

Selectboard Minutes
July 2, 2024

Present: Jenn Jones, chair
Andy Artimovich (Via Teams)
Jon Morgan
Paul Kleinman
Letty Bedard

At 6:01pm , Jones called the meeting to order.

The Board signed the payroll and accounts payable summary register.

Kleinman motioned, seconded by Morgan, to accept the consent agenda which consisted of public minutes from June 18th, the recreation manifest, the treasurer's report (found at the end of these minutes), and the following building permits:

- The Trinity Revocable Trust, 14 Lyford Lane, Electrical
- Brittany Freeman, 78 North Rd, Minor Project
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- Sheltra Revocable Trust, 59 Crawley Falls Rd, Electrical
- David Sayles, 150 North Road, Electrical
- Elaine M Wiesman Liv Trust, 19 Block Dr, Electrical
- Langdon Construction, 9 Stone Creek Dr, Electrical
- River Run Development, 10 Edgewater Dr, Plan Examination

All were in favor. Motion passed.

Morgan motioned, seconded by Bedard, to allow Artimovich to participate remotely. All were in favor.

At 6:04pm, Jones opened the meeting up to public comment.

Lois DeYoung, Crawley Falls Road, asked the Board if a decision had been made regarding Library Trustee alternates. Jones explained that committee appointments have been discussed at the last several meetings, and the new policy has been approved. Jones stated that applications for open positions will be accepted until July 12th, all appointments will take place after that date.

Seeing no other public comment Jones closed public comment at 6:05pm.

Jim Hajjar, representing the Brentwood Newsletter (BNL), was present to discuss the funding of the Brentwood Newsletter. Jones explained that the Statement of Assurance was reviewed by both Town Counsel and Primex. Jones read into record email responses from Mike Ricker of Primex and Laura Spector-Morgan of Mitchell Municipal Group (both found at the end of these minutes). Jones stated that some of the issues mentioned in the emails had come up a couple of years ago, however discussions were halted because there was more of an enforceability issue with payment occurring upfront and no enforceable content control. Jones stated these discussions have been occurring over the last 4 years to find a way to allow the Town to fund the Brentwood Newsletter where the issues of governmental speech arise. Hajjar stated that the statement of interest was created as the BNL's statement of assurance to the Brentwood community regarding their content. Hajjar stated that per this agreement if the BNL lives up to the statement of assurance, the Selectboard would fund the BNL according to the warrant article. Hajjar stated that the subject of content regulation by the Town has come up in previous discussions and agrees it is best to avoid those situations. Hajjar referenced Section A in the statement of assurance, he stated Section A discusses content, Hajjar changed "Town of Brentwood" to "Community of Brentwood" and put that section on

