

Town of Grantham
Trustees of the Trust Funds Meeting
February 8, 2011

Trustee Ray Woolson called the Tuesday, February 8, 2011 meeting of the Trustees of the Trust Funds (TTF) to order at 7:00 p.m. The meeting was held in the Jerry Whitney Memorial Conference Room at Grantham Town Hall located at 300 Route 10 South in Grantham.

Present: Trustee Robert (Rob) E. Fogg Jr., Trustee Ray Woolson and Trustee Robert (Bob) Lewis.

Member of the public: Joyce B. Spatz

Administrative

Review and Approve Minutes of January 11, 2011 meeting

Trustee Ray Woolson asked if there were any changes to the minutes of the January 11, 2011 TTF meeting. There being none, motion was made by Trustee Fogg and second by Trustee Woolson to approve the minutes as written.

Unanimously approved

Bookkeeper Report

Reimbursement request by Village District of Eastman:

Trustee Lewis reported that Withdrawal Requests were faxed to New Hampshire Public Deposit Investment Pool (NHPDIP) on January 12, 2011 for the six withdrawals totaling \$41,156.54 that were approved at the January 11, 2011 TTF meeting. The six checks were hand delivered to the Village District of Eastman office on January 19, 2011.

Year end account balances to Village District of Eastman

At the January 11, 2011 TTF meeting, Trustee Lewis agreed to provide VDE with December 2010 account balances. Trustee Lewis emailed the December 2010 account balances to VDE on January 13, 2011. Both Mr. Weber and Mr. Fairweather acknowledged receipt the same day. The statement in the January 19, 2011 minutes of the VDE Commissioner's meeting that "Trust balance reports have not been received" is, therefore, erroneous and misleading.

Old Business

Request by Town of Grantham to withdraw funds from Athletic Field Account:

No further action by Town to resubmit voucher to withdraw funds from the Athletic Fields account. Trustee Lewis did receive an email inquiry from the Assistant Town Administrator to confirm the correct withdrawal voucher to use.

New Business

New Trustee

Robert E. Fogg, Jr. was appointed to the Trustee vacancy by the Board of Selectmen on January 26, 2011. Mr. Fogg was sworn into office by the Town Clerk. Trustee Fogg is a very welcome addition to the Grantham Trustees of Trust Funds.

Mr. Fogg filed election papers for the two-year Trustee of Trust Funds vacancy and Joyce B. Spatz filed election papers for the three-year Trustee of Trust Funds vacancy. Both Mr. Fogg and Ms. Spatz will be on the ballot at Grantham Town Meeting on March 8, 2011.

Investment of Funds from Water Mains and Valves Capital Reserve Fund

On January 10, 2011 Trustee Lewis advised VDE Manager Weber that Sugar River Savings Bank sent a notice that the one-year Certificate of Deposit for this account will mature on January 24, 2011 and would automatically renew for another one year period. Trustee Lewis asked if VDE will need to withdraw funds from the account during the next 12 months. If so, a portion or all of the Certificate balance should be withdrawn on the maturity date and deposited into another account until the funds are needed to avoid a withdrawal penalty during the ensuing 12 months.

No response was received from VDE. On January 20, 2011, Trustee Lewis received a copy of minutes of the January 19, 2011 VDE Commissioner's meeting. The VDE Commissioner's minutes outlined negotiations between VDE and Lake Sunapee Bank to secure a 15-year unsecured, fixed rate loan. The minutes state: "Part of the agreement for the favorable loan rate is that all VDE operating accounts be moved to Lake Sunapee Bank, including a \$200,000 CD that is currently getting 0.77% interest. Lake Sunapee Bank will increase the interest rate on the CD to 0.85%."¹

The VDE Commissioner's minutes then state: "Commissioner Fairweather made a motion to withdraw the balance of the Water Mains and Valves Trust Fund CD from Sugar River Bank when it matures (expected 1/24/11) and authorize District Manager Bill Weber to direct the trustee to invest the amount with Lake Sunapee Bank in a one-year CD at 0.85%. Commissioner Wood Seconded the motion. Unanimous approval."

On January 21, 2011, Trustee Lewis requested that Mr. Weber "forward all statutory or case support for your belief that a water district can direct Trustees of Trust Funds to make specific investments." Mr. Weber has not provided any such statutory or case support.

NH RSA § 31:22 states "All such trust shall be administered by a board of 3 trustees...." In 1 N.H.Op.A.G.49, the Attorney General states "The word 'administered,' as used in this section, would mean to manage, direct or superintend the affairs of the trust." In the same Opinion, the Attorney General states: "Power of trustees: Authority to administer town trust funds is vested solely in the trustees and income therefrom cannot be turned over to the selectmen for purposes contrary to the judgment of the trustees." In N.H.Op.A.G. 1965-16 the Attorney General again reiterates that "authority to administer town trust funds is vested solely in the trustees."

It is clear from both the statute and Opinions of the Attorney General that Trustees possess sole and exclusive authority to decide how funds are invested. VDE does not provide any authority to

¹ NOTE: The CD was earning 1.4% interest. The interest rate stated in the VDE Commissioner's minutes is incorrect.

indicate that funds administered by the Trustees of Trust Funds for VDE are not subject to the same legal authority. After discussion, the Trustees unanimously concluded that VDE cannot direct the Trustees to make specific investments.²

The Trustees also note that funds administered by the Trustees are not “operating funds” of VDE. Rather, funds administered by Trustees are taxpayer funds until VDE incurs specific expense(s) and submits a withdrawal request for reimbursement accompanied by proper voucher support. Upon review and approval of the withdrawal request, Trustees will distribute funds. At that point, those funds become part of the “operating funds” of VDE.

Investment decisions made by the Trustees are guided by several objectives. One objective is to maximize the return on administered funds. The second objective is to preserve capital. The third objective is to support local banking institutions when appropriate. Investments are currently divided between Lake Sunapee Bank, Sugar River Bank and New Hampshire Public Deposit Investment Pool. Funds are currently divided approximately evenly between Lake Sunapee Bank and Sugar River Bank. One option to maintain that equal distribution of funds would be to invest the Water Mains and Valves funds at NHPDIP. After much discussion, the Trustees agreed that, where appropriate, decisions regarding investment of funds can also be made that support financial efforts of VDE so long as the decision does not compromise underlying general investment objectives. VDE should not, however, simply assume it can “direct” specific investment decisions. VDE should have discussed its loan negotiations and the involvement of funds administered by the Trustees of Trust Funds in those loan negotiations well in advance.

Based on these considerations, Trustee Fogg moved to deposit the Water Mains and Valves funds in a one-year Certificate of Deposit at Lake Sunapee Bank. The deposit is not inconsistent with underlying investment objectives of the Trustees and does provide support for VDE’s loan negotiations.

Unanimously approved.

March Trustee meeting discussion

The next meeting of the Trustees is presently scheduled for March 8, 2011. That will be the same night as Grantham Town Meeting and election of officers. Trustee Fogg moved to reschedule the March 8, 2011 TTF meeting to March 15, 2011 to allow election of Trustees to be completed before the next Trustee meeting. Trustee Woolson seconded.

Unanimously approved.

Petition to revise terms of English and Hudson scholarship funds

The Trustees administer the Jackson P. and Mathilde M. English scholarship trust and the Glenn Hudson scholarship trust. Under the terms of the trusts, the Grantham School Board awards annual scholarships to Grantham students graduating from high school. The scholarship awards are limited by the terms of the trusts to the income earned during the preceding year. With the

² In an email dated January 31, 2011, Mr. Weber states “I believe that where the draft minutes said “direct” is why you are asking me for the above information, if so we will be editing the minutes to reflect that the commissioners will direct the district manager to *request* the trustee’s to reinvest the CD at Lake Sunapee Bank. I will forward you the corrected minutes immediately after our Feb 16 meeting.” Since the only document before the Trustees at the February 8, 2011 meeting is the Draft Minutes of the VDE Commissioner’s January 19, 2011 meeting, the Trustee’s cannot rely on statement made by Mr. Weber regarding what might occur at a future VDE Commissioner’s meeting.

decline in interest rates, the annual interest earned on the trusts has been sufficient only to provide minimal annual scholarship awards.

Trustee Lewis and the Chairman of the Grantham School Board initiated communication with the New Hampshire Attorney General's office to investigate whether it is possible to change the terms of the trusts to allow larger scholarships to be awarded. Trustee Lewis received a telephone call from a lawyer for the School, Maureen Pomeroy, who indicated that petitions to revise the trusts would have to be filed in Probate Court seeking to change the terms of the trusts. Attorney Pomeroy has been in contact with descendents of the trust originators to explore their willingness to revise the terms of the trusts. If Petitions to revise the Trusts are filed, the Trustees of Trust Funds would also be a party to those legal actions. Trustee Fogg moved that Trustee Lewis be authorized to contact Attorney Pomeroy to indicate that the Trustees agree to be a party to the legal actions on the condition that the Trustees will not incur any legal fees to participate in the legal actions. Trustee Woolson second the motion.

Unanimously approved.

Adjournment

The next meeting of the Grantham Trustees of Trust Funds will take place in the Jerry Whitney Memorial Conference Room on Tuesday, March 15, 2011 at 7:00 p.m.

There being no further business to attend, the Trustees of the Trust Funds meeting adjourned at 8:00 p.m. Motion by Trustee Woolson and seconded by Trustee Fogg.

Unanimously approved

Respectfully submitted,

Robert Fogg, Trustee
Ray Woolson, Trustee
Robert Lewis, Trustee