

**SUNAPEE SELECTBOARD  
ADVISORY BUDGET COMMITTEE  
MEETING AGENDA  
6:30PM TOWN OFFICE MEETING ROOM  
Monday, November 27<sup>th</sup>, 2023**

Join us on Zoom: <https://us06web.zoom.us/j/86066395397>

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**1. ADVISORY BUDGET MEETING**

- 6:30 PM Budget Follow Up: Compensation
- Discussion

**2. CALL SELECTBOARD MEETING TO ORDER**

**3. REVIEW AND APPROVE MINUTES**

**4. REVIEW OF ITEMS FOR SIGNATURE:**

**CZC's**

- Parcel ID:0126-0024-0000, 8 Old Norcross Road, Michael & Janet Jesanis Trust
- Parcel ID: 0232-0018-0000, 46 Depot Road, 46 Depot Rd LLC, Jim Bruss

**LAND DISTURBANCE**

- Parcel ID: 0128-0031-0000, 90 Garnet Street, Michael & Sharon Kelly
- Parcel ID: 0125-0012-0000, 36 Jobs Creek Road, Duane & Elizabeth Delfosse

**USE OF FACILITIES**

- Retroactive Approval: November 20, 2023, Make A Wish Parade

**INTENT TO CUT**

- Parcel ID: 0234-0008-0000, Stagecoach Road, RH Webb Forest Preserve, LLC
  - Parcel ID: 0233-0057-0000, 222 Bradford Road, Stephen J and Dawn L Bowie
- 

**5. APPOINTMENTS:**

- 7:00 PM Public Hearing for the Acceptance and Expenditure of Unanticipated Revenue from State of NH-Highway Block Grant of \$35,295.52
  - 7:05 PM Conservation Commission
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**6. PUBLIC COMMENT:**

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**7. SELECTBOARD ACTION:**

- Certificate of Appointment – Ian Kirk, Recreation Committee
- 

**8. TOWN MANAGER REPORT:**

- Tax Rate Set: \$9.68 per thousand Compliance Update
  - Legal Update
    - 21 November 2023: KTP Hearing
    - 29 November 2023: Hoekstra Hearing
    - 16 December 2023: Weiss Hearing
  - Coalition 2.0
    - Meeting November 29, 2023, at 3 PM
  - FY 2022 Audit
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## **9. SELECTBOARD MEMBERS' REPORT:**

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## **10. UPCOMING MEETINGS:**

- Water and Sewer Commissioners Meeting: November 30, 2023 5:30 PM
  - Sunapee Selectboard Meeting: December 4, 2023 6:30 PM
  - Conservation Committee Meeting: December 6, 2023 7:00 PM
  - Zoning Board of Adjustments Meeting December 7, 2023 6:30 PM
  - Sunapee Selectboard Meeting: December 18, 2023 6:30 PM
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**NONPUBLIC: The Board of Selectmen may enter a nonpublic session, if so voted, to discuss items listed under RSA 91-A:3, II**

**SUNAPEE SELECTBOARD  
MEETING MINUTES  
TOWN OFFICE MEETING ROOM  
Monday, November 13, 2023, 6:30 P.M.**

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

**Also present:** Town Manager Shannon Martinez; Emily Wrenn

**Meeting called to order at 6:39 p.m. by Chair Wallace, who led the Pledge of Allegiance.**

**1. REVIEW OF MINUTES**

**MOTION to approve the minutes as amended for the October 16, 2023, Select Board meeting, and the minutes as written for the October 30, 2023, Select Board meeting made by Member Gottling, seconded by Member Trow. All voted in favor.**

**2. REVIEW OF ITEMS FOR SIGNATURE**

**CZCs**

- Parcel ID: 0114-0066-0000, 114 Fairway Drive, Ivey Trust Agreement, Mary B & Allen Evey
- Parcel ID: 0114-0065-0000, 13 Fairway Drive, Studawski Living Trust, Lauren Bowe
- Parcel ID: 0115-0006-0000, 90 Burma Road, James Ritter
- Parcel ID: 0226-001-0000, 10 Young Hill Road, Joseph & Susan Walz
- Parcel ID: 0118-0051-0000, 90 Burma Road, Daniel Cave
- Parcel ID: 0148-0045-0000, 640 Edgemont Road, Timothy & Linda Julian

**LAND DISTURBANCE**

- Parcel ID: 0117-0023-0000, 72 Marys Road, David & Daniel McInnis
- Parcel ID: 0118-0051-0000, 90 Burma Road, Daniel Cave

**DEMO PERMIT**

- Parcel ID: 0118-0051-0000, 90 Burma Road, Daniel Cave

**Consent Agenda: MOTION to approve CZCs, Land Disturbance, and Demo Permit made by Member Hathorn, seconded by Member Trow. All voted in favor.**

Chair Wallace recused herself from the Board.

**LAND USE CHANGE TAX**

- Parcel ID : 0239-0019-0000 Messer Road , George C. & Deborah A. Grant
- Parcel ID : 0140-0022-0000 68 Burkehaven Lane, Compass Point, LLC.
- Parcel ID : 0203-0007-0006 121 Granite Ridge, Norris Revocable Trust
- Parcel ID : 0203-0007-0007 Granite Ridge, Kirk & Colleen Bruns

**Consent Agenda: MOTION to approve Land Use Change Tax made by Member Trow, seconded by Member Gallup. All voted in favor, with one abstention.**

Chair Wallace returned to the Board.

**CHARITABLE EXEMPTION**

- Lake Sunapee Protective Association
- Sunapee Heritage Alliance
- Sunapee NH Historical Society
- YMCA Camp Coniston

**RELIGIOUS EXEMPTION**

- Lake Sunapee Baptist Church
- Our Lady of Unity
- St. James Church Rector
- St. James Epifocal Church
- St. Joachims Catholic Church
- Sunapee Methodist Church

**EDUCATIONAL EXEMPTION**

- Broom Family Foundation

**USE OF FACILITIES**

- Meagan Reed requesting use of Ben Moore / Barn stand November 30th, 2023, from 6:00 p.m. to 7:00 p.m. for a Candlelight Vigil
- Project Sunapee requesting use of Sunapee Harbor on December 9th, 2023, from 12:00 p.m. to 5:00 p.m. for horse and wagon rides for a Christmas event at the Livery

**Consent Agenda: MOTION to approve Charitable Exemption, Religious Exemption, Educational Exemption, and Use of Facilities made by Member Hathorn, seconded by Member Gottling.**

The Board agreed the organizations under Charitable Exemptions are listed as non-profits. Chair Wallace noted the Board received a letter from Tanner Royce regarding the eligibility of the LSPA as a charitable exemption. Ms. Gottling said that all tax documentation were filed in a timely fashion.

Mr. Royce noted the Town has the right not to grant a tax exemption, despite an organization's non-profit status. He provided a deposition where he said the former director stated they do not have legal funds in their budget, they can use their funds as they wish, and suing him does not further their mission of protecting the lake and watershed. He also pointed out the potential of a conflict of interest for a Select Board member. Ms. Gottling noted that this potential exists throughout the Town, with numerous Committee members donating to organizations they vote on.

Chair Wallace asked if any Board member objected to the LSPA being considered as a charitable exemption for the Town. A discussion ensued regarding the concerns Mr. Royce voiced in his letter. Chair Wallace noted the letter has been read and is in the reading file for the public to see. Elizabeth Harper of the LSPA said it is a matter of record that they have filed their taxes. She shared a publication regarding their funding, their mission, and the services they are providing to the community.

