the problem that way. They have been producing eggs uninterrupted and selling them in this community since 1998. He found himself challenged. He woke up in the middle of the night thinking that was what they were going to do. They weren't going to spend any more money. They weren't going to have any more aggravation. They would announce they wouldn't take food residuals at Main Street any longer. He woke up in the middle of the night and thought about explaining that decision to a roomful of intelligent fifth graders who had might ask questions. They have spent a lot of time with school kids in this community talking about food, what we do and giving them tours of the facility. He thought it was going to be very hard to explain how we killed the chickens that were laying eggs in the middle of January in Vermont, the only food being produced at that time in our community, because we couldn't figure out a way to solve the problem of very small amounts of food being transported by wild birds on to a neighboring horse pasture. He decided they would solve the problem

technically, and the excuse for that in business terms was that it was an important business development. It was important to be able to do this because it was non-negotiable about recognizable food transported off site. He doesn't believe it is principally a health issue. He believes it is a community development issue; it is a property rights issue, and it may be a community justice issue, but he does not believe it has been shown to be a health issue.

Mayor Hooper said that is the only matter in front of the Council today, whether or not it is a health issue.

Council Member Golonka said the date wasn't driven by Vermont Compost; the date was driven by the Health Officer.

Mr. Hammer said the dates were not driven by Vermont Compost.

Council Member Golonka asked if the dates were irrelevant in Mr. Hammer's opinion.

Mr. Hammer said the dates are the agreement they made.

Attorney Richardson said the dates are based on, as the record shows, the evidence that was collected and it was the city's decision to set those dates and we abide by them. Part of the danger here is that we do not want to get into the realm of regulating agriculture. This is public health.

Council Member Golonka said every aspect of the agreement references during the scope of the agreement. He is only asking about that scope of agreement which is section 2.

Attorney Richardson said they aren't talking about the agreement. They are talking about whether or not there are on the ground facts that illustrate a public health risk, but the agreement is what they are abiding by. The hearing here is looking to whether or not this agreement is in place.

Council Member Golonka said they have heard testimony that there is no evidence at this point of residuals being brought to these different properties because they are following an agreement. The agreement has a specific end date or a period where it is not covered. He is trying to figure out why that end date is and trying to figure out the end date in regards to the discussion. It has everything to do with it.

Mayor Hooper said the limited question to the Council is, is there a health hazard today? The question could be, after May 1st has there been evidence that food was being deposited? The answer is no but we know they are still contained.

Mayor Hooper reminded people in the audience that the Council is taking testimony from three parties as to whether or not a health hazard exists today. The three parties are the Health Officer, Vermont Compost and the adjacent property owners who brought the appeal. These individuals may ask other people to testify on their behalf, but we are really trying to limit it to the question of the health hazard.

Attorney Stitzel said a possible way to frame a question might be to ask if the agreement were followed as it is written and the birds were fed outside. At this point, what evidence can they provide that there will not be a resumption of the depositing of food waste on other property?

Mr. Hammer said he couldn't speculate about that. They didn't dictate these dates. They are currently abiding by the protocol that is working because they are very interested in preventing transport of food off site. They are determined not to have food transported off site on to the LaRosas. They built a substantial structure, bought a machine and are utilizing those things. They recognize they do have this latitude to manage feed on their farm within the scope of this agreement and he is not looking to encumber their management any more than it needs to be encumbered. They did everything the city asked them to do by way of agreement. Currently, there is to their knowledge no transport of fresh recognizable food by wild birds from their site.

Attorney Richardson said he would like to ask a follow-up question of Karl.

Question: Are you and Vermont Compost committed to abiding by this agreement?

Mr. Hammer said they are committed to abiding by the agreement.

Attorney Richardson said thus far this agreement has been successful.

Mr. Hammer said that is his belief.

Attorney Richardson said he would like to pose this hypothetical which goes to the heart of this question. Thus far he has stayed with this agreement even though technically by the agreement he is not bound to feed them inside the shelter. If in the future he were to remove the feeding and there was, contrary to all evidence heretofore, some evidence of crow activity, would he resume feeding inside the structure which has proven successful?

Mr. Hammer replied he would. He frankly doesn't envision changing to feeding in an unrestricted area.

Council Member Golonka asked if he could think of any reason why he would feed them outside of that restricted area.

