

Town of Newington, NH  
Board of Selectmen Meeting Minutes  
Monday July 31st, 2023

**Present:** Selectman Brandon Arsenault, Selectman Chris Wayss, Finance Director Sheryl Bagley, Library Trustees Chair Jack O'Reilly, Library Trustees; Paul Pelletier, Alex Jacuch, Meghann Wayss, Library Director Lara Berry, Library Employee Theresa Tomlinson, Board of Fire Engineer Ann Hyland Hebert and Town Administrator Martha Roy and Eleanor Boy, Recorder.

B. Arsenault called the meeting to order at 5:34pm. Followed by the Pledge of Allegiance.

J. O'Reilly wanted to correct an item from the previous meeting. He said that Library employees were Town of Newington and that was incorrect. They are not town employees.

Brandon said the overwhelming reason the Library Trustees want to take over the management of their finances is because the law provides you the power to do it. There is no disagreement about the trustees having the right to do this. However, because the trustees are taking on this responsibility the Selectman have to ensure that the transfer goes well and that everyone has a good understanding of every detail.

One of the major problems that was discussed at the last meeting was the payment of bills by the Town and then having the Library reimburse the Town for the expense. The Town would be paying the bill, then the Town would bill the Library and then the Library would pay the Town back for it to offset the expense.

L. Berry said that the Trustees had discussed invoicing. The library's bookkeeper does this same process at other libraries. The library would just have to know the amount of the bill from S. Bagley. The invoice would be what the monthly amount would be and the library would just pay that invoice every month for the four entities; Primex, HealthTrust, life insurance and Short Term Disability insurance.

B. Arsenault asked if that meant that the Town would prefund the library and then the library would pay back the Town.

L. Berry said that it wouldn't be prefunding, it would be that the Town would pay from the remainder of the library's appropriations, that the Town would still have. The Library would get one invoice and then pay it twelve times.

L. Berry explained that the Town wouldn't be fronting the money for bills. By the end of the year the library would be receiving the entire appropriation, the first quarter of the year, the library would only be receiving 25% of the appropriations and the Town would continue to have 75% of the appropriations for the year. So, any bills that the Town would be paying for the first quarter, which would be around \$500, the Town would be taking it from the remaining 75% of the money.

C. Wayss pointed out that taxes aren't raised 100% at one time. So, the Town doesn't have all the library's appropriations at the beginning of the year.

B. Arsenault asked if the library's proposal was to have their bookkeeper invoice the Town for bills monthly.

L. Barry said yes, to pay the invoice monthly to the Town, so that you always have the money and that there's a clear bookkeeping trail. The Library Trustees don't want to take advantage of the Town, they just want to manage their own finances.

J. O'Reilly added that when the town residents approve the budget in March, the Town would have half the appropriations in the bank. The Library isn't cleaning out the vault when they ask for their appropriations. There is money that comes in from taxes and the fund balance.

B. Arsenault asked if it would be easier if the Library just got their own building insurance.

J. O'Reilly said if they did that, he didn't think they could get the Town rates. L. Barry said that she didn't think Primex would let them do their insurance separately. If the Library got their own insurance it would end up costing the Town more money. It was the Library's intent all along to stay with these providers, that would allow the Town to save money.

C. Wayss asked if the Library's bookkeeper was going to cost more money now that she would be processing payroll.

L. Berry said yes, a small amount, between \$1,000 to \$1,200 per year.

C. Wayss pointed out that costs the taxpayers more money. The library is making a case to stay with all these providers to save the town money, however it does cost the taxpayer more money with what you are planning to do.

L. Berry said that they have not budgeted more for the bookkeeper.

Alex Jacuch said that she is sensitive about this process costing taxpayers more money.

There is not more money being allocated to this process the Trustees are using what is in their budget now. This process will insure some other safeguards.

C. Wayss said just because the library won't exceed their budget, doesn't mean that your bookkeeper won't cost the taxpayers more money.

L. Berry disagreed with that statement, because they don't know if it will cost more yet. The bookkeeper has spent a lot of time in the past trying to figure what has gone on with the finances here. Which is why we have decided to take on this responsibility ourselves.