**All voted in favor, with Member Hathorn abstaining.**

### **3. APPOINTMENTS**

#### **7:00 – Laura Trow, Welfare Administrator**

Laura Trow appeared before the Board. She noted there have been multiple donations and would like to accept \$5,841 in unanticipated revenue for use in the Food Pantry. She stated their primary goal is to improve the quality of the goods in the Weekend Backpack Program. She said proceeds from Empty Bowl are used for the Christmas program.

**MOTION to accept \$5,841 into the Food Pantry from various donors made by Member Gallup, seconded by Member Trow. All voted in favor.**

### **4. PUBLIC COMMENT:** (Public comments can be heard in full [here](#), beginning at 7:05 p.m.)

- **Tanner Royce**, 23 Central Street, thanked Mr. Hathorn for admitting he did not have time to read the documentation he submitted. He said Ms. Gottling called the LSPA and requested that the director appear at the meeting instead of reading the documentation. He said the LSPA does not have a line item for legal fees in their budget, which is why the former director is quoted as saying funds are fungible. He also said that in the deposition he provided there is discussion regarding why the LSPA is suing his family. He would like the Board to pay attention to these issues. He noted the Board does not have to grant the LSPA the right to act this way and to claim a charitable exemption. He said the LSPA is not using the funds as directed by their mission. He said Ms. Gottling has a conflict of interest in this issue and there are other instances in Town of issues regarding conflict of interest.
- **John Augustine**, 296 Nutting Road (via Zoom), said in recent minutes, it said the Select Board was surprised at the county tax assessment. He was surprised they would be surprised at anything coming out of the county, as the state representatives should be attending all county budget discussions and reporting back. He encouraged the Board to invite Representatives Tanner and Damon to an upcoming Board meeting to explain the large increase in the tax assessment and if this will occur again in the future. He would like to know if they have done anything to mitigate the increase. He also urged the Board to invite the School Superintendent to brainstorm on how the Town and School can work together to lower the operating costs of each organization. He was disappointed that during the discussion on November 7, there was no effort spent on how to be more efficient by working with other organizations. He said in a recent InterTown Record, it was stated the Town Manager said the Riverway properties get a lower property tax assessment because they are seasonal businesses. He does not

believe this is correct and believes there should be a discussion as to whether this is an accurate statement.

- **Chris Whitehouse** reviewed a New Hampshire Department of Justice memo on Right to Know. He said the Town Right to Know form asks for information that is not required by law. He said the delivery aspect of the form is ridiculous and it should be done electronically. He said this is a process of obstruction. Regarding the comment on the form about "you can't prove that it's true," he said it's a public record and the public record is true. He said this needs to be reworded. He asked the Board if the things recommended in the watershed program for Perkins Pond were followed. He said the \$2.3 million spent on the pond is a waste of money.
- **Lisa Hoekstra** said Ms. Martinez and Ms. Wrenn have indicated there have been glitches with the STR management system and that the LSSTRA has heard from some STR owners that they have issues with the registration forms and processes. She said there are issues on both sides of the platform and asked for data on these issues. She would like the Town to collect fact-based information to be able to move forward. She said the Board is not making decisions based on logic. She said the threat of legal action from the Town against STR owners will not work, as case law is on the STR owners' side. She asked if the Town wants to continue to waste money on legal fees, as the cost is already too high. She said the LSSTRA has ideas to help the STR process move forward more smoothly, but they will not share them during public comment. They would like a dialogue with the Town Manager and others to share these ideas. She would like a discussion guided by a professional mediator to bring healing over the STR debate.
- **Peter Hoekstra**, 25 Main Street, asked, regarding demolition permits, how the public can be assured that the hazardous materials in existing structures are removed prior to demolition. He does not think the Town complies by OES requirements. He formally requested \_\_\_\_\_ be put on the agenda to discuss these requirements. He said a report was presented at the Planning/Zoning meeting that appeared to be written by the Upper Valley Lake Sunapee Regional Planning Commission. He confirmed that the report as entered in the agenda was written by a member of the Sunapee ZBA and presented by a member of the Planning Board. He said at the next Planning Board meeting, a 120-day cap for STR will be discussed. He shared data regarding home sales and statistics on STRs from a New Hampshire housing study. He asked that the Town base decisions on real data when discussing new regulations.
- **Christine Corey** said she thinks the wording needs to be changed on the electronic copy authorization on the Right to Know form. She asked if this says that the data may or not be right. She said if the Town is supposed to be responsible for millions of dollars of taxpayers' money, the information the Town is keeping should be 100% correct. She would like the Board to move to reconsider the October 30<sup>th</sup> motion about the voting machines. She does not believe it was clear that there were two options. She would like the voters to decide which machine to use. The second option uses open source data, so there can be no secrets. She said the other machine is Dominion and the Board should do their research on this company.
- **Peter White** asked if the CZCs were approved earlier and Chair White confirmed they were.

## 5. SELECTBOARD ACTION

### Right to Know Policy Review

Ms. Martinez noted this policy was approved by the Board in 2006. It has been reviewed by counsel, who verified it is what it needs to be. She noted that while the Town can provide information, such as a report, it cannot confirm or deny the source of the information. She said the policy is in line with what most other towns do.

She said the intention is to cut down on the number of people looped in on the process as well as cut down the back-and-forth communication. She noted the process is being used for business purposes. The NHMA is aware that towns are receiving more Right to Know requests. They want to ensure the towns are lined up with the RSA as well as making sure extra requests, such as those being used for business purposes and not government transparency, are being handled correctly.

She said a training guide provided by the Mitchell Municipal Group will be integrated into the new HR manual and policies. Department heads and those who communicate with the public need to take the Right to Know training.

The Board asked Ms. Martinez to provide a document for the Board to sign off on, confirming they have reviewed the policy and associated information.

Lisa Hoekstra reiterated the definition of information in the RSA says information provided should include other forms than written. Ms. Martinez said the town has received guidance as to what constitutes a government record. She suggested these discussions could be held in other forums and this meeting is to discuss how the Board would like to move the policy forward.

Chair Wallace asked the Board's opinion of having a Right to Know request online in a unidirectional format. Mr. Trow it should not preclude other ways of sharing the data, such as in person. Ms. Martinez clarified they are attempting to bring more organization to the process. Mr. Trow asked if there is a way to ensure the person requesting the information is the one who receives it, if they do not want to identify themselves. Ms. Martinez said this is not possible.

Ms. Martinez verified that a government record must be in a physical form to be requested, per the RSA.

The Board discussed why information cannot be emailed. Ms. Martinez said the Right to Know law says they are not required to deliver government records other than at the place where they work. She said it is also to ensure equity, that everyone is treated the same. The Board discussed the use of a USB drive to provide the requested information. They agreed to charge for copies in excess of \$10 and not to charge for the USB drive.

**MOTION to readopt the Right to Know Information Request Policy, with the amendments that a USB stick to the tune of \$10 will be provided by the Town or a**

customer can provide their own sealed one, and for printed hard copies, up to \$10 worth of page sides will be provided and beyond that is at the cost of 25 cents per side made by Member Trow, seconded by Member Gallup. All voted in favor.

### **Certificate of Appointment – Jeffrey Kellner, Conservation Commission**

**MOTION to accept the certificate of appointment for Jeffrey Kellner, Conservation Commission, and the resignation of Sylvia Kellner made by Member Trow, seconded by Member Hathorn. All voted in favor.**

## **6. TOWN MANAGER REPORT**

### **Court Date Set**

Docket No. 2023-0189, Appeal of Elizabeth Hoekstra and Peter Hoekstra, Court Date Set: November 29, 2023, at 10:00 a.m.

