

# Town of Hampton



## TRUSTEES OF THE TRUST FUNDS

JUNE 21, 2010 3:00 p.m.

TRUSTEES: David Hamilton, Chairman  
Edward (Sandy) Buck, Vice Chair  
Warren J. Mackensen, Bookkeeper  
Norman Silberdick  
William A. Hartley

The meeting was called to order at 3:00 p.m. by Chairman Hamilton.

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### **Minutes of the Last Meeting**

The minutes from the meeting of April 19, 2010, were reviewed.

**MOVED** by Mr. Buck to approve the minutes.

**SECONDED** by Mr. Hartley.

**VOTE: 5-0-0**

**Motion Passed**

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### **Real Estate Trust Fund Trend Graphs**

The Trustees reviewed graphs showing the month-end market values of the Real Estate Trust Fund since late 2005. The portfolio struggled in May with the recent market economic turmoil, including the effects of the European economy (strengthening dollar against the euro) and the Gulf of Mexico oil spill uncertainty.

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### **Real Estate Trust Fund Disbursements Review**

The Trustees reviewed a 2010 Cash Basis Income, Fees & Distributions Summary spreadsheet provided by the Bookkeeper, as updated by TD Wealth Management (Mr. John O'Dowd) showing the accumulated income and associated distributions to the Town as of May 31, 2010. The Trustees noted that Net Income on Hand column now reflects the true nature of the outstanding income just received.

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### **Real Estate Trust Fund Fee Calculation Review**

The Trustees reviewed the Fee Verification spreadsheet prepared by the Bookkeeper. The numbers are tracking properly according to the fee arrangement with TD Wealth Management. The Trustees have seen five of these fee calculation spreadsheets now.

The Bookkeeper requested that written proof and supporting documentation of the fee calculation in the form of an attachment to the trustees' board packets be dropped. The Bookkeeper will continue to prepare the Fee Verification each month, and simply report verbally that the fee was calculated correctly at the next regularly scheduled meeting. If the fee is calculated incorrectly, the Bookkeeper will also report that fact to the trustees at the next regularly scheduled meeting, along with the necessary corrective actions.

**MOVED** by Mr. Silberdick to dispense with including the fee review calculations in the trustees' board packet, and accept the Bookkeeper's verbal assertion that the fee was calculated correctly for each month.

**SECONDED** by Mr. Hartley.

**VOTE: 5-0-0**

**Motion Passed**

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### **Investment Policy Change**

The Trustees signed the Investment Policy approved at the meeting on April 19, 2010.

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### **Smaller Trust Funds and Capital Reserve Funds**

The Trustees reviewed financial documentation on the smaller trust funds and capital reserve funds as of April 30, 2010, and May 31, 2010.

Chairman Hamilton contacted Mr. Maury Friedman to suggest that the AED Trust Fund consider purchasing two or three AEDs to dissipate the trust fund as the goal

of purchasing six AEDs seems to have stalled. The Trustees felt that it was better to start deploying a few AEDs to the police cruisers rather than wait until enough money had been garnered to purchase all six of them at one time.

Mr. Friedman reported that the fund was not being actively promoted at this time, but he expected to get together with Chief of Police Jamie Sullivan soon to develop a promotional campaign.

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### **Cemetery Burial Trust Fund CD**

The Bookkeeper reported that \$331,893.15 in the Cemetery Burial Trust Fund 2-year CD at TD Bank Government Banking Division, yielding 2.05%, was liquidated on May 3, 2010, as voted on at the last meeting. The proceeds were invested on May 4, 2010, in the Vanguard GNMA Fund.

The Bookkeeper reported that the approximate \$5,000 in the Cemetery Burial Trust Fund, previously held in the Vanguard Money Market Fund yielding almost nothing, was moved to the Vanguard GNMA Fund.

These moves will increase the overall yield of the Burial Trust Fund to approximately 3%.

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### **DPW Equipment Capital Reserve Fund**

The \$45,000 in the DPW Equipment Capital Reserve Fund was moved from the Vanguard Money Market Fund to the Vanguard GNMA Fund to improve the yield, per the vote at the last meeting.

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### **Real Estate Trust Fund – Loaning Money to the Town**

At the request of the Board of Selectmen Chairman Richard Nichols, the Trustees discussed the feasibility of loaning money to the Town from the Real Estate Trust Fund.

The Trustees reviewed a spreadsheet showing the effects of borrowing \$4,000,000 from the Real Estate Trust Fund for a capital improvement. The current Trust Fund yield of 4.47% was contrasted with municipal borrowing rates of 2.5%, 3.25% and 4.0%. In all cases, the town was better off using municipal bonds to finance capital improvements as long as the municipal bond rate was lower than the Trust Fund yield.

