

ALTON-BARNSTEAD HALF MOON LAKE ASSOCIATION

-- SECRETARY'S REPORT AUGUST 21, 1983

The August 21, 1983 meeting of the Alton-Barnstead Half Moon Lake Association held at Frank Brewster's cottage was called to order by President John Marmaras at 10:15 a.m.

In attendance were: John Alliegro, Frank Brewster, Arthur Gilbert, Richard Headley, Elvia Hetu, Alex MacConnell, Frederick MacConnell, and John Marmaras.

The secretary's report was read and accepted.

The treasurer's report, giving a balance on hand of \$1656.52 as of August 20, 1983, was also accepted.

The Boat Parade, to be held Saturday, September 3 with a Rain Date of Sunday, September 4, was discussed. Mr. Marmaras said that he would contact Larry Holt, chairman of the event, to make sure that enough flares had been purchased and that plans for the parade had been finalized.

A lengthy discussion followed on the problem of the airstrip on Kent Locke's property. A letter written by the Town of Barnstead's attorney, Anthony A. McManus, was read by those present. The letter referred to a pre-trial hearing on Thursday, August 11, 1983. The Association had not yet been informed of the outcome of this hearing. John Alliegro, chairman of the committee appointed by the Association to follow this problem, said that he would call Selectman Paul A. Golden to ascertain the results of this hearing. The Association then authorized Mr. Alliegro to send letters, over his signature as chairman of the committee, to the selectmen if necessary, depending on what he learned from his conversation with Selectman Golden.

Mr. Marmaras reported on the Sailboat Race held Saturday, August 13. On a motion by Frank Brewster, seconded by Fred MacConnell, it was voted to award Barnstead sweat shirts to all the participants. Mr. Marmaras said that in his August newsletter to all Association members he would ask for volunteers to be on the Water Sports Committee so that the Ski Contest and Canoe Races which had been cancelled this season could be held next year.

The fact that some of the buoys on the lake were missing or moved and had to be relocated by members of the Association was discussed. Dick Headley recommended that the possibility of vandalism be looked into and dealt with immediately.

Mr. Marmaras reported that he would have a test made of the water at the public spring this fall and another one in the spring so that a comparison could be made. It was agreed that Frank Brewster should contact Dr. Hickey, who provides the pump for this spring, and have him send the bills for the repair of this pump to the Association.

A discussion followed on a request by Dick Headley to have the Association consider lowering the lake in the fall. It was decided to look into the matter for possible action in the fall of 1984, to see what State agency would have to be contacted and what could be done to convince those lake residents who had been opposed to lowering the lake in the past.

Following a motion by John Alliegro, seconded by Fred MacConnell, the meeting was adjourned at 11:35 a.m. until our next meeting on Sunday, July 8, 1984.

Respectfully submitted,

Elvia Hetu
Secretary

BURNS, BRYANT, HINCHEY, COX & SHEA
ATTORNEYS AT LAW

Burns Building
Doover, New Hampshire 03820

AUG 6 1983

DONALD R. BRYANT
PAUL R. COX
JAMES H. SCHULTE
ANTHONY A. MCMANUS

STEPHEN E. GAIGE
CHRISTOPHER A. WYSKIEL
WILLIAM E. BOC
CHRISTOPHER T. REGAN
SAMUEL R. REID, III

August 4, 1983

GEORGE T. HUGHES
1897-1943
STANLEY M. BURNS
1925-1967
ROBERT P. SHEA
1964-1983
ROBERT E. HINCHEY
OF COUNSEL
AREA CODE 603
742-2332

Selectmen, Town of Barnstead
Barnstead, NH 03218

Dear Sirs:

You asked me recently to report on the status of the case against Kent Locke involving the airfield.

This is scheduled for a pre-trial hearing on Thursday, August 11, 1983. It is not necessary for any of you to be present. This is an opportunity for the lawyers involved to sit with the judge, discuss the case and the issues and determine when the parties would be ready for trial.

In the meantime, I have done some investigation. I was able to contact the State Police officers who used the field while observing an alleged drug operation in New Durham. They verified that permission to use the field was obtained from Kent Locke. They told me, however, that there is little or no facility there. The field is not really maintained. There are no permanent storage buildings. There is no fuel for sale. As far as they know, no one had to pay any fee for using the field.

In response to a letter, I had a call from Harvey Locke. He told me there is no hanger or buildings there. There are four or five planes that are kept there, but they are simply tied down on the field. He pays Locke nothing for using the field; there is no rental charge. He said the field is not maintained, but that he mows it himself from time to time with a riding mower.

I have had a response from the New Hampshire Aeronautics Commission which states, "So far as we know, there is a privately-owned, non-commercial air strip in Barnstead that is owned by a person named Kent Locke." Either Harvey Locke or the State Trooper told me that he does not believe the field is located on the official aeronautical map for the State.

Selectmen, Town of Barnstead
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Based on the above, I think it would be a very difficult thing to argue that this is a commercial use. I would still be able to argue that it is a nonresidential use, however, and that Locke was aware his situation was covered by the zoning ordinance because of his previous filing before the Zoning Board of Adjustment. It is my feeling that the defense to the case will be that it is not a commercial enterprise, and therefore is not subject to control of the Town pursuant to the zoning ordinance. As soon as I receive a copy of Attorney Greenhalge's pre-trial statement, I will have a better idea of his response.

Chapter 424 of the Revised Statutes relates to airport zoning. In the first paragraph of that statute there is a definition of airports which says, "Any area of land or water, whether constructed or not, which has been approved by the Director of Aeronautics as a site for the landing and taking off of aircraft or utilized or to be utilized by the public as a point of arrival or departure by air." Obviously, this airport has not been approved by the Director of Aeronautics, but I think we can argue that it is "utilized or to be utilized by the public . . ."

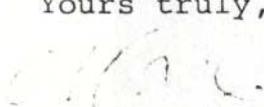
That statute goes on to provide that a municipality may pass zoning regulations dealing with airports, but it seems to be directed to protecting the airport rather than prohibiting the use of private land for that purpose. I would refer you to that particular statute for your review, at least so you can be aware and become familiar with the several provisions of the statute.

The outcome of the case may well be that the situation is more of a private nuisance than a zoning violation. In that event, it would be up to the residents in the area of the airfield to bring a private action rather than the Town to pursue a zoning violation or injunction as we have now.

As I say, I will know a lot more about the situation after the pre-trial hearing on the 11th, and I will give you a report at that time. If any of you have any thoughts or comments prior to the 11th, please let me know.

Thank you.

Yours truly,


Anthony A. McManus

AAM/smg

Present

- (5) Elvin Holm
- (1) John Collins
- (2) Jim Mathias
- (3) Jim Mathias
- (2) Frank Bennett
- (4) Dick Hadley
- (6) Guy MacConnell
- (2) Ted MacConnell

(Both)
maybe Chairman
of next yrs SKI. Contest