### **Short-Term Rentals**

Ms. Martinez said they are tracking developments of the Planning Board's amendment to Section 4.95, which would impact the number of rental days, occupancy limits, and Owner-in-Residence / Rent-in-Residence. There is a Planning Board meeting on November 16<sup>th</sup> to discuss this. An upcoming decision will become enforceable the day the Public Hearing is posted in the paper (December 7<sup>th</sup>).

Mr. Gallup asked if the Selectboard could meet with the Planning Board to discuss not enforcing the amendment, to give the process that's in place a chance to work. Mr. Trow noted the Board is reviewing the amendments at their next meeting. He said they can provide input, but he felt it is not the Board's responsibility to tell Planning and Zoning how to do their jobs.

Ms. Martinez reviewed the current STR registrations and the associated deadlines. The Board discussed the difficulties in obtaining registrations.

### **Budget Day Follow-Up Meetings**

Proposed meetings to discuss the budget: November 27 and December 11, 2023. At the November 27<sup>th</sup> meeting, the team coming out of the budget meeting will provide a more comprehensive overview of the Town's approach to compensation.

**2023 Selectboard Meeting Schedule:** November 13 & 27, December 4 & 18

**2024 Selectboard Meeting Schedule:** January 8 & 15, February 5

**Budget Public Hearing:** January 8, 2024

### **FY 2022 Audit**

Ms. Martinez provided hard copies for the Board's review and posted an e-copy online. She noted that many of the same findings have been repeated and suspects that FY23 will be much the same. With complete turnover in the Finance Department (two times over), they

have not been able to cement the changes they want to implement. With a new team in place, they hope to see many good things happen in 2024.

### **Muzzey Hill**

Ms. Martinez shared an update from the DOT regarding Muzzey Hill Road. They expect to begin working on the project in the summer of 2024. They sent a letter seeking feedback concerning any environmental concerns associated with this project. She will reach out to the Conservation Commission to discuss this further.

### **Unanticipated Revenue**

Ms. Martinez reported receipt of \$34,039.23 as part of a one-time road and bridge payment from the State of New Hampshire. A public hearing is needed to accept these funds. These monies may be used to provide services that repair, maintain, and construct municipal bridges; repair class IV and class V roads; advancing sidewalk construction adjacent to a Class V road.

**MOTION to set a Public Hearing at 6:30 p.m. on November 27, 2023, for accepting the block grant in the amount of \$34,039.23 made by Member Trow, seconded by Member Hathorn. All voted in favor.**

### **Warrant Book** **Vote Materials**

There have been 1 survey participants to date. Ms. Wrenn shared the results of these surveys.

### **Of Note**

The Housing Appeals Board commented Allison Treadwell on the completion and presentation of the 1111 certified record and noted that she could give other Towns a course.

The Highway Department was complimented for helping a resident resolve a concern that would hinder their receiving mail from the United States Postal Service.

## **7. SELECTBOARD MEMBERS' REPORT**

Ms. Gottling responded to a statement made that was not true. She did not call the director of the LSPA and ask her to attend the Select Board meeting. She felt the director needed the opportunity to respond.

Mr. Hathorn apologized for not having time to read Mr. Royce's document. He thanked the Highway Department for removing the bump on Prospect Hill Road.

Chair Wallace asked what is causing the rash of accidents on Route 11 in Georges Mills. The Board agreed it is a bad intersection. She noted there has been a lot of discussion regarding conflict of interest and Board members recusing themselves. She does not feel any further discussion is needed. The Board agreed.

## **8. UPCOMING MEETINGS**

- November 14, 2023, Recreation Committee Meeting – 7:00 p.m.
- November 16, 2023, Planning Board Workshop – 6:30 p.m.
- November 16, 2023, Abbott Library Trustees Meeting – 7:00 p.m.
- November 17, 2023, Community Conversation with the Town Manager – Time TBD
- November 27, 2023, Selectboard Meeting – 6:30 p.m.

## **9. ADJOURNMENT**

The meeting was adjourned at 8:37 p.m.

Respectfully submitted,

Beth Hanggeli  
Recording Secretary

Draft



**Revised Estimated Revenues Adjusted**

**Sunapee**

For the period beginning January 1, 2023 and ending December 31, 2023

*In accordance with RSA 21-J:35, the department is notifying you of the following changes in the estimated revenues used in computing the tax rate.*

Account	Source	Estimated Revenue	Change Amount	Estimated Revenue Adjusted
<b>Taxes</b>				
3120	Land Use Change Tax - General Fund	\$6,500	\$0	\$6,500
3180	Resident Tax	\$0	\$0	\$0
3185	Yield Tax	\$1,000	\$0	\$1,000
3186	Payment in Lieu of Taxes	\$0	\$0	\$0
3187	Excavation Tax	\$0	\$0	\$0
3189	Other Taxes	\$0	\$0	\$0
3190	Interest and Penalties on Delinquent Taxes	\$30,000	\$0	\$30,000
9991	Inventory Penalties	\$0	\$0	\$0
<b>Taxes Subtotal</b>		<b>\$37,500</b>	<b>\$0</b>	<b>\$37,500</b>
<b>Licenses, Permits, and Fees</b>				
3210	Business Licenses and Permits	\$1,280	\$0	\$1,280
3220	Motor Vehicle Permit Fees	\$1,020,000	\$0	\$1,020,000
3230	Building Permits	\$60,000	\$0	\$60,000
3290	Other Licenses, Permits, and Fees	\$20,800	\$0	\$20,800
3311-3319	From Federal Government	\$232,000	(\$232,000)	\$0
<b>Licenses, Permits, and Fees Subtotal</b>		<b>\$1,334,080</b>	<b>(\$232,000)</b>	<b>\$1,102,080</b>
<b>State Sources</b>				
3351	Municipal Aid/Shared Revenues	\$0	\$0	\$0
3352	Meals and Rooms Tax Distribution	\$176,553	\$140,762	\$317,315
3353	Highway Block Grant	\$200,000	(\$78,067)	\$121,933
3354	Water Pollution Grant	\$12,000	\$0	\$12,000
3355	Housing and Community Development	\$0	\$0	\$0
3356	State and Federal Forest Land Reimbursement	\$0	\$0	\$0
3357	Flood Control Reimbursement	\$0	\$0	\$0
3359	Other (Including Railroad Tax)	\$0	\$21,921	\$21,921
3379	From Other Governments	\$120,000	\$0	\$120,000
<b>State Sources Subtotal</b>		<b>\$508,553</b>	<b>\$84,616</b>	<b>\$593,169</b>
<b>Charges for Services</b>				
3401-3406	Income from Departments	\$57,000	\$0	\$57,000
3409	Other Charges	\$6,200	\$0	\$6,200
<b>Charges for Services Subtotal</b>		<b>\$63,200</b>	<b>\$0</b>	<b>\$63,200</b>