Selectboard Minutes

July 2, 2024

the BNL website. Kleinman stated he feels this is a significant issue in terms of the first amendment constitutional law. Kleinman also stated that he is concerned that the Board is relying heavily on “off-the-cuff” emails from Counsel rather than legal memoranda that has authority and will set forth what the law is. Kleinman added that his off-the-cuff opinion would be the opposite, the statement of assurance does not have the Town regulating the content of the BNL because the BNL has voluntarily agreed to the content. Jones referenced a case which involved public comment at selectboard meetings and whether the board can moderate the content of public comment, the end result being that the selectboard cannot regulate public comment. Jones added that if a government body or government group allows a free speech platform the only legal limitations are violence and inciting violence. Kleinman stated that the distinction he is trying to make is that the Selectboard is not controlling the content, the content is decided by the BNL. Jones agreed and stated that the document includes a signature line for the Selectboard and that makes it appear that the Selectboard is agreeing that these contingencies be met before funding. Bedard stated that by agreeing to payment under these circumstances is restricting what they can do. Clement stated that in Section B a liaison is described which brings into question another form of input and content control. Jones added that Counsel and Primex has advised that by utilizing a liaison and/or the putting of BNL happenings into Selectboard minutes would support the idea that this is government funded speech. Kleinman disagrees and states he feels that the liaison would be mediating an issue. Jones stated she believes the concern is if the liaison is a Town employee or a town elected official. Clement stated that the BNL is a private forum but when you include the liaison which is a town official it creates a public forum, creating the public forum opens the town up to First Amendment liabilities. Kleinman states he does not agree. Bedard asked about the consequences with Primex if the Board did sign the statement of assurance. Clement stated they would not drop coverage, it is up to the Town and the Selectboard to decide, Primex’s advice is not to sign the statement of assurance. If the BNL wants to agree to the terms of the statement of assurance on their own, outside of the Board, it is up to the Town what they would like to do with the funding. Primex and Town Counsel’s alternative is to pay for the actual space used, this would be the most risk adverse by removing content control and the public forum. Bedard asked if donating the money rather than tying the payment to any specific activity would change anything. The BNL is a nonprofit, in theory they could go through the Regional Associations Committee like other associations. Bedard asked how the costs would be calculated if paying for actual space used. Clement stated that would be up to the BNL. Hajjar stated that the BNL is for the community, if you look at the issues, they are all related to the Town of Brentwood. Hajjar asked how the warrant article ties into this. Hajjar added that there is no problem if the Board can not to sign the statement of assurance because almost the entire document is showing the Selectboard, “this is what we do and this is what we will continue to do going forward to keep the trust with not only this board but with the entire community.” Hajjar explained the intent of the liaison is if there ever is a complaint that cannot be resolved between the BNL and an individual he would like to make it public. Hajjar does not see a problem with including a quarterly report to the Selectboard with the BNL invoice. Jones asked for Board comments. Artimovich stated that he liked Bedard’s idea of giving a donation rather than signing a contract agreement, also believes they should fund the BNL for the remainder of year. Jones asked Artimovich if he would just make clear the intentionality of the payment as a donation. Artimovich agreed that for this year that would work, and they could figure out next year at a later time. Morgan stated that the Board has heard repeatedly from experts not to do this, Morgan agrees with the experts that the Board should not fund the BNL. Morgan stated the funds could be used elsewhere, not to exclude an actual town newsletter. Kleinman stated that the BNL has agreed to abide by those assurances, they are on their website and it is their policy, a warrant article was passed at a meeting by the legislative body, there is an invoice before the Board, and the Board is aware of the content, he feels the Board should pay the invoice and not be characterized as a donation. Kleinman stated that the Board doesn’t need to sign the agreement, they already have all the assurances needed, the published newsletters, the invoice, the statement of assurance and their own policies. Bedard asked if the Board has verified that the three published issues of the BNL meet all of the criteria in their agreement. Kleinman stated he had read the issues and saw no misinformation, Jones stated that she has not personally received any concerns. Jones asked Clement if not signing the statement of assurance created enough delineation between public speech and private speech to provide the Town with sufficient protection from First Amendment issues. Clement stated she believes there is always the risk the Town could get named in a lawsuit regardless but that is a good step to limit liability. Morgan stated that he has been on the Board for 4 years and they have got assurances before and got it in writing before and it continues to happen, and that the Board needs to “have the courage to say enough.” Kleinman stated that he feels the Board needs to have the courage to support

Selectboard Minutes

July 2, 2024

what occurs at Town Meeting and the assurances from a newsletter that the majority of the community wants. There were no other Board comments. Kleinman motioned to pay the BNL first quarter invoice in the amount of \$4,704.55, based on the invoice, the date, the statement of assurances that have been adopted as newsletter policy, Artimovich seconds. Artimovich – aye; Morgan – nay; Kleinman – aye; Bedard – nay; Jones – aye. Motion passed.

Jones stated to Hajjar that if the statement of assurance has been published, anything that references the Town or reviewing things with the Town, or using a town employee as a liaison, should be stricken to make it clear that the BNL is a private publication. Hajjar was agreeable to this and stated he would find someone from town to act as a liaison.

