

SUNAPEE SELECTBOARD
MEETING AGENDA
Monday, February 26th, 2024
6:30PM - TOWN OFFICE MEETING ROOM
Join us on Zoom: <https://us06web.zoom.us/j/86066395397>

- 1. CALL SELECTBOARD MEETING TO ORDER**
- 2. REVIEW & APPROVE FEBRUARY 12th MINUTES**
REVIEW AND AMEND MINUTES FROM OCTOBER 30, 2023

- Joshua Boone, Town of Sunapee Town Clerk/Tax Collector

- 3. REVIEW OF ITEMS FOR SIGNATURE:**

CZC's

- Parcel ID: 0238-0082-0000 – 122 Nutting Road – Lee Arrison & Jennifer McAllister

LAND DISTURBANCE

- Parcel ID: 0120-0016-0000 – 11 Scotts Cove Road – Jonathan & Helaine Winer
- Parcel ID: 0120-0017-0000 – 15 Scotts Cove Road – Pam & John Martin

USE OF FACILITIES

- Tyler Ruff and Lena Thomas- Use of Crowther Chapel – July 20, 2024 – 10 AM - 2 PM

ABATEMENT

- 0139-0006-0000 - Anthony Tate III, & Josephine- 89 Rolling Rock Road
- 0139-0007-0000 - Rockwall Farm Trust- 100 Rolling Rock Road

LAND USE CHANGE TAX

- 0238-0077-0006 - The Clark Revocable Trust- Nutting Road
- 0238-0077-0003 - Shayna Levesque & Nicholas Doughty - Nutting Road

SHORT-TERM RENTAL CZC'S

- Parcel ID: 0112-0007-0000 – 85 Tilson Point Road – Timberlost LLC, Margaret Schneider
- Parcel ID: 0128-0004-0000 – 61 Central Street – Thomas & Kimberly Rairdon
- Parcel ID: 0125-0044-0000 – 15 Dewey Beach Road – Snow Trust, Harry Snow
- Parcel ID: 0133-0107-0001 – 11 Saville Lane – Gary & Kara Sullivan
- Parcel ID: 0133-0096-0000 – 9 Maple Street – Michael & Jennifer Cretella
- Parcel ID: 0107-0034-0000 – 1090 Lake Avenue – Michael & Elizabeth Zea
- Parcel ID: 0148-0022-0000 – 14 Hamel Road – Lauren & Todd Vanacore
- Parcel ID: 0133-0117-0000 – 14 Maple Street – Above Board Sunapee Harbor LLC – Melinda Luther

SOLAR EXEMPTION

- Parcel ID: 0114-0016-0000 – 82 Brown Hill Road – Brian & Margaret McGovern
- Parcel ID: 0218-0007-0000 – 22 Chippendale Drive – Circosta 2021 Revocable Trust
- Parcel ID: 0237-0009-0000 – 18 Harding Hill Road – Jason Mills

- Parcel ID: 0210-0041-0000 – 11 Dobles Road – Sheryl Rich-Kern

4. APPOINTMENTS:

- 7:00 PM – Public Hearing for the Acceptance and Expenditure of Unanticipated Revenue from the New Hampshire Office of Highway Safety in the amount of \$23,308.64 - Police Lt. Tim Puchtler and Accreditation Manager Steve Marshall
 - 7:15 PM- Lake Sunapee Short-Term Rental Association, Lisa Hoesktra
-

5. PUBLIC COMMENT:

6. SELECTBOARD ACTION:

- **Certificate of Appointment** – Pam Green, Thrift Shop
 - **Certificate of Appointment** – Patricia Shea, Thrift Shop
-

7. TOWN MANAGER REPORT:

- Legal update:
 - Coalition 2.0 Update
 - KTP
 - Recreation Committee Resignation-Tim Berbue
 - Building Congestion/Roads
 - Police Department Grant Application
 - Equipment Update (Fire Chief)
 - 4th of July
-

8. SELECTBOARD MEMBERS' REPORT:

9. OUTSTANDING ITEMS

- Current Use Map
- After Action: Prospect Hill Fire, in-process
- Short-Term Rental Platform
- Waste Water Treatment Land Ownership
- Long-Term Lease with Solar Array Company
- Conservation Commission Deed Clean Up

10. UPCOMING MEETINGS:

- February 29, 2024: Abbott Library Trustees Meeting, 5PM Abbott Library
- February 29, 2024: Water and Sewer Commission Meeting, 5:30 PM Sunapee Town Hall
- February 29, 2024: Firewards Meeting, 6:30 PM Safety Services Building
- March 04, 2024: Sunapee Selectboard Meeting, 6:30 PM Sunapee Town Hall
- March 05, 2024: Recreation Committee Meeting, 7:00 PM Sunapee Town Hall
- March 06, 2024, Conservation Commission Meeting, 7:00 PM Sunapee Town Hall
- March 07, 2024, Zoning Board of Adjustments Meeting, 6:30 PM Sunapee Town Hall

NONPUBLIC: The Board of Selectmen may enter a nonpublic session, if so voted, to discuss items listed under RSA 91-A:3, II

NOTICE OF PUBLIC HEARING

Town of Sunapee, NH

The Selectmen of the Town of Sunapee Public Hearing
on Monday, February 26th, 2024 at 7:00PM in the Town Office
Meeting Room, 23 Edgemont Road, Sunapee NH.

Acceptance and Expenditure of Unanticipated Revenue from the New Hampshire Office of Highway Safety. Pursuant to RSA 31:95-b, the meeting will be held to hear public comment on the acceptance and expenditure of unanticipated revenue in the amount of \$23,308.64 for the purchase of three mobile data terminal tablets, three docking stations with related equipment, three printers with mobile adapter kits, three printer mounts with adapter plates, and two traffic data recording devices. This is an amendment to a previously awarded and accepted grant from the amount of \$6,600.00 to \$29,908.64.

Any persons wishing to be heard on this matter are invited to attend the hearing and make their opinions known.



Lake Sunapee Short-Term Rental Association

A 501(c)(6) not-for-profit association with a Board of Directors, registered with the State of NH.

Brief History: Established in the Fall of 2022 to create a unified “one voice” entity for Sunapee region’s short-term rental owners.

Core Values:

Advocacy

Education

Resource Stewardship

Meeting with the Selectboard – Q&A:

To recognize LSSTRA as Sunapee’s local STR expert

To identify mutual objectives

To prioritize efforts, including participation in upcoming community initiatives





TOWN OF SUNAPEE
Volunteer Interest Form
For Town Committees, Boards, and Commission

RECEIVED

FEB 12 2024



Name: Shea Patricia Date: 2/10/24
(Last) (First)

Sunapee Registered Voter: ☒ Yes () No

Mailing Address:

Street Address (if different):

[Redacted Address]

Lived in Sunapee Since: 1965

Home Phone:

k Phone

[Redacted Phone Numbers]

1. Please indicated the Board/Commission/Committee you would like to serve on in order of preference.
(1-First Choice, 2-Second choice, etc.)

- | | |
|--|---|
| <input type="checkbox"/> Abbott Library Trustee | <input type="checkbox"/> Advisory Budget Committee |
| <input type="checkbox"/> Capital Improvement Committee | <input type="checkbox"/> Conservation Commission |
| <input type="checkbox"/> Crowther Chapel Committee | <input type="checkbox"/> Fireward |
| <input type="checkbox"/> Planning Board Alternate | <input type="checkbox"/> Recreation Committee |
| <input checked="" type="checkbox"/> Thrift Shop | <input type="checkbox"/> Upper Valley Lake Sunapee Regional |
| <input type="checkbox"/> Zoning Board Alternate | <input type="checkbox"/> Highway Safety Committee |
| <input type="checkbox"/> Energy Committee | |

2. For consideration:

a. Occupation: retired b. Employer: _____

c. Length of current employment: _____ d. Education: _____

e. Relevant Experience: _____

f. Do you feel there may be any *conflict of interest* with your personal beliefs, occupation, or employer if appointed to serve on any of the above boards, commissions, or committees? ☐ Yes ☒ No

g. Volunteer Time Available 6? hours per week (daytime) _____ hours per week (evenings)
_____ hours per week (weekends)

h. Did you previously serve on any Municipal or School District Board/Committee/Commission? ☐ Yes ☒ No

RECEIVED
FEB 13 2024
i. If yes, please indicate Town/Position: _____ / _____ / _____

j. Are you willing to serve as an Alternate? ___ Yes ☒ No

k. Are you willing to serve on a Sub-Committee? ___ Yes ☒ No

3. Why do you want to serve on this board/committee? I have volunteered at
the thrift shop for 3 years

4. What attributes and/or qualifications can you bring to the Board/Committee/Commission? _____

5. Your reasons for wanting this/these appointments /appointments are: _____

6. Additional Comments: _____

Patricia Shea

(Signature)

2/10/24

(Date)

Please send completed application form and resume, if available, to the Town Manager's
Office, 23Edgemont Road, Sunapee, NH 03782 (telephone 603-763-2212, fax 603-763-4925)

“considered **public information** and may be distributed or copied”



TOWN OF SUNAPEE
Volunteer Interest Form
For Town Committees, Boards, and Commission

Name: Green (Last), Pam (First) Date: _____

Sunapee Registered Voter: () Yes () No

1. Please indicated the Board/Commission/Committee you would like to serve on in order of preference.
(1-First Choice, 2-Second choice, etc.)

- | | |
|---|--|
| _____ Abbott Library Trustee | _____ Advisory Budget Committee |
| _____ Capital Improvement Committee | _____ Conservation Commission |
| _____ Crowther Chapel Committee | _____ Fireward |
| _____ Planning Board Alternate | _____ Recreation Committee |
| <input checked="" type="checkbox"/> Thrift Shop | _____ Upper Valley Lake Sunapee Regional |
| _____ Zoning Board Alternate | _____ Highway Safety Committee |
| _____ Energy Committee | |

2. For consideration:

a. Occupation: _____ b. Employer: _____

e. Relevant Experience: _____

f. Do you feel there may be any *conflict of interest* with your personal beliefs, occupation, or employer if appointed to serve on any of the above boards, commissions, or committees? ____ Yes ☒ No

g. Volunteer Time Available ____ hours per week (daytime) ____ hours per week (evenings)
____ hours per week (weekends)

h. Did you previously serve on any Municipal or School District Board/Committee/Commission? ____ Yes ☒ No

i. If yes, please indicate Town/Position: _____

j. Are you willing to serve as an Alternate? ☒ Yes ☐ No

k. Are you willing to serve on a Sub-Committee? ☐ Yes ☐ No

3. Why do you want to serve on this board/committee? Helping others, working with others.

4. What attributes and/or qualifications can you bring to the Board/Committee/Commission? _____

Many years working the New London
Garage sales.

5. Your reasons for wanting this/these appointments /appointments are:

Working with others, helping people.
recycling clothes and offering affordable clothes.

6. Additional Comments: So many people need this service
of affordable clothing and helping
recycle things that otherwise
would cost to be in the dump.