**Revised Estimated Revenues Adjusted**

Account	Source	Estimated Revenue	Change Amount	Estimated Revenue Adjusted
<b>Miscellaneous Revenues</b>				
3501	Sale of Municipal Property	\$11,000	\$0	\$11,000
3502	Interest on Investments	\$35,000	\$0	\$35,000
3503-3509	Other	\$9,000	\$0	\$9,000
<b>Miscellaneous Revenues Subtotal</b>		<b>\$55,000</b>	<b>\$0</b>	<b>\$55,000</b>
<b>Interfund Operating Transfers In</b>				
3912	From Special Revenue Funds	\$0	\$0	\$0
3913	From Capital Projects Funds	\$0	\$0	\$0
3914A	From Enterprise Funds: Airport (Offset)	\$0	\$0	\$0
3914E	From Enterprise Funds: Electric (Offset)	\$227,683	\$0	\$227,683
3914O	From Enterprise Funds: Other (Offset)	\$0	\$0	\$0
3914S	From Enterprise Funds: Sewer (Offset)	\$1,344,887	\$0	\$1,344,887
3914W	From Enterprise Funds: Water (Offset)	\$627,439	(\$21,921)	\$605,518
3915	From Capital Reserve Funds	\$335,000	\$0	\$335,000
3916	From Trust and Fiduciary Funds	\$0	\$0	\$0
3917	From Conservation Funds	\$0	\$0	\$0
<b>Interfund Operating Transfers In Subtotal</b>		<b>\$2,535,009</b>	<b>(\$21,921)</b>	<b>\$2,513,088</b>
<b>Other Financing Sources</b>				
3934	Proceeds from Long Term Bonds and Notes	\$0	\$2,148,000	\$2,148,000
<b>Other Financing Sources Subtotal</b>		<b>\$0</b>	<b>\$2,148,000</b>	<b>\$2,148,000</b>
<b>Total Revised Estimated Revenues and Credits</b>		<b>\$4,533,342</b>	<b>\$1,978,695</b>	<b>\$6,512,037</b>



**Revised Estimated Revenues Summary**

	Estimated	Change Amount	State Adjusted
<b>Subtotal of Revenues</b>	<b>\$4,533,342</b>	<b>\$1,978,695</b>	<b>\$6,512,037</b>
Unassigned Fund Balance (Unreserved)	\$3,235,866	(\$471,939)	\$2,763,927
(Less) Emergency Appropriations (RSA 32:11)	\$0	\$0	\$0
(Less) Voted from Fund Balance	\$3,800	\$0	\$3,800
(Less) Fund Balance to Reduce Taxes	\$850,000	\$0	\$850,000
Fund Balance Retained	\$2,382,066	(\$471,939)	\$1,910,127
<b>Total Revenues and Credits</b>	<b>\$5,387,142</b>	<b>\$1,978,695</b>	<b>\$7,365,837</b>
<b>Requested Overlay</b>	<b>\$0</b>	<b>\$300,000</b>	<b>\$300,000</b>

**Assessment Overview**

Total Appropriations	\$12,393,363
(Less) Total Revenues and Credits	\$7,365,837
<b>Net Assessment</b>	<b>\$5,027,526</b>

**Explanation of Adjustments**

Account	Reason for Adjustment	Warrant Number
3311-3319	ACCEPTED AS UNANTICIPATED REV	
3352	STATE REVENUE	16
3353	STATE REVENUE	16
3359	WTR FILT	
3914W	=MS232 #4914W-WTR FILT	16
3934	W/A #2	,02

**TAX COLLECTOR'S WARRANT  
PROPERTY TAX LEVY  
STATE OF NEW HAMPSHIRE**

**Sullivan ss.**

**TO: JOSHUA BOONE , Collector of Taxes for Sunapee, New Hampshire in said county.**

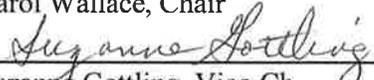
In the name of the State you are hereby directed to collect the property taxes in the list herewith committed to you, amounting to the sum of Twelve Million Six Hundred Fifty Two Thousand Seven Hundred Ninety Nine Dollars (\$12,652,799.00) and with interest at eight (8%) percent per annum from December 21, 2023 thereafter, on all sums not paid on or before that day.

And we further order you to remit all monies collected to the Town Treasurer, or to the Town Treasurer's designee as provided by RSA 41:29, VI, at least on a weekly basis, or daily whenever tax receipts total One Thousand Five Hundred Dollars (\$1,500.00) or more.

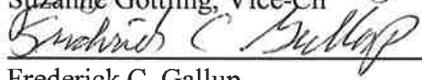
Given under our hands at Sunapee, New Hampshire, this Seventeenth day of November in 2023.

  
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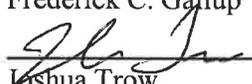
Carol Wallace, Chair

  
\_\_\_\_\_

Suzanne Gottling, Vice-Ch

  
\_\_\_\_\_

Frederick C. Gallup

  
\_\_\_\_\_

Joshua Trow

\_\_\_\_\_

Jeremy Hathorn

Board Of Selectmen  
Sunapee, New Hampshire



<b>2023</b> <b>\$9.68</b>
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## Tax Rate Breakdown Sunapee

Municipal Tax Rate Calculation			
Jurisdiction	Tax Effort	Valuation	Tax Rate
Municipal	\$5,148,345	\$2,396,653,812	<b>\$2.15</b>
County	\$5,243,175	\$2,396,653,812	<b>\$2.19</b>
Local Education	\$10,094,815	\$2,396,653,812	<b>\$4.21</b>
State Education	\$2,678,474	\$2,365,856,812	<b>\$1.13</b>
<b>Total</b>	<b>\$23,164,809</b>		<b>\$9.68</b>

Village Tax Rate Calculation			
Jurisdiction	Tax Effort	Valuation	Tax Rate
<b>Total</b>			

Tax Commitment Calculation	
Total Municipal Tax Effort	\$23,164,809
War Service Credits	(\$75,000)
Village District Tax Effort	
<b>Total Property Tax Commitment</b>	<b>\$23,089,809</b>

 Sam Greene Director of Municipal and Property Division New Hampshire Department of Revenue Administration	11/17/2023
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# Appropriations and Revenues

## Municipal Accounting Overview

Description	Appropriation	Revenue
Total Appropriation	\$12,393,363	
Net Revenues (Not Including Fund Balance)		(\$6,512,037)
Fund Balance Voted Surplus		(\$3,800)
Fund Balance to Reduce Taxes		(\$850,000)
War Service Credits	\$75,000	
Special Adjustment	\$0	
Actual Overlay Used	\$45,819	
<b>Net Required Local Tax Effort</b>	<b>\$5,148,345</b>	

## County Apportionment

Description	Appropriation	Revenue
Net County Apportionment	\$5,243,175	
<b>Net Required County Tax Effort</b>	<b>\$5,243,175</b>	

## Education

Description	Appropriation	Revenue
Net Local School Appropriations	\$12,773,289	
Net Cooperative School Appropriations		
Net Education Grant		\$0
Locally Retained State Education Tax		(\$2,678,474)
<b>Net Required Local Education Tax Effort</b>	<b>\$10,094,815</b>	
State Education Tax	\$2,678,474	
State Education Tax Not Retained	\$0	
<b>Net Required State Education Tax Effort</b>	<b>\$2,678,474</b>	

## Valuation

### Municipal (MS-1)

Description	Current Year	Prior Year
Total Assessment Valuation with Utilities	\$2,396,653,812	\$1,481,348,412
Total Assessment Valuation without Utilities	\$2,365,856,812	\$1,456,025,412
Commercial/Industrial Construction Exemption	\$0	\$0
Total Assessment Valuation with Utilities, Less Commercial/Industrial Construction Exemption	\$2,396,653,812	\$1,481,348,412

### Village (MS-1V)

Description	Current Year
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# Sunapee

## Tax Commitment Verification

### 2023 Tax Commitment Verification - RSA 76:10 II

Description	Amount
Total Property Tax Commitment	\$23,089,809
1/2% Amount	\$115,449
Acceptable High	\$23,205,258
Acceptable Low	\$22,974,360

If the amount of your total warrant varies by more than 1/2%, the MS-1 form used to calculate the tax rate might not be correct. The tax rate will need to be recalculated. Contact your assessors immediately and call us at 603.230.5090 before you issue the bills. See RSA 76:10, II

<b>Commitment Amount</b>	
Less amount for any applicable Tax Increment Financing Districts (TIF)	
<b>Net amount after TIF adjustment</b>	

**Under penalties of perjury, I verify the amount above was the 2023 commitment amount on the property tax warrant.**

<b>Tax Collector/Deputy Signature:</b>	<b>Date:</b>
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## Requirements for Semi-Annual Billing

### Pursuant to RSA 76:15-a

76:15-a Semi-Annual Collection of Taxes in Certain Towns and Cities - I. Taxes shall be collected in the following manner in towns and cities which adopt the provisions of this section in the manner set out in RSA 76:15-b. A partial payment of the taxes assessed on April 1 in any tax year shall be computed by taking the prior year's assessed valuation times 1/2 of the previous year's tax rate; provided, however, that whenever it shall appear to the selectmen or assessors that certain individual properties have physically changed in valuation, they may use the current year's appraisal times 1/2 the previous year's tax rate to compute the partial payment.