Chief Ventura was present to discuss shift differential. Chief Ventura explained the Police Department's shifts, the pay differentials, the timesheets and the payroll process. Chief Ventura explained to the Board that by eliminating shift differentials it would average out to approximately .82 cents per officer per hour, Chief Ventura states he could round that number to \$1 with no budgetary concern. Chief Ventura explained his goal is to simplify the process with no net loss to the Town. The Board was provided with sample PD time sheets, Jones asked if the cross outs on the timesheet were human error or payroll processing, Clement stated they are part of the payroll process. Bedard asked about software for payroll, Clement stated that the software the Town utilizes for payroll will not account for shift differential and will not differentiate between a patrol shift or an administrative shift or a detail, those things would need to be manipulated after time sheets were submitted. Time sheets cannot be changed without an employee's consent, Bedard asked if there was something employees could sign ahead of time. Clement stated she did not feel the Department of Labor would agree with that. Jones asked Clement how this would simplify the payroll process. Clement explained that officers would get paid their standard rate for 40 hours and their overtime rate would be standardized for anything over 40 hours. Currently officers' overtime rates are calculated based on a weighted average and vary week to week. Chief Ventura stated his officers are in favor of the change. Jones agreed with Bedard that the system and payroll process seems out of date and should be automated as much as possible. The board discussed what shift differentials are and why and how they've been utilized for Brentwood PD. Clement stated she is also in favor of the change, she has tried to implement this change multiple times in the past this is the fourth Chief she has worked with to make this change. Jones asked the Board if anyone could see any drawbacks to getting rid of shift differentials. Artimovich stated that it becomes part of COLA and it was never meant to increase, it was meant to stay at \$1 and \$1.50, when added to pay it will technically increase. Jones asked Artimovich if that was reason enough for him to not support the change or if he was just pointing that out. Artimovich stated he was just pointing it out. Morgan asked why past Chiefs have not been agreeable. Clement stated that past Chiefs didn't have shift rotations so it was seen as a disparity amongst certain officers. Bedard stated that she was unsure why it was suggested to round to \$1. Bedard also stated that if COLA is a concern, they could subtract out .82 cents before calculating officers' COLAs. Jones stated that they have tried to keep things consistent for everyone and transparent, and she feels that this would become the officers' base pay and should not be subtracted from their COLA. Kleinman motions to accept Chief Ventura's proposal but to make the increase .82 cents per hour per officer, Morgan seconds. Artimovich – aye; Morgan – aye; Kleinman – aye; Bedard – abstain; Jones – aye. Motion passed.

The Board discussed Mohawk Lane as requested by Bedard. Bedard explained that the process of naming roads was discussed at the last Planning Board meeting, following that she looked at a list of Brentwood roads and wondered if Mohawk Lane was one the Town would like to change. Jones asked if this was due to political correctness, Bedard stated that the Mohawks were from New York, there were none in this area, she is guessing this name was not chosen because of its Brentwood history. Clement stated that subdivision went in in the 90s, the Board was unaware of how that road name was chosen in the 90s, Jones asked if anyone in the audience was aware. Bruce Stevens, Brentwood Planning Board, stated that the Historical Society created a list of old town names in the 80s which was used when assigning road names, Stevens also stated that he believes there is some significant historical reference to Brentwood. Stevens suggested the Board speak with Dexter Swasey from the Brentwood Historical Society. Stevens also stated that Swasey has come before the Planning Board and asked that they adhere to the list of suggested/approved road names. Bedard stated "Mohawk" was not on the list they received recently; Jones believes the list has been updated. Stevens requested a copy of the list, Bedard stated that she

Selectboard Minutes

July 2, 2024

forwarded the list to Kristin Aldred, Planning Board Chair but will forward the list to Stevens. Jones stated the Board needs to do some research to see if there is any historical information on how that name came to be. Bedard agreed, she stated that it feels the name has no tie to Brentwood and can be viewed as derogatory. Kleinman asked if there was any input from residents of Mohawk Lane. Laura Hajjar, Mohawk Lane, was present, she stated she does not want the road name changed. Jones stated that if a board member wants to look into it, they will look into the history. Bedard stated it came up at the Planning Board meeting, some people were unhappy with the way some roads are currently being named.