Pamela J. Brown
(Signature)

(Date)

Please send completed application form and resume, if available, to the Town Manager's Office, 23 Edgemont Road, Sunapee, NH 03782 (telephone 603-763-2212, fax 603-763-4925)

"considered public information and may be distributed or copied"

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

Contoocook Valley School District, et al.

v.

The State of New Hampshire, et al.

No. 213-2019-CV-00069

ORDER ON STATE'S POST-TRIAL MOTIONS

In this case, the plaintiffs challenge the constitutionality of RSA 198:40-a, II(a), contending that "local school districts require substantially more" base adequacy aid funding to "deliver the opportunity for a constitutionally adequate education" Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 157 (2021) ("ConVal"). Following a three-week bench trial, the Court granted the plaintiffs' request for a declaratory judgment deeming RSA 198:40-a, II(a), unconstitutional. See Doc. 246 (Nov. 20, 2023 Order on the Merits (the "Base Adequacy Aid Order")) at 56. In addition, the Court partially granted the plaintiffs' request for injunctive relief, establishing a conservative threshold that base adequacy aid funding must exceed. See id. The Court also awarded the plaintiffs their reasonable attorney's fees. See id. The State now moves for partial reconsideration, see Doc. 247 at 1, and for a stay of the Base Adequacy Aid Order until one full legislative cycle has passed post appeal. See Doc. 248; see also Doc. 247 at 1 (seeking same outcome via delayed effective date of Base Adequacy Aid Order). Id. The plaintiffs object to each of the State's requests. See Doc. 250 (Obj. Doc. 247); Doc. 254 (Obj. Doc. 248). After review, the Court finds and rules as follows.

Background

Part II, Article 83 of the New Hampshire Constitution “imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding.” Claremont Sch. Dist. v. Governor, 138 N.H. 183, 184 (1993) (“Claremont I”). To comply with that duty, the State must “define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability.” Londonderry Sch. Dist. v. State, 154 N.H. 153, 155–56 (2006) (“Londonderry I”) (quotation omitted).

Pursuant to RSA 193-E:2-a, an adequate education requires instruction in:

English/language arts and reading; mathematics; science; social studies, including civics, government, economics, geography, history, and Holocaust and genocide education; arts education, including music and visual arts; world languages; health and wellness education . . . ; physical education; engineering and technologies including technology applications; personal finance literacy, and computer science.

See RSA 193-E:2-a, I (cleaned up). RSA 193-E:2-a, IV(a), explains that the “minimum standards for public school approval for the areas identified in paragraph I shall constitute the opportunity for the delivery of an adequate education.”

To fund this opportunity, the legislature enacted RSA 198:40-a, which provides for funding via “base adequacy aid” and “differentiated aid.” RSA 198:40-a, II. While school districts receive base adequacy aid for each pupil in the average daily membership in residence, they only receive differentiated aid for pupils who meet certain statutory criteria. Id.¹ Effective July 1, 2023, the legislature amended RSA 198:40-a to provide for base adequacy aid of \$4,100. See RSA 198:40-a, II(a) (2023).

¹ Prior to July 1, 2023, differentiated aid criteria included eligibility for free or reduced-price meals, English language learner status, receipt of special education services, and certain below-proficient test scores. See Laws 2023, 79:150. The 2023 amendment eliminated the test score criterion. See id.

Before this amendment took effect, the statute set base adequacy aid at \$3,561.27 per pupil, with that amount adjusted each biennium to reflect changes in the federal Consumer Price Index. See RSA 198:40-a, II(a) (2022). For the 2022 fiscal year, the adjusted base adequacy aid amount awarded under the then-existing version of the statute was just under \$3,800. See Joint Ex. 248 (Doc. 83 – Pls.’ 3rd Am. Compl.) ¶ 26.

Procedural History

The plaintiffs filed this action on March 13, 2019, seeking declaratory and injunctive relief in connection with their claim that existing base adequacy aid funding levels are constitutionally insufficient. See Doc. 1 (Compl.). Shortly thereafter, the State moved to dismiss, arguing (as relevant here) that the plaintiffs’ requested relief would be “incompatible with separation-of-powers principles.” See Doc. 15 at 22. The State reiterated these arguments in connection with the parties’ April 2019 cross-motions for summary judgment. See Doc. 37 (State’s Obj. Pls.’ 1st Mot. Summ. J.) at 13–14; see also Doc. 26 (State’s 1st Mot. Summ. J.).

By Order dated June 5, 2019, the Court denied portions of the State’s motion to dismiss, including that portion seeking dismissal on separation of powers grounds. See Doc. 51. In addition, the Court denied the State’s first motion for summary judgment, and granted portions of the plaintiffs’ cross-motion. See id. Thereafter, the State moved for reconsideration, arguing that the Court “fail[ed] to pay appropriate deference to” the legislature and “violated the separation-of-powers doctrine[.]” See Doc. 54 at 16; see also id. at 21 (arguing Court “fashioned standards that result in the judiciary serving as a super-legislature” in connection with school funding review).

In September of 2019, the parties filed cross-appeals of the June 5, 2019 Order. See Docs. 66, 68 (Notices of Appeal). As relevant here, the State's Notice of Appeal questioned "[w]hether the trial court erred in denying the . . . motion to dismiss." See Doc. 66 at 3. Upon review, the ConVal court affirmed this Court's denial "of the State's motion to dismiss for failure to state a claim" 174 N.H. at 156. Notably, however, the ConVal court concluded that this Court erred in partially granting the plaintiffs' summary judgment motion, determining questions of fact precluded the entry of summary judgment. See id. at 166. In vacating this aspect of the June 5, 2019 Order and remanding the matter for trial, the ConVal court explained that to "address the plaintiffs' costing argument," this Court would need to determine "what is required to deliver an adequate education as defined in the statute." Id. at 166–67.

Following remand, the parties filed another round of cross-motions for summary judgment. See Doc. 122 (State's 2nd Mot. Summ. J.); Doc. 126 (Pls.' 2nd Mot. Summ. J.). Citing the ConVal court's observation that the reliability of and weight to be afforded certain data were necessarily trial determinations, the Court denied those motions. See Doc. 194 (March 20, 2023 Order) at 10 (citing ConVal, 174 N.H. at 167, n.1). In response to the plaintiffs' renewed request for injunctive relief, see Doc. 126 ¶ 1, the Court explained that to obtain such relief, the plaintiffs would need to convince the Court it has the requisite "constitutional authority[.]" See Doc. 194 at 12. Accordingly, shortly before the April 2023 bench trial, the plaintiffs submitted a supplemental memorandum addressing that issue. See Doc. 230.

After the three-week bench trial concluded, the State submitted a memorandum outlining its position as to the separation of powers issue. See Doc. 244. In that filing,

the State argued that “a judicial determination of the exact per-pupil amount of funding necessary to provide for base adequacy would infringe the constitutionally committed responsibilities of the political branches and embroil the courts in weighty policy decisions belonging to the people’s representatives.” Id. at 1; see also id. at 2 (invoking Part I, Article 37 of New Hampshire Constitution); see also Doc. 243 (State’s Prop. Findings & Conclusions) ¶ 185 (asserting “this is not a situation that warrants the Court imposing its own” base adequacy aid figure). The State further argued that “Part II, Article 83 plainly commits the duty to ‘cherish’ education to the executive and legislative branches,” and thus, in the State’s view, injunctive relief defining the cost of providing the opportunity for a constitutionally adequate education would be improper. See Doc. 244 at 3; Doc. 242 (State’s Tr. Mem.) at 36–39 (raising similar arguments and asserting plaintiffs’ injunctive relief claim is nonjusticiable).

In issuing the Base Adequacy Aid Order, the Court carefully considered and responded to the State’s separation of powers concerns. See Doc. 246 at 42–44. Specifically, the Court noted that prior to trial, the Court was resistant to the plaintiffs’ request for an affirmative determination as to the necessary level of base adequacy aid funding precisely because of the weighty separation of powers concerns implicated here. Id. at 42. The Court further explained that because the Court remained concerned about those issues, the Court “agree[d] with the State that ‘a judicial determination of the exact per-pupil amount of funding necessary to provide for base adequacy would infringe the constitutionally committed responsibilities of the political branches and embroil the courts in weighty policy decisions[.]’” Id. (citation omitted).

The Court explained, however, that given the relevant history—including the fact that after hiring an expert to analyze school funding, the legislature set base adequacy aid at less than half of its own expert's recommended funding level—and the significance of the school funding issue, it would be inappropriate for the Court to simply strike the existing base adequacy aid funding level. See id. at 43–44 (noting relevant history “calls into question whether the politics of this issue are impeding” fulfillment of State’s constitutional obligations). Rather, in satisfaction of the judiciary’s “responsibility to ensure that constitutional rights not be hollowed out,” the Court concluded that a further judicial remedy was “not only appropriate but essential” here. See id. (citations omitted). Accordingly, the Court established a highly conservative base adequacy aid threshold intended to leave space for the legislature to fulfill its function, while ensuring that after devoting years to this litigation and ultimately proving that the existing level of base adequacy aid was woefully inadequate, the plaintiffs would obtain meaningful relief. See id. at 44.

Analysis

I. State’s Request For Reconsideration of Base Adequacy Aid Threshold

The State now moves for reconsideration as to the above-described base adequacy aid threshold. See Doc. 247. In support of that request, the State renews its separation of powers argument, contending the threshold “materially impairs” the “lawmaking function by mandating the General Court solve a complex policy issue in a particularized way.” See id. ¶ 14 (suggesting legislature might wish to modify definition of adequate education, institute new funding scheme, or clarify that other State funding counts toward base adequacy aid, and arguing Base Adequacy Aid Order precludes

such actions). In addition, the State contends that the Base Adequacy Aid Order “runs afoul of . . . the Speech and Debate Clause” because individual legislators may fear civil contempt proceedings if they support legislation that is inconsistent with the Base Adequacy Aid Order. See id. ¶¶ 20–25.

Upon review, the Court is not persuaded by the State’s arguments. As explained above, the Court carefully considered the relevant separation of powers concerns when issuing the Base Adequacy Aid Order. Ultimately, the Court concluded that those concerns must be balanced against the reality that the right to “a constitutionally adequate public education is a fundamental right.” See Claremont Sch. Dist. v. Governor, 142 N.H. 462, 473 (1997) (“Claremont II”). In addition, given the relevant history, the Court felt compelled to establish a threshold level of base adequacy aid funding to avoid further unnecessary “delay in achieving a constitutional system[.]” See Claremont III, 143 N.H. 154, 158 (1998) (“Absent extraordinary circumstances, delay in achieving a constitutional system is inexcusable.”). To the extent each of the separation of powers arguments raised in the State’s motion for reconsideration are properly before the Court at this juncture, but see infra at 3–6 (outlining relevant procedural history), those arguments do not undermine the Court’s conclusions on these fronts.