Sunapee	Total Tax Rate	Semi-Annual Tax Rate
Total 2023 Tax Rate	\$9.68	\$4.84

### Associated Villages

No associated Villages to report

## Fund Balance Retention

<b>Enterprise Funds and Current Year Bonds</b>	<b>\$4,326,088</b>
<b>General Fund Operating Expenses</b>	<b>\$26,083,739</b>
<b>Final Overlay</b>	<b>\$45,819</b>

DRA has provided a reference range of fund balance retention amounts below. Please utilize these ranges in the determination of the adequacy of your municipality's unrestricted fund balance, as currently defined in GASB Statement 54. Retention amounts, as part of the municipality's stabilization fund policy [1], should be assessed dependent upon your governments own long-term forecasts and special circumstances. Please note that current best practices published by GFOA recommend, at a minimum, that "...general purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures." [2],[3]

[1] The National Advisory Council on State and Local Budgeting (NACSLB), (1998), *Framework for Improved State and Local Government Budgeting: Recommended Budget Practices (4.1)*, pg. 17.

[2] Government Finance Officers Association (GFOA), (2015), *Best Practice: Fund Balance Guidelines for the General Fund.*

[3] Government Finance Officers Association (GFOA), (2011), *Best Practice: Replenishing General Fund Balance.*

2023 Fund Balance Retention Guidelines: Sunapee	
Description	Amount
<b>Current Amount Retained (7.32%)</b>	<b>\$1,910,127</b>
17% Retained <i>(Maximum Recommended)</i>	\$4,434,236
10% Retained	\$2,608,374
8% Retained	\$2,086,699
5% Retained <i>(Minimum Recommended)</i>	\$1,304,187

APPLICATION FOR USE OF TOWN OF SUNAPEE FACILITIES

Area (Circle One): BenMere/Bandstand – Coffin Park - Dewey Beach - Georges Mills Harbor – Safety Services Building--Sunapee Harbor-Tilton Park

Lower Main St. parade (Between SMHS and SLES)

Name of Organization:

make A Wish - LaPorte family (Parade for PJ)

This Organization is: Non-Profit – Political –Private (N/A for profit companies)

Steve Bourque / Jane Williamson

Name of Duly Authorized:

Mailing Address:

Daytime Phone:

(607) 721-4071

Evening Phone:

I/We hereby apply for permission to use the above circled Town facility on:

Event Date:

11/20/23

Time: From:

12:30p

To:

1:00pm

Please describe the complete details of the event:(If advertising please include ad or flyer)

\*include a list of outside vendors that will be part of your event.

Requested to have a parade for Sunapee Elementary School student PJ Laporte Jr. He was selected for Make A Wish to go on a trip to Disney. They wanted to celebrate him with a parade w/ school, fire & police.

I/We acknowledge understanding the following restrictions:

down Lower Main Street.

(1) If this event will likely bring more than 50 people or 20 cars to the area, the applicant must first submit this application to the Chief of Police. The Chief of Police may require the applicant to hire police officer(s) for crowd or traffic control.

(2) I/We agree to abide by the Town of Sunapee's Recreation Area Ordinance, which controls conduct and uses of this area.

(3) The applicant shall indemnify and hold the Town of Sunapee, its employees, agents, and representatives harmless from any and all suits, actions, claims, in equity or at law, for damages asserted by any attendees at such function, or other third parties, resulting from the use of the premises, or from

[EXTERNAL]FW: FW: [EXTERNAL]FW: Dewey Woods Project - Update

Van Webb <vanowebb@gmail.com>

Fri 11/17/2023 7:54 AM

To: Town Manager <manager@town.sunapee.nh.us>; Allyson Traeger <allyson@town.sunapee.nh.us>

Cc: 'Matthias Nevins' <mnevins@meadowsendco.com>

**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.

Shannon-

So you have some point of reference on the timber tax issue I am sending you an estimate of what we would project for revenue for the town.



**Van Webb**

NH Licensed Forester #58

524 Stagecoach Road  
Sunapee, NH 03782  
O: 603.863.6493 | C: 603.543.7518

[website](#) | [facebook](#) | [instagram](#)

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**From:** Matthias Nevins <mnevins@meadowsendco.com>  
**Sent:** Thursday, November 16, 2023 7:38 AM  
**To:** Van Webb <vanowebb@gmail.com>; 'Timothy Fleury' <timothyfleury@gmail.com>  
**Subject:** RE: FW: [EXTERNAL]FW: Dewey Woods Project - Update

Hi All,

I think it would be fair to say the timber tax would be around \$200 based on the volume I estimated and the most recent stumpage report for the central region.

<i>Species</i>	<i>Product</i>	<i>Sale Volume</i>	<i>Unit</i>	<i>Stumpage</i>	<i>Estimated value</i>
White pine	Sawlog	6	MBF	\$ 150.00	\$ 900.00
White pine	Box	2	MBF	\$ 15.00	\$ 30.00
Hemlock	Sawlog	0.5	MBF	\$ 30.00	\$ 15.00
White ash	Sawlog	2	MBF	\$ 200.00	\$ 400.00
Red oak	Sawlog	2	MBF	\$ 200.00	\$ 400.00

Red maple	Sawlog	1	MBF	\$ 80.00	\$ 80.00	
Other hardwood	Pallet	2	MBF	\$ 35.00		70.00
<b>Total Sawlogs</b>		<b>15.5</b>	<b>MBF</b>		\$	-
Hardwood	Firewood	11.5	Tons/cords	\$ 10.00	\$	115.00
Softwood	Pulp	30	Tons	\$ 1.00	\$ 30.00	
Mixed	Chips	90	Tons	\$ 0.25	\$ 22.50	
<b>Total pulp</b>		<b>150</b>	<b>Tons</b>		\$	
				TOTAL	2,062.50	
				%10 Tax	206.25	



**Matthias Nevins**  
Forester

New Hampshire Licensed Forester #518  
 Vermont Licensed Forester #148.0134027  
 NRCS Certified Technical Service Provider #21-23611  
**Mobile:** 603.568.7480  
**Office:** 603.526.8686  
 420 Main Street  
 P.O. Box 966  
 New London NH, 03257  
[mnevins@meadowsendco.com](mailto:mnevins@meadowsendco.com)  
[meadowsendco.com](http://meadowsendco.com)

Cordell A.  
Johnston

Attorney at Law

P.O. Box 252  
Henniker, NH 03242  
603-748-4019  
cordell@cajohnston.com

November 14, 2023

VIA ELECTRONIC MAIL AND FIRST-CLASS MAIL

Elizabeth Menard, Clerk  
Housing Appeals Board  
Johnson Hall, 107 Pleasant Street  
Concord, NH 03301

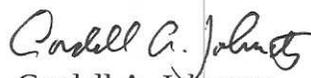
*Re: Case No. ZBA 2023-21, KTP Cottage, LLC v. Town of Sunapee*

Dear Ms. Menard:

Enclosed for filing in this case are the original and three copies of the Town of Sunapee's Pre-Hearing Memorandum. A copy has been sent by e-mail and first-class mail to Roy W. Tilsley, Jr., and A. Eli Leino, counsel for the applicants.

