

Minutes

TRUSTEES OF TRUST FUNDS

April 19, 2023

In attendance: Jan Cole, Karen Foss, Mike Betley and Carol Walker

The meeting commenced at 4 pm with a review of the 4/17/23 meeting of the Trustees (Jan, Karen, Mike and Carol attended) with the Board of Selectmen, Town Administrator, members of the Lafayette Recreation Committee (LRC) and new Recreation Director to discuss how to go about utilizing money from a fund, who can use money from a fund and the proper procedure for using money from a fund.

The meeting came about after the Trustees denied a Lafayette Recreation Committee request to use approximately \$30,000 from the Lafayette Recreation ETF to go toward the purchase of a used van since there is insufficient money (only about \$21,000) in the Recreation Van CRF. The denial was based on the Lafayette Recreation ETF's purpose which is "to enhance the Lafayette Recreation programs, events and activities) that has been funded by public donations and fundraising activities. Since there is currently approximately \$21,000 in the Recreation Van CRF, the committee members were seeking the additional funds needed to complete the \$51,000 van purchase. There was also discussion about changing the purpose of the Lafayette Rec ETF which would have to be approved by a 2/3rds of all voters present and voting at Franconia's annual meeting. According to an attorney for the NH Charitable Trust division, if a fund's purpose is changed, it must apply to the entire fund, not just a portion of the fund.

Jan prepared a document describing the history of each fund's warrant article, original date approved, purpose, funding source and how requests for expenditures are approved for the four funds in question, specifically Dow Field CRF, Rink Surface Maintenance Fund ETF, Recreation Van CRF and the Lafayette Recreation ETF. Also included was a description of the Trustees of Trust Funds' role in the approval & disbursement process; this document was provided to each attendee and a copy is attached to these minutes. A variety of questions were posed with answers discussed. It was suggested that further assistance may be found in a review of the LRC By-Laws and Tri-Town Intergovernmental Agreement for the Management of the LRC. Additional information about our meeting will be available in the minutes from the 4/17/23 BOS meeting.

Transaction activity for March 2023 is included in the monthly summary(s) of Capital Reserve Funds (CRF) and the Common Trust Funds (CTF) below.

The Trustees reviewed the March 1- 31, 2023 Three Bearings/Fidelity Common Capital Reserve Fund (CRF) report with a beginning balance of \$2,394,286.04 on 3/1/2023. A deposit of \$45,000.00 was made to the Lafayette School Building and Grounds Maintenance CRF on 3/13/2023. Dividend income of \$3,845.76 was received in March. The quarterly CRF advisor fee to Three Bearings of \$2,758.38 was paid on 3/3/23. After an increase in investment value of \$48,390.94 in March, the ending account value was \$2,484,918.60 at 3/31/2023. On a year-to-date basis in 2023, there has been an increase in investment value of \$63,972.43 in the CRF.

The Trustees reviewed the March 1-31, 2023 Three Bearings/Fidelity Common Trust Fund (CTF) report with a beginning balance of \$312,642.09 on 3/1/2023. Dividend income of \$1,476.02 was received in

March. The quarterly CTF advisor fee of \$360.18 to Three Bearings was paid on 3/3/23. After an increase of \$424.19 in investment value in March, the ending account value was \$312,706.10 at 3/31/2023. On a year-to-date basis in 2023, there has been an increase in investment value of \$5,992.77 in the CTF.

The MS-9's for the periods from 1/01/2023 through 3/31/2023 and 3/1/2023 to 3/31/2023 were reviewed; March transaction activity (dividends earned and the LRS deposit to the School Buildings & Grounds Maintenance fund) was included as noted above; Three Bearing's quarterly advisor fees were accrued and reported in February MS-9's.

Minutes: Draft minutes for the March 15, 2023 trustee meeting were reviewed, with a change made to the meeting date. Jan made a motion to approve the minutes as amended with a second by Karen. All present voted in favor of approving the minutes as amended. Carol will send the final approved minutes for March's meeting to the Town Administrator and Town Secretary for posting to the Town's website.

Other business:

- Franconia Scholarship & Towse award: Jan sent a reminder to the Scholarship committee (Tom Allen, Ann Steuernagel and Jane Brewer) that the trustees will need their recommendations prior to our May 17 trustee meeting.

