

**Kingston, New Hampshire
Board of Selectmen
Meeting of October 3, 2011
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 Peter Broderick and Selectmen Charles Hart and Mark Heitz.

Emergency Management Discussion

The Board discussed with Emergency Management Directors Donald Briggs, Bill Seaman and Rich St. Hilaire a proposal for an hour long, evening training session on November 16th. The session will be presented by Unitil and will provide training about electrical hazards and safety measures. There are sufficient funds in the Emergency Management budget to compensate Police, Fire and Highway employees for their attendance. The training session was approved by the Board.

The Board then discussed and approved a proposal for an existing Police Department Ford Expedition to be turned over to the Fire Department next spring. The Police Department will order a new vehicle from the Outside Detail Fund in January and will use the time between ordering and delivery to find and purchase the necessary lighting and accessories both for the new vehicle and for the vehicle to be transferred to the Fire Department. The Board asked if the Fire Chief's Crown Vic will last until spring when the transfer is made. Chief Seaman noted that some repairs have been necessary, but that he believes the vehicle, with 112,000 miles, should be able to last until May, when it's anticipated that the switch will occur.

A proposal for an existing police department vehicle to be sold, with the proceeds of the sale being used to outfit a second existing department vehicle with lights and radio, will be discussed with the Finance Officer. Another proposal, for a local dealership to provide a late model used car annually as a donation, also needs to be discussed with the Finance Officer and auditors.

At this point, 7:00 pm, the Board moved the meeting to the Main Meeting Room and the remainder was televised.

Discussion of Trust Fund Transfer

Trustees of Trust Funds Chairman Bradley Maxwell was present to advise the Board that the Trustees voted at their most recent meeting to delay decision on whether to transfer a portion of the former Infrastructure Improvements Trust Fund to the General Fund, as requested by the Selectmen and required by the Department of Revenue Administration.

Chairman Broderick explained that the transfer is necessary because, at the 2011 Town Meeting, voters approved the fund being dissolved for the purpose of withdrawing the appropriation for the new Library. An accompanying article to re-establish the fund with the amount remaining after the Library appropriation was withdrawn, although passed by voters, was partially disallowed because it hadn't been recommended by the Budget Committee. As Kingston has adopted the Municipal Budget Act, total appropriations may not exceed by more than 10% the total recommended budget of the Budget Committee. The \$4,210,182.00 that was disallowed cannot remain in the Trust and must be transferred to the unreserved fund balance of the general fund.

Mr. Maxwell explained that he understands the issues involved and has read the correspondence between the Department of Revenue and the Town, but requests on behalf of the Trustees that the Selectmen take whatever steps are necessary to see that the Infrastructure Improvement Fund is re-established prior to the next Town Meeting.

Lynn Merrill suggested that, as the article to re-establish the Trust really was more of a transfer of existing funds than an authorization to raise and appropriate new funds, the state legislature probably would be amenable to overriding the provision of the Municipal Budget Act that the Department of Revenue Administration has applied. She stated that there is no cost to petition the legislature to override the statute and ratify the vote, whereas petitioning of the Superior Court and holding of a Special Town Meeting would entail substantial expense. She also noted that she has doubts concerning the validity of DRA's interpretation of the matter, as they've made several errors recently.

Selectman Heitz noted that DRA has performed its proper function in advising the town of the provisions of the Municipal Budget Act as they affect the Budget Committee's actions and the town's vote. He stated that he will not consider petitioning either the legislature or the Governor to override a statute that has been properly adopted by the Town. Further, he believes that petitioning the court to hold a Special Town Meeting would entail unnecessary expense since the other available remedy - introducing an article to the 2012 Town Meeting to re-establish the fund as intended - will accomplish the purpose at no additional expense.