Thank you for your attention, and please let me know if anything further is needed.

Sincerely,

  
Cordell A. Johnston

cc: Roy W. Tilsley, Jr., Esq.  
A. Eli Leino, Esq.  
Shannon Martinez, Town Manager

STATE OF NEW HAMPSHIRE

HOUSING APPEALS BOARD

Case No. ZBA-2023-21

KTP Cottage, LLC

v.

Town of Sunapee

**TOWN OF SUNAPEE'S PRE-HEARING MEMORANDUM**

NOW COMES the Town of Sunapee (the "Town"), by and through its attorney, and submits this memorandum of law in advance of the November 21, 2023, hearing on the merits in this matter.

**Summary**

This is an appeal pursuant to RSA 677:4 and RSA 679:7 of a decision of the Town's zoning board of adjustment ("ZBA") denying the petitioner's request for a rehearing of the ZBA's denial of three variances. The ZBA reasonably considered the facts of the case and the statutory variance criteria and found that the application did not satisfy the criteria. The board did not commit an error of law, and its decision was reasonable. Therefore, the ZBA's decision should be upheld.

**Background**

The petitioner owns a 0.33-acre lot (the "Property") in the Town's Rural Residential zoning district. The Property currently contains an approximately 2,394-square-foot single-story, single-family home. The existing building is non-conforming with respect to setback

requirements under the Town’s zoning ordinance (the “Ordinance”), both from an adjacent property and from its frontage on Lake Sunapee. The petitioner proposed replacing the existing home with a much larger one, approximately 3,974 square feet and 33 feet tall. The proposal would expand the building footprint, although it would also reduce, very slightly, the encroachment into the side setback and the waterfront setback. *See* Certified Record (hereinafter “CR”) at 9-10.

The petitioner requested variances because the new building would encroach into the 15-foot side setback and the 50-foot waterfront setback.<sup>1</sup> In addition, while the Ordinance’s general height limit is 40 feet, it is 25 feet for properties that are allowed a reduced setback because of inadequate lot size, which is the case with the Property. Thus, the petitioner also sought a variance from the 25-foot height limit. *See id.* The ZBA denied the variances because it found that (1) the variances would violate the spirit of the ordinance; (2) the petitioner had not established an unnecessary hardship; and (3) the variances would diminish the values of surrounding properties. *See id.* at 218-20.

### **Standard of Review**

In an appeal from a decision of a land use board, “[t]he [Housing Appeals] board shall not reverse or modify a decision except for errors of law or if the board is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.” RSA 679:9. Thus, the question is not whether the Housing Appeals Board might have made a different decision. The question is whether the ZBA could reasonably have reached the decision it did based on the evidence before it, even if someone else might have reached a different decision.

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<sup>1</sup> The house on the Property is a pre-existing non-conforming structure. If the petitioner were proposing to replace the house in the same or smaller building envelope, setback variances would not be required, “provided the new structure stays within the horizontal footprint of the existing structure.” *See* Ordinance § 6.12, CR at 126. Because the new house is not within the existing footprint, variances are required for both the side setback and the waterfront setback.

*See Appeal of Chichester Commons*, 175 N.H. 412, 416 (2022) (“The HAB's review is not whether it agrees with the . . . board's findings, but, rather, whether there is evidence in the record upon which the . . . board could have reasonably based its findings.”).

### **Argument**

#### **The ZBA Acted Reasonably in Denying the Variance.**

A zoning board of adjustment should grant a variance if:

- (A) The variance will not be contrary to the public interest;
- (B) The spirit of the ordinance is observed;
- (C) Substantial justice is done;
- (D) The values of surrounding properties are not diminished; and
- (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

RSA 674:33, I(a)(2). An applicant for a variance “bears the burden of demonstrating that all five criteria are met.” *Perreault v. Town of New Hampton*, 171 N.H. 183, 186 (2018). If the applicant fails to establish any one or more of the criteria, the variance should be denied. *See id.* at 189-90. Thus, if the ZBA could reasonably have found that any one of the criteria was not established, its denial of the variances was proper.

#### **A. The Board Could Reasonably Have Found that the Variances Would Violate the Spirit of the Ordinance.**

One reason for the ZBA’s denial of the variances was a finding that granting them would violate the spirit of the Ordinance. Three members of the board expressly cited this in voting to deny the variances, *see* CR at 218-20, and a fourth cited it implicitly, *see id.* at 219 (statement of member David Munn, agreeing with Chairman Claus’s vote “just the way you’ve answered it”).

The test for whether a variance conflicts with the spirit of a zoning ordinance is whether it would “unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Perreault*, 171 N.H. at 186. The obvious “zoning

objective” of the setback requirements in the Ordinance, as in any zoning ordinance, is to prevent overcrowding, which the supreme court has recognized as a legitimate purpose. *See id.* at 188.

1. The Proposal Violates the Ordinance’s Basic Zoning Objectives.

The court in *Perreault* upheld a ZBA decision denying a variance to place a shed within a 20-foot-wide setback on a 0.3-acre lot on the shore of Lake Waukegan. The court held that “the ZBA did not act unreasonably or unlawfully when it ‘focused on the aesthetic environment of the neighborhood and the desire to avoid the appearance of overcrowding’” in determining that the variance would violate the spirit of the ordinance. *See id.* (quoting superior court decision). The ZBA had found that granting the variance would jeopardize one of the purposes of the setback requirements: preventing overbuilding on lots. The court upheld this finding. *See id.* at 189.

Similarly, in *Nine A, LLC v. Town of Chesterfield*, 157 N.H. 361 (2008), a landowner wanted to subdivide a parcel on Spofford Lake into several lots that would not meet the zoning district’s minimum lot size or frontage requirements. The ZBA denied the variances, and the superior court affirmed the denial, noting that the town had adopted the overlay district specifically to protect the lake from over-development. *See id.* at 368. In affirming the superior court’s decision, the supreme court stated that the lot size and frontage requirements “evidence an intent to reduce the density of buildings in that region. . . . [The proposed development] would contribute to lakeside congestion and overdevelopment. . . . The ZBA could reasonably have found that proposal to be contrary to the public interest and inconsistent with the spirit of the ordinance.” *Id.* at 368-69.

In contrast, the court has upheld the granting of variances, or has reversed the denial of variances, in cases where the proposed use did not conflict with the goals the zoning restriction was intended to achieve, or where the neighborhood had evolved in such a way that the

restriction no longer served its purpose. *See, e.g., Labrecque v. Salem*, 128 N.H. 455, 459 (1986) (spirit of ordinance not violated by variance allowing commercial use in residential district where proposed use was less intense than what was allowable on surrounding lots); *U-Haul Co. v. Concord*, 122 N.H. 910, 912-13 (1982) (spirit of ordinance would not be violated by one apartment for resident manager of commercial property, given that apartment would have less impact than multi-family dwellings, which were permitted in the district); *Belanger v. Nashua*, 121 N.H. 389, 393 (1981) (variance to allow expansion of real estate office in residential district would not violate spirit of ordinance where neighborhood had undergone significant change from the time it was zoned for single-family residential use).

The present case has nothing in common with the latter cases and everything in common with *Perreault* and *Nine A*. Like those cases, this one involves an ordinance intended to prevent overbuilding on small lots, especially in the vicinity of Lake Sunapee. Building a larger, taller house in the setback is in direct conflict with that purpose.

## 2. The Proposal Would Not Reduce the Nonconformity With the Ordinance.

The petitioner has consistently argued that “the Proposal *reduces* the overall nonconformity on the Property,” and therefore is “intrinsically consistent with the spirit of the ordinance.” Petition ¶ 26 (emphasis in original). The supreme court has rejected this argument, stating that although there may be situations where reducing the nonconformity with an ordinance indicates that the spirit of the ordinance is observed, this is not necessarily the case. If it were, a property owner could “put a property to any nonconforming use, regardless of the intent of the ordinance.” *Nine A*, 157 N.H. at 367.

Moreover, the ZBA could reasonably have found that the development would *not* reduce the overall nonconformity. Although the proposal moves the house back a few feet from the lake

and makes a very slight reduction in the square footage within the side setback, *see* CR at 20, it also creates a new nonconformity—the violation of the height limit. Thus, the claim of a reduced nonconformity is debatable at best.

Further, while the proposal reduces the footprint within the side setback, it moves the house closer to the building on the abutting lot, and it increases the height, and therefore the volume, of the building within the setback. At the hearing, abutter Brad Nichols (“Unidentified Speaker”) explained, “The request states that less area in side lot setback, and they're talking about 55 square feet. The height is increasing the cubic footage inside the setback, and the total living area when you're talking about cubic footage, the height is going from the 17 foot high building to a, someone said 27, 28 feet, a two-story building, and that's putting a lot of area right against our property line.” CR at 207-08. The petitioner never disputed that statement.

Thus, to suggest that the proposal reduces the nonconformity is at best an incomplete statement. As far as the effect on neighbors and the intent of the ordinance, the proposal appears to increase the nonconformity, at least in “spirit,” by putting more building volume closer to the neighbors’ house. In light of that, the ZBA certainly could reasonably find that granting the variances would violate the spirit of the ordinance. While it is possible that a reasonable person could disagree, it cannot be said that the board’s decision on this point was unreasonable. The board’s finding on this criterion was enough, by itself, to require denial of the variance and is sufficient to sustain the board’s decision.

**B. The Board Could Reasonably Have Found that There Was No Unnecessary Hardship.**

**1. The Board Did Not Apply the Wrong Hardship Standard.**

The petitioner’s first argument on the hardship criterion is that the ZBA applied the wrong standard to determine unnecessary hardship. The petitioner states:

The Board's decision on whether there would be an unnecessary hardship focused [on] whether the Proposal "was a need or a want" as Board members characterized it. The Board found there was not a hardship because the Applicant did not "need" to replace the Existing Residence or, alternatively, could replace the Existing Residence with a structure of a different design that did not require variances.

See Petition for Appeal ¶ 23.

It is true that the hardship standard does not require proof that the applicant is unable to use the property without a variance. It *used* to be the law that the unnecessary hardship standard required proof that the property owner could not make any reasonable use of the property without a variance. See *Governor's Island Club v. Gilford*, 124 N.H. 126, 130 (1984), *overruled by Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001). Since the *Simplex* decision and a 2009 statutory amendment, "unnecessary hardship" means that, "owing to special conditions of the property that distinguish 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." RSA 674:33, I(b)(1).

It is also true that one ZBA member made several references to whether the petitioner "needed" the variance or merely "wanted" the variance, *see* CR at 168, 216, and that other members used some imprecise language when discussing the hardship standard, *see id.* at 189-91. There is also language in the board's decision, *see id.* at 53, indicating that "viable alternatives exist" without the need for the variances, which admittedly is not the standard. It is not surprising or unusual that a board of five volunteer laypersons would struggle with the language of unnecessary hardship, which is a complicated subject even for lawyers. But what matters here is that to the extent any board members may have misunderstood or misstated the standard, that did not affect the outcome of the case.

What all of the members did clearly and correctly understand was that the first step in proving unnecessary hardship is to demonstrate, as the statute requires, that there are “special conditions of the property that distinguish it from other properties in the area.” RSA 674:33, I(b)(1). If the applicant cannot demonstrate “special conditions,” that is the end of the inquiry—there is no unnecessary hardship, regardless of the reasonableness of any existing or proposed use. *See Garrison v. Town of Henniker*, 154 N.H. 26, 32-35 (2006) (superior court properly reversed ZBA’s grant of variance where property owner failed to establish uniqueness of property).

The board members in this case followed the law, concluding that there were no special conditions, and therefore no hardship. Board member Jamie Silverstein stated, “[I]t really doesn’t matter how reasonable, and I put that in quotes, the use can be or may be. Without special conditions there is no hardship. And if the land does not have any special conditions, we can’t even get to the hardship discussion.” CR at 213. She made the same statement a minute later. *See id.* at 213-14 (“But we don’t even get to that [hardship] test until we establish that there are special conditions.”) Chairman Claus (whose name is misspelled in the transcript) made similar observations. *See id.* at 179 (“But what I think we’re all kind of struggling with is the hardship here because we are not seeing that what’s unique.”); *id.* at 192-93.

Later, Ms. Silverstein moved to deny the variances. In voting for her own motion, she said, “I don't feel the applicant has established special conditions of the property that distinguish it from other properties in the area. And that's pretty much where the test ends. It's not even about hardship. There's nothing to distinguish this property from the other properties.” *Id.* at 218. Chairman Claus said that he agreed and voted to deny the variances, as did other board members, for that reason among others. *See id.* at 218-20.

Thus, even if there was some confusion about the “reasonableness” element of the hardship standard, it did not matter, because the board did not need to get to that issue. If it could reasonably find that there were no special conditions of the property, it could properly conclude that there was no unnecessary hardship.

2. The ZBA Could Reasonably Have Found There Were No Special Conditions.

The New Hampshire Supreme Court has explained the “special conditions” requirement as follows:

The [hardship] factor "requires a determination of whether the hardship is a result of the unique setting of the property." The applicant must show that "the hardship is a result of specific conditions of the property and not the area in general." The property must be "burdened by the zoning restriction in a manner that is distinct from other similarly situated property." While this does not require that the property be the only such burdened property, "the burden cannot arise as a result of the zoning ordinance's equal burden on all property in the district." The burden must "arise from the property and not from the individual plight of the landowner."

*Garrison*, 154 N.H. at 32-33 (citations omitted) (quoting *Harrington v. Town of Warner*, 152 N.H. 74, 80-81 (2005)).

The petitioner in this case claimed that the Property had several “special conditions”: (1) its small size; (2) its wedge shape; (3) its location next to a much larger property; (4) the “deteriorating” condition of the existing house; and (5) the slope of the property. *See* CR at 60-62 (Motion for Rehearing), 174-76 (ZBA hearing transcript). However, the ZBA could reasonably have concluded that these factors did not constitute “special conditions” sufficient to satisfy the hardship test.

(a) Small Size.

The Property is small – 0.33 acre – but so are many of the lots in its vicinity. The maps filed by the petitioner, *see* CR at 69-70 (Exhibit 1 to Motion for Rehearing), appear to show that most of the lots in the area are that size or smaller. In fact, of the first six lots to the east of the

Property, five are the same size or smaller, and one is only slightly larger—0.39 acre. *See id.* at 69. There are well over a dozen more within a quarter-mile that are the same size or smaller. *See id.* at 70. Although there is no clear statement in the statute or case law as to what constitutes the relevant “area” for purposes of the “special conditions” test, a reasonable person looking at these maps could certainly conclude that the size of the petitioner’s lot did not “distinguish it from other properties in the area.”

(b) Wedge Shape.

Every one of the first six lots to the east of the Property is wedge-shaped, *see id.* at 69, as are many others in the area, *see id.* at 70. Again, a reasonable person could conclude that the Property’s wedge shape did not distinguish it from other properties in the area.

(c) Location Next to a Larger Property.

The petitioner argued before the ZBA that one of the special conditions of the Property is that the lot immediately to the west (Lot 43 on the map, *see id.* at 69) is much larger, and “the building on that lot is not in immediate proximity to the building site on the Property,” so that encroaching on the setback does not create the same concern about crowding that would exist with a smaller lot on that side. *See id.* at 61 (Motion for Rehearing), 182, 193 (hearing transcript). This is an unusual argument. The Town is not aware of any case that has recognized the size of a *neighboring* property as a special condition, and this board would be breaking new ground by recognizing such a possibility.

Further, although the neighboring lot is more than twice the size of the Property, it is still a small, non-conforming lot: 0.83 acre in a district with a minimum lot size of 1.5 acres. *See* Ordinance section 3.10, CR at 95. While the house on that lot is not “in immediate proximity” to the proposed building site on the Property, it is actually almost on the line between the two

properties, *see* CR at 69, and the petitioner’s proposal would move his house *closer* to the neighbors’ house. The owners of Lot 43 stated at the hearing that if they ever chose to rebuild on their property, they would want to do so in the area close to where the petitioner was proposing to build his expanded house. Thus, granting the variances *would* create the same concern with crowding that the setback requirements were designed to avoid.

(d) “Deteriorating” Condition of Existing House.

This is another unusual argument. Again, the Town is not aware of any case that has categorized a building’s deteriorating condition as a special condition that can establish an unnecessary hardship. If this were permitted, any property owner could establish a hardship merely by letting the property fall into disrepair. This makes no sense.

(e) Slope of the Property.

The petitioner talked about the steep slope of the Property as a “special condition,” *see id.* at 175, 193, and it certainly is possible that a property’s slope could constitute a special condition for purposes of the variance standard. The problem is that the petitioner never proved, or even claimed, that the slope of the Property was any greater or more burdensome than that of any other property in the area. The “special conditions” of the property must be such as to “distinguish it from other properties in the area.” RSA 674:33, I(b)(1). They must make the property “unique in its surroundings.” *Garrison*, 154 N.H. at 35.

Here, the petitioner claimed that the steep slope made complying with the ordinance difficult, but offered no evidence that the difficulty was any greater than it would be for any other property in the area. For all anyone knows, surrounding properties may have steeper slopes—there simply was no evidence on this point. In the absence of such evidence, the ZBA not only *could* find that the slope was not a special condition, it was required to do so.

(f) Summary.

Every applicant for a variance can identify some characteristics of his or her property that are unusual. In *Bacon v. Town of Enfield*, 150 N.H. 468 (2004), two dissenting justices argued that “[t]he fact that other properties in the zoning district contain some or even all of the same characteristics does not negate a particular property's uniqueness” – in essence, it doesn’t matter whether all other properties have the same conditions. *Id.* at 482. Had this view ever been adopted by the full court, it “would have effectively eviscerated the statute’s ‘special conditions’ requirement.” 15 P. Loughlin, *New Hampshire Practice: Land Use Planning and Zoning*, § 24.20 (LexisNexis Matthew Bender) (4th ed.). But the court firmly rejected it in *Garrison* and other cases. The property must be "burdened by the zoning restriction in a manner that is distinct from other similarly situated property."

The petitioner did his best to identify characteristics of the Property that could qualify as “special conditions,” but failed to prove that these characteristics resulted in a burden on the Property that is any greater than on surrounding properties. While a reasonable person might have concluded that the Property had special conditions that met the hardship standard, it certainly was not unreasonable for the ZBA to conclude that it did not. Because the board reasonably concluded that there were no special conditions, it was reasonable to find that there was no unnecessary hardship, and this alone justified denial of the variances.

D. The ZBA Could Reasonably Have Found that Surrounding Property Values Would Be Diminished.

“The variance applicant bears the burden of demonstrating that all five criteria are met.” *Perreault*, 171 N.H. at 186. This includes demonstrating that the values of surrounding properties will not be diminished.

1. The Only Evidence on this Issue Supported the Board's Decision.

The petitioner did not offer any evidence, either before or during the hearing, about the effect of the proposal on surrounding property values. The variance application merely included a statement that the development would, if anything, improve surrounding property values by replacing a deteriorating building with a newer, more aesthetically pleasing building. *See* CR at 12. The petitioner did not even address the issue at the hearing.

In contrast, there was testimony from an abutter that the development would negatively affect his property. Mr. Nichols stated, “We view that increased cubic footage in the setback as doing harm to our property.” *Id.* at 208; *see also id.* at 210 (“We think that increasing the cubic footage in the offset is doing harm to our property, and we are opposed.”) Although he did not explicitly use the words “property value,” any “harm” to one’s property would necessarily affect the property’s value.

The supreme court has recognized that the opinions of neighboring property owners are relevant on this criterion. *See U-Haul Co.*, 122 N.H. at 912 (where no surrounding property owners objected to variance, this was “some indication” of effect on property values). Here, the opinion of the abutter was the only evidence offered. This was sufficient for the board to find that there could be a diminution in property values. *See Harborside Assocs. v. Parade Residence Hotel*, 162 N.H. 508, 519 (2011) (it is for the ZBA to resolve conflicts in evidence regarding effect on property values).

“In reaching its decision, the ZBA was also entitled to rely upon its own knowledge, experience and observations.” *Id.*; *accord Nestor v. Town of Meredith Zoning Board of Adjustment*, 138 N.H. 632, 636 (1994). The ZBA in this case did that. In voting to deny the variances, member James Lyons stated:

I am concerned about the value of the surrounding properties. Certainly to go from a home that is 17 feet high on my property line to one that is 27, 28 feet high is going to affect what I do with that property. It certainly would affect a neighbor or if I decide to sell the property. Someone's like, "That's guy's looking right into my living room"; so I'd be concerned about that.

CR at 219-20. That is a reasonable conclusion an ordinary person is entitled to make based upon his experience and observations as a homeowner. Chairman Claus also said that it "would diminish surrounding property values . . . because of proximity and the side setbacks," *id.* at 218-19, and member David Munn agreed, *see id.* Especially given that the petitioner offered no evidence to the contrary, this was a proper basis for the board to conclude that the petition had failed to meet his burden on this issue.

## 2. Testimony from Real Estate Agents Was Too Late to be Considered.

With his motion for rehearing, the petitioner offered letters from two real estate agents expressing the opinion that the proposed redevelopment would not diminish surrounding property values. *See* CR at 75-78. However, this evidence was presented too late to be considered, and the rehearing was properly denied.

The purpose of the rehearing process is to give the ZBA the "opportunity to pass upon any alleged errors in its decisions." *Fisher v. Boscawen*, 121 N.H. 438, 440 (1981); *accord Pelletier v. City of Manchester*, 150 N.H. 687, 690 (2004). It is not to afford parties an opportunity to present evidence they could have presented at the first hearing. Otherwise, there would be no finality to the process.

As a general rule, rehearings should be granted only if the petitioner can demonstrate that the board committed technical error or that there is new evidence ***that was not available at the time of the first hearing***. Such new evidence should reflect a change in conditions which occurred subsequent to the original hearing or which was unavailable at the time of the original hearing. It should not be evidence which was available but not produced due to [the] applicant's lack of preparation.

15 P. Loughlin, *supra*, § 21.18 (emphasis added); *see also* N.H. