



TOWN OF NEW LONDON, NEW HAMPSHIRE

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BOARD OF SELECTMEN MEETING MINUTES March 5, 2013

PRESENT:

Selectmen
Peter Bianchi, Chair
Tina Helm, Selectman
Janet Kidder, Selectman
Kimberly Hallquist, Town Administrator

ALSO PRESENT:

Aarne Vesilind, Bandstand Committee
Dave Cook, Kearsarge Community Band
Nola Aldridge, Kearsarge Community Band Secretary
Peggy Prew, Kearsarge Community Band
Andy Deegan, Ausbon Sargent Land Preservation Trust

Chair Bianchi called the meeting to order at 8:30am. Several members of the Kearsarge Community Band and the New London Bandstand Committee (Bandstand Committee) were present to discuss the Steve Mendelson Trust and how the money is to be used. Chair Bianchi indicated that he, Ms. Hallquist, and Aarne Vesilind went to Concord last May and met with Anthony Blenkinsop, Director, Charitable Trusts Unit and Terry Knowles, Assistant Director, Charitable Trusts Unit, of the State Office of the Attorney General, to discuss the Trust and how the money should be used. Following the meeting, Mr. Vesilind wrote up a memorandum giving a summary of what was discussed. Chair Bianchi observed that the memorandum was an accurate summary of what was discussed at that meeting. One of the things that came from the meeting was the understanding that the Bandstand Committee must be separate from the Kearsarge Community Band. He wondered if the members of the Bandstand Committee are now different from the members of the Kearsarge Community Band. Mr. Vesilind agreed that this was so. Mr. Vesilind distributed a list of the members on the Bandstand Committee, noting that there is no overlap of members (listed are: Aarne Vesilind, New London; Kim Dean, South Sutton; Marty Sutton, Newport; Nicole Densmore, New London; Donna Sparks, New London; and Jim Antell, Grantham).

There was a question as to whether the Bandstand Committee is a Town committee. The Town's attorney, in a 2008 letter to the Board, feels it is a Town committee, but Mr. Vesilind disagreed.

Mr. Vesilind reviewed the history of the New London Bandstand Committee: there was a group of citizens in New London who wanted to have band concerts on the Town Green. Mr. Mendelson and others got together and solicited money from the different businesses in town and used the money to bring bands to town to perform on the Green. When Mr. Mendelson died, he left money to the Bandstand Committee. The members of the committee became concerned that having such a large amount of money might expose them to personal liability with regard to taxes. They also did not want the responsibility of investing the money. This group of citizens formed a 501(c)(3) organization. Mr. Vesilind observed that a Town committee could not have done this and concluded that they were clearly by themselves and not part of the town government. Once the group became a 501(c)(3) they were able to receive the gift from Mr. Mendelson. They asked the Town to hold the money on their behalf so they could use the money as

necessary, but it would still be their money, administered by the Town trustees. That is how it operated for a number of years. The chairman of the Bandstand Committee would ask the trustees for money and they would get a check. Mr. Vesilind referenced an email from Terry Knowles (Assistant Director, Charitable Trusts Unit), which states that the Bandstand Committee is not a Town committee. Ms. Levine (former Town Administrator) had responded that the Bandstand Committee owned the money and made monetary decisions.¹ Mr. Vesilind concluded by noting that the Bandstand Committee would like this matter to be resolved.

Chair Bianchi read from Bart Mayer's (Town Counsel) letter of March 19, 2008 in which he opined that the Bandstand Committee is a Town committee and the money was left by Mr. Mendelson to the Town, for use by the Bandstand Committee.

Ms. Kidder noted that Mr. Vesilind has submitted the Committee's request for the amount of money needed for this year's concerts and she felt it was an appropriate amount. She had no problem with giving them what they have requested. Chair Bianchi said he had no problem with the amount, but he wanted to have an understanding about whether or not the Bandstand Committee is a Town Committee.

Ms. Helm said that the Selectmen had discussed earlier that they could accept the committee as a Town Committee and if the Bandstand Committee submitted the names of those already on the committee, and any new appointees, the Selectmen would likely approve those members. Then they could work within this framework that is used for other committees in the Town.

Mr. Cook was interested in the 501(c)(3) aspect of the committee as it shows they are independent of the Town, by virtue of that status. Private and corporate donations come in and he felt that the 501(c)(3) status was worth preserving so they could raise funds independently. He thought they should listen to Terry Knowles, as they cannot be part of the Town and still have that non-profit status. As the treasurer of the Kearsarge Band, Mr. Cook said that they [the band] have no say over how the Bandstand Committee operates, but noted that the Kearsarge Band is the recipient of almost half the funds distributed by the Bandstand Committee. The Kearsarge Community Band plays over half of the concerts the Bandstand Committee is supporting.

Chair Bianchi wondered if the Bandstand Committee had to remain as a 501(c)(3) organization. Mr. Cook said the money that seemed so huge at one time is going to look very small down the road and they need to give the bandstand people an opportunity to augment their funds to deal with this. Ms. Helm thought this was a good argument and understood their need to raise funds privately. She thought they should maintain the 501(c)(3) as it is a vehicle to raise private funds.

Ms. Hallquist said they still have the issue of the Town Bandstand Committee. Attorney Mayer was referring to the \$100,000 which was left in Mr. Mendelson's will to the "Town of New London Bandstand Committee" when he offered the opinion on the status of the Bandstand Committee. She thought perhaps there are actually two groups: (1) the private non-profit 501(c)(3) entity that received the insurance proceeds and (2) the Town of New London Bandstand Committee, named in Mr. Mendelson's will as the beneficiary of \$100,000. However, all of the money was accepted by the Town in a public hearing held on November 12, 2002.

Ms. Helm wondered what the name on the 501(c)(3) was. Mr. Vesilind said it was the New London Bandstand Committee; not the Town of New London Bandstand Committee.

¹ The emails in question between Ms. Knowles and Ms. Levine are dated October 8 and October 10, 2002.

Chair Bianchi wondered who appointed those on the Bandstand Committee. Mr. Vesilind said they appointed themselves and populated the committee themselves. There was no structure, really, so they thought combining the Bandstand Committee with the Kearsarge Community Band would offer some stability and was a logical way to move forward. Unfortunately, this ran counter to the Attorney General's view so it has been discontinued.

Chair Bianchi wondered if the Bandstand Committee would have a problem with the Selectmen appointing three more people to the committee. Mr. Vesilind said if the Selectmen started appointing members it would make them answerable to the Town and the committee would need to discuss that amongst themselves before he agreed that this was OK. Chair Bianchi said that the idea of the Selectmen appointing members to the Bandstand Committee had not been discussed as a board.

Mr. Cook said the idea sounded reasonable at first, but they have found it to be a lot of work to be a member of the Bandstand Committee. It includes manual labor and soliciting funds among other things. They are setting up for their fourth year and he assured everyone that being a part of the Bandstand Committee was a challenge that many have found hard to follow through with.

Mr. Vesilind said he did not believe the Bandstand Committee would be against accepting more members and their bylaws state that as many as nine people can participate. He thought that if they agreed to having some members appointed by the Selectmen, that their budget could be formed around using the interest from the two accounts. It could be an automatic thing and they would have a budget to respond to the money that was available. The Selectmen and those appointed to the committee would be privy to this amount and to their budget. Chair Bianchi said he was not sure of the legal ramification of this and wanted to see the bylaws of the committee. Mr. Vesilind distributed the bylaws to the Selectmen.

Ms. Kidder did not think they should appoint any people to the Bandstand Committee and thought they have done a good job. She felt it is important that the Board of Selectmen not micromanage them. There should be some check that the money will not be spent frivolously, which she did not think would happen, but they should relay to the Board how they plan to spend the money. Mr. Vesilind suggested the cleanest way to do this would be to get a lump sum every January of the interest accrued and they would come back to the Selectmen to show their budget and what they will spend the money on.

Chair Bianchi said they have appointed a committee to go through the Town buildings to assess the maintenance needs for the present and future. The Bandstand is included on that list and will be maintained as needed. He said that the Town would not be against accepting donations towards the maintenance and upkeep of the Bandstand and he did not feel it should be paid for out of the Mendelson money. The Bandstand sits on Town property and they see it as a Town building. Ms. Kidder said that other groups use the bandstand and it would not be fair to ask the Bandstand Committee to pay for the maintenance of it.