Municipal bond rates are likely to be lower than corporate bonds rates indefinitely because of the tax benefits associated with the tax-free municipal bonds. The tax-exempt status of the Trust Fund suggests that investment in lower-paying municipal bonds will never be prudent when compared with high quality corporate bonds that pay a higher coupon.

Chairman Hamilton shared an email from Robert Preston regarding his thoughts on the matter. The Trustees continue to discuss this matter at length. The following points were made and discussed.

Prior to the meeting, Mr. Mackensen reviewed pertinent RSAs relative to this matter. For the record, the original 1983 law establishing the Hampton Real Estate Trust Fund (314:1) requires that "The principal shall remain intact." Further, "the income from the fund shall be paid annually or more often into the town's general fund."

Mr. Mackensen pointed out that the 2003 Amendment to the original 1983 Real Estate Trust Fund law strikes the requirement that the income from the fund shall be paid annually into the town's general fund. The Amendment states:

"Income from the trust may be retained in the trust fund in anticipation of future projects or it may be paid into the town's general fund as determined by the town's legislative body."

The Real Estate Trust Fund distributed \$466,104 to the town's general fund in 2009, which reduced the town's tax rate. If the citizens of Hampton vote to retain the trust fund income in the trust fund, each citizen's taxes for the coming year will increase to cover the shortfall in revenue. At the current time, the income is being paid to the Town monthly.

The 2003 Amendment to the original 1983 Real Estate Trust Fund law draws in RSA 33:8, the Municipal Finance Act, to govern borrowing from the Real Estate Trust Fund for capital improvements. The reference to RSA 33:8 seems to turn over the decision-making authority of this trust fund to a town meeting vote, which may be in conflict with the RSAs establishing trust funds and appointing the Trustees of Trust Funds as the fiduciaries of such trusts. The 2003 Amendment and RSA 33:8 are attached to these minutes for reference.

Mr. Mackensen cautioned that the Real Estate Trust Fund is an endowment fund for the Town, and the unfettered borrowing by the Town (up to 75% of the trust fund) disrupts the investment policy and the associated asset allocation for the Fund. Further, the borrowing of up to 75% of the trust fund virtually removes any possibility of growing the trust fund to offset inflation as the assets could be stuck in low-paying municipal bonds with no growth component for a period of up to 15 years. He further opined that no prudent investor would invest up to 75% of a trust fund in a single security (one or more bonds issued by a single municipal entity). The 1994 Orange County (California) bankruptcy comes to mind.

Chairman Hamilton pointed out that the 2003 Amendment does not allow temporary borrowing from the Real Estate Trust Fund for tax anticipation notes (TANs) because the 2003 Amendment states: "The principal of the trust fund may be used to finance capital improvements of the town..." Since TANs are not capital improvements, the Town is not authorized to use the Real Estate Trust Fund for temporary TAN borrowing.

Further corroborating this point, Mr. Hartley said that he recently attended trustee training in Concord, which was hosted by the Charitable Trusts Unit of the Department of Attorney General. He specifically asked about a town borrowing from trust funds for TANs. The response from the Assistant Director of the Charitable Trusts Unit (Attorney Terry Knowles) was an emphatic "No" because the trustees have no mechanism to enforce repayment on the notes.

Mr. Buck suggested that the response also seems to apply to borrowing from the trust funds for capital improvements. How could the trustees enforce repayments, especially if the town was on especially hard times?

Mr. Silberdick offered that the question was more academic than specific, and that the trustees need to focus on the broad long-term implications of the question.

To resolve the conflicting words in RSA 314:1 with the other trust fund RSAs, Mr. Mackensen recommended that the Trustees submit a technical assistance request to the Charitable Trusts Unit at the Attorney General's Office in Concord. The technical assistance request will ask for opinions on four specific questions regarding the 2003 amendment to RSA 314:1 vis-à-vis seemingly-conflicting RSAs governing trust funds.

**MOVED** by Mr. Silberdick to send a letter, signed by the Chairman on behalf of the Trustees, to the Charitable Trusts Unit as proposed by Mr. Mackensen.

**SECONDED** by Mr. Buck.

**VOTE: 5-0-0**

**Motion Passed**

The Trustees then reviewed the proposed letter and agreed upon its content.

**MOVED** by Mr. Mackensen to attach the technical assistance request letter to the June 21<sup>st</sup> minutes for the record.

**SECONDED** by Mr. Silberdick.

**VOTE: 5-0-0**

**Motion Passed**

**Next Meeting**

The next meeting of the Trustees is scheduled for Monday, July 19, 2010, at 3:00 p.m. TD Wealth Management will attend.

**MOVED** by Mr. Silberdick to adjourn.

**SECONDED** by Mr. Hartley.

**VOTE: 5-0-0**

**Motion Passed**

The meeting adjourned at 4:15 p.m.

Respectfully submitted,

*Warren J. Mackensen*

Warren J. Mackensen, Bookkeeper

# Town of Hampton



June 23, 2010

Atty. Terry M. Knowles  
Registrar of Charitable Trusts  
Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397

RE: Request for Technical Assistance, Hampton Real Estate Trust Fund

Dear Attorney Knowles:

The Trustees of Trust Funds are hereby requesting technical assistance with respect to the 2003 Amendment to the 1983 law establishing the Hampton Real Estate Trust Fund.

## **1983 LAW:**

The original 1983 law, 314:1 established the Real Estate Trust Fund, the principal of which was to be derived from the sale of leased lots at Hampton Beach. The principal was to remain intact. The income was to be paid annually or more often into the town's general fund to reduce the tax rate.

As a point of information, the Trustees currently pay the income to the Town monthly.

## **2003 AMENDMENT:**

The 2003 Amendment eliminated the words: "The income from the fund shall be paid annually or more often into the town's general fund." The 2003 Amendment inserted:

The principal of the trust fund may be used to finance capital improvements of the town when authorized in accordance with the procedures under RSA 33:8. The amount of money borrowed shall be paid back to the real estate fund plus interest. The rate of interest shall be the prevailing bank rate charged to municipalities as determined by the trustees of the fund. The amortization schedule on any loan shall not exceed 15 years. The total of all loans shall not exceed 75 percent of the fund's value. Income from the trust may be retained in the trust fund in anticipation of future projects or it may be paid into the town's general fund as determined by the town's legislative body.

**Question #1:**

In the 2003 Amendment, how does the allowance that “up to 75% of the principal may be loaned to the town to finance capital improvements” reconcile against the spirit and intent of RSA 31:27 (Collective Investments), which states in part:

“...not more than \$10,000, or more than 10 percent of the fund, whichever is greater, of any town or city common trust funds shall be invested under RSA 31:25 in the obligations of any one corporation or organization...”

The Trustees understand that RSA 31:27 applies to Collective Investments, but there were implications at Trustee training stressing the importance of diversification of investments. Further, a prudent investor managing a \$15 million portfolio would never invest 75% (\$11,250,000 in this case) in a single instrument, or a series of instruments, from the same organization (Town of Hampton).

**Question #2:**

How does the 2003 Amendment sentence:

“...Income from the trust may be retained in the trust fund in anticipation of future projects or it may be paid into the town’s general fund as determined by the town’s legislative body.”

reconcile against RSA 31:22 (Trustees), which states in the Selected Annotations:

“Powers 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. 1 N.H.Op.A.G. 49.”

The Hampton Trustees interpret the 2003 Amendment to say that the distribution of income from the Real Estate Trust Fund is now at the discretion of town meeting or a special town meeting.

Further, the 2003 Amendment seems to give the town’s legislative body the authority to stop paying over ANY income to the town, at their discretion.

**Question #3:**

Is it appropriate that a trust fund (the Hampton Real Estate Trust Fund) that is under the jurisdiction of the Trustees of Trust Funds is subject to the provisions of the Municipal Finance Act under RSA 33:8?

Trustee training made it perfectly clear that:

- a) trust funds (and capital reserve funds) are managed by the Trustees of Trust Funds acting as fiduciaries;
- b) trustees are under the jurisdiction of the Charitable Trusts Unit in the Department of Attorney General;
- c) the town's legislative body determines which trust funds (and capital reserve funds) are accepted or established;
- d) the town's legislative body determines which capital reserve funds are to be expended; and
- e) selectmen and town meeting votes have no authority to control the actions of trustees.

**Question #4:**

If the Charitable Trusts Unit deems the 2003 Amendment to the 1983 law to be in conflict with other RSAs, what is the course of action that the Hampton Trustees should take to remedy the conflicting laws?

The Hampton Trustees would appreciate a written reply to these questions. You are also welcome to attend the next trustees meeting, which will be held on July 19, 2010, at 3:00 p.m., in the Selectmen's Meeting Room, Hampton Town Office Building at 100 Winnacunnet Road.

The Trustees' contact person is Warren J. Mackensen, 603-926-1775, warren@mackensen.com.

Sincerely yours,



David W. Hamilton, Chairman

cc: Trustees: Norman Silberdick, Edward R. Buck, William A. Hartley,  
Warren J. Mackensen

Enclosures: 314:1 and 2003 Amendment

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Three*

AN ACT relative to the Hampton real estate trust fund.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

53:1 Hampton Real Estate Trust Fund; Principal and Interest. Amend 1975, 314:1 as amended by 1983, 3:1 to read as follows:

314:1 Authorization for Real Estate Trust Fund. The town of Hampton may, at any regular or special meeting, provide that the proceeds of sales of land or interests in lands, other than land or interests in land acquired by taking for non payment of taxes or land under the administration of the town's conservation commission, shall be paid over to the town's trustees of trust funds, to be invested and reinvested by them. The trustees are authorized to obtain the services of a bank or professional management company. ~~[The income from the fund shall be paid annually or more often into the town's general fund.]~~ The principal of the fund shall remain intact. *The principal of the trust fund may be used to finance capital improvements of the town when authorized in accordance with the procedures under RSA 33:8. The amount of money borrowed shall be paid back to the real estate fund plus interest. The rate of interest shall be the prevailing bank rate charged to municipalities as determined by the trustees of the fund. The amortization schedule on any loan shall not exceed 15 years. The total of all loans shall not exceed 75 percent of the fund's value. Income from the trust may be retained in the trust fund in anticipation of future projects or it may be paid into the town's general fund as determined by the town's legislative body.*

53:2 Effective Date. This act shall take effect upon its passage.

(Approved:

Enacted in accordance with Article 44, Part II of N.H. Constitution, without signature of the governor, May 13, 2003)

(Effective Date: May 13, 2003)

# TITLE III

## TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### CHAPTER 33

#### MUNICIPAL FINANCE ACT

##### Section 33:8

**33:8 Town or District Bonds or Notes.** – Except as otherwise specifically provided by law, the issue of bonds or notes by any municipal corporation, except a city or a town which has adopted a charter pursuant to RSA 49-B, without a budgetary town meeting, and except a school district or municipality which has adopted official ballot voting procedures pursuant to RSA 40:13 shall be authorized by a vote by ballot of 2/3, and the issue of tax anticipation notes, by a vote of a majority, of all the voters present and voting at an annual or special meeting of such corporation, called for the purpose. The issue of notes or bonds by a school district or municipality which has adopted official ballot voting procedures pursuant to RSA 40:13 shall be authorized by a vote of 3/5. The issue of notes or bonds by a municipality that has adopted an optional form of legislative body under RSA 49-D:3, I-a or RSA 49-D:3, II-a shall be authorized by either a 2/3 or 3/5 vote as adopted and provided for in the charter. If such charter does not specify which majority vote is required, then the required majority vote shall be 2/3. Only votes in the affirmative or negative shall be included in the calculation of any majority. No such action taken at any special meeting shall be valid unless a majority of all the legal voters are present and vote at such special meeting, unless the governing board of any municipality shall petition the superior court for permission to hold an emergency special meeting, which, if granted, shall give said special meeting the same authority as an annual meeting. The warrant for a special meeting shall be published once in a newspaper having a general circulation in the municipality within one week after the posting of such special meeting. The warrant for any such annual or special meeting shall be served or posted at least 14 days before the date of such special meeting. Every warrant shall be deemed to have been duly served or posted, if the return on the warrant shall so state, and it shall be certified by the officer or officers required to serve or post the same. All bonds or notes, authorized in accordance with this chapter, shall be signed by the governing board, or a majority of the governing board, and countersigned by the treasurer of the municipality, and shall have the corporate seal, if any, affixed to it. The discretion of fixing the date, maturities, denominations, the interest rate, or discount rate in the case of notes, the place of payment, the form and other details of said bonds or notes and of providing for the sale of such bonds or notes, may be delegated to the governing board or to the treasurer and shall, to the extent provision therefor shall not have been made in the vote authorizing the same, be deemed to have been delegated to the governing board. Bonding authority under this section may be limited or rescinded as provided in RSA 33:8-f.

**Source.** 1895, 43:3. PL 59:9. RL 72:9. 1953, 258:1, par. 8. RSA 33:8. 1969, 438:2. 1970, 18:2. 1983, 160:2. 1991, 304:1, eff. Aug. 23, 1991. 1999, 134:1, eff. Aug. 17, 1999. 2002, 246:1, eff. July 16, 2002. 2004, 254:1, eff. Aug. 14, 2004. 2009, 229:1, eff. Jan. 1, 2010.