- Lafayette School building maintenance: The \$45,000.00 check was sent to Three Bearings / Fidelity and was deposited on 3/13/23 to the Lafayette 2002 School Building and Grounds Maintenance Fund (CRF). Since the funds may be needed this spring/summer for roof repairs, it has been deposited into the Fidelity Treasury Money Market Fund that is currently earning over 4%. Jan noted that since there are "no agents to expend" noted on any of the 3 Lafayette School funds, she will investigate how requests for withdrawal/expenditures are approved in this situation.

- Cemetery perpetual care trust funds update: Jan sent a memo on 3/16/23 to the cemetery trustees regarding the historical value of the original corpus and confirming how the income from perpetual care trusts is defined and calculated for the care and maintenance of specific graves. A copy of the memo has been attached to these minutes. We have not received a response from the cemetery trustees.

- Cemetery, miscellaneous: Jan sent the cemetery trustees a message on 3/16/23 regarding processing of the Warren Tree Removal and asked that future requests be submitted in the same year as the expenses are incurred (and no later than November) to allow for processing prior to year-end.

- Heritage Museum Fund: Reimbursement for the work done by the Wooden Thumb last summer will be processed once we receive the QuickBooks report and a record of the BOS vote.

- Warrant articles: Jan provided an updated (only minor corrections) warrant article tracking sheet, that includes the warrant numbers, fund name, amounts and sources of funding approved at Franconia's 3/14/23 Town meeting. A copy is attached to these minutes.

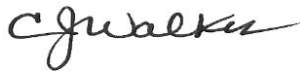
-Upcoming reimbursement requests for capital purchases approved at town meeting: The 1-ton dump truck has arrived at a lower price since the used truck was traded in instead of being auctioned. The net price is \$66,139.00 with \$35,000.00 coming from the unassigned fund balance (UFB) and \$31,139.00 from the Town Buildings Vehicle CRF per warrant #13. The Ventrac tractor/mower has been

delivered with a price of \$76,325.10 with \$65,000.00 coming from the UFB and \$11,325.10 from the Town Building & Grounds Equipment CRF per warrant #14. The \$260,000 Western Star anticipated arrival date is in June. We expect work to be done to the rink surface in the next month or so that will include additional topcoat(s) and striping at a cost of \$12,885.

-Three Bearings meeting: a GoToMeeting with David Mayes and Zachary Zwick is scheduled for 10:30 on Friday 4/21/23 to discuss investment performance and Franconia's funding forecast for 2023.

There being no further business, the trustees adjourned the meeting at 6:30 pm. The next trustee meeting will be held on Wednesday, May 17, 2023 at the Town Hall beginning at 4 pm.

Respectfully submitted,



Carol Walker, Trustee

Attachments:

- Outline of Four Funds – Recreation Committee Meeting 4/17/23
- Dow-Rec-Van-Rink-Lafayette Rec Fund Criteria 4/1/2023
- 3/16/23 memo to Cemetery Trustees
- Updated warrant article funding spreadsheet

Outline of Four Funds – Recreation Committee Meeting 4/17/23

Dow Field – Capital Reserve Fund created 3/8/94

1. Approval to spend from this fund allowed only via a warrant at town meeting and approved by Franconia taxpayers.
2. Funds to be used for capital improvement projects (over \$10,000) on Dow Field
3. Money in this fund only from taxpayers.
4. Requests to spend money in this account must be brought before the Town of Franconia Board of Selectmen for their approval and in sufficient time to include a warrant for this project.
5. Dow Field was gifted to the Town of Franconia in 1990 and the buildings and maintenance are the responsibility of the Town of Franconia.

Rink Surface Maintenance Fund – Expendable Trust Fund created 3/12/02

1. Approval to spend from this fund thru the Town of Franconia Board of Selectmen as authorized agents to expend. Approval from the BOS will only be for items meeting the purpose of the fund.
2. Funds in this account are for “the purpose of maintaining the surface of the rink”.
3. Money in this fund only from taxpayers.
4. Historically the rink is resurfaced approximately every 10 years. The rink was/is being resurfaced in 2022/2023.

Recreation Van – Capital Reserve Fund created 3/1/15, agents added 3/10/20

1. Approval to spend from this fund thru the Town of Franconia Board of Selectmen as authorized agents to expend. Approval from the BOS will only be for a purchase meeting the purpose of the fund.
2. Funds in this account are for the capital purchase of a replacement van for the Recreation Department.
3. Money in this fund only from taxpayers.