Ms. Helm said she had no problem with the suggestion that the interest be used on an annual basis and that the annual budget be shared with the Selectmen via an annual report to show what they will do with the money. Chair Bianchi thought it would be better to appoint some members to the Bandstand Committee to increase transparency. Ms. Helm said that if they appoint people to the committee it would no longer be a 501(c)(3). Mr. Vesilind said he was fine if they "suggest" three more people to the committee. Mr. Cook warned that there is a lot of work involved when someone is a member of the Bandstand Committee.

Mr. Vesilind said he has heard that some people feel the Bandstand Committee was "dipping in" to the Mendelson funds instead of asking the businesses for money. By deciding to just use the interest, it would

clear up a lot of the misunderstanding surrounding the use of the trust funds. Ms. Helm thought there could be some closure on this issue today. Whatever understanding they come to that day should be included in a written document, to explain their view on it. This would not be a legal document, but it could help with understanding of this issue further down the road. Ms. Hallquist suggested coming up with a memorandum of understanding circulated to the Bandstand Committee to make sure they agree with what they have decided. No motion would need to be made at this point. Ms. Hallquist would draft the memorandum.

Ms. Kidder said that if people come forward and wish to join a Town committee, they could suggest the Bandstand Committee as a possible opportunity. Mr. Vesilind agreed and thought this would be well received with the rest of the committee.

It was noted that the amount of money the Bandstand Committee was requesting for the coming year (\$10,600) is an appropriate amount and the Selectmen had no problems with the amount being given to them.

Phillips Preserve Conservation Easement – Andy Deegan

Mr. Deegan, Ausbon Sargent Land Preservation Trust, met with the Board to discuss the conservation easement deed for the Phillips Preserve property. He noted that some changes have been made in the deed as a result of comments by the Town, but that sections 9E and 9H are provisions that the Town and Ausbon Sargent remain at odds on. Section E provides that Ausbon Sargent is entitled to recover damages from the Town for loss of scenic, aesthetic or environmental values. Section H states that Ausbon Sargent could recoup attorney's fees and costs if they must bring the Town to court in order to enforce the easement. Town Counsel has informed the Board that these provisions are not in the Town's best interests.

Mr. Deegan said he understands the Town's concerns regarding Section E, however this verbiage is included in all of their easement deeds as a necessary tool to enforce the easement. He did not foresee that damage to the property would ever happen but it is protection for them to be able to enforce the easement. Ms. Kidder asked for an example of the damages covered by the provision. Mr. Deegan explained that all easements require that a forestry management plan must be followed. In a situation where that forestry plan is ignored, there could be damages due to the loss of scenic and aesthetic values. He pointed to the cutting on Seamans Road property that many complained about as one that could have resulted in the damages he is talking about, had it been property covered by a conservation easement. Changing the water course is another example of when damages might be sought. He has met with the Ausbon Sargent Board Chair and the Executive Committee and they are firm on the need for both of these sections (9E and 9H) and do not want to change the wording. Chair Bianchi said since this is a legal document and since the easement will be intact forever, they have to think about the possibility of something happening many years down the road. He said he was not qualified to say whether or not the Town is at risk so he must consider the advice of Town Counsel.

Chair Bianchi noted that the Town's attorney and Ms. Hallquist did not feel that these provisions as worded are good for the Town as it puts the Town in a hard position. Mr. Deegan said that the Town is going through another easement (with the New London Conservation Commission and the Forest Society) and the same language would be in that conservation easement as well. The language protects both parties. If they cannot hold the Town accountable for their actions, they have recorded a document that has no power. Violation of the easement is detrimental to the Town and it must be that way to ensure that there are no violations. That is why it is important to have the easement on the property; to protect the land.

Mr. Deegan said that the Ausbon Sargent mission statement is to protect the rural values of the surrounding towns. Many people support them annually and they expect a certain standard: open spaces, sustainable uses of the lands, etc. It is not “their interest” or “our interest” it is for the best interest of the community and is not in the best interest of the Town to violate the easement. Mr. Deegan said that Ausbon Sargent is an accredited land trust and if they take the “teeth” out of the agreement, it makes no sense.

Ms. Helm wondered if an individual were to damage the property and it is not the work of the Town, who would be liable? Mr. Deegan said that Section 9J addresses that issue – the Town is not liable for things beyond its control. Mr. Deegan noted that storms and fire and other acts of nature will not cause action to be brought against a land owner as those things are not anything they can control. Mr. Deegan stressed that if there was a problem, Ausbon Sargent would work with the Town to get the problem resolved without getting into a legal battle. If the Town fails to work with them to resolve the problem, legal action could be taken against the Town.

Mr. Deegan noted that if they take this portion of the wording out for the Town, other landowners will ask why they can’t take it out of their easement document too. He noted that the concern is for what happens down the road; future landowners may not even realize that there is a conservation easement on the property they own and the land could fail to be protected the way it was meant to be. Chair Bianchi said the Town has a good record taking care of their land and not selling property to others for development purposes. Mr. Deegan said a private landowner with an easement could be the person in charge of the land for 60+ years. When working with the Town, they could be working with a new “land-owner” (selectmen) each year. There is no indication what future selectmen will do.

Chair Bianchi noted that this easement document is different than what they have signed in the past. Mr. Deegan agreed and said it has evolved over time. Chair Bianchi wondered if it would be best to tailor each easement language to the property and situation. Mr. Deegan said that if they want a property permanently protected, they have to use this language. As time goes on, the document they use is becoming more restrictive after learning that their older documents did not address some problems and loopholes.

Ms. Helm observed that Sections 8A, B and C provide for a progression of effort to resolve a situation. They can go through reaching a mutually agreeable resolution, then to mediation, and then on to assistance from an arbitrator, if necessary. As a member of the Selectmen, she said she has to have the citizen’s interest first. She saw three solid steps before they would have to go to court. Ms. Helm recognized common goals between the Town and Ausbon Sargent and thought that these defined steps would be enough to avoid them going to court. Mr. Deegan said that to get to court, it would have to be a situation where both Ausbon Sargent and the Town were being very stubborn and not able to work together. There has been a good relationship between Ausbon Sargent and the Town in the past which leads him to believe this relationship will continue into the future.

Mr. Deegan clarified that Ausbon Sargent treats towns and private owners the same and he is not treating New London any differently than any other Town or private property owner.

Chair Bianchi asked what would happen if neither party budged on this part of the document. Mr. Deegan said he would have to put the Phillips Preserve file away and work on other things. Chair Bianchi said the Town approved moving forward with the easement and the Selectmen want to do it, but they feel obliged to listen to their Town Counsel’s recommendations. While moving forward with an easement was

approved at Town Meeting, the easement document has portions in it that both parties feel strongly for and against.

There was some discussion of Section 9H regarding protection for the Town should Ausbon Sargent initiate litigation that is found by a court to be initiated without reasonable cause or in bad faith. In this case, the Town wants the word **shall** inserted to make it clear that Ausbon Sargent must pay the Town's expenses as the Town taxpayers should not be responsible to pay to defend itself in that case. Additionally, Town Counsel has suggested that since the deed provides that the Town will pay Ausbon Sargent's fees if the Town loses in Court, then to be fair Ausbon Sargent should pay the Town's costs if the Town prevails in Court.

Ms. Helm said she would hate to see this easement fall apart and not be held by Ausbon Sargent. She could not imagine anything happening that would make them have to go to court. Mr. Deegan said he would be meeting with his board on March 21st and he would relay the thoughts and feelings of the Town to them at that time. Chair Bianchi offered to have someone from the Town be present at this meeting to further explain the town's positions. Mr. Deegan thanked the Board and noted that he would let them know if this was something the Ausbon Sargent Board felt would be helpful.

Old/Pending Business

LGC Building Assessment Request

Chair Bianchi referenced an email from LGC about going through the Town's buildings to assess their worth. He thought the buildings should be properly insured, should something catastrophic happen. Ms. Hallquist suggested having someone representing the Town, who has knowledge of the replacement value of the buildings, go with the people from LGC to see the buildings. Ms. Hallquist would inquire about someone to do this.

1941 Building Committee Meeting

Ms. Hallquist said that Thursday at 9:00am there is a meeting of the 1941 Building Committee scheduled. The Board is still awaiting the official document with regard to the \$10,000 option to hold the building for the Town for one year while the Town decides on a course of action.