Library Trustee Lesley Hume expressed her regret that the issue has arisen, particularly since she worked so closely with the Department of Revenue to come up with the articles that were presented to the 2011 Town Meeting. She noted that the 10% Municipal Budget Act rule had been discussed at the time and that she had been assured by DRA that, as long as the Budget Committee recommended either the Bond Issue or the Article to withdraw from the Infrastructure Fund, the Library appropriation would be covered. It hadn't been considered that the Budget Committee's non-recommendation of the article to re-establish the fund would present an issue. She stated her wish to see the intent of the voters honored and encouraged the Board to pursue options other than a Special Town Meeting to have that vote upheld.

Lynn Gainty, Budget Committee member, referred to minutes of the July 11th Selectmen's meeting, during which it had been noted that the Department of Revenue doesn't decide the amount of the unreserved fund balance that will be used to offset the tax rate. She then encouraged the Board to contact the Governor's office and request override of the Municipal Budget Act.

Lynn Merrill, reiterating her opinion that Article 23 had not been a "raise and appropriate" situation to which the Municipal Budget Act should pertain, suggested that Lesley Hume provide the documents that showed DRA had assured her that the 10% wouldn't apply to the three articles presented by the library. Those documents could serve as basis for a request to the Governor to affirm the vote on Article 23. She also suggested that the amount of expense that would be incurred should the Board petition the court for a Special Town Meeting could be minimized by not setting up all the booths, by using town employees to man the polls, by limiting the hours during which the polls are open, etc.

Selectman Heitz stated that if copies of the documents relating to discussions between Ms. Hume and DRA can be provided, and if those documents show that DRA provided advice that was contrary to the subsequent DRA decision to disallow most of Article 23, he would be willing to request reconsideration of that decision.

Trustees Chairman Brad Maxwell asked if the disallowed portion of the fund could remain in its current account until nearer the end of the year. Selectman Heitz advised that it only needs to be transferred prior to December 31st and that the amount transferred should include any interest earnings since Town Meeting. Mr. Maxwell asked if it would be possible to set up an account at the same bank in which the trust has been held. Selectmen Heitz noted that investment of the money is up to the Treasurer, but he sees no reason why it can't remain with the bank it's been with.

Library Trustees Chairman Dannielle Genovese expressed concern that the DRA, when setting the town's tax rate, will force the Board to use the unreserved fund balance, including the dissolved

Infrastructure Fund, to offset town expenses. Selectmen again explained that DRA doesn't make that decision; they only use the Selectmen's decision as to how much of the fund balance is applied. Ms. Genovese then stated she doesn't understand why the Board won't request that the Governor issue an administrative override of DRA's interpretation of the Municipal Budget Act. Selectman Hart stated that he sees no harm in pursuing that course of action. Chairman Broderick agreed. Selectman Heitz reiterated that, while he would feel comfortable in requesting reconsideration from DRA if there is documentation that shows they initially misadvised the town in the writing of the Warrant Articles, he would not feel comfortable requesting that the Court or legislature by-pass a statute that the town voluntarily adopted.

Budget Committee member Keith Dias expressed the opinion that he would prefer the Board attempt to have the March 2011 vote upheld rather than risk a new vote that could conceivably divert the Infrastructure Fund to other purposes. He noted that the Trust would have been fully reestablished but for an administrative error and that the good faith intent was to keep the fund intact save for the withdrawal for the new library.

Lesley Hume advised that she has grave concerns about DRA's interpretations, particularly since she had done all that was humanly possible to ensure that the articles had been presented in such a way as to protect voters' intentions, whatever they were to be.

Selectmen approved a request from Trustees Chairman Brad Maxwell that he be authorized to contact Town Counsel Sumner Kalman about possible ramifications if the Trustees should fail to make the necessary transfer to the Town Treasurer.

Lynn Merrill noted that Kingston is fortunate to have as its most controversial issue the disposition of a \$4,000,000 surplus fund.