Notwithstanding the foregoing, given the nature of the State’s arguments, some clarification is warranted. In the Base Adequacy Aid Order, the Court recognized that the legislature recently considered creative solutions to education funding. See Doc. 246 at 53 n. 27 (noting in 2023, legislature “considered but ultimately rejected an education funding model that would have eliminated base adequacy and differentiated aid, opting instead to fund public education at half of certain statewide average

expenditures"). By setting a base adequacy aid funding threshold, the Court did not intend to suggest that the legislature cannot enact meaningful changes to the education funding scheme. Rather, the Court's intention was to ensure that if the legislature maintains the existing scheme in substantial part, the legislature will not repeat the constitutional violations of the past by funding base adequacy aid at a level the plaintiffs have already proven to be unconstitutional.

In other words, the threshold set forth in the Base Adequacy Aid Order does not prohibit the legislature from meaningfully altering the education funding scheme, so long as such alterations provide New Hampshire children with the opportunity for a constitutionally adequate public education. Instead, the threshold establishes a minimum level of per-pupil funding—exclusive of the additional costs attributable to the heightened needs of students who qualify for differentiated aid—under the existing funding model. See id. at 44–51 (explaining why conservative calculations exclude additional costs attributable to students who qualify for differentiated aid).

To the extent the legislature considers or enacts legislation that funds education at a level below the aforementioned threshold, the Court further clarifies that the Base Adequacy Aid Order must not be construed as exposing legislators to civil contempt proceedings. Cf. MacDonald v. Jacobs, 171 N.H. 668, 679 (2019) (explaining injunctive relief is equitable in nature, and Superior Court has "broad and flexible equitable powers which allow it to shape and adjust the precise relief to the requirements of the particular situation"). Instead, the threshold merely establishes clear, minimum guidelines by which courts can swiftly measure future legislative action. If the legislature's response to the Base Adequacy Aid Order falls short of the threshold, an aggrieved party may

seek prompt declaratory relief without need for further, protracted litigation. Given the historical difficulties in the school funding context, and in recognition of the plaintiffs' substantial investment of time and resources in litigating this action, the Court maintains the view that establishing a clear guideline by which future legislative action can readily be measured is not only permissible, but essential.²

Consistent with the foregoing, the State's motion for reconsideration is **DENIED** vis-à-vis the injunctive relief set forth in the Base Adequacy Aid Order and clarified here.

II. State's Request For Stay or Deferral of Base Adequacy Aid Order

The State also moves for a stay of the Base Adequacy Aid Order until one full legislation cycle has passed post appeal. See Doc. 248. Alternatively, the State urges the Court to defer the effective date of the Base Adequacy Aid Order for the same duration. See Doc. 247 at 1. In support of these requests, the State contends that because the Court has declared RSA 198:40-a, II(a), unconstitutional, it is unclear "whether the Executive Branch may continue to make adequacy payments to schools while" the Base Adequacy Aid Order "remains subject to . . . appeal[.]" Doc. 247 ¶ 26.

The Court is unpersuaded. To the extent necessary, the Court clarifies that during the appellate period and pending further legislative action to address this issue, the State not only may continue to provide education funding to public school districts, the State is constitutionally bound to do so. See Claremont II, 142 N.H. at 473

² The Court sincerely hopes that the legislature will respond to the Base Adequacy Aid Order in a manner that honors and effects the State's constitutional school funding obligations. Yet, if the Court simply struck the existing funding level without establishing a threshold, the legislature might inadvertently increase funding to a level the plaintiffs have already proven to be unconstitutional. In the Court's view, additional relief is warranted to protect the plaintiffs from such an outcome. The State's suggestion that such protections are not necessary brings to mind the fable of the Wolves and the Sheep. See The Aesop for Children, The Wolves and The Sheep, available online from the Library of Congress at: <https://www.read.gov/aesop/144.html> (last accessed February 16, 2024).

(explaining right to “constitutionally adequate public education is a fundamental right”). Within that window, however, the Court concludes that it would be inappropriate to continue funding base adequacy aid at the \$4,100 level plaintiffs have proven to be woefully inadequate, and thus, unconstitutional. In reaching this conclusion, the Court observes that although the issues implicated here may seem like a simple matter of dollars and cents to some, the reality is that with each passing school year, another class of public school children is permanently deprived of the fundamental right to a constitutionally adequate public education. See Claremont II, 142 N.H. at 473. In light of this reality, and given the overwhelming evidence the plaintiffs presented at trial, the Court cannot endorse the State’s request to perpetuate the egregious underfunding of public education pending appeal.

Rather, pending resolution of any appeal or further legislative action, the Court **DIRECTS** the State to make base adequacy aid payments equal to the conservative \$7,356.01 threshold set forth in the Base Adequacy Aid Order. See Doc. 246 at 56. The Court notes that this funding level is far less than the plaintiffs requested and, as explained in the Base Adequacy Aid Order, the plaintiffs have proven that this funding level is also constitutionally insufficient. See id. at 54; see also Doc. 245 (Pls.’ Tr. Mem.) at 33 (seeking base adequacy aid funding of \$9,900 plus actual transportation costs). As a result, temporarily funding base adequacy aid at the threshold level will still result in a regrettable “delay in achieving a constitutional system.[.]” See Claremont III, 143 N.H. at 158. Yet, under the “extraordinary circumstances” presented here, the Court concludes that this compromise strikes an appropriate balance between the

parties' competing interests while the State pursues appellate relief or further legislative action. See MacDonald, 171 N.H. at 679.

Consistent with the foregoing, the State's requests to stay or defer the effective date of the Base Adequacy Aid Order are each **DENIED**.

III. State's Request For Reconsideration of Attorney's Fee Award

Lastly, the State moves for reconsideration with respect to the Court's award of the plaintiffs' reasonable attorney's fees. See Doc. 247 ¶¶ 31–34. Specifically, the State contends that it is "premature to address the issues of attorney's fees in any detail" because the plaintiffs may not be entitled to such fees if the State prevails on appeal, and the plaintiffs may incur additional fees during the appellate process. See id.

Upon review, the Court concludes that the interests of justice are best served by promptly litigating the reasonableness of the attorney's fees the plaintiffs have incurred to date. See Super. Ct. R. 1(b) (providing that "rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action"). When determining the reasonableness of attorney's fee requests, the Court considers, among other things, the "difficulty of the litigation, the attorney's standing and the skill employed, the time devoted, . . . the extent to which the attorney prevailed, and the benefit thereby bestowed on his clients." In re Metevier, 146 N.H. 62, 64 (2001) (citation omitted). As a result, the Court is better positioned to determine the reasonableness of a fee request close in time to the events underlying that request, including (as is true here) counsel's performance during a lengthy trial. Cf. City of Rochester v. Marcel A. Payeur, Inc., 169 N.H. 502, 508 (2016) (explaining statutes of limitations "reflect the fact that it becomes more difficult . . . to try claims as evidence

disappears and memories fade with the passage of time” (citation omitted)). For this reason, the State's motion for reconsideration is **DENIED** as it relates to the issue of attorney's fees. The Court will entertain a motion to stay payment of the plaintiffs' attorney's fees pending appeal, but the Court concludes that determining the reasonableness of the plaintiffs' fee request is best performed in the immediate future.

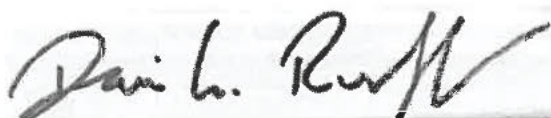
While the State's motion for reconsideration remained pending, the State understandably did not file a substantive response to the plaintiffs' affidavit of fees. See Doc. 249 (Pls.' Dec. 15, 2023 Aff. Fees); see also Doc. 252 (State's Resp. Doc. 249). Rather, citing the level of detail included in the plaintiffs' affidavit, the State requested an additional 60 days in which to file a substantive response in the event that the Court denied the relevant portion of the State's motion for reconsideration. See Doc. 249 ¶ 11. The plaintiffs have not objected to this reasonable request for additional time. Accordingly, the State's request for additional time is **GRANTED**.

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Conclusion

Consistent with and subject to the clarifications outlined above, the State's motion for partial reconsideration of the rulings set forth in the Base Adequacy Aid Order is **DENIED**. See Doc. 247. The State's motion to stay or defer the relief granted within the Base Adequacy Aid Order is also **DENIED**. See Doc. 248. As explained above, pending resolution of any appeal or further legislative action, the Court **DIRECTS** the State to make base adequacy aid payments in an amount equal to the \$7,356.01 conservative threshold established in the Base Adequacy Aid Order. Finally, the State's request for additional time in which to respond to the plaintiffs' attorney's fee affidavit is **GRANTED**. See Doc. 252. The State shall file a substantive response **within sixty (60) days** of the date on the Notice of Decision accompanying this Order. SO ORDERED.

Date: February 20, 2024

A handwritten signature in black ink, appearing to read "David W. Ruoff", is written over a light gray rectangular background.

Hon. David W. Ruoff
Rockingham County Superior Court

Clerk's Notice of Decision
Document Sent to Parties
on 02/20/2024

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

Steven Rand, et al.

v.

The State of New Hampshire

No. 215-2022-CV-00167

ORDER ON PENDING MOTIONS CONCERNING SWEPT CLAIMS

In this case, the plaintiffs challenge the manner in which the State carries out education-related obligations imposed by the State Constitution. See Doc. 17 (Pls.' Am. Compl.). On November 20, 2023, the Court granted the plaintiffs' motion for partial summary judgment, concluding that certain practices concerning the Statewide Education Property Tax ("SWEPT") are unconstitutional, and enjoining the State from continuing those practices "[b]eginning with the budget cycle commencing in late-2023 and culminating in budget votes in March or April 2024[.]" See Doc. 86 (the "SWEPT Order"). The State now moves for a stay of the SWEPT Order pending appeal. See Doc. 91. To expedite the appellate process, the State also seeks a ruling that the SWEPT Order constitutes a final decision on the merits. See Doc. 92 (the "Rule 46(c) Request"); see also Super. Ct. R. 46(c). The Coalition, an intervenor representing certain New Hampshire cities and towns, joins in the State's motions, see Doc. 93, and moves for partial reconsideration of the SWEPT Order, see Doc. 94. The plaintiffs object to reconsideration and the requested stay, but assent to the Rule 46(c) Request. See Doc. 95. After review, the Court finds and rules as follows.

Background

The SWEPT Order includes a detailed summary of New Hampshire's education funding jurisprudence. See Doc. 86 at 2–9. To the extent relevant, that summary is incorporated by reference here. By way of brief background, "Part II, Article 83 of the State Constitution imposes a duty on the State to . . . define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability." Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 156–57 (2021) ("ConVal") (citations and quotations omitted). Pursuant to Part II, Article 5 of the State Constitution, "constitutional taxes" must "be proportionate and reasonable—that is, equal in valuation and uniform in rate." Claremont Sch. Dist. v. Governor, 142 N.H. 462, 468 (1997) ("Claremont II") (citations and quotations omitted)).

