

**SUNAPEE SELECTBOARD
MEETING MINUTES
TOWN OFFICE MEETING ROOM
Monday, February 26, 2024, 6:30 p.m.**

Present: Selectboard Chair Carol Wallace; Selectboard Vice Chair Suzanne Gottling;
Selectboard Members Josh Trow and Jeremy Hathorn

Also present: Town Manager Shannon Martinez

1. CALL SELECTBOARD MEETING TO ORDER

Selectboard Chair Wallace called the meeting to order.

2. REVIEW OF MINUTES

February 12, 2024

MOTION to approve the minutes of the February 12, 2024, Select Board meeting as amended made by Selectboard Member Trow, seconded by Selectboard Member Hathorn.

S. Martinez noted a request from Christine Corey to add “petition warrant article” in the Public Comment section. Regarding the warrant articles that were changed at the deliberative, a page reference will be made to note where to find the complete warrant article. Selectboard Member asked about consistency in formatting in the minutes regarding bolding.

A vote was taken. Motion carried unanimously.

October 23, 2023

Joshua Boone, Town of Sunapee Town Clerk/Tax Collector, noted the minutes omitted the type of voting machine being purchased, which is the Dominion ImageCast Precinct 2. He requested the Board to revise the October 23, 2023, meeting minutes to reflect that specific decision point.

Revised Minutes: Josh Boone appeared before the Board to present a request to purchase a new ballot-counting machine, **the Dominion ImageCast Precinct 2**. The current machine was purchased in 1999; servicing and programming the memory card can only be guaranteed through the 2024 election. The funds to purchase this machine are in the budget. It can be used for the first time for the March 2024 election. Town Manager Martinez noted the RSA requires the Board to approve this purchase.

MOTION to authorize the use and the purchase of the discussed Dominion ImageCast Precinct 2, an electronic ballot-counting device for counting ballots in the Town of Sunapee in accordance with RSA 656:40 was made by Member Gallup and seconded by Member Hathorn. All voted in favor.

MOTION to accept the suggested changes to the minutes of the October 23, 2023, Select Board meeting made by Selectboard Vice Chair Gottling, seconded by Selectboard Member Trow. A vote was taken. Motion carried unanimously.

3. REVIEW OF ITEMS FOR SIGNATURE

CZCs

- 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 CZCs

- 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

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

Mr. Trow asked about the change to 22 Chippendale Drive. The Board discussed if a solar exemption is given to the owner or to the property. Kris McAllister clarified that if a property is in an irrevocable trust, it will lose the exemption. In this situation, the property went into a revokable trust. As the ownership in the deed changed, they needed to reapply.

Ms. Martinez noted for the Crowther Chapel, use was made contingent on the organization paying a fee and acknowledging the number of people who can fit into the chapel. There has been no response, so approval of this request is on hold.

Chair Wallace asked if the Short-Term Rental CZCs were checked for compliance on the database and Ms. Martinez verified they had been.

A vote was taken. Motion carried unanimously.

4. APPOINTMENTS

7:00 p.m. – 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

Lieutenant Tim Puchtler and Steve Marshall appeared before the Board. Lt. Puchtler provided background on grant funds received from the Office of Highway Safety and the equipment that will be purchased with them. He and Mr. Marshall explained the ways they will decrease this total via soft matching. Ms. Martinez clarified that the most the Town will have to pay is \$7,553.80, which is in the budget in the general equipment line.

Chair Wallace asked for public comment.

A resident asked if there are warranties on the batteries for this equipment. Mr. Marshall said, as with any new equipment, they will come with a warranty.

Christine Corey noted that an earlier grant came with the requirement that patrol work be done and asked how that was going. Lt. Puchtler said they would not have been given an additional grant if the work was not going as required. She asked if the current grant came with conditions and Lt. Puchtler said there were not.

Peter Hoekstra asked how his neighborhood could have the safety equipment installed. Mr. Marshall said it would be moved around.

Chris Whitehouse asked about the number of motorists required to be stopped per grant patrol. Lt. Puchtler and Mr. Marshall explained this.

Chair Wallace closed public comment.

MOTION to approve the acceptance and expenditure of unanticipated revenue from the New Hampshire Office of Highway Safety in the amount of \$23,308.64 for purchase of the equipment as noted and matched by the Department as necessary made by Selectboard Member Hathorn, seconded by Selectboard Member Gottling. A vote was taken. Motion carried unanimously.