Brandon said that the question is; does it cost more to hire your own services, and if that is the case, then the Library can't use the opposite argument for different services. That the Library will use the Town services to save money.

Alex Jacuch said that it is a balance. The idea was never to secede from the Town, it was to manage the library's finances more efficiently.

J. O'Reilly said that it could be worth it to spend a little more money to run their finances efficiently. The library also supplements the town's expenses with trust fund interest.

B. Arsenault said he thought it was the opposite, that the trust fund interest from the trust fund, does not offset taxpayers' appropriations, it supplements them.

J. O'Reilly said no.

B. Arsenault asked if the funds that the library will be returning to the Town on December 31<sup>st</sup> each year, will be from the trust fund interest.

J. O'Reilly said no. Sometimes the Library doesn't have enough money to offset their payments in a quarter, so they borrow that from the trust funds. At the end of the year, they repay any money they have taken out of the trust fund and then they will be giving the remaining amount back to the Town.

L. Berry referred to a NH supreme court decision about the division between the Town and the Library. The Library is a political subdivision of the Town and the Library Trustees are the custodians and managers of the library per RSA 202A.

C. Wayss wanted to clarify what RSA 202A is, versus the Supreme Court ruling about the Littleton case. C. Wayss understood that the Supreme Court had ruled in favor of that person. They said that the Littleton employee was allowed to be a Selectmen as well as being a library employee, but those were very specific circumstances in that

case. It is a very narrow case. The ruling does state that. The fact that the library sighted in this case was a Carnegie library which is a very important part of that case. A Carnegie library is a private library, not one established with tax payer dollars like the Langdon Library.

C. Wayss said that the Selectmen don't disagree with what the Library Trustees want to do, but it seems that you are picking and choosing what responsibilities you want to take on or not take on. The Library Trustees want to take payroll, electricity, gas, water. You don't want to take any insurances.

L. Berry said that as far as she knows there have been no issues with the insurances.

C. Wayss said that both groups need to work together to decide and no decisions will be made tonight. It's important to have a work session and work through all the budget lines. The Selectmen understand what RSA 202A sets forth; that the Trustees can manage their own funds. There is a different RSA, that speaks to an agreement, RSA 202:11, 3 and 4.

C. Wayss read an excerpt from the Library Trustee manual 2021, page 23.

Not all libraries have appropriations paid over to them. Some reach an agreement with the Town for the Town to manage the public funds as directed by the Library Director and Trustee Treasurer. That is either the Director or the Trustees sign off on all expenditures to be paid. Non public funds are managed directly by the Trustees whether this benefits your library depends on the circumstances in your town and your relationship with town officials. Once money has been appropriated to the library it can't be withheld from the trustees, arrange a payment schedule with the selectmen or city town council to receive the library's money.

C. Wayss said this excerpt hints to an agreement that will have to be worked out between the Library Trustees and the Selectmen and believes everyone is on board with that.

B. Arsenault pointed out that one of the highlights in that excerpt is that either all of the expenses can be handed over to the Trustees or there is an agreement on which ones are shared. That is what needs to be figured out. Are all of the funds going to the Trustees or if there are some that wouldn't be going to the Trustees.

B. Arsenault said that next budget line is worker's comp insurance, a Primex account.

L. Berry said that anything under Primex, which would include building insurance and workers comp insurance would remain with the Town, as it is currently.

B. Arsenault asked if that would require anyone to oversee the benefits administration by a separate entity if the Library was to get their own policies. B. Arsenault asks who oversees the workers comp policies and administers them to the library employees.

L. Berry said that they have not been. M. Roy said that if there was an injury with a library employee the town hall fills out the forms for them.

B. Arsenault asked if workers comp insurance would stay with the Town. J. O'Reilly said yes.

B. Arsenault asked about short- and long-term disability, life insurance and AD&D. L. Berry said it would stay with town hall.

NH Retirement system. L. Berry said library will administer.

FICA and Medicare. L. Berry said library will administer.