Highway Department Updates

Road Agent Richard St. Hilaire presented to the Board a proposed letter to US Congressman Guinta requesting his assistance to expedite certain work change orders for the FEMA Great Pond and Ball Roads culvert replacement projects. The approvals for the routine work changes have been held up for two months, delaying the award of bids, purchase of materials, and start of construction. The State Emergency Management Office thinks the delay may be due to a diversion of the entire FEMA workforce to dealing with recent area disasters. The Board approved and signed the letter.

Selectmen approved a waiver of the Timber Tax for a Conservation Commission timber operation.

Selectmen approved replacement of the 12-year old waste oil furnace at the Highway Garage, dependent upon there being a \$2,500.00 grant available through the Department of Environmental Services. The present furnace could be repaired for \$3,500.00 or replaced for \$6,600.00. Selectmen opted to replace the furnace, which will be needed to heat the present garage even if a new highway garage goes up on the site. Mr. St. Hilaire estimates annual savings of \$4,500.00 realized by using waste oil rather than purchasing fuel.

Mr. St. Hilaire presented a purchase order for four additional phone lines to be used in the Emergency Operations Center at Central Fire Station. The four lines will entail a cost of \$34.00 each per month, but will allow for the level of communications necessary during emergencies. Selectman Heitz requested that Mr. St. Hilaire look into special rates for lines that will be used only rarely, if ever.

Selectmen reviewed contracts from CMA Engineering relating to the Mill Road culvert replacement project. Options were for a \$15,000.00 contract to cover engineering work through the permitting process, or \$32,000.00 to cover full construction oversight. The Board agreed to sign the contract covering the entire project.

Selectmen approved paving of New Boston Road from the town line to Main Street, using 2010 Block Grant funds and the 2011 paving and road reconstruction appropriations. The work will include shimming and a 1" top coat. It's expected that weather will allow the project to be completed this year.

Selectmen approved Mr. St. Hilaire's plan to contact two of the finalists from the applicant search held earlier this year to begin the process to fill a new vacancy in the maintenance department.

Mr. St. Hilaire then asked whether he should include in his 2012 budget proposal the utilities, heating fuel, and maintenance costs of other departments. Selectmen noted that during last year's budget reviews, it had been decided that each department having its own building would include the utility costs for that building in the department's budget, in order to get a more accurate idea of the cost to operate. Costs have been separated out and tracked separately by the Finance Office throughout the year. Department Heads will be requested to contact the Finance Office, find out how much has been spent during the preceding year for their department, and amend their 2012 Budget Requests accordingly.

Review of Previous Meeting Minutes

MOTION: Upon motion of Selectman Hart and second of Selectman Heitz it was voted to approve the minutes of the September 12, 2011 meeting as printed. Chairman Broderick abstained due to his not having been present at the meeting.

MOTION: Upon motion of Selectman Hart and second of Chairman Broderick, it was voted to approve the minutes of the September 19, 2011 meeting as printed. Selectman Heitz abstained due to his not having been present at the meeting.

MOTION: Upon motion of Selectman Heitz and second of Chairman Broderick it was voted to approve the minutes of the September 26, 2011 meeting as printed. Selectman Hart abstained due to his not having been present at the meeting.

Miscellaneous Items

Chairman Broderick announced that the Department of Environmental Services will be holding a Public Hearing on October 19th at 7:00 pm at the Town Hall, to review an application for a Large Groundwater Withdrawal, filed by Diamond Oaks Golf Club.

The Board reviewed a proposal from a company that manages surplus equipment sales. Because the contract would prohibit local advertisement or noticing on the town's website or public access channel, the proposal will be placed on file for review as different equipment offerings arise.

Road Agent Richard St. Hilaire advised that he thinks the Board should include an Article in the 2012 Town Meeting Warrant to change the Road Agent's position from elected to appointed.

Adjournment

There being no further business, the meeting was adjourned at 9:25 pm and the Board retired to address administrative issues.

Respectfully submitted,
Catherine Grant
Administrative Assistant