Over time, the legislature has crafted several tax schemes aimed at complying with the above-described constitutional obligations. See, e.g., id. In resolving questions regarding those tax schemes, the New Hampshire Supreme Court has also clarified the nature of the State's constitutional obligations. In Claremont II, for example, the court explained that because taxes intended to raise education funds serve a "State purpose"—i.e., fulfilling the State's duty "to provide a constitutionally adequate education . . . and to guarantee adequate funding"—such taxes must be "proportional and reasonable throughout the State in accordance with" Part II, Article 5. Id. at 469–70 (emphasis added). The supreme court reaffirmed this ruling in Opinion of the Justices (School Financing), concluding that a proposed "special abatement" intended to offset excess tax revenues—that is, education tax revenues generated by a given community above the amount necessary for that same community "to provide the legislatively

defined 'adequate education' for its children"—would run afoul of Part II, Article 5. 142 N.H. 892, 899–902 (1998). One year later, the Supreme Court tripled down on the requirement that education tax schemes be uniformly applied, concluding that the State could not perpetuate the unconstitutional application of such a tax via a five-year phase-in of the uniform tax rate. Claremont Sch. Dist. v. Governor (Statewide Property Tax Phase-In), 144 N.H. 210, 212 (1999) ("Claremont III").

Today, RSA 198:40-a, II, sets forth the annual per-pupil cost of providing the opportunity for a constitutionally adequate education ("adequacy aid"). The State raises adequacy aid funds via the SWEPT. See ConVal, 174 N.H. at 159. Since 2011, the State has allowed communities that raise SWEPT revenues above their respective adequacy aid levels to retain the excess. See Laws 2011, 258:7 (eff. July 1, 2011) (eliminating requirement that communities pay excess SWEPT funds to Department of Revenue Administration ("DRA") for deposit in education trust fund). For certain other locations, the DRA has set negative local education tax rates to offset the applicable SWEPT rate. See Doc. 86 at 10. In December of 2022, the plaintiffs successfully moved for summary judgment with respect to their claim that both practices result in an effective SWEPT tax rate that is not uniform, in violation of Part II, Article 5. See Doc. 50 (Pls.' Mem. Law) at 3, 14; Doc. 86 (SWEPT Order) at 15–16 ("[T]here can be no meaningful dispute that allowing communities to retain excess SWEPT funds lowers the effective SWEPT rate paid by those communities"); id. at 16–18 (emphasizing that public education system benefits entire State, and concluding that "setting of negative local education tax rates which offset the SWEPT . . . runs afoul of Part II, Article 5"). As a result, the Court enjoined the State from continuing either practice. See id. at 21.

Analysis

As noted at the outset, the State and the Coalition have filed several motions concerning the SWEPT Order. See, e.g., Doc. 94. The Court will first address the Coalition's motion for partial reconsideration. See id. Notably, this motion does not challenge the substance of the legal rulings set forth in the SWEPT Order, but rather the remedy provided in response to those rulings. See id. In particular, the Coalition suggests that an immediate suspension of the practices at issue—i.e., allowing communities to retain excess SWEPT funds or to avoid such an excess via negative tax rates—will cause substantial hardship to those communities that have benefitted from these unconstitutional practices for the past twelve years. See id. at 2. In addition, the Coalition argues that it would be too disruptive to adjust local budgets in response to the SWEPT Order at the current stage of that process. See id. at 3–6 (arguing this shift will result in voter confusion and prevent communities from completing important projects). Given these concerns, the Coalition argues that the “public interest and balance of harms” weigh against injunctive relief. See id. at 7–8 (noting excess SWEPT funds would be held in escrow pending appeal, and citing Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 534 (1987) in support of claim that if enjoined party “would suffer injury” and injunction “does not remedy” plaintiffs’ harm, “injunction should be denied”).

This is not the first time the Coalition has raised these concerns. Rather, the Coalition voiced substantially similar concerns in connection with a November 28, 2022 hearing on the plaintiffs’ request for preliminary injunctive relief. See Doc. 41 (Coalition’s Obj. Pls.’ Mot. TRO & Prelim. Injunct.). At that stage of the proceedings, the Coalition argued that the “mere” fact that the plaintiffs’ “constitutional rights . . . have

been allegedly violated" did not amount to irreparable harm. See id. at 4. Moreover, in comparing the plaintiffs' claimed injuries to the potential fiscal impact on Coalition members, the Coalition took the position that the relevant harms were "obviously one-sided[.]" Id. at 6. Significantly, however, that view was premised on the Coalition's perception that preliminary injunctive relief would put "dozens of communities in 'crisis' and facing a million-dollar deficit in sixty days." Id.

In denying the plaintiffs' request for preliminary injunctive relief, the Court was persuaded by the Coalition's time-based arguments, noting:

The Court in no way wishes to minimize the significance of the plaintiffs' claimed constitutional injuries. Nevertheless, the Court cannot ignore the substantial, immediate, and concrete harm that the Coalition members and their constituents would suffer if the Court were to grant the plaintiffs' request for preliminary injunctive relief. Because the Commissioner [of the DRA] is responsible for carrying out the State's education funding scheme, the Court cannot fault the Coalition members for relying on the Commissioner's years-long practice of allowing them to retain excess SWEPT funds or offset their respective SWEPT rates.

Doc. 48 (Dec. 5, 2022 Order) at 11; see UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987) (explaining that in exercising discretion concerning requests for injunctive relief, courts consider circumstances of each case and apply principles of equity).

In the Court's view, however, the equitable scales have shifted. As an initial matter, the Court remains both unpersuaded and deeply troubled by the characterization of the plaintiffs' injuries as a "mere" violation of their constitutional rights. See Doc. 41 at 4; see also Doc. 94 at 7–8 (arguing plaintiffs "will not gain any benefit from" injunction because excess SWEPT revenues will be held in escrow pending appeal). New Hampshire Supreme Court Rule 42E requires that every attorney admitted to practice law in New Hampshire "take and subscribe an oath to

support the constitutions of New Hampshire and of the United States." Further, as the Claremont III court recognized, "[t]he New Hampshire Constitution is the supreme law of this State," and "[e]very person chosen governor, councilor, senator, or representative in this State is solemnly committed by oath taken pursuant to Part II, Article 84 to 'support the constitutions' of the United States and New Hampshire." 143 N.H. at 158. Against that backdrop, the Court concludes that although the plaintiffs will not sustain an immediate fiscal benefit from the disgorged funds, they will derive significant benefit from injunctive relief that cures the above-described constitutional violations.

In weighing that benefit against the concerns raised by the Coalition, the Court notes that the Coalition has now been involved in this litigation for well over a year. In addition, having reached the merits of the plaintiffs' Part II, Article 5 SWEPT claims, the Court is persuaded that the clarity of the relevant legal landscape should have inspired Coalition members to plan for the fiscal impacts of the SWEPT Order during the pendency of this action. See, e.g., Opinion of the Justices (School Financing), 142 N.H. at 899–902 (concluding "special abatement" intended to offset excess education tax revenues would run afoul of Part II, Article 5). As the Court previously recognized, it might have been imprudent or impractical for communities to collect additional tax revenues during prior budget cycles in anticipation of the rulings set forth in the SWEPT Order. See Doc. 86 at 20. Given the substantial jurisprudence supporting the plaintiffs' claims, however, it would have been both prudent and practical for those communities to consider the fiscal impact of the plaintiffs' SWEPT claims when planning for this budget year. See Doc. 50 at 1–3 (explaining plaintiffs moved for partial summary judgment in December of 2022 so communities could plan for "next property tax year").

In the Court's view, any failure to prepare for the foreseeable suspension of unconstitutional practices does not justify the continuation of those practices. See Claremont III, 143 N.H. at 158 ("Absent extraordinary circumstances, delay in achieving a constitutional system is inexcusable. The legality of the education funding system in this State has been questioned for at least the past twenty-seven years The controlling legal principles are plain."); see also Lanfear v. Home Depot, Inc., 679 F.3d 1267, 1270 (11th Cir. 2012) (citing Aesop, "The Ant and the Grasshopper," Aesop's Fables Together with the Life of Aesop 115 (Rand McNally 1897) in support of proposition that if people are "wise like Aesop's ant, during the summer and autumn of their lives they store up something for the winter"). Accordingly, the Coalition's motion for partial reconsideration is **DENIED**.

In moving for a stay of the injunctive relief set forth in the SWEPT Order, the State and the Coalition raise similar arguments concerning the wisdom of directing the DRA to collect excess SWEPT funds and hold them in escrow pending appeal. See Docs. 91, 93. For the reasons outlined above, those arguments are unavailing. In addition, the State also maintains that holding excess SWEPT funds in escrow will prove overly complicated. See Doc. 91 ("The DRA will have to segregate those excess funds by local jurisdiction and . . . account for excess SWEPT that municipalities were unable to collect"). The Court is, again, unpersuaded. The DRA is well-versed in determining tax revenues to be collected from individual communities, and tracking amounts collected and owed. The Court is thus confident that the DRA can readily devise a system for recording the amount of excess SWEPT revenues generated by and collected from individual communities while this matter is pending appeal. To the

extent any communities fail to remit the requisite level of excess SWEPT revenues, the Court is similarly confident that the DRA can follow existing protocols to obtain the missing amounts or offset them through other means.¹

Consistent with the foregoing, the motions seeking a stay of the remedy set forth in the SWEPT Order pending appeal are **DENIED**.

The final pending SWEPT motion is the State's Rule 46(c) Request. See Doc. 92; see also Super. Ct. R. 46(c). Rule 46(c)(1) provides:

When, in a civil action that presents more than one claim for relief . . . , the court enters an order that finally resolves the case as to one or more, but fewer than all, claims . . . , the court may direct that its order . . . be treated as a final decision on the merits as to those claims . . . if the court:

- (A) explicitly refers to this rule;
- (B) identifies the specific order or part thereof that is to be treated as a final decision on the merits;
- (C) articulates the reasons and factors warranting such treatment; and
- (D) finds that there is an absence of any just reason for delay as to the party or claim that is to be severed from the remainder of the case.

As noted at the outset, all parties assent to the State's Rule 46(c) Request. See Docs. 93–94. Upon review, the Court agrees that the relief requested in that filing is warranted. In particular, while the SWEPT Order pertains to the manner in which the DRA collects education tax revenues from local communities, see Doc. 92 ¶ 2, the plaintiffs' remaining claims concern the sufficiency of the education funding the State provides to local communities. See id. ¶¶ 2–3. Those issues implicate distinct legal

¹ The State and the Coalition seemingly suggest that the DRA cannot compel communities to collect or remit excess SWEPT revenues. The Court views this suggestion with extreme skepticism. Though the Court has heard no evidence concerning this issue, the Court would be surprised to learn that communities collect and remit State taxes on a purely voluntary basis. Rather, common sense suggests that the DRA has mechanisms in place to enforce the tax scheme, perhaps by offsetting uncollected or improperly retained amounts via a reduction in State grants or aid. If the State wishes to further contest the DRA's authority in this context, it may file a timely motion for reconsideration, following which the Court will schedule an evidentiary hearing regarding this narrow issue.

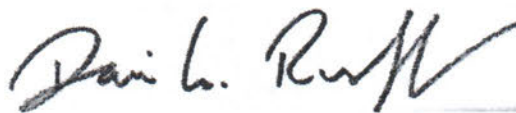
questions. Moreover, given the compelling interests involved, there is no just reason to delay appeal of the SWEPT Order. Accordingly, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92. The Court thus directs that the SWEPT Order is to be treated as a final decision on the merits with respect to the plaintiffs' Part II, Article 5 challenge to the administration of the SWEPT. See Super. Ct. R. 46(c)(1).