Health and dental insurance. L. Berry said that none of the library employees are enrolled the Town's insurance, but she is on the dental insurance, both of those go through HealthTrust and the library is fine with having the town continue to administer these.

Audit. J. O' Reilly said that the Town has always billed the Library for that. L. Berry said that either way is fine with her.

Telephone. L. Berry said the library already administers it.

Professional services. L. Berry said the library already administers it.

Maintenance. L. Berry said library already administer it.

Equipment Maintenance. L. Berry said the library already administers it.

Library software. L. Berry said the library already administers it.

Material Maintenance. L. Berry said the library already administers it.

General supplies. L. Berry said the library already administers it.

Office supplies. L. Berry said the library already administers it.

Programs. L. Berry said the library already administers it.

Collection development. L. Berry said the library already administers it.

Electronic subscriptions. L. Berry said the library already administers it.

Equipment purchases. L. Berry said the library already administers it.

Electricity. L. Berry said the library already administers it.

Heating. L. Berry said the library already administers it.

Water. L. Berry said the library already administers it.

Landscaping (Mowing). L. Berry said that it's included in the Town's contract. L. Berry said they would like to keep it that way.

Irrigation and Lawn Treatment. L. Berry said the library already administers it.

B. Arsenault reviewed a couple of items from the last meeting.

B. Arsenault said that he asked J. O'Reilly what items would be added to the amount paid over by the Town each quarter and J. O'Reilly said all of the accounts from the Town from the top down. The other item was that the library would be separate from the town.

J. O'Reilly said that he came to that meeting at the last minute and didn't have his expert with him.

Discussion ensued about an MOU between the Town and the Library. How it was done years ago and how it could be done now.

P. Pelletier said that all the checks marks are basically the MOU now.

C. Wayss asked about the library obtaining their own EIN and if there were any tax implications with that. C. Wayss said that in the Library Trustees manual, it says on page 30, "...it is recommended that libraries use the municipalities' number. The IRS classifies entities according to taxable status; government, non-profit, for profit, trusts, estates, etc. When a tax ID is issued, the IRS places the entity receiving the EIN into one of the predetermined categories, the town is governmental and therefore money is recorded under the town EIN or classified by the IRS as assets of a governmental entity and nontaxable. The library is a subdivision of the Town and should use the Town EIN for that reason. If, however the library applies and receives its own EIN the taxable nature of the library made be called into question by the IRS." C. Wayss stated that it doesn't say it is definitely going to happen however, this manual references several

libraries that have had their trust funds taxed as well as any of their funds taxed. C. Wayss asked if the trustees were aware of that and how would they insure that it will not happen.

M. Wayss said that she did raise this question about this procedure. The library bookkeeper had stated that on the EIN application she submitted it as a subdivision or subgroup of a municipality. The bookkeeper felt confident that it shouldn't be an issue.

C. Wayss asked this question because the library is not a municipality, it is a subdivision of a municipality. The Library Trustee Association manual says to not do it because you are risking taxation. The Langdon Library trustees say they are going to do it.

L. Berry said that it is very common for libraries to have their own EIN.

C. Wayss said that the NH Library Trustees Manual says two libraries in NH that have applied and received their own EINs, were sent tax bills by the IRS for interest earned on private donations and their bank accounts. Taxes have been withheld from library trusts and investments because the IRS doesn't recognize them as non-taxable. It is therefore advised that libraries to not use their own EIN.

L. Berry said that those stories aren't that recent. I would ask them to look at the libraries that aren't having this issue with the IRS. L. Berry has discussed this issue with the bookkeeper and she said to not ignore when the IRS asks questions. The libraries must answer the IRS to avoid being taxable. L. Berry said that she and the bookkeeper did payroll for a library with its own EIN a decade ago and never had any problems.

