

**Kingston, New Hampshire
Board of Selectmen
Meeting of August 26, 2013
MINUTES**

The meeting was called to order at 6:30 pm in the Selectmen's Office of the Kingston Town Hall. In attendance were Chairman Mark Heitz and Selectmen Peter Broderick and George Korn.

Discussion of Election Checklist Procedures

Town Clerk Melissa Fowler and Moderator Electra Alessio were present to discuss with the Board a need to provide to the three elected Supervisors of the Checklist a course of training in the Electronet software program that the state advises municipalities to use in maintaining voter checklists. Ms. Fowler has been in discussion with the Secretary of State's office as well as with HAVA (Help America Vote Act) and she and Ms. Alessio are concerned that the town may be at risk for non-compliance with regulations if both they and the Supervisors aren't familiar with all new regulations. Selectmen agreed and, because Ms. Fowler is authorized to provide the necessary training, asked that she arrange to meet with the Supervisors and ensure that everyone is on the same page.

Acceptance of Library Donations

MOTION: Upon motion of Selectman Broderick and second of Selectman Korn it was unanimously voted to accept on behalf of the Library Trustees personal donations of books and movies having an approximate value of \$771.00.

Review of Previous Meeting Minutes

MOTION: Upon motion of Selectman Broderick and second of Selectman Korn it was voted to accept the minutes of the August 12, 2013 meeting as printed. Chairman Heitz abstained from the vote.

Proposal for Removal of the Grace Daley House Reviewed

The Board reviewed and accepted a proposal submitted by Robert Pothier of First Period Colonial, Inc. for removal of the Grace Daley House by the end of the year. The removal was approved by voters at the March, 2013 Town Meeting. Mr. Pothier intends to remove the building in such a manner that it can be reconstructed on another site, hopefully in Kingston. The work will be done at no cost to the town.

Request for Use of Recreation Building Discussed

Scout leaders from the local troop were present to discuss with the Board their request to use the Recreation Building at 24 Main Street for weekly scout meetings during the school year. The Board advised that the heating system for the building hasn't been installed so the building isn't available for winter use. Chairman Heitz also advised that the town typically arranges for an employee to open and close town buildings when they're used by community groups and that there is a charge for those services and for any clean up necessary. It was suggested that they contact Road Agent Richard St. Hilaire to speak with him about their intent, as he's the supervisor for town buildings and his approval is requisite for any use of the buildings.

Discussion of Enforcement Action for 143 Main Street

Rick Korn, owner of the property located at 143 Main Street; Richard LeClair, who operates a business in part of the property located at 143 Main Street; Richard Johnson, who has operated a hot dog vending cart in part of the parking area at 143 Main Street; and Attorney Keith Dias were present to discuss with the Board a recent enforcement action taken by the town. Selectman Korn recused himself from the discussion due to the matter involving a relative of his.

Chairman Heitz advised that the Notice of Violation in question, dated August 2, 2013, had been issued in response to a Request for Enforcement received from the Planning Board on that same date. The enforcement request cited non-compliance with the approved site plan in that outside food sales were being conducted. Mr. Heitz noted that Mr. LeClair had recently - prior to issuance of the Notice - advised the Planning Board that he would no longer be conducting outside food sales. For that reason, the Planning Board had foregone a site plan review that otherwise would have addressed the issue.

Mr. LeClair stated that the Notice of Violation had been hand delivered to him at 4:30 on a Friday afternoon, after Town Hall had closed, leaving him unable to ask questions or request reconsideration. Because compliance with the notice effectively would have kept Mr. Johnson from being able to operate his vending cart for the entire Kingston Days weekend, because Mr. Johnson had on two earlier occasions been shut down by the town under what he claims to have been erroneously leveled violations (at substantial expense to himself), and because the hot dog cart has been operating on the property for over a year, Mr. LeClair did not comply with the Notice and the hot dog cart operated through the weekend.

Chairman Heitz referred to a June 17, 2012 meeting that Mr. LeClair had attended with the Planning Board, at which Mr. LeClair had obtained permission to hold an event during the 2012 Kingston Days weekend involving beer and food sales. It was noted in the minutes of that meeting that to conduct the same type of event at any other time would require further review by the Planning Board. Mr. LeClair advised that the 2012 event was similar to a carnival and bears no comparison to the sale of hot dogs undertaken at the 2013 event. He noted that outside food sales have been held on the property for many years, by former owners and operators as well as by himself. He further noted that there is no single, formal document that constitutes a site plan for the property. He's been advised by the Planning Board that when they refer to his site plan, they're referring to the historical uses of the property as well as to the record of attendance at Planning Board meetings at which the property was discussed. In his mind, the fact that the property has historically been a site for outside food sales indicates that outside food sales are an approved part of his site plan. Chairman Heitz reiterated that Mr. LeClair had very recently advised the Planning Board that he would not be operating outside sales, which is why the operation during Kingston Days constituted a violation.

Discussion was held about other businesses holding ancillary events during Kingston Days, about other business having outside sales of merchandise, etc.

Chairman Heitz noted that the Planning Board has scheduled a hearing for September 17th at which items of non-compliance will be discussed and a decision as to whether to proceed with a hearing to revoke the property's site plan will be made. He advised that he believes Mr. LeClair deliberately ignored the August 2nd Notice of Violation and order to cease those activities not included in the approved site plan. He further advised that it is his belief that, because the violation continued for two days following issuance of the Notice, two days' worth of the \$275.00 fine for each day of continuing violation should be levied. He stated his belief that the Selectmen must respond to Planning Board requests for enforcement and cannot allow non-compliance to continue without consequence. He stated that he believes that Mr. LeClair and Mr. Johnson did willfully continue in a state of non-compliance. He advised that he is willing to reduce the total fine to one day's worth - or \$275.00 - in order to mitigate the burden on Mr. Johnson, but stated that it's his intent to recommend to the Planning Board that, should that fine not have been received at the time of the September 17th meeting, revocation of the site plan approval should proceed.