Steve Marshall explained a grant has been submitted to the Department of Safety for three body-worn cameras, to be able to issue a camera to each officer. They also want to replace two of the older cruiser camera systems, which are soon to become obsolete.

7:15 p.m. – Lake Sunapee Short-Term Rental Association (LSSTRA), Lisa Hoekstra

Peter and Lisa Hoekstra appeared before the Board. Chair Wallace noted the discussion should focus on the materials submitted. She also asked that the warrant articles not be included in the discussion, as there will be an opportunity to discuss them at the deliberative session. Ms. Hoekstra verified these are not part of the discussion.

Ms. Hoekstra gave an overview of the Lake Sunapee Short-Term Rental Association, including goals and core values. Chair Wallace asked for clarification on the association's membership. Ms. Hoekstra said they have an email list of 72 people, most of whom are owner-not-in-residence. There are no members.

They would like the LSSTRA to be recognized as local STR experts and used as a resource. Chair Wallace questioned the use of the term "local," as most STR owners do not live in Sunapee. Ms. Hoekstra clarified the LSSTRA is its own community, and that she and other Board members are residents of Sunapee.

She said they would like to identify the mutual objectives of the Town and the LSSTRA. Mr. Trow noted the process appears to be stabilizing and he would like to see it stable. Chair Wallace would like to see registration at 100 percent, and she is surprised it is not. Ms. Hoekstra said compliance is not high due to obstacles, including the high cost of registration, the lack of protections, and regulations the LSSTRA view as harsh, not legal, and discriminatory. Chair Wallace said another mutual objective is preventing the increase of owners not in residence, which is why some of the regulations are in place. Ms. Hoekstra said information regarding this is a falsehood and more accurate data is needed.

Mr. Hoekstra said they would like to be part of steps forward. They would like an ad hoc committee created, as noted in the Master Plan survey. They would like the Select Board to endorse a tourism committee. They would like the LSSTRA to be part of upcoming conversations, including the charrette. Mr. Trow noted the difficulty in soliciting members for committees.

5. PUBLIC COMMENT

Chair Wallace asked for public comment.

Shawn Carroll, 5 Apple Hill Road, reviewed the documentation regarding road postings and asked for clarification about penalties and violations. He noted the difficulty of understanding the requirements, and that checks and balances are needed.

A resident said if an owner registers their STR, there should be give and take. He said if they do something the Town wants them to do, there should be protection. He asked if owner-not-in-residence STRs are being restricted and noted they live 15 minutes from their STR in Sunapee. He does not want to be prevented from renting out his house. He said owners of second and third homes renting out their homes is almost exactly like his situation.

Ann Bordeianu, 15 Maple Street, said there is more than one STR expert in town. She led the STR Task Force and said there are former members of the Task Force who could provide input and guidance. She asked about the policy on political signs being erected on Town property.

Chris Whitehouse said no one has a problem with most of the houses on the lake being empty most of the time and rented out. He said the Town is creating an ordinance that prevents people like himself being able to rent a house on the lake for a vacation. He said this is a class warfare act. He asked for follow-up on the fire suppression for the Town Garage. He said public notices should be published in the local paper. He questioned the diversity in Town departments.

Christine Corey said she asked for a copy of the oath of office the Board members take and was told she needed to submit a Right to Know request, which she did. She obtained copies of every Board member's signed oath of office. She read the oath and Article 8 of the New Hampshire Constitution Bill of Rights. She said the public expects the Town government to be lawful and accountable, and that the public is the Board's boss. She said trying to shut the public up is not acceptable. She noted an earlier incident where a member of the public was told public comment was not appropriate at that point in the meeting. She said the Board is not abiding by their oath of office and cited examples.

Suzanne (via Zoom) clarified the definition of owner-not-in-residence as related to STRs. She said there are owners of STRs who are not in residence, but who live in town. She also said the Town administration and other public servants do a great job and should be praised occasionally.

Anthony Dolan, 18 Sunapee Heights Court, said there needs to be a bigger assessment period for Town regulations and see how it impacts STRs. He said they are seeing a decline in STR rentals since COVID, and some investors are backing off due to the ordinances in place in Sunapee. He urged to continue to have an open forum and discuss STR issues.

Peter Hoekstra said tourism brings \$3 million to the Town. He said this is evidence that a tourism committee is needed.