Lafayette Recreation – Expendable Trust Fund created 3/14/17

1. Approval to spend from this fund thru the Town of Franconia Board of Selectmen as authorized agents to expend. Approval from the BOS will only be for items meeting the purpose of the fund.
2. Funds in this account are to “enhance the Lafayette Recreation programs, events and activities”. This language was drafted by the Lafayette Recreation Committee in February 2017. This language was contained in Warrant No. 11 in 2017 which was approved as written.
3. The initial funding for this Fund came from a checking account held in a bank that the Town of Franconia’s auditors identified during multiple audits as necessary to be moved into an Expendable Trust Fund.
4. Money in this fund is from private sources (participation fees, donations, etc.)

Trustee of the Trusts Role

1. Requests for reimbursement of expenses are presented to the Trustees generally two to three times per year. Requests to expend must include:
 - a. For reimbursement from funds where the BOS are agents to expend - written minutes from the BOS meeting indicating their approval of an expense which details the type of expense, the fund from which reimbursement is requested, the total amount approved,
 - b. copy of the invoice(s),
 - c. copy of the Town of Franconia check(s) (or a copy of a QuickBooks report with check information
 - d. A written request from the Town of Franconia Town Administrator
2. Trustees will review the request to ensure it adheres to the purpose of the fund as set out in the warrant and approved at town meeting.
3. Trustees are elected town officials who are charged with ensuring all monies disbursed from Capital Reserve Funds and Expendable Trust Funds are in accordance with the definition of the fund.

Dow-Rec-Van-Rink-Lafayette Rec Fund Criteria 4/1/2023

Dow Field is owned by the Town of Franconia and its management is Franconia's responsibility. The Dow Strip Capital Reserve Fund is for capital improvements (items that cost \$10,000 or more). There are no agents to expend and all requested expenditures must be via a warrant at town meeting and approved by the voters. This fund was established in 1994 as stated below.

TOWN MEETING WARRANT March 8, 1994

ARTICLE 5. To see if the Town will vote to establish a ***Capital Reserve Fund*** under the provisions of RSA 35:1 ***for the purpose of Capital Improvements to the Dow Strip*** and to raise and appropriate the sum of one thousand dollars (\$1,000.00) to be placed in this fund. The Selectmen recommend this appropriation.

The Rink Surface Maintenance Fund was established in 2002 as an Expendable Trust Fund with Franconia's Board of Selectmen as agents to expend. Items paid from this fund must fall in to the category of "maintaining the surface of the rink". This fund was established in 2002 as stated below:

TOWN MEETING WARRANT March 12, 2002

ARTICLE 17. To see if the Town will vote to create an ***Expendable Trust Fund*** under the provisions of RSA 31:19-a, to be known as the Rink Surface Maintenance Fund, ***for the purpose of maintaining the surface of the rink***, to appropriate two thousand dollars (\$2,000.00) from the Recreation Committee's Une item budget for this purpose, and to designate the **Selectmen as agents** to expend. The Selectmen recommend this appropriation.

The Recreation Van fund was established in 2015 as a Capital Reserve Fund, agents to expend were added in 2020. Items paid from this fund must fall into the category of a new/replacement van. This fund was established in 2015 as stated below:

TOWN MEETING WARRANT MARCH 11, 2015

ARTICLE 21. To see if the town will vote to establish a ***Capital Reserve Fund*** under the provisions of RSA 35:1 ***for the purpose of a Recreation Van*** and to appropriate the sum of one thousand dollars (\$1,000.00) from the Recreation Committee's line-item budget for this purpose. The Selectmen recommend this appropriation. (Majority Vote required)

TOWN MEETING WARRANT MARCH 10, 2020

ARTICLE 17. Board of Selectmen Agents to Expend Recreation Van To see if the Town will vote to **appoint the Board of Selectmen as agents to expend from the Recreation Van Capital Reserve Fund** previously established. The Selectmen recommend this article. (Majority vote required)

The Lafayette Recreation fund was established in 2017 to enhance the Lafayette Recreation programs, events and activities. This same language is contained in the Tri-Town Recreation Agreement. Items paid from this fund must fall into the category of program, event or activity enhancement. See warrant language below:

TOWN MEETING WARRANT MARCH 14, 2017

ARTICLE 11. To see if the town will vote to establish the Lafayette Recreation ***Expendable Trust Fund*** to ***enhance the Lafayette Recreation programs, events and activities (these are to be determined by the Lafayette Recreation Committee)***, and to appropriate fifty one thousand four dollars (\$51,004.00) to be placed in said fund with the monies to come from the unassigned fund balance (this amount represents previously collected donations and fundraising monies); furthermore to name the **Selectmen as agents** to expend from the fund. Recommended by the Selectmen.

To: The Cemetery Trustees – Town of Franconia
From: The Trustees of the Trust – Town of Franconia
Date: March 16, 2023
Subject: Income Available for Reimbursement from Perpetual Care Accounts

The Trustees of the Trust Fund (TOTF) would like to continue the conversation with the Cemetery Trustees regarding available Income for reimbursement to the Town for expenses incurred in caring for perpetual care lots.

As you know four Trustees were able to meet on January 4, 2023 (Jayne and Jan were unable to participate). At this meeting, the Trustees of the Trust commented that there had been a lot of work done by Barbara Holt and then Chris Collman and Mary Brubaker to record and verify the original contribution for perpetual care. These valuable records should be retained by the Cemetery Trustees for their historical purpose.

There was additional conversation where the TOTF indicated that the MS-9 is a State of New Hampshire form and no column names may be changed or added. There was extensive discussion regarding the Income that is available to be spent/reimbursed. While the TOTF understand the position of the Cemetery Trustees that they believe available income should be the difference between the original contribution and the current ending balance; that is not how Income is defined by NH Charitable Trusts.

At the conclusion of this meeting, the TOTF felt they were clear as to which column shows the only available Income from which the Cemetery Trustees may request reimbursement from. Recently, however, the TOTF had the opportunity to review the Cemetery Trustees' minutes of this same January 4, 2023 meeting and see that there is still a disconnect on this issue. The following is an excerpt from those Cemetery Trustee minutes:

“The Cemetery Trustees and Trustees of Trust Funds discussed how the 96 Perpetual Care funds are listed on the Town’s MS-9. All know that when caring for a specific cemetery lot the principal of its fund may not be spent, only income. The two sets of trustees disagree on the definition of eligible income. Currently, the Trustees of Trust Funds use the Ending Balance in the Income section minus the Beginning Balance in the Principal Section to determine the amount that is available to care for a specific lot. The Cemetery Trustees believe that the Ending Market Value minus the Original Principal equals the amount that is available to care for a specific lot. Once the Original Principal amounts (as reviewed in the paragraph above) are used, the question remains which column on the MS-9 (or elsewhere) represents eligible income.”

The only column on the MS-9 that will be used to determine available Income for reimbursement of expenses is the Income – Ending Balance. No further calculations are needed to determine this amount. At the January meeting there was extensive discussion on how the corpus has grown over the years (capital appreciation) and only Income is available to be spent.

Below is an excerpt from a FAQ published by the NH Charitable Trust regarding the definition of Income:

MUNICIPAL TRUSTEES: SUMMARY OF LAWS AND FAQS Diane Murphy Quinlan, Esq., Director of Charitable Trusts Michael R. Haley, Esq., Assistant Director of Charitable Trusts Amy Nichols, CPA, Financial Analyst New Hampshire Department of Justice

4. Cemetery Perpetual Care Funds: Perpetual care funds are considered to be privately donated charitable trusts. They are permanent funds, and only the income from the funds may be spent. **(Income in this context is defined as dividends and interest; principal appreciation or capital gains may not be expended.)** The income from the perpetual care funds may be used only for the care and maintenance of the grave to which the perpetual care fund is attached. See *Town of Boscawen v. Acting Attorney General*, 93 N.H. 444 (1945) (the income from perpetual care funds cannot be expended by the town for general cemetery maintenance without permission from the court). To address this, cemetery trustees may conduct an informal labor study to determine the annual maintenance cost for each lot in a cemetery, and that allocated amount may be spent from the income of a perpetual care fund pertaining to a lot in that cemetery. Note that towns are required to appropriate “sufficient funds” for the maintenance of their cemeteries, which would include burial lots, to the extent they are not otherwise supported by perpetual care funds. RSA 289:4.

The TOTF would like to have closure on this issue of available income as it has been discussed at multiple meetings for the past two years. We are also concerned with some of the comments made earlier this year that the TOTF are responsible for a faulty accounting program used by a contractor of the Trustees and the earnings are understated because of an accounting error. This is not an accurate statement.

In closing, the original amount given (the principal) has grown in value over time thru principal appreciation and capital gains. This increase in principle then is able to generate higher dividends and interest. Available Income is only the amount of dividends and interest earned. The TOTF would welcome the opportunity to meet with the Cemetery Trustees to review and conclude this issue and look forward to hearing back from each of you.