Clement and Morgan explained that the new road at the Recreation Center that was put in for safety reasons went over budget due to drainage and fill, extra stone to cure water runoff issues and encountering ledge during construction. Morgan is in receipt of an invoice for \$94,900, \$11,900 over the budgeted \$83,000. Morgan stated that in the future he would hope the Board would have approval authority or awareness of changes such as this. Morgan asked if using impact fees would be a possibility, Clement stated that highway and infrastructure do not have impact fee accounts. The \$83,000 originally budgeted for this project came from encumbered highway funds. Morgan would like to consider putting the overage under the highway budget. Jones asked where the highway budget is as of now, Clement stated pretty healthy but is unsure if funds have been allocated for other projects. Robinson also absorbed the overage from his truck, \$15,000, as opposed to using ARPA funds. Jones asked if there were any other Board comments. Kleinman stated his opinion, Mike Sanborn, did a great job, the Board asked for a road to be built, stuff happens. Artimovich stated that he feels the Board should speak with Robinson before taking money out of his budget, the Board agreed. Morgan motioned to pay the additional \$11,900 out of the highway budget, recognizing that the Board may need to look closer at that budget toward the end of the year, Bedard seconds. Artimovich – aye; Morgan – aye; Kleinman – aye; Bedard – aye; Jones – aye. Motion carried.

The Board signed the Hawkers & Peddler's ordinance they adopted on June 18th.

Artimovich had no committee updates.

Kleinman said he and his son have volunteered to ump softball at the rec, it is going well and they are enjoying it. Kleinman also stated that about a month ago the Conservation Commission had a guest speaker who discussed potential factors to look at for different sites for preservation. Kleinman stated he has been asked about a letter regarding the Woodman property. Clement responded that she sent the information to Becky Dunham, Conservation Commission Chair, with the impression that Dunham would send it out. Clement explained that the Woodman's were granted permission to put up a fence, the fence is now in disrepair and needs to be fixed or removed. Artimovich stated that last he spoke with Dunham UNH was looking at the fence and recommending portions not be removed because the trees are growing into it, so a plan needs to be developed before the letter can be sent out. Jones asked if the conservation commission was actively looking into any properties around town. Kleinman stated that the new subcommittee is just getting started.

Bedard gave a planning board update, they checked on the status of the podium, work is underway. There is a business on Pine Road looking to expand, they have a design review scheduled for July 18th.

Bedard stated she attended the Zoning Board of Adjustment meeting; they did not have a quorum.

Jones asked about the status of the rock business that was located on Route 125 that was brought up at several meetings, they have vacated the property. Clement confirmed that that issue and the legal issues associated with it are also closed.

Jones stated the next Municipal Building meeting is July 23rd 1:30-2:30, the public information session will be held on the 15th at 6pm.

Morgan stated there will be an Economic Development Committee meeting on Thursday, July 18th at 6pm. Morgan also announced the next Brentwood Economic Development Business Breakfast will take place on Tuesday, August 13th at 8am,

Selectboard Minutes

July 2, 2024

at the Brentwood Town Office in the Cross Room. Chase Hagaman, the director of economic development at the New Hampshire Department of Business and Economic Affairs will be the guest speaker.

At 7:21pm, Morgan motioned, seconded by Bedard, to enter nonpublic for personnel and hiring. Artimovich – aye; Morgan – aye; Kleinman – aye; Bedard – aye; Jones – aye. Motion passed, 3-2.

At 8:23, Morgan motioned to come out of non-public, 2nd by Bedard, all in favor. Morgan motioned to seal the minutes, 2nd by Kleinman, Artimovich – aye; Morgan – aye; Kleinman – aye; Bedard – aye; Jones – aye.

At 8:24, Bedard motioned to adjourn, 2nd by Morgan. Artimovich – aye; Morgan – aye; Kleinman – aye; Bedard – aye; Jones – aye.

Respectfully submitted,

Jillian Benedix