Atty. Dias advised that, at their August 20, 2013 meeting, the Planning Board decided to formulate an affidavit to include all aspects of the property's site plan as it has developed over time and to have the parties involved sign it so that it can be recorded as an official document. He and Mr. LeClair asked about the wisdom of imposing a fine for violation of a site plan that

hasn't yet been documented. Chairman Heitz repeated that it's his intent to recommend site plan revocation if the fine isn't paid.

Discussion of Bridge Aid Reimbursement for 2008 New Boston Road Project

MOTION: Upon motion of Selectman Broderick, second of Selectman Korn and discussion of the financial implications involved, it was unanimously voted to deposit a \$226,511.17 reimbursement from the State Bridge Aid program into the income account of the Infrastructure Improvement Fund, to reimburse the amount that was taken from the account for the New Boston Road bridge project in 2008.

Complaints about Dog Park Noise and Disturbance

Mark Stafford of Ann Hannigan Lane was present to request Board assistance in addressing the issue of constant barking emanating from the Dog Park located on the Fairgrounds adjacent to his property. Selectman Broderick advised that he and Chief Briggs will visit the park and speak with the organizers to see if they have ideas for solutions. If the managers of the park can't alleviate the problem, the park may have to be restricted to residents only in order to cut down the amount of use. If that also doesn't work, the Board may restrict the hours of operation or number of dogs that can use the park.

Discussion of Rockrimmon Forest Property Acquisitions

Duane Hyde of the Southeast Land Trust of N. H. and Rick Russman of FOKOS were present to advise that closing on the several properties on and near Rockrimmon Road that were approved for acquisition by the 2013 Town Meeting will occur on September 30th. Because two properties adjacent to the acquisitions are available but weren't approved by Town Meeting, Mr. Hyde advised that the necessary approvals from Planning Board and Conservation Commission should be obtained, and that the requisite two public hearings should be scheduled. A copy of the proposed conservation easement documents will be reviewed by the Board and the Finance Officer will be requested to work with Mr. Hyde to provide the approved funding when necessary.

Mr. Hyde advised that a \$55,000.00 North American Conservation grant, along with the \$5,000.00 PREP (Piscataqua Regional Estuaries Partnership) grant for which SELT applied and that was awarded several weeks ago will reduce the town's cost of acquiring the parcels.

Heritage Commission Discussion

Debra Powers and Ernie Landry of the Heritage Commission requested Board approval to proceed with an application for LCHIP funding to assist with renovations to the bandstand. Grant applications are due by September 13th, so Ms. Powers will be seeking signatures of the Board at their September 9th meeting. The project involves an estimated \$35,000.00 in cost, half of which would be covered by the grant. Road Agent Richard St. Hilare advised that the final cost will depend partially on what time period the Commission finally decides will be replicated in the bandstand design.

MOTION: Upon motion of Selectman Korn and second of Selectman Broderick, and at the request of Debra Powers, it was unanimously voted to accept from the Heritage Commission funds amounting to \$51.00, representing proceeds of the Commission's Kingston Days fundraising efforts. The funds will be deposited into the Heritage Commission fund approved by voters at the 2013 Town Meeting.

Ms. Powers then requested that the Board put a hold on removal of the Grace Daley House until such time as the Commission has had the opportunity to publicly meet with the Selectmen at a televised meeting and make known the concerns of the various historical groups. Selectman Broderick suggested that Ms. Powers speak with Mr. Pothier to see if he will be willing to delay removal of the building without the town incurring any cost. The Commission will attend the

September 23rd Selectmen's meeting, which will be televised, to present their concerns about the removal.

Discussion of Application for Nichols Building Grant

Library Trustees Chairman Lesley Hume was present to request Board approval of a second LCHIP grant application to assist with work needed on the Nichols Building. She noted that she's been assured a second application this year won't affect the chances for the Heritage Commission's bandstand application. Last year's application wasn't successful because the building is so well cared for it doesn't compete well with buildings that are at risk through neglect. Nevertheless, the Trustees have been encouraged to submit another application, and the report on the building prepared last year by Preservationist Bob Bedard still applies. Total project costs are estimated at \$38,000.00 for masonry, roof repair, excavation, and burial of utility wires. Fellow Trustee Jane Christie will prepare the application. The Board approved submittal.

Highway Department Issues Discussed

Road Agent Richard St. Hilaire advised that a surplus 250 KW generator has been acquired by Chief Briggs and that, with a Memorandum of Understanding that the Bakie School can serve as an emergency personnel training site, the 3306 CAT Dielsel generator can be used to replace the school's present emergency generator.

Mr. St. Hilaire further advised that FEMA and the state Emergency Management Office have agreed to provide funding at 75% for the North Road culvert replacement project. Danville is expected to chip in for the costs associated with road work on their side of the town line, and that amount will reduce the estimated \$50,000.00 local share of the project.

Adjournment

There being no further business the meeting adjourned at 9:48 pm and the Board adjourned to address administrative issues.

**Respectfully submitted,
Catherine Grant
Administrative Assistant**