Conclusion

Consistent with the foregoing, the Coalition's motion for partial reconsideration is **DENIED**. See Doc. 94. The State's motion for a stay of the injunctive relief set forth in the SWEPT Order, see Doc. 91, and the Coalition's joinder in that motion, see Doc. 93, are also **DENIED**. As set forth above, if the State wishes to contest the DRA's authority to enforce the relevant aspects of the tax scheme, it may file a timely motion for reconsideration, following which the Court will schedule an evidentiary hearing concerning that narrow issue. Finally, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92.

SO ORDERED.

Date: February 20, 2024



Hon. David W. Ruoff
Rockingham County Superior Court

Clerk's Notice of Decision
Document Sent to Parties
on 02/20/2024

THE STATE OF NEW HAMPSHIRE HOUSING APPEALS BOARD

Governor Allen State Office Park
Johnson Hall, 107 Pleasant Street
Concord, New Hampshire 03301
Telephone: (603).271-1198
TTY/TDD Relay: (800).735-2964
Visit us at <https://hab.nh.gov>



Case Name: KTP Cottage, LLC v. Town of Sunapee
Case Number: ZBA-2023-21

ORDER

This appeal follows a decision by the Town of Sunapee ("Town") Zoning Board of Adjustment ("ZBA") denying several variance requests made by KTP Cottage, LLC ("Applicant") to construct a new home partially within the footprint of an existing home on a lot with shore frontage on Lake Sunapee.

FACTS

This matter concerns certain property located at 106 Fernwood Point Road, also known as Map 121, Lot 42 on the Town of Sunapee tax maps ("Property"). The Property is located in the Rural-Residential zoning district. There is an existing single-story home on the Property that does not conform to current setback requirements on the side and on the waterfront.

On May 30, 2023, the Applicant filed an application requesting the following (CR 9):

1. A variance from Article III, Section 3.10 of the Sunapee Zoning Ordinance (the "Ordinance") to allow a new home to be constructed within the 15-foot side setback.
2. A variance from Article III, Section 3.40(c) of the Ordinance to allow a new home to be constructed within the 50-foot waterfront setback.
3. A variance from Article III, Section 3.10 of the Ordinance to allow a new home to be constructed with a height exceeding 25 feet for the portion of the home within the side setback.

There is an existing home on the Property which encroaches on the 15-foot side setback on the westerly side of the Property. (CR 16). The Applicant has proposed to remove the old home and replace it with a new home that encroaches on the 15-foot setback by 55 square feet less than the existing home (the "Project"). (CR 9 and CR 18).

The existing home encroaches on the 50-foot waterfront setback. (CR 16). The Applicant proposed moving the new home away from the waterfront by two feet. (CR 9 and CR 18). The

Applicant's abutter to the east, Anne Waehner, wrote a letter of support for the Project on July 2, 2023. (CR 44).

On July 6, 2023, the ZBA held a hearing on the application. (CR 48). The ZBA suggested that an additional variance would be required to exceed the maximum allowable percentage of impervious area for rural residential properties on the shoreline of 25% since the Applicant is proposing 31.5%. (CR 50).

The abutters to the west, Kathryn and Brad Nichol, stated:

...concerns regarding the proposal...pointed out that although there is a 55-square-foot reduction in the square footage, the increase in building height, from 17 feet to 27-28 feet, would increase the cubic footage within the reduced side setback... 'We view that increased cubic footage in the setback as doing harm to our property.'

(CR 50).

Member Lyons "...expressed concern about the diminution in value of surrounding properties." (CR 51). Chairman Claus noted that "...the abutters had raised that concern as well." Member Silverstein stated that, "if the land does not have any special conditions, then we can't even get to the hardship discussion." (CR 50). The ZBA voted to deny the requested variances. (CR 51).

In its notice of decision, the ZBA cited the following reasons for denial:

1. The Applicant has failed to meet the requirements stated in (c) of Article X, Section 10.42 of the Ordinance. The hardship presented by the Applicant does not meet the threshold necessary for the approval of the variance.
2. The proposed Project does not adhere to the spirit of the Ordinance. It deviates from the intended objectives and principles outlined in the zoning regulations.
3. The evidence presented demonstrates that the implementation of the proposed Project would negatively impact the values of the surrounding properties. The potential decrease in property values is a concern.
4. The strict enforcement of the Ordinance does not result in unnecessary hardship for the Applicant. The circumstances presented do not warrant the granting of a variance based on the criteria defined in the Ordinance. Viable alternatives exist for the reconstruction of the Project without necessitating the listed variances. Reasonable alternatives are available that comply with the existing zoning regulations." (CR 53).

On August 1, 2023, the Applicant filed a Motion for Rehearing, (CR 54), including new exhibits. (CR 69-78). On August 17, 2023, the ZBA voted to deny the Motion. (CR 80-81). On August 29, 2023, the Applicant filed this appeal with the Housing Appeals Board ("HAB"). On

November 9, 2023, a prehearing conference was held. On November 21, 2023, a hearing on the merits was held. This decision follows.

LEGAL STANDARD OF REVIEW

The legal standards for review of a Zoning Board decision under RSA 677:15 are well established. “The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.” See, RSA 677:15, V; Durant v. Town of Dunbarton, 121 N.H. 352, 357 (1981). The burden of establishing that a determination of a Planning Board was unlawful or unreasonable lies with the appealing party. K & P, Inc. v. Town of Plaistow, 133 N.H. 283, 292 (1990). See also, RSA 679:9.

The Housing Appeals Board review of any Zoning Board decision is limited. It will consider the Board of Adjustment’s factual findings prima facie lawful and reasonable. Those findings will not be set aside, unless, by a balance of probabilities upon the evidence before it, the Housing Appeals Board finds the Board of Adjustment’s decision was unlawful or unreasonable. See, RSA 679:9, II. See also, Lone Pine Hunter’s Club v. Town of Hollis, 149 N.H. 668 (2003).and Saturley v. Town of Hollis Zoning Board of Adjustment, 129 N.H. 757 (1987). The party seeking to set aside a Zoning Board decision bears the burden of proof to show that the order or decision was unlawful or unreasonable. RSA 676:6.

DISCUSSION

I. Public Interest and Spirit of the Ordinance

The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.” Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007). “The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005). Two criteria for determining whether a variance will violate a zoning ordinance’s basic zoning objectives are to examine: (1) whether the variance would alter the essential character of the neighborhood; and (2) whether the variance would threaten the

public, health, safety or welfare. Harborside Associates, L.P. v Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

The ZBA stated that the application violated the spirit of the Ordinance. (CR 218-220). The Town stated in its Pre-Hearing Memorandum to the HAB that the spirit of the setback provisions of the Ordinance is to prevent overcrowding of the Property. The Applicant has argued:

[The] Board appears to have been swayed by abutter comments about the cubic increase of building mass in the setback overwhelming the linear decrease in the encroachment ('The request states that less area is the side lot setback, and they're talking about 55 square feet. The height is increasing the cubic footage inside the setback,') (CR 207); however, the Ordinance beyond height restrictions, does not differentiate 'bulk' versus linear encroachments.

(Applicant's Memorandum of Law, ¶ 39).

The Applicant continued its argument, "In...using a 'bulk' restriction not present in the Ordinance, the Board acted unreasonably and unlawfully in determining the Proposal was inconsistent with this variance criterion." (Applicant's Memorandum of Law, ¶ 42).

At the November 21, 2023, HAB hearing on the merits, Applicant's counsel stated that setbacks should only be looked at as being two dimensional. However, by inference, the presence of a height restriction in the Ordinance, and in this instance, as applied to a non-conforming lot, implies that bulk will be an issue. If the spirit of the Ordinance is to prevent overcrowding of the Property, the ZBA was not acting unreasonably in determining that the Project did not meet the spirit of the Ordinance. See, for example, Nine A, LLC v. Town of Chesterfield, 157 N.H. 361 (2008) where the New Hampshire Supreme Court upheld the denial of a variance that would replace a nonconforming building in a lake district with a nonconforming cluster development. Specifically, the Court found that the ZBA acted reasonably when it found that the proposed development was contrary to the public interest and inconsistent with the spirit of the Ordinance which required compliance with dimensional requirements to prevent congestion and over-development.

II. Value

Section 10.42 of the Ordinance and RSA 674:33 I.(a)(2)(D) requires that, *inter alia*, a zoning board may grant a variance if the Applicant demonstrates that the values of surrounding properties are not diminished (by a grant of the variance). The burden of establishing that it

meets all variance criteria is on the Applicant (see, for example, Perrault v. Town of New Hampton, 171 N.H. 183 (2018)). The Applicant offered no evidence regarding valuation at the ZBA hearing. In contrast, an abutter testified that the increased building size would [do] “harm to our property,” (CR 208), which can reasonably be inferred as having an adverse impact on value. The ZBA may also rely on its members’ knowledge in reaching its decision. See Nestor v. Meredith Zoning Board of Adjustment, 138 N.H. 632 (1994). The Applicant simply failed to meet its burden as to this criterion.

The Applicant tried to introduce evidence of value in its motion for rehearing. However, this evidence was not presented in a timely fashion. The purpose of rehearing is to review alleged errors in a Zoning Board’s decision – it is not to allow new evidence that could have been presented at the original hearing. It would not have been difficult for the Applicant to present valuation evidence at the ZBA hearing.

III. Hardship

A. Notice of Decision.

In its Notice of Decision, the Sunapee ZBA found that “the strict enforcement of the ordinance does not result in an unnecessary hardship for the Applicant. The circumstances presented do not warrant the granting of a variance based on the criteria defined in the ordinance.” The New Hampshire Legislature codified the hardship test in 2009. The criteria, which is also found in the Ordinance at Section 10.42, is outlined in RSA 674:33. RSA 674:33, I. (a)(2)(E) provides: “Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.” The first prong of the test provides: “(b)(1) For purposes of subparagraph I(a)(2)(E), ‘unnecessary hardship’ means that, owing to special conditions of the property that distinguishes it from other properties in the area:

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(B) The proposed use is a reasonable one.”

B. Whether Special Conditions Exist.

The ZBA concluded that the property did not contain any special conditions that distinguished it from other properties in the area. The Applicant asserted that the property had

several special conditions due to its small size, its wedge shape, location next to a larger property, deteriorating condition of the house, and slope of the property. (CR 13) The deteriorating condition of the house and proximity to a larger lot do not rise to the level of a special condition.

At the June 6, 2023 ZBA meeting, Chairman Claus inquired about special conditions that distinguished the Property from other properties in the area and added that there were several properties of similar or smaller size in the area. Applicant's counsel replied that there were several special conditions about the Property. He stated that uniqueness does not mean that the Property is the only one in the zoning district with these special conditions. Applicant's counsel stated that there may be half a dozen small, wedge-shaped lots in the area, but this condition is not shared by all lots in the Rural-Residential Zoning District. Applicant's counsel reiterated that (1) the size and wedge shape of the Property, and the fact that it is next to a larger lot that has a building that is significantly set back; and (2) that there is ample space between the proposed structure on the Property and its proximity to the abutting structure are both special conditions. (CR 49).

Based on the foregoing, and as spelled out in the Applicant's original application, (CR 12-13), we find that the Applicant did demonstrate that the Property has special conditions. In particular, the wedge shape of the property is a condition that is shared by some, but not all of the properties in the neighborhood, and this condition has a significant impact on the property's building envelope as was clearly demonstrated by the Applicant's plans. (CR 16, 18, 20). The HAB also notes that the proposed use could be considered reasonable in general but recognizes that the proposed configuration as presented to the ZBA may adversely impact the value of surrounding properties.

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CONCLUSION

Based on the foregoing, upon a balancing of the probabilities, the Housing Appeals Board
ORDERS as follows:

1. The Decision of the Town of Sunapee's Zoning Board of Adjustment denying the Applicant's variance to reconstruct a residence within setbacks and in excess of the maximum height allowed in the Sunapee Rural Residential District is UPHELD, consistent with this Order.
2. The Town's requests for findings of fact and rulings of law which are consistent with this Order are APPROVED; the balance are DENIED.

**HOUSING APPEALS BOARD
ALL MEMBERS CONCURRED
SO ORDERED:**

Elizabeth Menard

Elizabeth M. Menard, Clerk

Date: February 20, 2024

[EXTERNAL]Fwd: Resignation letter

Mon 2/12/2024 8:42 PM

To: Town Manager <manager@town.sunapee.nh.us>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Charleen Osborne sent from mobile

Forwarded message

From: **Tim Berube**

Date: Mon, 12 Feb 2024, 8:33 pm

Subject: Resignation letter

To whom it may concern:

Please accept this letter as formal notification that effective immediately I am resigning my position on the Sunapee Recreation Committee.

I wish the committee luck with the many initiatives and warrant articles it is currently working on. However, my current commitments do not allow me to be as active as I would like.

Good luck,

Tim Berube



Town of Sunapee Community & Development

Developed Land Cover

- Developed, High Intensity
- Developed, Medium Intensity
- Developed, Low Intensity
- Developed, Open Space

FEMA Flood Zones

- 0.2% Chance Annual Flood Hazard
- Floodway

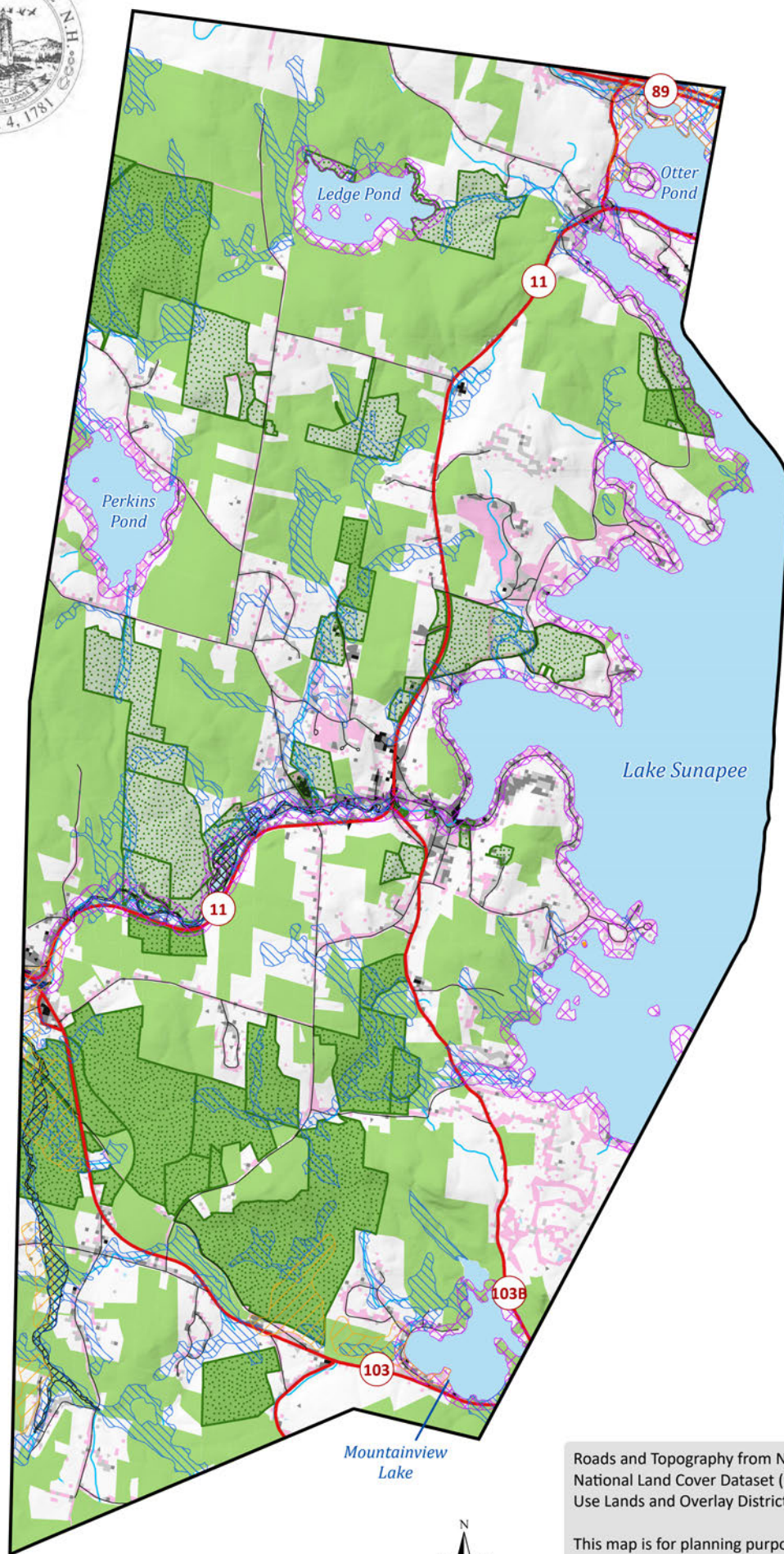
Water Features

- Waterbodies
- Rivers and Streams

Town Features

- State Roads
- Local Roads
- Current Use Land
- Conserved Land
- Shoreline Overlay District
- Wetlands Overlay District
- Aquifer Overlay District

Note: This map shows parcels where current use is in place. It does not delineate the area of each parcel where current use applies.



Mountainview
Lake



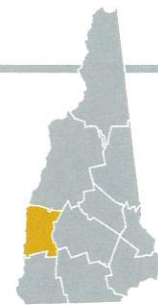
0 1 2 Miles

Roads and Topography from NH GRANIT (2022); National Hydrography Dataset (2018); National Land Cover Dataset (2019); FEMA National Flood Hazard Layer (2006); Current Use Lands and Overlay Districts from Town of Sunapee (2022).

This map is for planning purposes only.

Created for the Sunapee Conservation Commission
by the Upper Valley Lake Sunapee Regional Planning Commission
for the 2022 Sunapee Natural Resource Inventory

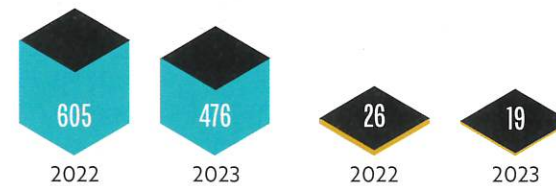




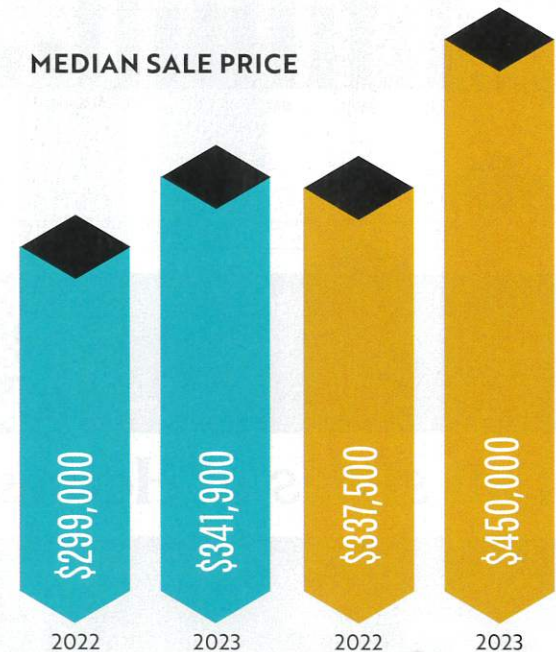
Sullivan County

Single Family Condo

CLOSED SALES



MEDIAN SALE PRICE



Single Family Snapshot

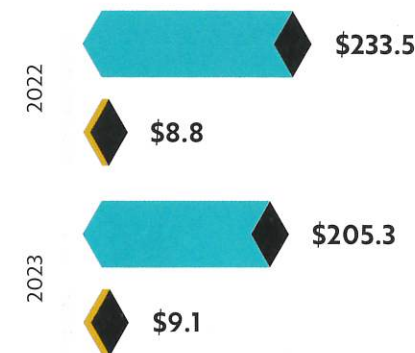
-21.3% One-Year Change in Single Family Closed Sales
+14.3% One-Year Change in Single Family Median Sales Price
-12.1% One-Year Change in Single Family Sales Volume

Condo Snapshot

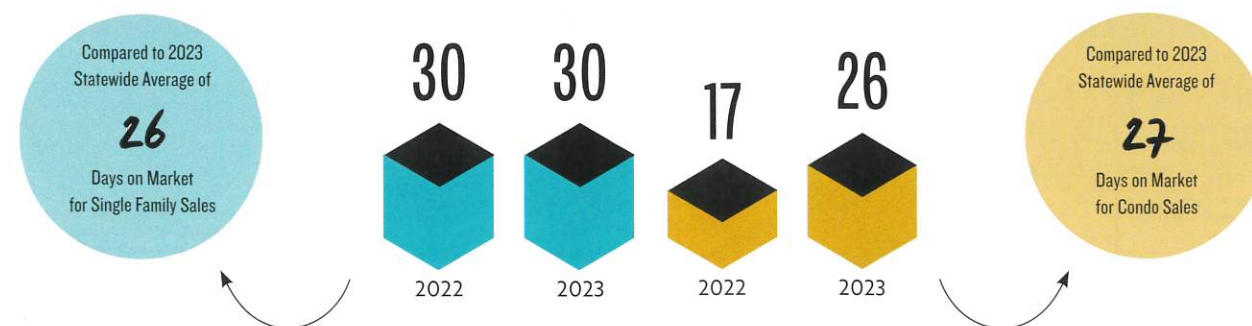
-26.9% One-Year Change in Condo Closed Sales
+33.3% One-Year Change in Condo Median Sales Price
+3.4% One-Year Change in Condo Sales Volume

SALES VOLUME

The total dollar volume for all closed sales
[IN MILLIONS]