Patricia Freeman, 72 Oak Ridge Road, (via Zoom), said she owns an STR and long-term rental, and that her family uses the home as well. She said Sunapee has no definition of a bedroom regarding long-term rentals, so she could turn her living room or office into a bedroom. She said she can rent her house to eight people with unlimited parking as a long-term rental. She said the STR restrictions are not reasonable, when there are no restrictions on long-term rentals. She said it is a nightmare registering for an STR permit.

Lisa Hoekstra said the LSSTRA is a collective and as a collective is the STR expert in Sunapee. She said agendas and minutes continue to publish legal case documents, even though the Board agreed to no longer do so in October 2023. She asked when this decision was reversed. She noted the Board updated the Ethics policy and asked where this had gone. She asked if the oath of office is a standardized form and thought a reference to the Ethics policy was going to be added to the oath of office.

A resident (via Zoom) noted the Town is voting on the 120-day limit for STRs and asked how this will be enforced.

Ann Bordeianu, Planning Board alternate, said at Meet the Candidate night, she was asked for clarification on proposed STR Articles 9 and 10. She explained the background and rationale for these articles, for residents who could not attend the Planning Board meeting where these articles were discussed and voted on.

Lisa Hoekstra, representative for the LSSTRA, said a study given to the Planning Board and public was falsified. She said the median home cost is \$500,000 in Sunapee, which is not affordable for first-time home buyers. She said the community consists of a lot of second-home owners, who are not commercial investors. She said this is an accessory use.

Chair Wallace closed public comment.

6. SELECT BOARD ACTION

Certificates of Appointment, Sunapee Thrift Shop: Pam Green and Patricia Shea

MOTION to approve the Certificates of Appointment of Pam Green and Patricia Shea for the Sunapee Thrift Shop made by Selectboard Vice Chair Gottling, seconded by Selectboard Member Hathorn. A vote was taken. Motion passed unanimously.

7. TOWN MANAGER REPORT

Legal update: Coalition 2.0 Update

Ms. Martinez shared an article regarding the Education Tax and provided an update on this issue. She explained the Town might need to raise \$1.5 million in taxes to cover the state

education tax, depending on decisions made around this issue. She said the Town has worked to pull the fund balance into equilibrium and utilized \$850,000 to buy down taxes this year, so there won't be a lot of money available to help absorb this shock should it come. She said this is a conversation that the Board should have. Ms. Gottling provided background from her experience with this issue.

Legal update: KTP

Ms. Martinez reported the Zoning Board's conclusion was backed.

She noted the cases are making their way to the website. The Board asked for all major decisions to be shared at the Selectboard meeting. The documents demonstrating the court decisions are being shared here and on the website.

Recreation Committee Resignation

Tim Berube has resigned from the Recreation Committee. The Town is grateful for the time and effort he has put into Recreation.

Building Congestion/Roads

Ms. Martinez noted increased congestion on Town roads due to the increase in building projects, and the impact this is having on the health of roads not designed for construction traffic. She said while it is not illegal, it does bring a disruption to the neighborhood. She said residents are expressing concern. She asked if an impact fee has been or should be considered. The Board discussed this, noting that they did not want to limit companies' ability to do business.

In response to Mr. Carroll's comment during Public Comment, Ms. Martinez noted any issues with permits can be quickly addressed by the Town Office. She said the Highway Department can also address any problems. She said the budget cannot cover repairing the damage done by construction traffic.

Selectboard Chair Wallace noted there is an impact to the roads, but also a human impact. The Board discussed increasing the cost of a building permit, bonding roads, and rebuilding roads to bear the increased loads. They noted that construction cannot be limited and that it does offer positives to local businesses.

Ms. Martinez noted the Select Board sets the fees for the Zoning Board. The Planning Board would like to know if the Select Board would contemplate setting the fees for them. The Select Board agreed they could do so.

Equipment Update

The Fire Chief shared an update on the status of fire trucks that need repair or replacement and are out of service. He noted the increased cost of replacing equipment.

Ms. Martinez asked for feedback from the Board. She said at the public budget hearing, she stressed the need for a full-time fire chief. She stressed that she tried to present the needs of the departments under her purview at the meeting. She noted that the Board put forth a full-time Recreation Director position and asked how she could have better achieved the priority she established of a full-time fire chief position.

Mr. Trow stressed the need for fire equipment is vital and funding it has been put off for years. He noted that this issue needed more attention than the need for a full-time fire chief. Ms. Martinez suggested the Board spend time discussing how to address the continued need to support the growth and development of the Fire Department.

Fourth of July

Ms. Martinez said the Town has been approached regarding replacing the Fourth of July fireworks with a drone show, to avoid polluting the lake and the adverse effects on some people and animals. She asked if the Board would be open to the idea of not having fireworks show. She noted possible scheduling and cost challenges and said the Town would partner with the Yacht Club in this matter. The Board agreed that she should explore this possibility.

Georges Mills Bridge

Ms. Martinez noted stripping and chaining will be done on the Georges Mill Bridge in the spring.

Community Conversation

The next Community Conversation will be on March 7 to discuss the Fourth of July fireworks and address any last-minute questions regarding the budget.

March Select Board Meetings

Ms. Martinez noted they will begin the March 4, 2024, Select Board meeting with a non-public session for hiring and compensation. They will also celebrate the long tenure of Mr. Trow to thank him for his service. The March 18, 2024, meeting will be an orientation meeting, assuming there are new Board members, and mapping out strategic goals for the coming year.

8. SELECTBOARD MEMBERS' REPORT

Mr. Hathorn said he participated in the Project Sunapee Candidates Night and appreciated the opportunity to do so.

Mr. Trow said the Brownfield Advisory Committee is seeking potential sites for brownfield review projects. The Upper Valley is seeking a paid intern for spring/summer/fall fieldwork.

Chair Wallace asked for an update on the signage policy. Mr. Trow said they have not given permission, so there is no permission to post political signs on Town property. However, they do defer to the school regarding their property.

Chair Wallace said Lisa Hoekstra has requested an appointment to speak about issues she has with conflict of interest, among other things. Chair Wallace said the Board and counsel has reviewed the documentation that has been submitted and the allegations therein. Counsel has said there is no merit and no fault on behalf of anyone who has been identified. She asked if any members would like to accept the request for an appointment to review this in a public meeting. Mr. Trow understands the Hoekstras have concerns; however, individuals serving on a public body do not give up their right to have an opinion. Mr. Hathorn saw no reason to agree to this appointment if the issue has been vetted by counsel. Chair Wallace clarified for Ms. Gottling that conflict of interest is an issue in members of other Boards, not the Select Board. Ms. Gottling said the other Boards should deal with this question, not the Select Board. Chair Wallace said the request is denied. Ms. Hoekstra asked for a letter stating this.

9. OUTSTANDING ITEMS

Current Use Map

Ms. Martinez shared a current use map as requested by the Board at the last meeting.

After Action: Prospect Hill Fire, in process

Ms. Martinez said the Fire Department has prepared their response. She and Chief Cobb need to provide feedback from the emergency operations plan perspective. Once they do that, the Fire Department will present the after action to the Selectboard.

Wastewater Treatment Land Ownership

Ms. Martinez said from her research, she found that the Town owns the land that the plant is located on. At one point, the Water and Sewer Department was charged to use an office at the Town Office, so paid for the space and associated costs. After 2017, there is no evidence of any payments being made. She is unsure if this was a concrete decision made not to do this or if the office was no longer necessary.

Long-Term Lease with Solar Array Company

Ms. Martinez met with Mr. Bailey and representatives working on the solar issue to examine different approaches. As the Water and Sewer Department is a separate entity, she needs to determine what this means for the Town financially. The Board agreed if the array is to fulfill the needs of the wastewater treatment plant, there is no need for the Town to be involved financially. They discussed the need to lease the land to the Water and Sewer Department. The Board agreed the Water and Sewer Department should do any necessary research, but Ms. Martinez said Administration will still need to be involved by default.

Conservation Commission Deed Clean Up

Ms. Martinez reported there is a plan to clean up one of the largest deeds. A baseline survey will be done to establish the baseline on the property and begin monitoring the easement. The Conservation Commission will cover the cost of this.

10. UPCOMING MEETINGS

- February 29, 2024: Abbott Library Trustees Meeting, 5 PM 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 4, 2024: Sunapee Selectboard Meeting, 6:30 PM Sunapee Town Hall
- March 5, 2024: Recreation Committee Meeting, 7:00 PM Sunapee Town Hall
- March 6, 2024, Conservation Commission Meeting, 7:00 PM Sunapee Town Hall
- March 7, 2024, Zoning Board of Adjustments Meeting, 6:30 PM Sunapee Town Hall

11. ADJOURNMENT

The meeting was adjourned.

Respectfully submitted,

Beth Haggeli
Recording Secretary

The background image shows the Sunapee Police Department building, a two-story white structure with a prominent clock tower. A dark-colored patrol car is parked in front of the building. The scene is set in a winter or early spring environment with some snow on the ground and bare trees. A semi-transparent green box is overlaid on the left side of the image, containing the text.

February 26, 2024

Chief E. Neill Cobb

Town of Sunapee

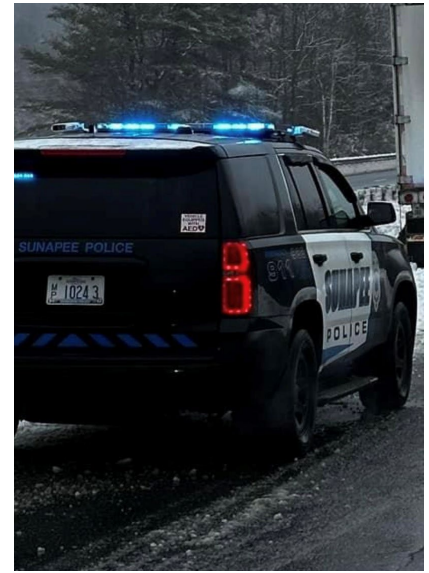
Sunapee Police Department

Board of Selectmen Presentation

Request to Accept Unanticipated Funds

Steven Marshall, Accreditation Manager
Lt. Timothy Puchtler

Previously approved 9/18/23 NH Office of Highway Safety Grant Award



Total Amount

- \$6,600 - Federal Budget
- \$1,650 - Min. Match Required

Budget Period

- 10/1/2023 to 9/30/2024

Project Titles

- Speed Enforcement
- DUI Enforcement
- Join the NH Clique
- Drive Sober or Get Pulled Over
- U Drive, U Text, U Pay



NH Office of Highway Safety

Grant Award Amendment

Goals of the Grant:

- Replace three Mobile Data Terminals (MDTs) and related equipment in cruisers.
 - Update MDTs to compliment the new records management (RMS) and computer aided dispatch (CAD).
 - Utilize E-Crash and E-Ticket systems to reduce paperwork and related administrative costs associated with crashes and tickets.
 - Reduce duration of traffic stops.
 - Increase officer awareness during traffic stops.
- Purchase two Traffic Data Recording Devices
 - Provide traffic data (speed, count, time) of areas with an easily movable device without the use of a speed sign.

Chief E. Neill Cobb

February 26, 2024



NH Office of Highway Safety Grant Award Amendment

Adjustments:

Additional Project & Funds Awarded	Adjustment	Match Requirement
3 Laptop/Tablet/Operating System/Internal GPS (Cellular Modem)	\$8,325.00	\$2,775.00
3 Docking Station/Charger/Mounting Hardware/Stand/Antenna	\$5,186.39	\$1,728.80
3 Compatible Printer(s)/Mobile Adapter Kit(s)	\$1,305.00	\$326.25
3 Printer Mount & Adapter Plate(s)	\$1,284.00	\$321.00
2 Traffic Data Recording Device w/ Data Software Cost of Initial Year	\$7,208.25	\$2,402.75
Total	\$23,308.64	\$7,553.80



Chief E. Neill Cobb

February 26, 2024

NH Office of Highway Safety Grant Award Amendment

Requested motion:

- To accept and expend unanticipated revenue from the New Hampshire Office of Highway Safety Pursuant to RSA 31:95-b in the amount of \$23,308.64 for the purchase of three mobile data terminal tablets with related equipment 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.



Questions?

**SEAT BELTS
SAVE LIVES.**

In 2022, 55 people who were killed in vehicle crashes on New Hampshire roads were not wearing a seat belt.

#BuckleUpNH



THE CHEMISTRY OF FIREWORK POLLUTION

Fireworks displays can be spectacular, but they can also have some negative effects on the environment. Here we take a look at some of the issues.

PARTICULATE MATTER

PM₁₀

Particulate matter 10 micrometres or less in diameter

PM_{2.5}

Particulate matter 2.5 micrometres or less in diameter

Fireworks produce a lot of very small particles, which can remain suspended in the air for some time after the display. This significantly increases the concentration of particulate matter in the air. Inhalation of these particles can have adverse effects on the respiratory and cardiovascular systems.

METALS

Sr

Ba

Cu

Pb

Cr

Sb

Ca

Na

Mg

COLOURS

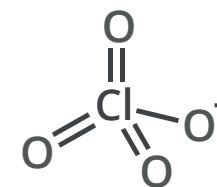
OTHER METALS

Note: Lead (Pb) and chromium (Cr) are both banned in fireworks in the US and UK, but can still be found in some imported fireworks.

Metal compounds give fireworks their vivid colours and can also be present in oxidiser or mixtures. These metals persist in the environment. Small particles of toxic metals such as lead, chromium and antimony show increases in atmospheric concentrations in the days after fireworks displays.



PERCHLORATE POLLUTION



PERCHLORATE ION

Perchlorate concentration increase after a fireworks display in Albany, New York



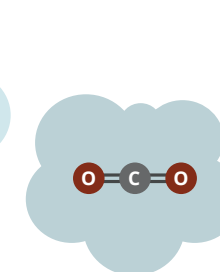
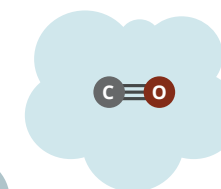
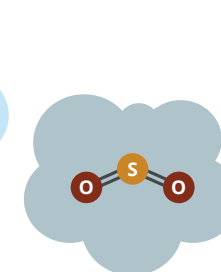
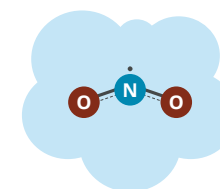
0.11 µg/L

519 µg/L

Source: Fate of perchlorate in a man-made reflecting pond following a fireworks display in Albany, New York, USA, Qian Wu and others, 2011, Environmental Toxicology and Chemistry 30, 11, 2449-2455.

Perchlorate compounds are used as oxidisers in some fireworks to aid the combustion reaction. These perchlorates can contaminate bodies of water near firework displays. Elevated concentrations of perchlorate in water can affect wildlife and it may also affect human health if it contaminates drinking water.

POLLUTING GASES



Fireworks lead to elevated levels of well-known polluting gases in the atmosphere. These gases include nitrogen dioxide and sulfur dioxide, which can cause respiratory problems, or exacerbate existing health problems such as asthma. They can also react in the atmosphere to form particulate matter.



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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

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- 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.)

____ Abbott Library Trustee

____ Advisory Budget Committee

____ Capital Improvement Committee

____ Conservation Commission

____ Crowther Chapel Committee

____ Fireward

____ Planning Board Alternate

____ Recreation Committee

☒ Thrift Shop

____ Upper Valley Lake Sunapee Regional

____ Zoning Board Alternate

____ Highway Safety Committee

____ 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.

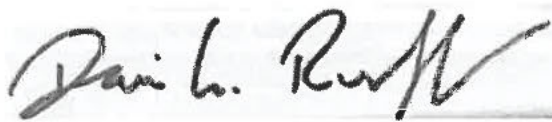
While the State's motion for reconsideration remained pending, the State understandably did not file a substantive response to the plaintiffs' affidavit of fees. See Doc. 249 (Pls.' Dec. 15, 2023 Aff. Fees); see also Doc. 252 (State's Resp. Doc. 249). Rather, citing the level of detail included in the 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.

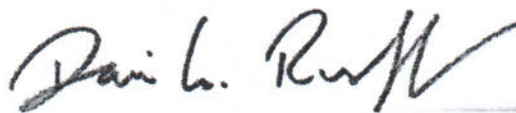
questions. Moreover, given the compelling interests involved, there is no just reason to delay appeal of the SWEPT Order. Accordingly, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92. The Court thus directs that the SWEPT Order is to be treated as a final decision on the merits with respect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

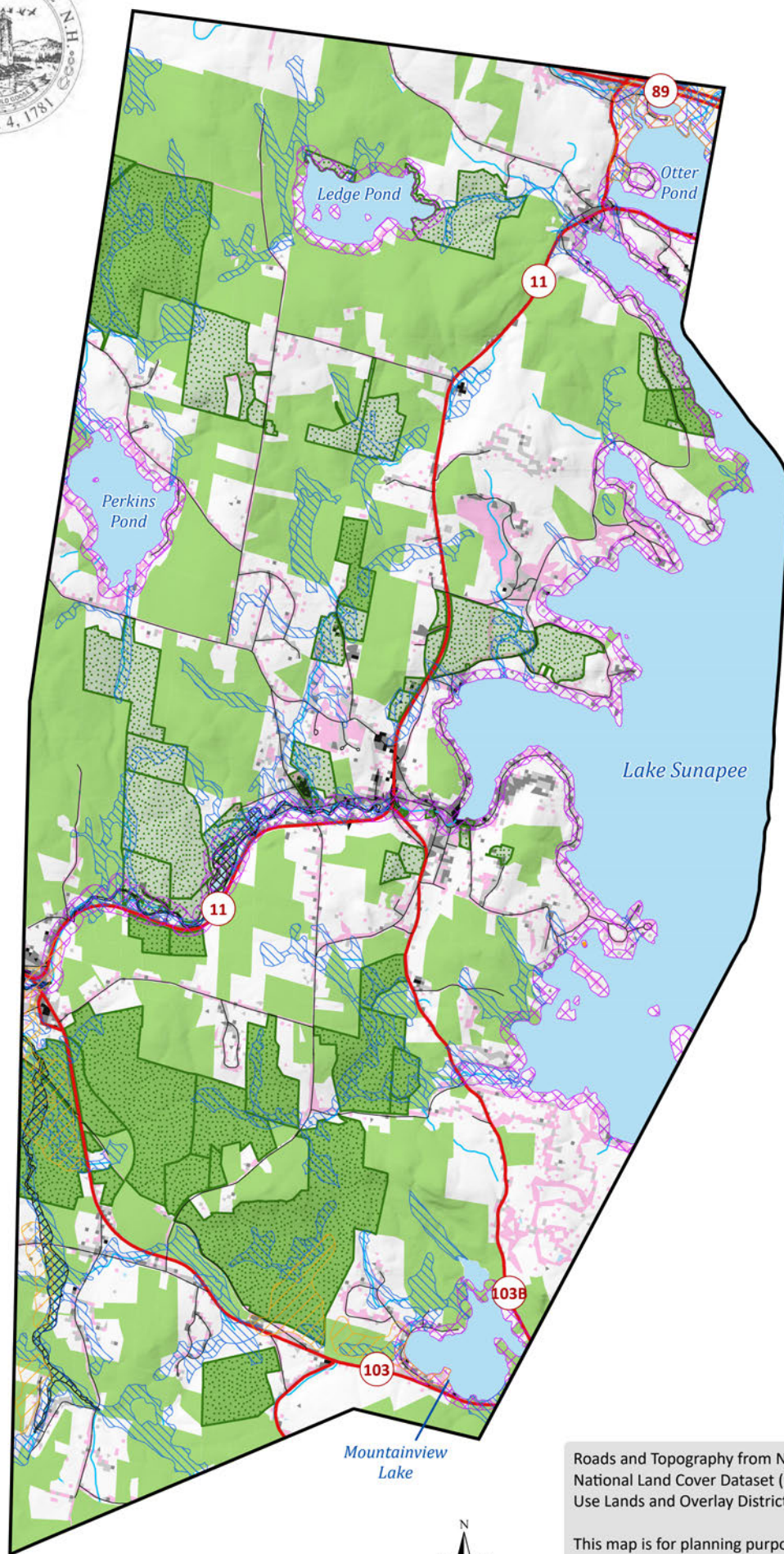
Water Features

- 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.

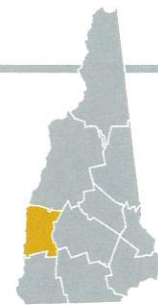


Roads and Topography from NH GRANIT (2022); National Hydrography Dataset (2018); National Land Cover Dataset (2019); FEMA National Flood Hazard Layer (2006); Current Use Lands and Overlay Districts from Town of Sunapee (2022).

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

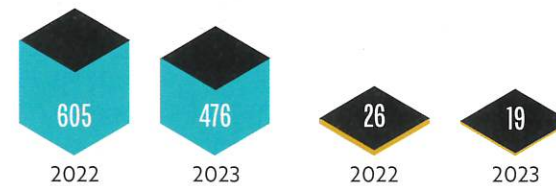




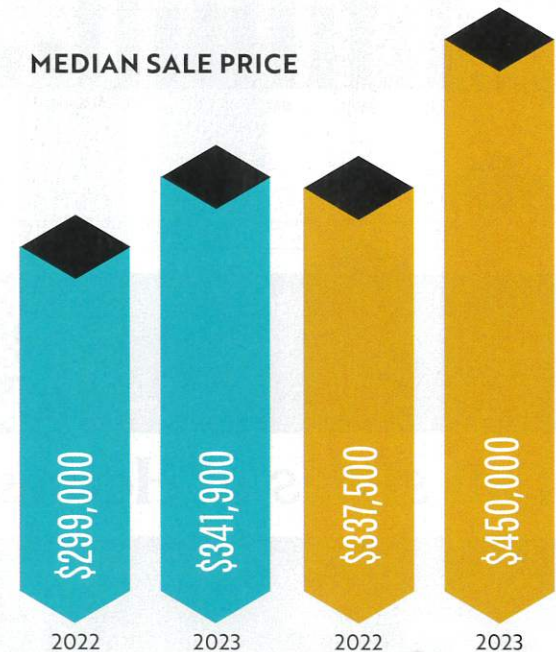
Sullivan County

Single Family Condo

CLOSED SALES



MEDIAN SALE PRICE



Single Family Snapshot

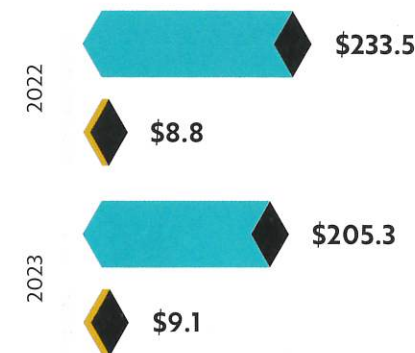
-21.3% One-Year Change in Single Family Closed Sales
+14.3% One-Year Change in Single Family Median Sales Price
-12.1% One-Year Change in Single Family Sales Volume

Condo Snapshot

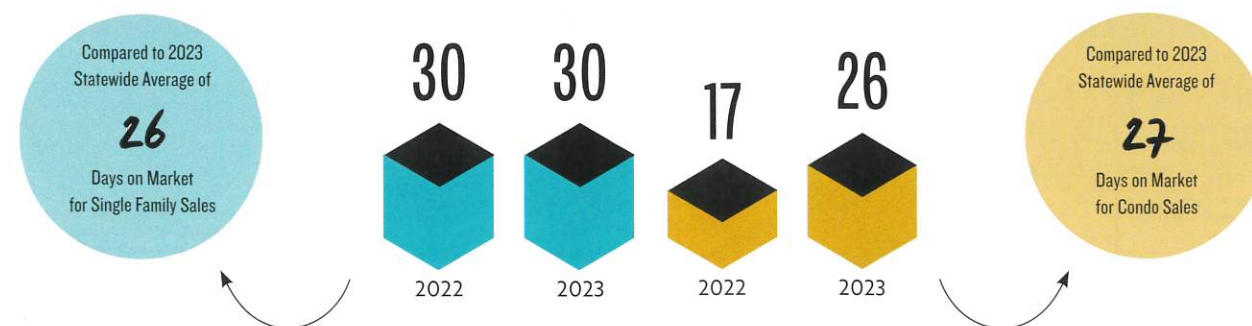
-26.9% One-Year Change in Condo Closed Sales
+33.3% One-Year Change in Condo Median Sales Price
+3.4% One-Year Change in Condo Sales Volume

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

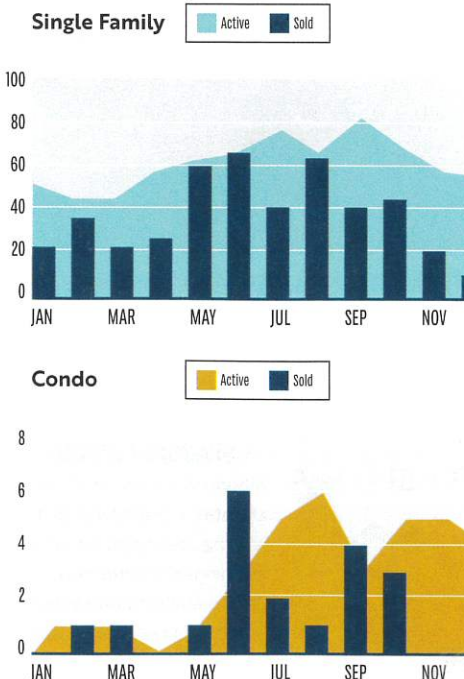
CONDOS

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

**Your Hometown
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.

Let one of SBW's local mortgage experts—Sarah, Raelene, Roy, Samantha or Christine—be your home financing guide. To set up appointments, give us a call at (603) 352-1822, or visit walpolebank.com.



NMLS #466063



SIGN-IN SHEET

SUNAPEE SELECTBOARD MEETING

DATE: 07/26/2024

Anthony Dolan

Christina Carey
Peter Hoekstra

Lisa Breen
Lynn Arnold
Ann Bardeianu

Joanne Lastie
Sharon Plawitt, 5 Apple Hill Rd.
Steve Marsh