Attorney Richardson said he objected to that question.

Mayor Hooper reminded them that the question before the Council is whether or not a health hazard exists today.

Attorney Richardson said he wanted to ask Mr. Hammer a question. Is there any evidence to his knowledge that has ever shown this kind of crow food removal activity during the periods that are not covered specifically by this agreement?

Mr. Hammer said there are crows at every time of the year.

Attorney Richardson said he is asking a specific question. Has he heard of any deposition complaints from the neighbors during the periods that are not covered by this agreement?

Mr. Hammer replied he has not. He doesn't receive the complaints from the neighbors directly. They are collated by the Health Officer.

Attorney Richardson said he has not heard them directly and has not heard anything from the Health Officer.

Mr. Hammer said he has not. He accepted from the Health Officer that he had to his satisfaction designed a process that would mitigate the problem. They are absolutely committed to and interested in mitigating the problem while continuing to provide sustenance to their chickens.

Mayor Hooper said she thinks they will ask the Health Officer back because there are some specific questions that have come up about why the terms of this agreement.

Mr. Hammer said that is talking about the agreement again and not about the health issues on the ground today.

Steve LaRosa said Mr. Hammer has testified a couple of times that small amounts of food have been removed from his operation. Can he define for him what a small amount is?

Mr. Hammer asked if they were talking about prior times. Is it appropriate to talk about volumes? He said he has never actually gotten to hold any of this material that is evidential in nature. He understands Chief Schneider has seen it. He has never actually had an opportunity to look at the alleged material. They have accepted other peoples' word for it. His understanding from the photographs he has seen that they are typically talking about a portion in a week's time would be small amounts distributed over several acres.

Mr. LaRosa asked what would constitute something that is not a small amount but a significant amount.

Attorney Richardson said he objected to this line of questioning. This doesn't seem to be relevant to the issue at hand.

Mayor Hooper told Mr. LaRosa that perhaps he could bring them up to date on what is happening today.

Mr. LaRosa said what has been testified to a couple of times tonight is that the volume of food waste that has accumulated is what determines whether there is a health risk.

Mayor Hooper told him he would have his chance to present testimony as to what he has experienced. If he has questions that Vermont Compost can answer directly that is okay.

Attorney Richardson said he would like to call Joseph Ferris to testify.

Joseph Ferris said he has lived in Montpelier his whole life. He works at Vermont Compost Company and has worked there for four years.

Attorney Richardson asked what he does at Vermont Compost.

Mr. Ferris said he mixes potting soil, screens compost, takes care of chickens, bags products, and from the time he has been there he has done most of the things that one can do at Vermont Compost. Currently, his position is soil mixing.

Attorney Richardson asked if he had worked with the chickens in the past.

Mr. Ferris replied he had.

Attorney Richardson asked if he was familiar with the subject of this hearing which is whether or not there is any continuing public health threat from the crow depositions.

Mr. Ferris said he was familiar with the subject.

Attorney Richardson said you are familiar with Vermont Compost before the February agreement about the grounds and the feeding systems. Since the February feeding agreement you are familiar with the grounds and arrangements. Has he seen any crow removal of food residuals since the February agreement?

Mr. Ferris said he has not.

Attorney Richardson asked if he was aware of any removal of these food residuals from the property since the February agreement.

Mr. Ferris said he was not aware of any removal of these food residuals.

Attorney Richardson asked if it was fair to say that as he understands it there is no removal of any food residuals from Vermont Compost since the February agreement went into effect.

Mr. Ferris said there are none.

Attorney Richardson asked how many days a week he is there.

Mr. Ferris replied five days a week.

Attorney Richardson said in addition to this agreement what other tasks does he do as an employee of Vermont Compost each day to police the area.

Mr. Ferris replied on a daily basis they police the whole site for exposed food or plastic wraps. They are very meticulous and making sure everything is in order.

Attorney Richardson said each day he is at work he polices the grounds in its entirety.

Mr. Ferris said they do virtually, yes.

Attorney Richardson said neither he or anyone he knows of has encountered any kind of removal of food residuals since the February agreement.

Mr. Ferris replied no.

Roseanna Vestuti appeared as the next witness.

Attorney Richardson asked her where she lived in regards to Vermont Compost.

Ms. Vestuti said she lives on the same side of the street as the farm is at and she is the next door neighbor closest to Montpelier. She is the adjacent neighbor.

Attorney Richardson asked if she shared a common boundary with Vermont Compost.

Ms. Vestuti replied yes.

Attorney Richardson asked how long she had lived there.

Ms. Vestuti replied 15 years.

Attorney Richardson asked if she had ever experienced crow depositions of food residuals on her property

Ms. Vestuti replied no.

Attorney Richardson said since the February agreement that Vermont Compost entered into with the city has she noticed any change in the situation.

Ms. Vestuti replied no. There are hardly any crows and maybe one or two seagulls flying around, which is unusual.

Attorney Richardson asked if this agreement and protocol has been effective in lessening any wild bird population.

Ms. Vestuti replied most definitely, yes.

Attorney Richardson said for the record, what is her relationship with Karl Hammer?

Ms. Vestuti said she was his ex-wife and he is the father of her son.

Attorney Richardson asked if she let her son work at Vermont Compost.

Ms. Vestuti said she is really happy that he does.

Attorney Richardson asked if she let him work with the food residuals.

Ms. Vestuti replied yes. It's a safe place. It's a great place for him to work.

Attorney Richardson asked if she had any fear that he may contract an illness, or has he ever contracted an illness by working there?

Ms. Vestuti said he hasn't and she doesn't have any fears. It's one of the cleaner places he could work.

Council Member Golonka said she stated she was his ex-wife. Does she have any financial interest in Vermont Compost?

Ms. Vestuti replied no. He is the father of her son.

Health Officer Schneider said he had a question for the record. How far is her house from the feeding area as opposed to the LaRosas?

Ms. Vestuti replied it is further away than the LaRosas.

Mayor Hooper said she referenced to the change in the bird behavior. There has been a significant change in the bird behavior since the feeding regime has been changed. Is that right?

Ms. Vestuti replied behavior as in quantity. There are a lot less. She has never personally noticed food issues on her side, but there are definitely less birds now, hardly any at all.

Council Member Sherman asked Ms. Vestuti if she had open fields so that the layout of her property is comparable to the LaRosa's property.

Ms. Vestuti replied yes. She also gardens on one part of it and in the winter she snowshoes up there. She has never noticed any particles of food on the snow.

Council Member Sherman asked if the current times different than prior times. She says now she doesn't notice that the bird population is down and doesn't notice food. When the bird population was high, did she notice food?

Ms. Vestuti said she didn't notice food. She noticed a quantity of birds but not ever food.

Council Member Sherman asked if they roosted on trees on her property. Did they come there?

Ms. Vestuti said there were some. Not that many but there were definitely some roosting and she hasn't noticed that lately either.

Attorney Richardson said that was all of the witnesses they choose to call at this time.

Mayor Hooper said they would like to hear from Steve and Barbara LaRosa.

Attorney Stitzel administered the oath to Steve and Barbara LaRosa.

Mayor Hooper said specifically what they are looking to learn from them are observations and comments about what has occurred since the execution of the agreement and any comments they might have concerning any deficiencies that may exist.

Steve LaRosa said he unfortunately doesn't have legal counsel. He doesn't fully understand why their appeal of the Health Officer's decisions is not what is being discussed. Their appeal was to formally appeal the decision of Health Officer

Schneider, that the Vermont Compost Company actions have not historically resulted in health hazards. That is what their appeal was. They also mentioned they had some issues with the testimony represented in the agreement between the City Health Officer and Vermont Compost Company. They are not appealing the agreement. There are some things they would like to see changed, but what they are appealing is the decision of the Health Officer. One of his questions is, why is that not what they are discussing and why is that not allowed in the pre-hearing notice?

Attorney Stitzel said there is no process provided in the state statute that specifically authorizes an appeal of an action of a health officer that does not precipitate a request for issuance of a health order by the Council. The fact that the Health Officer made a determination that there has not been a health hazard is not an issue that is directly reviewable by the City Council in an appeal. What the City Council is doing is independently evaluating at this point whether there are facts to demonstrate, regardless of what the Health Officer has determined, that there is in fact a health hazard or a significant health risk currently. He is also focusing on the appeal of the specific relief that was requested in their appeal which is:

We simply want protection for our family and pet's health. I ask that the city create an agreement that has a very specific timeline and consequential language that will assure the neighborhood is protected from the health risks posed by food waste transported.

The relief he is seeking is prospective in nature, not retroactive. He has mentioned during the deliberative session the Council doesn't have authority under this statute to look retroactively at imposing fines or penalties but merely looks forward and tries to come up with a remedy for a problem if a problem exists. The focus is definitely on is there a problem at the present time that requires some further intervention than what has been done so far.

Mr. LaRosa said that evaluation if they came here tomorrow would be made independently for what tomorrow's data says, but not what is happening today but tomorrow, or if they came in next week what the conditions are then and not what the conditions are today or the date the agreement was put in place.

Attorney Stitzel said he didn't want to engage in speculation.

Mr. LaRosa said he doesn't want to go back in history. He just wants to know where the start of history is.

Attorney Stitzel said if there are facts to document the creation of a health hazard on property at some time in the future that certainly is something that is reviewable in the first instance by the Health Officer and can potentially ultimately come before the

Council. The Council can only act on the basis of the evidence that presently exists of what is presently occurring and not on the basis of speculation as to what might occur.

Steven LaRosa said he lives at 2012 Main Street directly adjacent to the Vermont Compost Company's main offices and their farm. They have lived there for approximately 10 years and have had a number of interactions in the past regarding the deposition of food waste on their property. Since the installation of the agreement that Vermont Compost and the City Health Officer have entered into they too have seen a massive decrease in the amount of food waste being transported off property. He only had an opportunity to observe the bird activity on a limited basis during the week and on the weekends. He has seen maybe a dozen crows in the area recently. He doesn't recall seeing many of them with items in their mouths so it doesn't seem they are gaining access to the food waste. Barb hasn't indicated to him that they haven't seen any transport or they have picked up much of anything for food waste. They have picked up the occasional piece but not much so the arrangement they have for dealing with the food waste when it arrives at their property and how they are feeding now certainly seems to appear to be working, again in the operations occurring as the agreement has been laid out. However, he would point out, as Mr. Hammer testified to earlier, this is not spring. Summer is not the best time to evaluate the worst case scenario. Fall has traditionally been the time where they see the most activity. He is hopeful this will work. Last year their first contact with the Health Officer in the fall was around October 14th, so from a timeframe standpoint it seems like the timeframes that have been straining the agreement is coming in too late in the fall and they would actually like to see things carry a little bit further towards summer, primarily because they were real lucky this year and lost all of their snow cover very early. If that carries later, what they have seen in the past is that the spring need for food seems to congregate crows a little more. That seems to be the case from their experience in the neighborhood.

He thinks he has addressed the comments about execution of the agreement and how that has worked. Comments regarding deficiencies – he doesn't like the word deficiencies because it has a bit of a negative connotation to it, but they would like to see some modifications to the agreement that they believe would make it better structured in the event that there is an issue that arises in the future so they don't need to come forward again and say this is what is happening in the present time, that they lay out a method for moving forward.

They, too, would like to see the agreement actually be year round. Not necessarily that the feeding happen inside the enclosure but that the feeding methods be consistently evaluated and that the potential for removal of food waste be continually evaluated and that any changes in feeding be reported on the basis of when it happens

and not just during the spring/fall period but throughout the year so they are all aware of what is happening.

What really concerns them about the agreement is if something does happen in the future. There is some very good language in here that if there are reports to the Health Officer that Vermont Compost will do some things immediately, do some evaluations, and that's all great. It is heartening to him to hear Karl Hammer say that they are very committed to this agreement because in the past when they have brought up these issues and when the Health Officer has looked at what is currently happening today it has taken quite a bit of time to move forward from what's happening to actually getting to the agreement. They initially discussed things in October through December and January, and in February finally came and there was action that was taken. They would very much like to see some sort of timeframes proposed for responses. He certainly isn't going to put them forward because Karl knows how long it takes to even try to do it this way and it doesn't seem to be working. There needs to be something in there to say how we are going to go about it and this is how we will try to remedy this if something happens. Then, they would also like to see some sort of consequences for not following the agreement, that if the agreement isn't followed and if the Council or Health Officer determines that the agreement isn't being followed that there are some sort of consequences. Having an agreement has happened in the past. Changes to the operations have happened without notification and there have been no repercussions because of that. He would like to see this in the agreement. They think it would make it a bit stronger. From the sound of things it really isn't going to change how the commitment that Karl and Vermont Compost has clearly indicated tonight that they are going to put forth with regard to this matter. He doesn't see that it would be any more constrained to their operations to do that.

Mayor Hooper said while she knows there are some that would like to discuss the content of the agreement the Council is limited. Mr. LaRosa's testimony has been that he has seen a massive decrease in the food waste. Has he had any food wastes deposited on his property since the feeding area has been up and in operation?

Mr. LaRosa said he would estimate that they have seen less than a dozen individual pieces of recognizable fresh food waste. They found a couple of bones and some clam shells in the front yard, but compared to what they had been seeing there has been a very minor amount.

Barbara LaRosa said she lives adjacent to Vermont Compost with her husband Steve. The February date that the building was erected was also the time where the snow cover was large, and typically the crow population does decrease in the area and they spread out. Today is not a day where they normally would ever have a crow problem. Typically, it is in the fall through spring time that they do have a very large problem.

Mayor Hooper said there are a couple of questions for Chief Schneider so they will call him back.

Attorney Richardson said he would like to recall Karl Hammer for one quick question. The written agreement he signed with the city in February, is that the first written agreement on a public health matter he entered into?

Mr. Hammer said they made an agreement the year before but it was open and not executed. He believes he signed it.

Attorney Richardson said he is talking about an executed agreement with the city on a voluntary compliance.

Mr. Hammer said yes.

Mr. LaRosa said he would like to ask a question of Mr. Hammer.

Attorney Richardson said he would ask that it stay to the scope of the redirect he had with Karl about the agreement.

Mr. LaRosa asked Mr. Hammer if he recalled whether he followed through with that agreement in its totality.

Mr. Hammer asked which agreement, the agreement he made with Chief Schneider in 2009. They didn't make an agreement in 2009. That was when the city, Vermont Compost and also intended the LaRosas would enter into an agreement.

Mr. LaRosa said he is discussing the agreement he entered into.

Mayor Hooper said there was one executed agreement which was the one that was completed in January of this year and one that was not executed, which she believes that the testimony was that it was not final. Is that correct?

Mr. Hammer said in 2009 they attempted an agreement that was not executed.

Mr. LaRosa said he misunderstood the testimony. He thought that Dan had asked that there was a previous agreement he had entered into and he indicated yes there was.

Mayor Hooper said no there was not a previous agreement. She told Chief Schneider that while they are not revisiting or attempting to rewrite the terms of the agreement there was a desire to understand in terms of the deposition of food residuals has to do

with crow behavior and say that crows deposit food some periods of the year and some periods they don't. Can he help the Council understand that?

Health Officer Schneider said to keep in mind that he first got involved on January 8, 2008 and that first spring, as he testified prior at the City Council, he doesn't think the LaRosas were aware of the impact it was having on them and they made very little effort to notify the city when things were happening so they only had one or two contacts with them up until April of the third year. That summer they did not have any specific complaints about crows. On December 17, 2008 they were told that the crows were back and there were food residuals there. January 19th, which is about 17 days later, he determined that while maybe not a significant health risk that there was enough accumulation of material to indicate that a health risk was occurring at that time. Actions were taken and changes and procedures were attempted. Over the summer of 2008, again there were no specific complaints about deposits. On October 15th the LaRosas did notify him that the crows were back. However, it was only on December 21st that they went ahead and notified him again that there were food deposits and food wastes. Again, it was around January 11th when he was basically ready to make the same finding that Karl Hammer change his rules. Keeping in mind from his point of view the garbage itself is not a health risk. It is the accumulation of garbage and it requires evidence that garbage is accumulating. That is not to say it is not a property issue, but as far as being a health officer he cannot say that garbage is a health risk. It became very clear to him that over a two year period, a period starting in December and into January, February and March that was a high risk area. He went back a month and a half from the earlier actual deposition of the food waste to get to the November 1st date and the May 1st date is a guess in the spring because they haven't had any specific information.

Mayor Hooper said in summary the dates of agreement were based on his experience in terms of when problems begin to arise within a definitive time frame.

Health Officer Schneider said two years' experience with that specific problem showed him that was the high risk time. Obviously, if he received a complaint outside of that then he would have to start evaluating if there was enough deposition to consider it becoming a possible health risk.

Council Member Sherman said they have defined the problem in terms of a period of time, but during that period of time when the problem has gone away there has been a significant change in the operation, i.e. the food is in the feeding structure. Would the problem persist without the feeding structure?

Health Officer Schneider said he presumes that after two years without the feeding structure they would continue to have a problem, at least during the wintertime.

There is no evidence at this point with his experience of two years dealing with it that there is a summer problem. There is definitely a wintertime problem.

Mayor Hooper said she would like to know if there is any other evidence to be entered. This is the time to receive evidence and then they will close the hearing and there will not be an opportunity to receive additional evidence from either party.

Mayor Hooper closed the evidentiary portion of the hearing at 8:50 P.M. The Board of Health needs to decide if it would like to make a site visit in order for us to determine as the Board of Health that there is a health hazard or you believe that there is a risk of a health hazard and we should be reconvened as a Board of Health to deal with that issue. Do they wish to visit the site?

Council Member Hooper asked if they made that decision in deliberative session and decide that now.

Council Member Golonka said he would like to see the site.

Mayor Hooper said she assumes two vocal yes's and no one objecting strenuously is a desire to make a site visit and they will need to have all of the parties join them. This will not be an opportunity for the Board of Health to gather additional evidence or be shown specific issues.

Council Member Weiss said if he is assuming correctly that before this evening is over this group will go into deliberative session. Is that correct?

Mayor Hooper said if they make a site visit they will do nothing until they make the site visit, and then having visited the site they will go into deliberative session. Is that right?

Attorney Stitzel said they could have some deliberations tonight.

Mayor Hooper said the answer to Council Member Weiss' question is yes, we will have a deliberative session which is only open to the Board of Health and our attorney and not our City Manager or Health Officer.

Council Member Weiss said if they are going into deliberative session he would like the deliberative session to cover all matters, and following the deliberative session then it would be determined whether or not a field trip would be worthwhile.

Mayor Hooper asked if he would like to defer making that decision.

Council Members Hooper and Weiss replied yes.

Mayor Hooper asked the question if they wanted to make a field trip and there are some members who would like to. However, they would like to have a deliberative opportunity, and then based on that opportunity to decide on whether or not they will make a field trip. They may take the invitation to visit the site. If they do they will make sure that all of the parties have an opportunity to join us at the site. There is also a motion they need to consider from Vermont Compost. At this point she will adjourn this portion of the hearing.

Mayor Hooper asked Attorney Stitzel what were the rules in terms of them talking to anyone about this until they have made a decision. She presumes they should not have any conversations with any member of the public or the press.

Attorney Stitzel said that is correct.

Mr. LaRosa asked if he would have an opportunity to respond to the voluminous information provided by Vermont Compost immediately prior to the meeting.

Mayor Hooper said because there was information that Mr. LaRosa has not had a chance to review he does have an opportunity to respond to it. She would ask that he do it in writing so they can all share it equally.

Mr. LaRosa said they would be glad to do that within the next seven calendar days.

Attorney Richardson said at this point he would withdraw the second memorandum that is the summary of testimony simply because it was not required. He asked the Board of Health not to consider that. The second memorandum which is entitled "A Summary" is the one they are withdrawing. That is the one they filed in anticipation of potential expanded testimony that did not come to fruition. It is simply the first memoranda on procedural history and objections.

Mr. LaRosa said they would have their response to the Board of Health by May 27th.

Attorney Richardson asked that a copy be sent to his office.

Attorney Stitzel said he would like to clarify why the Health Officer would not be allowed to participate. The Health Officer under Vermont law is a member of the Board of Health and the Board of Health has many responsibilities, only one of which is the review of issuance of health orders. Health orders are actually issued directly by either the City Council or a Select Board and not by the Board of Health. In health order matters typically the Health Officer is requesting that the Council or the Select Board issue the health order, and in those cases the Council is exercising judgment independent of the judgment exercised by the Health Officer. In other instances where the Council is acting purely as a Board of Health, such as the adoption of

ordinances under the health statute, the Health Officer is a member of the Board of Health and participates with the Council as a member.

Mayor Hooper said this portion of the meeting is adjourned. She appreciates everyone's interest in this issue and hopes understanding of the very limited scope of what we are looking at, which is whether or not a health hazard exists today.

The City Council entered into deliberative session as the Montpelier Board of Health.

Transcribed by Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk