

**Kingston, New Hampshire  
Board of Selectmen  
Meeting of December 22, 2014  
MINUTES**

The meeting was called to order at 7:00 pm in the Selectmen's Office of the Kingston Town Hall. In attendance were Chairman Mark Heitz and Selectmen Peter Broderick and George Korn.

Prior to the call to order, Fire Chief Bill Seaman advised the Board that Administrator/EMT Karyn Maxwell plans to retire from her position at the end of January, 2015, and requested he be allowed to advertise the position. It was agreed that, if possible, the successful candidate will carry certifications for EMT and for Firefighter II as well as have the requisite administrative abilities. Otherwise, another Administrator/EMT will be hired.

Planning Board Chair Richard Wilson was present to advise the Board that an illegal excavation/timbering operation on North Road is being reported to the State by the town's Planner and is in violation of numerous local ordinances, causing irreparable damage to a jurisdictional wetland located on the property. It was agreed that the Board will send a Cease and Desist order both to the property owner and to the operator.

The Board discussed a request from a New Boston Road property owner who has been issued a Notice of Violation relating to operation of a junk yard. Due to a personal injury, the owner has requested an extension of the deadline for compliance, which had been set for December 26th. It's expected that a dumpster will be delivered early in the new year and that unregistered vehicles, machinery and equipment will be removed as soon as possible. Health Officer Peter Broderick will inspect the property on a weekly basis and take photographs. If substantial progress toward compliance is not evident, the matter will be referred for court action.

The Board agreed that a work session will be held at 9:00 am on Tuesday, December 30<sup>th</sup> for setting of encumbrances to cover 2014 expenses in 2015.

Road Agent Richard St. Hilaire advised that the foundation for the new highway garage is in and that the steel is expected to be in during the third week in January.

**Discussion of Proposed Memorandum of Understanding with Library Trustees**

The Library Trustees were present to discuss a Memorandum of Understanding (MOU) they are proposing. Chair Lesley Hume advised that the purpose is to clarify points that the Trustees had thought were resolved but that, in some cases, continue to be issues. The draft Memorandum is meant to be a starting point for a discussion.

Ms. Hume noted that she has spoken with the Finance Officer and understands that any balance remaining from a current year's budget will be returned to the Town at year end. That process is outlined in the MOU and has been approved by the town's auditing firm.

Selectmen informed the Trustees that they will not agree to a point in the MOU calling for the Selectmen to cover any shortfall in the Library budget's utility line. The Library budget will need to include an amount sufficient to cover the expense, just as is expected of every other department. An amount also should be included to cover any maintenance and repairs on the heating equipment. The Board advised that they had covered a shortfall for 2014 because that was the first full year in which utility expenses were paid from the budget, but now that there is a history and projected rate increases are known, it should be possible for the Trustees to budget accordingly. The same will be expected for every line in the library budget.

Discussion then turned to the Nichols Building. Chairman Heitz noted that the residents of Kingston had been highly supportive of the new library. He believes that it was never expected that the Nichols Building would continue in service as a library facility. It was his understanding, based on numerous discussions with the Trustees and Historical groups, that the intended use

of the Nichols Building would fall to the various Historical groups for establishment of a museum facility, with a minor library component in order to meet the requirements of the trust.

Alternate Library Trustee Bart Noyes advised that, regardless of voter intent, the town is obligated to maintain the building as a library facility. Trustee Chair Lesley Hume stated that she had left a June, 2012 meeting between Library, Historical groups and the Selectmen, believing that the facility would continue as a library facility and for two years she and a group of highly motivated volunteers have been working to transform it into a research facility and historical display museum.

Chairman Heitz advised that the Nichols Trust, which called for use of the building as a public library, probably can be broken. The building was used as a library facility for more than 100 years, and the grantor or his heirs probably had no expectation that it would be used in that capacity for longer than that; it remained a public library until it no longer could meet the needs of the town. Ms. Hume advised that the first the Trustees had heard of the Selectmen considering breaking the trust was at a public Budget Committee hearing; she believes the Selectmen could have discussed it first with the Trustees. Selectman Broderick advised that no decision has been made and there really has been nothing to discuss. Selectman Korn advised that he agrees with Chairman Heitz that there never was an intention to operate two libraries and, if he has a preference as to who will manage the Nichols Building, he prefers it be managed by the town's historical groups. If he determines that it will be in the town's best interest that the trust be broken and the historical groups be given oversight of the facility, he will support that course of action and he will not at this point sign any document that restricts his ability to look at all possibilities.