AVERAGE DAYS ON MARKET



TOP 3 SALES

SINGLE FAMILY

| Price | City | Squ. Footage | Bedrooms | Baths |
|-------------|---------|--------------|----------|-------|
| \$4,795,000 | Sunapee | 4,400 | 6 | 5 |
| \$3,400,000 | Sunapee | 3,232 | 4 | 4 |
| \$2,925,000 | Sunapee | 2,060 | 3 | 3 |

Top single family home sold at \$4,795,000

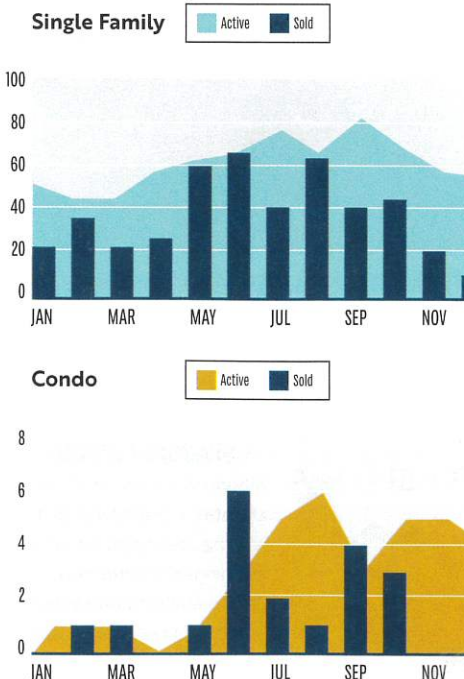
CONDOS

| Price | City | Squ. Footage | Bedrooms | Baths |
|-----------|----------|--------------|----------|-------|
| \$998,000 | Sunapee | 2,604 | 3 | 3 |
| \$700,000 | Grantham | 4,379 | 4 | 4 |
| \$600,000 | Grantham | 1,774 | 3 | 3 |

Top condo sold at \$998,000

INVENTORY AND SALES

Jan 2023 - Dec 2023



Back L to R: Raelene Robinson-Garrow NMLS# 853514,
Christine Greenwood-Smart NMLS #865412,
Sarah Rosley NMLS# 1722915,
Front L to R: Samantha Monson NMLS# 2126877,
Roy Graves NMLS #1526227

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Mortgage Experts in
the Monadnock Region.**
Let us be your mortgage guides.

Getting a mortgage is one of the biggest financial commitments your clients will ever make! As the Monadnock Region's truly local lender, Savings Bank of Walpole is committed to providing them with competitive rates and the best customer service—from beginning to end and after closing. Plus, all decisions are made locally.

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NMLS #466063



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Bank of
Walpole**
since 1875

**SUNAPEE SELECTBOARD
MEETING MINUTES
TOWN OFFICE MEETING ROOM
Monday, February 12, 2024, 6:30 p.m.**

Present: Selectboard Chair Carol Wallace; Selectboard Vice Chair Suzanne Gottling; Selectboard Josh Trow, Jeremy Hathorn, and Frederick Gallup

Present via Zoom: Allyson Traeger, Land Use and Assessing Coordinator

Also present: Town Manager Shannon Martinez; Emily Wrenn. Short-Term Rental Coordinator and Executive Assistant

1. CALL SELECTBOARD MEETING TO ORDER

Chair Wallace called the meeting to order at 6:45 p.m.

2. REVIEW OF MINUTES

MOTION to approve the minutes of the January 8, 2024, Select Board meeting as amended made by Selectboard Member Trow, seconded by Selectboard Vice Chair Gottling.

Mr. Trow noted for Article 39, the word "from" in the title should be deleted. In the narrative for Article 42, in the sentence, "Chair Wallace explained that Mr. Trow vetted," change "Mr. Trow" to "Mr. Boone."

A roll call vote was taken. Motion carried 3-0-2, with Selectboard Member Hathorn and Selectboard Member Gallup abstaining.

MOTION to approve the minutes of the January 22, 2024, Select Board meeting as presented made by Selectboard Member Trow, seconded by Selectboard Vice Chair Gottling. A roll call vote was taken. Motion carried 3-0-2, with Selectboard Member Hathorn and Selectboard Member Gallup abstaining.

3. REVIEW OF ITEMS FOR SIGNATURE

CZCs

- Parcel ID: 0232-0018-0000 - 46 Depot Road - Landladies 46 LLC.
- Parcel ID: 0127-0035-0014- 28 Overlook at Indian Cave- Todd & Karen Honan

LAND DISTURBANCE

- Parcel ID: 0122-0017-0000- 232 Garnet Hill Road- 234 Garnet Hill Rd, LLC.

DEMO PERMIT

- Parcel ID: 0122-0017-0000- 232 Garnet Hill Road- 234 Garnet Hill Rd, LLC.

SIGN PERMIT

- Parcel ID: 0129-0074-0000-552 Route 11 unit 3- J&F Realty

AFTER THE FACT

- Parcel ID: 0232-0018-0000 - 46 Depot Road - Landladies 46 LLC.

SHORT-TERM RENTAL CZCs

- Parcel ID: 0238-0001-0000 – 115 Timmothy Road – Jennifer Gray
- Parcel ID: 0138-0007-0000 – 25 Stagecoach Road – Jessica Stocker
- Parcel ID: 0237-0009-0000 – 18 Harding Hill Road – Jason Mills
- Parcel ID: 0210-0041-0000 – 11 Dobles Road – Sheryl Rich-Kern

CURRENT USE APPLICATION

- Parcel ID: 0140-0022-0000 – 68 Burkehaven Lane – Compass Point LLC.
- Parcel ID: 0237-0029-0001 – 102 Brook Road – Mayo Trust of 2010

ABATEMENT

- 0114-0066-0000 - Mary B. Ivey Trust Agreement - 114 Fairway Drive
- 0121-0020-0000 - Pierre Lessard & Sarah Harris- 45 West Shore Road

USE OF FACILITIES

- Lake Sunapee Cruising Fleet requesting use of the Safety Services Building from 9am – 12pm on 05/18/2024 for their annual skippers' meeting.

MOTION to approve the Consent Agenda as presented made by Selectboard Member Hathorn, seconded by Selectboard Member Trow.

Mr. Trow clarified the identity of the owner of 102 Brook Road.

A roll call vote was taken. Motion carried, with Selectboard Chair Wallace abstaining from the Current Use Application at 68 Burkehaven Lane and Selectboard Member Gallup abstaining from the Demo Permit and Land Disturbance.

4. APPOINTMENTS

7:00 p.m. Meeting with Derek Ferland, Sullivan County Manager

Derek Ferland appeared before the Board to present an update on the gateway sign project. He reviewed the background as to how this project was conceived and where it stands. He has met with the DOT and is currently meeting with municipalities to understand their regulations and requirements. The next step will be to contact landowners for permission to install the signs. The final step will be to install the signs, which ideally will occur in 2024.

Mr. Ferland shared the prototype of the sign design, which will be 4 feet by 6 feet and constructed of aluminum. He described the proposed locations on Routes 103 and 11, which the Board discussed. The signs will be maintained by the DOT.

The Board thanked Mr. Ferland for his presentation.

7:30 p.m. Meeting with Water and Sewer Commission

Dave Bailey, Water and Sewer Department Superintendent, and Commissioners Doug Gamsby, Jim Williams, and Charlie Hirshberg met with the Board to discuss erecting a solar array. They have obtained quotes and are discussing whether the array will power only the wastewater plant or feed power into the grid.

Warrant Article 40 was written for a five-year contract, but they are concerned a solar company will not be receptive to this length of contract, preferring something longer. Mr. Hirshberg noted the rate structure is based on a certain time commitment, a longer period, like 25 years. Ms. Martinez explained the contract would be between the solar company and the Select Board and would need to meet specific requirements. There must be an out clause, for example.

The Board discussed the benefits and challenges of a 25-year contract as opposed to a 5-year contract.

Mr. Gallup asked if there is an urgency to move forward due to the grid's capacity, which was mentioned by Mr. Brown, a resident who lives off the grid. Mr. Bailey said as this will be a smaller array, he does not believe it will be a major issue.

Mr. Gallup asked if they will lose any of the bidders if a Warrant Article is presented next year to enter a 25-year contract. Mr. Trow explained the Board cannot guarantee a 25-year contract without a separate Warrant Article. And there is always the possibility that the Town would vote the warrant down.

The Board discussed how the wastewater plant can use the land where it is located, and whether this land is leased from the Town. If the land is leased, the lease could be modified. If the Water and Sewer Commission owns the land, the Board would not need to be involved. They agreed this needs to be determined. Mr. Bailey said if the array only powers the plant, it would not be a money-making arrangement and thus not involve the Selectboard Board. The Selectboard Board discussed land being removed from the Town Forest in the past and the original intention for this land.

Doug Hanson, a resident, said the Energy Commission went through this process years ago. He said the power can only be used onsite; state laws do not make it financially feasible to put power into the grid. He said the project only benefits people who are on water and sewer. The Energy Commission ended the process as the plant needed to expand and the land where the array was going to be located would be lost.

The Selectboard Board discussed the difference between the Energy Commission's work and the current project. They agreed they should consult the individuals involved in the Energy Commission to obtain any information that might be useful.

The Selectboard agreed they are not opposed to this project moving forward. They will obtain language from counsel to create a renewable five-year contract for the Commission to present to the entities to gauge their interest. This will be incorporated into the RFP (Request for Proposal), which the Commission will design.

Mr. Hirshberg asked if the solar companies are not willing to enter a five-year contract, would the next step be to create a Warrant Article for a longer time? Ms. Martinez said yes, but there would need to be more to it. The Town can, through the Selectboard, enter a five-year lease and can make extension periods possible.

Chair Wallace said a proposal is needed from the solar companies. Mr. Gallup noted the Warrant Article needs to be voted on in March. The Board needs to know if the solar companies would be amenable to five-year leases. Chair Wallace said the Commission should identify what they need, as an RFP will be required. Depending on whether the Town can benefit from the power generation, they can decide if a larger array be installed.

Chair Wallace also asked the Commission about water quality and PFAS so that the Board can determine if they should join the class-action suit. She also asked what the plans are to mitigate PFAS. Mr. Bailey said they did PFAS sampling on the drinking water a few years ago and found none. However, there was PFAS in the sludge; they will be sampling again soon. Chair Wallace asked them to share this information when it is available and suggested the Town join the class-action suit.

Doug Hanson suggested an energy subcommittee be created that reports to the Board to deal with energy issues in Sunapee. The Board discussed this idea.

5. PUBLIC COMMENT

Chair Wallace asked for public comment.

Catherine Bushueff (online) said she is thrilled solar is being discussed and she supports the Town moving forward on this. She noted Clean Energy New Hampshire has energy circuit riders to help municipalities work on clean energy projects. She will send the contact information for the energy circuit riders' supervisor to Chair Wallace.

Chris Whitehouse said he is pleased to see "outstanding items" listed on the agenda. He said if he doesn't attend meetings, his suggestions are not followed up on. He asked who puts items on this list and said citizens should be able to add items. He said in the deliberative session, there was a comment about giving the Fire Department a donation to hire employees and he did not see how that would be legally possible.

Doug Hanson asked if the Board has sent a formal letter to the DOT regarding evaluating traffic safety on Route 11. He said he has done so, and cited the accidents and the difficulty he has pulling onto the road. He said traffic calming measures are needed. Mr. Gallup said letters have been sent over the years regarding various issues and they rarely receive a response. He noted the state occasionally conducts safety studies, and sometimes the Town receives reports and recommendations. The Board could enquire as to when the next safety study will be conducted.

Christine Corey asked if Warrant Article 21 will be left with the new verbiage as part of the minutes of the January 8th meeting. She said the verbiage was not part of the January 8th agenda, although the PowerPoint was. Ms. Corey noted that during the Public Comment discussion at the last meeting, it was noted that the Selectboard would not reply to emails and individuals needed to appear in person. She said that is not always feasible, and individuals might not want to appear, so she asked that this be reconsidered.

Ms. Corey said the individuals who signed the petition were disappointed that their issue will not be on the ballot. They thought their signatures would guarantee that it would be on the warrant. She said it was disingenuous of the Board, as they did not want the public to have a say on reexamining going back to a hand count. She said the Board sabotaged the warrant article on purpose and the people will remember that.

Chair Wallace closed public comment.

6. SELECT BOARD ACTION

Review of warrant articles and final Selectboard recommendations

The Board reviewed the warrant articles that were amended at the deliberative session:

Article 21

Clarifying language was added.

MOTION to recommend Warrant Article 21 made by Selectboard Member Gallup, seconded by Selectboard Member Gottling. A roll call vote was taken. Motion carried 4-0-1, with Selectboard Trow abstaining.

Article 22

The Board discussed whether the budget is adequate to cover adult and senior programs and youth programs. Ms. Gottling clarified that the Recreation Director is an exempt position.

MOTION to recommend Warrant Article 22 made by Selectboard Member Trow, seconded by Selectboard Member Hathorn. A roll call vote was taken. Motion carried unanimously.

Article 39

Clarifying language was added. Mr. Trow asked if it should be on the ballot in the future to create the ability to have funds to receive payments for special details.

MOTION to recommend Warrant Article 39 made by Selectboard Member Trow, seconded by Selectboard Vice Chair Gottling. A roll call vote was taken. Motion carried unanimously.

Article 41

Clarifying reimbursement of expenses and adding clarifying language.

MOTION to recommend Warrant Article 41 made by Selectboard Member Gallup, seconded by Selectboard Member Hathorn. A roll call vote was taken. Motion carried unanimously.

Article 42

MOTION to recommend Warrant Article 42 made by Selectboard Member Trow, seconded by Selectboard Vice Chair Gottling.

Mr. Trow noted the point of the deliberative session is to modify articles, as long as they stay within the subject of the original articles. He hoped that anyone with the impression that an article cannot be changed is now clarified of this misunderstanding. The only articles that cannot change are Planning and Zoning.

Doug Hanson asked if the Board changed this article. Mr. Trow said he made the motion to change the article and the legislative body approved it.

Lisa Hoekstra asked why the Moderator is part of this. Mr. Trow said the Town Moderator is a common election official and is present on election day.

A roll call vote was taken. Motion carried unanimously.

Article 43

MOTION to recommend Warrant Article 43 made by Selectboard Member Trow, seconded by Selectboard Member Hathorn. A roll call vote was taken. Motion carried unanimously.

7. TOWN MANAGER REPORT

Fire Department Letters

Ms. Martinez said there was a request to send thank you letters from the Selectboard to the fire departments that supported the fire. This is being done.

Town Office Closure

Ms. Martinez noted the Town Offices will be closed on Monday for the holiday. They will be closed Tuesday through Friday for furnace work, although staff will be working, and

available online and via telephone. They will also be rethinking the layout of the upstairs and the meeting room.

Administrator Permission

Ms. Martinez presented a letter for signature giving her permission to be an administrator for the Town's grant portfolio.

Conservation Commission Work

Ms. Martinez hopes to chip away at a long list of finance-related tasks, now that budget season is over. She will be working with the Conservation Commission to tackle several matters that have been pushed off for much too long. The Conservation Commission and other boards have been patient; however, it is time to pay attention to more pressing matters- such as deeds and easements. She noted there are three deeds that need to be put right. She has been asked to work on one specifically, and she will work with the Conservation Commission on the other two. This will incur legal costs, which the Commission will help to cover.

She said the Conservation and Cemetery Commissions have been patient. However, there are deeds that are not clear regarding cemeteries that must be taken care of. She wanted to ensure the Board had no concerns about this project. Chair Wallace asked for clarification as to what Ms. Martinez will be doing and she explained.

Tree Cutting on Town Property

Ms. Martinez reviewed a situation regarding a property owner who approached the Conservation Commission about cutting trees and was given permission to do so. It has evolved into the property owner asking the Town to remove the trees, although the Town has determined the trees are not hazardous. The property owner is now threatening legal action. She asked if the Board would like different action to be taken; however, they support the actions currently being taken.

RFPs

Ms. Martinez updated the Board on RFPs, saying more should be coming up. She explained specialty woodwork is needed, and asked Mr. Hathorn to speak with Dexter and serve as the go-between on this. They are piloting releasing an RFP with the School for mowing services. The RFP for the compensation study is being drafted and should be out next week.

Highway Safety Committee

Ms. Martinez reported the Highway Safety Committee is coming back to life. She asked the Board to appoint Jim Dutille and Bob Hall as members. She said Mr. Gallup is the Selectboard representative and noted the other members. Jen will coordinate the meetings, draft the agendas, and ensure the agendas and minutes are posted on the website.

MOTION was made by Selectboard Member Gallup, seconded by Selectboard Member Trow, to appoint Jim Dutille and Bob Hall as members of the Highway Safety Committee. A vote was taken. Motion carried unanimously.

North Shore Road

Ms. Martinez said there is legal action occurring regarding closing North Shore Road from Perkins Pond to the water. The Town has not been formally notified of this. Although the Town does not own the road, it was accepted as an emergency lane. The Town is an abutter. She said the Town might need to consult counsel regarding this issue. Mr. Gallup noted there is the potential for the road to no longer be an emergency lane and not be maintained at that level by the Town. Emergency services might not be able to navigate the road, if it is not properly maintained. He said they need to see if any conversation regarding the emergency lane situation is entered into testimony. Ms. Martinez said the highway director would not feel comfortable approving a driveway permit to the existing home to enter on the blind highway, so the Board might be pulled into this situation.

Emily Wrenn

Ms. Martinez announced that Ms. Wrenn is going to take on her thesis, so her role will be minimized.

Warrant Article Process

Ms. Martinez reviewed the process that is followed when creating and approving warrant articles. She explained that regarding the Fire article, if the subject matter and dollar amount did not change, a special hearing was not required. The articles were made legal when the Board signed the warrant. If the change was discussed and disclosed at the public hearing, it is legal. It is common practice for articles to be reviewed first at the public hearing, then by counsel and DRA, before signing the official warrant.

Christine Corey asked if Article 21, with the change, was brought before the Board for them to give their recommendation prior to the deliberative session. Ms. Martinez said the Board saw the article when they signed the warrant. She said the law is clear that petition articles can only be changed at deliberative session.

8. SELECTBOARD MEMBERS' REPORT

Mr. Trow asked if there is an updated map of Sunapee's current use. He has a map from 2008 and is curious to know how it has changed. He noted there is a benefit to have land in current use from a tax and land preservation perspective. He said it appears that over 50% of Sunapee is in current use and it is important to know how much land is actively in true conservation versus effectively in conservation. Ms. Martinez noted there is a cost to the Town for mapping. She offered to provide a copy of the NRI, which provides useful information.

Ms. Martinez said there was a recommendation during a Community Conversation that the Conservation Commission and the Select Board meet at least once a year. Chair Wallace asked when the next Community Conversation will be held and Ms. Martinez said February 16th and 22nd.

9. OUTSTANDING ITEMS

Use of Harbor: Boat Renovations

Ms. Martinez shared this information as an attachment to the minutes and in the Selectboard Reading File

After Action: Prospect Hill Fire

Ms. Martinez noted they will schedule the After Action for the Prospect Hill Fire and reviewed what the Board would like to be covered.

Trask Brook Road Closure

Ms. Martinez reported Trask Brook Road has been closed, and the highway team has posted signs.

Short-Term Rental Registration Platform

Ms. Martinez reviewed the breach of security situation with GovOS. She is confident the Town is going to switch over to OpenGov. Ms. Wrenn will build the process and take over the messaging campaign. Ms. Traeger and her team will manage the process. She said the flow of information is easier in OpenGov. If Ms. Wrenn is successful, the software price should be reduced next year and they will switch to a more streamlined platform with multiple Town applications. Chair Wallace noted her disappointment that the software did not live up to their expectations.

10. RESPONSE TO PUBLIC COMMENT FROM JANUARY 22, 2024, BOARD MEETING

Chair Wallace responded to the following issues:

- **Chris Whitehouse indicated he was concerned the Town was not advertising in the InterTown Record, but in other papers.** This is a matter of cost. However, they are open to using whatever makes the most advertising sense.
- Regarding **documentation of mileage**, mileage is being tracked.
- **John Augustine raised an issue regarding the Town Manager's annual review.** The Select Board will meet in a non-public session after this meeting to discuss this. The review will be given by Chair Wallace at a date yet to be determined.
- **John Augustine asked why the Livery is not considered a short-term rental.** It does not meet the definition as per the Planning Board.
- **John Augustine raised an issue regarding Steve Marshall and how many grants he has done, and what the results of those are.** The Board will ask for an update from the Police Department. Ms. Martinez noted Mr. Marshall has been brought in to be the Police Department's Accreditation Manager. He is working on grants separately; he is not the Town-wide grant writer.

- **Lisa Hoekstra raised an issue regarding site plan review requirements for owners not in residence.** For owners not in residence of a single-family home with an additional room for rent, site plan review is not required. If it is a two-family home, this gets more into site plan review.
- Chair Wallace apologized for not redacting the person's name in the GovOS security breach issue.
- **Request of review of complaints in non-public.** The Board has not chosen to take this on. If there are complaints, an appointment should be made to discuss them in public.

11. UPCOMING MEETINGS

- February 14th, 1:00pm: Conservation Commission - Dewey Woods Meadow Review
- February 20th, 6:00 to 8:00pm: Recreation Community Forum
- February 20th, 8:00pm: Recreation Committee
- February 26th, 6:30pm: Selectboard Meeting
- February 27th, 5:00pm: Abbott Library Trustees

12. NON-PUBLIC SESSION

MOTION was made by Chair Wallace and seconded by Member Hathorn to enter into non-public session at 9:45pm per RSA 91-A:3, II (a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a public meeting, and (2) requests that the meeting be open, in which case the request shall be granted. A roll call vote was taken. Wallace – aye, Gallup – aye, Hathorn – aye, Trow – aye, Gottling – aye.

13. ADJOURNMENT

The meeting was adjourned.

Respectfully submitted,

Beth Hanggeli
Recording Secretary