C. Wayss pointed out that the Library Trustees Manual was updated in 2011 and then again in 2021, and they added this section about the two libraries being taxed. They addressed this issue in an update. C. Wayss is concerned about the potential tax implication and asked what assurance do you have if the IRS comes knocking and says it wants to tax you because you are not a municipality. C. Wayss asked of the library's bookkeeper is indemnified from that error which might cost money. C. Wayss pointed out that if something happens and the Library gets taxed and there is a \$5,000 bill, the library will have to pay that bill. It's something to think about and make sure everything is in order.

Brandon pointed out that the Library Trustee manual says that the IRS classifies entities according to the taxable status as; government, non-profit, for profit, trust and estates. It does not say subdivisions of these.

B. Arsenault said that he is more comfortable slowing down the transfer of responsibilities because there are mistakes that can be made and consequences that can happen. None of us can advise on what should happen with the EIN or the legal questions. The Selectmen have reached out to attorneys and asked for their recommendation.

C. Wayss said that the NH Library Trustee Manual points out that the manual is not a legal document and encourages Trustees to reach out to attorneys for legal opinions.

Discussion ensued about the time table for this transfer to be completed. The Library wants to take over payroll beginning August 7<sup>th</sup>. The Selectmen would like them to consider January 1<sup>st</sup>, 2024, to give everyone time to get clarity on the issues that have been raised tonight.

L. Berry said that they have been trying to do this process for years, but have been unable to even discuss this with the previous boards.

B. Arsenault said that they did discuss it and the Selectmen had three questions that needed to be answered before going forward. The first question was if the library was going to return the excess money from their budget at the end of the year and the answer was no. The second question was why did you want to do this and the answer was, "because we can" and the third question was if you are unhappy the way the town reports the financials to you, what are your plans on reporting the financials back to the town. The two sides couldn't come to an agreement. B. Arsenault stated that the Board didn't say that you couldn't do this, we just wanted to get the answers to these questions. Then we were finally able to come to an agreement, because you gave a justification as to why you wanted to do this, we agreed for you to take over utilities, you would report monthly on the bills, because they are town raised funds. We came to a responsible agreement last year and thought we did a good job working together. B. Arsenault said that he was disappointed that L. Berry thought that the Board had previously said absolutely not.

L. Berry said that it has been difficult to communicate effectively about this process.

J. O'Reilly said that we are all one town and group of elected officials and we can work together to get to an agreement.

B. Arsenault said that right now we can't even write an MOU. We need to make sure that we get this right. The Board received a letter from our attorney that says that they do not recommend the separate EIN for the Library. It's not unreasonable to wait until the beginning of the year.

L. Berry assured the Board that they do have all their ducks in a row.



C. Wayss said that we don't have a written assurance. We don't know how the bookkeeper applied for the EIN. The Board of Selectmen sought out a legal opinion on the EIN and the attorneys said not to do it and sighted the IRS revenue ruling 57:128 1957-1cb. We will share the letter with you.

C. Wayss asked if they had consulted a tax attorney about this issue.

L. Berry said they have consulted their bookkeeper who has done this exact thing before.

P Pelletier thought that it would be a good idea to seek other legal counsel advice.

C. Wayss said that you have to make sure to consult a tax attorney to make sure that your trust funds are protected.

Alex Jacuch said that she feels a responsibility to get something in writing from the bookkeeper about this issue and to research it further.

B. Arsenault said this is a good work session to have. Work together to make it a good transfer.

B. Arsenault said there are six items that are open topics; the building insurance, the workers comp insurance, life and disability, health and dental, landscaping and the audit.

**Public Comment:**

J. O' Reilly asked if the Selectmen would like him to come in and update the Board on the 2024 elections. B. Arsenault said they would like that.

Ann Hyland Hebert asked about the skiffs at Fox Point and asked about the progress in getting them identified. M. Roy said that the Police Chief is working on it. A. Hyland Hebert said that Septemberfest is widely advertised and asked if there is anything the Town can do to make sure that only Newington residents and their guests attend. J. O'Reilly said that it has been discussed and will bring it up at the next Recreation Committee meeting.

**Adjournment:** C. Wayss moved to adjourn at 7:06pm. B. Arsenault seconded the motion. All were in favor.

Respectfully submitted,  
Eleanor Boy, Recorder