Ms. Hume then referred to the section of the MOU dealing with the cleaning of the two facilities. That section provides a specific listing of items to be accomplished and a timetable for how often each item needs to be done. Chairman Heitz asked if the Trustees understand that there is substantial difference between the Selectmen allowing the Library Director to discuss cleaning and maintenance of the building with town employees and the Trustees demanding the Board's approval of a detailed listing. Alternate Trustee Bart Noyes advised that the Board of Selectmen and the Library Trustees are two separate legal entities and that it falls to the Trustees to determine what's needed to maintain the interior of the building. Chairman Heitz advised that Richard St. Hilaire - who maintains the town's buildings and who has been supervising the work of the town employees who perform the cleaning and maintenance work at the library at no cost to the library - is a town employee and, as such, falls under the Board of Selectmen's authority. He asked Mr. St. Hilaire what he thinks of the Trustees' proposal. Mr. St. Hilaire advised that he is angry; he works for one Board - the Selectmen - and doesn't intend to be subject to any other board. Mr. Noyes pointed out that part of the proposal in the MOU calls for an outside cleaning service to come in on a weekly basis to supplement the work done by Town Employees, and the amount of that service - \$5,400.00 for 2015 - was included in the Trustees' 2015 Budget proposal. He said that attempts by the Selectmen to try to interfere with Library operations is equivalent to them going to the Town of Newton and demanding compliance because the Board of Selectmen and the Board of Trustees are totally separate legal entities. Mr. St. Hilaire, noting that he already has increased from three to five the number of times per week that his maintenance staff visits the library and cleans, stated that he cannot increase the level of service to that one building without either limiting the number of major repair projects that the staff undertakes town-wide or increasing staff. John Cogswell, who is one of the maintenance staff, advised that every item on the proposed cleaning list is done regularly, although probably not as often as the list calls for, and "high dusting" of work areas is left for library employees to do, as agreed to by library personnel. Ms. Hume advised that she has been very happy and appreciative of the work the town's employees have been doing and if they can continue to clean at the library daily she will be happy not to hire an outside service. Mr. St. Hilaire advised that the list included in the MOU is ridiculous and that if the Trustees insist on that level of oversight they should hire the outside firm. He also advised that he believes the building is well cleaned and that if the employees aren't able to clean their own workstations the Trustees need

to find new employees. In no other building in town are the cleaning staff expected to clean personal spaces.

Ms. Hume asked if the Board will be willing to work with her to find points within the MOU that both Boards can agree to. Chairman Heitz advised that - speaking for himself - he will never agree to have town employees placed under any level of control by the Trustees. Library Director Mike Sullivan advised that he is the professional manager of the library and that he will deal directly with Mr. St. Hilaire as a fellow professional or with his employees. There is no need for the Trustees to bother with that aspect of operations. Selectman Korn advised that he will be willing to work with Ms. Hume in reviewing the MOU. Selectmen agreed, however, that since the Trustees seem determined to draw a line in the sand, it may be necessary to go forward with a full separation between the two separate legal entities, and allow the Trustees to request funding via Warrant Article. Selectman Broderick advised that voters then can decide whether they want to continue to operate a public library in Kingston.

Chairman Heitz advised that he doesn't believe it to be in the town's best interest for the two Boards to behave as "totally separate entities". However, when he looks at a document like the MOU proposed by the Trustees, he thinks the Selectmen probably should consider the option of total separation, letting the Trustees submit a Warrant Article for their funding and letting the Trustees be responsible for the cleaning and maintenance of the library facility, paying and insuring their employees, accounting for their budget, plowing, etc. He advised that, in reviewing the 2014 Library budget proposal, the Budget Committee had refused approval of an appropriation for a bookkeeper yet the Trustees had gone ahead and hired a bookkeeping service. Trustees Chair Lesley Hume explained that the Trustees had encumbered funds from the 2013 Budget to cover that expense, with the approval of the Department of Revenue Administration. Selectman Broderick asked if DRA was made aware of the fact that the expense was to be incurred in 2014. Ms. Hume reiterated that DRA had approved the encumbrance.