New Business

Abatement Request – Robert DePorter

Ms. Hallquist said that Mr. Lee is in favor of the abatement request from Robert DePorter as it was determined that there was not an increase in sewer usage, instead, there was a hose left on outside on the lawn and the water did not go into the sewer system. The amount requested is \$637.

IT WAS MOVED (Tina Helm) AND SECONDED (Janet Kidder) to approve the abatement request for Robert DePorter for \$637. THE MOTION WAS APPROVED UNANIMOUSLY.

Town Administrator Report

Winter Parking Ban on Main Street

Dan Wolf, New London Inn, asked the Board to consider amending the winter parking ordinance which prohibits overnight parking in the town parking lot on Main Street. Mr. Wolf noted that some of his guests have been parking there when the Inn parking lot is full. Ms. Hallquist said she spoke with Mr. Lee and Chief Seastrand who indicated that the ordinance was put in place to allow for plowing of the parking lot during the night, when it is empty. The Selectmen decided not to amend the ordinance to this time.

New Cleaning Company

Ms. Hallquist noted that the new cleaning company has started: Thoroughly Pro Affiliates, Inc. This company is not going to be shoveling snow at the Library and Sandra Licks is working on alternatives.

Committee Meetings & Reports

Ms. Helm noted that the Planning Board met on February 26, 2013. There was an application for Greg & Elizabeth Curtis (sellers) and Kelly Bogan (purchaser) who want to create an in-home business (fitness center). The request was way over what is allowed for an in-home business so the applicants were referred to the ZBA.

There was a fast track application review for TDS Telecom. The Planning Board did not approve the project for fast track so TDS will be coming back for a full site plan review.

Colby-Sawyer College had to renew a letter of credit for six months, which was approved. Also, there was a discussion of naming the streets within the campus. There was a request by Tom Little that the Town redefines their definition of a wetland as it has changed at the State level. She presented the conflict between the April 9th Planning Board meeting with the scheduled Budget Committee Public hearing. The Budget Committee does not want to change so she has passed this on to Tom Cottrill for consideration.

The CAC meeting was held on March 2nd and Bruce King from New London Hospital came to talk about the affiliation with Dartmouth Hitchcock and other goings on at the hospital.

Review of Minutes

IT WAS MOVED (Janet Kidder) AND SECONDED (Tina Helm) to approve the minutes of February 19, 2013, as amended. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Tina Helm) AND SECONDOED (Janet Kidder) to approve the minutes of February 27, 2013, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Upcoming Meetings

March 8th Scott Blewitt meet 'n greet at Whipple Hall 4-6
March 12th – Recreation Commission Meeting at 5:00pm
March 12th – Planning Board Meeting at 7:00pm
March 18th – Selectmen Meeting at 6:00pm

Other Business

Ms. Kidder said Merrimack County has gone through a broker to get a good price on their electricity. She wondered if it would be a good idea for the Town to explore this as well. Perhaps they could go through a regional provider. Ms. Hallquist said they are already doing this but could possibly get a better deal by getting together with other nearby towns.

Ms. Kidder asked if there had been any movement towards having the Transfer Station open on Sundays. Ms. Hallquist said she thought Mr. Lee had been thinking about it but nothing had been suggested yet. There was no extra money in his budget for this so there will probably need to be a shift in the current hours. Chair Bianchi suggested taking three hours away from a Wednesday afternoon and have the station open on Sundays for three hours. He thought they should ask Mr. Lee to come up with a proposal on how it could work.

Application for Building Permit:

- Thomas Little, 98 Barrett Road (Map & Lot 084-038-000) interior basement renovations – Permit #13-008 – Approved.
- Beaconwood 2012 Realty Trust, 231 Poor Road (Map & Lot 091-006-000) demolish 4 exterior buildings – Permit #13-010 – Approved.

Application for use of Whipple Memorial Town Hall

- New London Barn Players, April 6 & 7th, 2013 10AM – 5PM – Approved.

Application for sign permit

- New London Outing Club – temporary sign at information booth – 3/10-16 – Annual Comedy night – Approved.

Other Items to be signed:

- Disbursement voucher

With no other business, Chair Bianchi called for a motion to adjourn.

**IT WAS MOVED (Tina Helm) AND SECONDED (Janet Kidder) to adjourn the meeting.
THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 10:40am.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London