Chairman Heitz stated his belief that no one benefits from an adversarial stance between town Boards. Ms. Hume suggested that better lines of communications may be necessary. She asked if there are any points in the MOU to which the Board can agree. One point relative to the Nichols Building - finishing of the basement floor to reduce dampness, dust and dirt - is extremely important to the volunteers who've been working down there. Chairman Heitz asked if it's accurate to say that the Trustees believe they are operating two facilities - both the public library and the Nichols Building. Ms. Hume replied that it is her belief that both facilities are libraries and that the Trustees therefore are responsible for them. Alternate Trustee Noyes advised that there's a statutory mechanism for giving up a library facility and, if the Nichols Building is not to be under the Trustees' management, that mechanism needs to be put into place.

Mr. Noyes asked if he can get a copy of the town's liability insurance policy and a letter advising that that library is a covered entity. He also advised that he would like the library budget to include its own legal expense line. Trustees Chair Lesley Hume noted that she believes it to be a reasonable request that the Trustees be able to seek counsel without having to get the permission of the Selectmen. There are times when she prefers to seek advice from an attorney with a specific specialty rather than using town counsel or seeking advice from the legal services division of NHMA. Chairman Heitz noted that there was a legal expense line in the budget proposal submitted by the Trustees to the Budget Committee - the same budget proposal that the Trustees refused to provide to or discuss with the Selectmen as is done by every other department of the town. He also noted that the Trustees had suggested to the Budget Committee that the \$5,000.00 legal expense line in that proposal be off-set by a corresponding reduction in the town's legal expense budget. The suggestion was made with no concurrence on the part of the Selectmen and with no discussion prior to being proposed to the Budget Committee. He advised that he finds it unbelievable that the Trustees would attempt to impact the Selectmen's budget to their own benefit and that he has zero interest in supporting the Trustees in using tax funds to bring suit or seek legal advice against the Selectmen or town.

Trustee Jef Flanders-McDougall advised that the historical groups have been working every week in the basement of the Nichols building trying to archive the town's collection of artifacts and that they keep being told that their working conditions will improve once the new floor is installed, but months have passed with nothing being done. The Selectmen agreed that if the historical groups are working on the preservation and cataloging of artifacts, it may be best to get the floor sealed and finished. Richard St. Hilaire was asked to work with the contractor to get that accomplished.

Chairman Heitz closed the discussion with a suggestion that the Trustees discuss the Nichols building and determine where they stand relative to its oversight. The Selectmen then will decide what their course of action will be.

### **Recreation Department Discussion**

Recreation Co-Director Paul Butler was present to request guidance for a Warrant Article that the Recreation Commission would like to submit for the purchase of commercial grade playground equipment for the Community Recreation site on Main Street. It was agreed that a petition article requesting the \$35,000.00 necessary for the equipment, ground cover and fencing will be most likely to pass voter approval. The petition will be presented to the Board prior to the January 13, 2015 deadline for submittal.

Mr. Butler and Richard St. Hilaire also discussed with the Board a second entrance into the recreation site, from a point on Wadleigh Point Road. The Commission and Mr. St. Hilaire believe that entrance will be a safer alternative to the present entrance, which leads traffic directly past the front door to the building. Also, it would allow for a basketball court off to the side of the new entrance. The paved court would be available for activities other than basketball and would be a great addition to the resources on the site. It's expected that both the driveway and the basketball court can be done by Mr. St. Hilaire's crews for approximately \$18,000.00. Although the playground upgrade is the main priority, Mr. Butler hopes that both projects, as well as installation of the heating system in the building, can be done by next spring.

### **Sands Lane Residents Discussion**

Robert Ducharme of 36 Main Street was present to request that the minutes of the December 15, 2014 meeting be amended to reflect a question he had asked at that meeting relative to the status of Sands Lane. Road Agent Richard St. Hilaire advised that, while he hadn't been present at the meeting of December 15<sup>th</sup>, he will state that Sands Lane is a privately owned public right of way that extends from Main Street to the shoreline of Kingston Lake. At one time - prior to establishment of the town's boat ramp - Sands Lane was the access way to the town beach. It was defined in 1930's court documents to be a 9' right of way, but no specific metes and bounds location has ever been established. A second right of way was laid out when some of the former Sands property was subdivided. That 20' right of way was at one time known as White Sands Way and is a private, deeded right of way for the benefit of the new lots created, extending from the property now owned by Joyce Francis to Sands Lane. Chairman Heitz advised that he doesn't remember what precisely was said about the matter at the meeting of December 15<sup>th</sup>, but that the minutes of the present meeting will reflect both Mr. Ducharme's request and Mr. St. Hilaire's reply.

Joyce Francis was present and noted that, referring to removal of a trash shelter on an abutting property, the minutes of December 15<sup>th</sup> read, "Mr. Sands advised that the structure will be gone within a week. He had intended to remove it when the existing house is razed, but will take it down himself immediately." She believes that Mr. Sands had not used the word "immediately" and would like the minutes amended. Chairman Heitz agreed that the minutes will be accepted with that amendment. It was noted that the structure has been removed.

Mrs. Francis questioned Selectman Broderick, who also is the Health Officer, about what day he inspected the newly installed septic system located on the property adjoining hers, at 6 Sands Lane. Mr. Broderick advised that he doesn't track inspections by date, but knows that he inspected the system prior to backfilling. Ms. Francis advised that she has pictures of Mr.

Broderick and of State Inspector Jay Bass on the site on two occasions when the trench with the sewer line was filled in and has no evidence that they were out when the trench was open although the property has been under surveillance 24/7 since installation began. Mr. Broderick reiterated that he and Mr. Bass completed a backfill inspection while the system was open. Mrs. Francis stated that she just wants to be sure everything was done correctly and that her well is safe. She also asked that her questions and Mr. Broderick's responses be reflected in the minutes.

Chairman Heitz, referring to an anonymous complaint received about the Ducharme property on Main Street, asked Mr. Ducharme how many bedrooms are at present in his home. Mr. Ducharme advised that it's a one bedroom home, as stated on the property card. He occasionally will have people spend the night in the basement, but there are two means of egress. Mr. Ducharme's response will be included in the violations file. It was noted that complaints have been received about structures on the Francis property as well, relating to setbacks from the boundary. Mrs. Francis advised that her property is in compliance with all of the town's ordinances.

### **Administrative Issues**

It was agreed that a Notice of Violation will be prepared for a property on Route 125 in violation of the town's sign ordinance.

**MOTION:** Upon motion of Selectman Broderick and second of Chairman Heitz it was voted to accept the minutes of the December 15, 2014 meeting as amended (as noted above). Selectman Korn abstained from the vote due to his not having been present.

**MOTION:** Upon motion of Selectman Broderick and second of Chairman Heitz it was voted to accept the minutes of the non-public session of December 15, 2014 as printed. Selectman Korn abstained from the vote due to his not having been present.

At the request of Road Agent Richard St. Hilaire, it was agreed that he will be provided with copies of future Intents to Cut so that he can discuss with loggers their plans to protect town roadways during their cutting operations as well as determine whether bonding or additional permitting may be necessary.

The Board approved the town's Investment Policy. The policy is reviewed and approved annually.

The Board was provided with copies of a proposed cable franchise agreement, a year-end report of training accomplishments by Camp Lincoln relative to the town's recreation program, and the 2015 Capital Improvements Plan.

### **Adjournment**

There being no further business before the Board, the meeting adjourned at 10:55 pm.

The next meeting will be held on December 29, 2014 beginning at 7:00 pm.

**Respectfully submitted,**

**Catherine Grant  
Administrative Assistant**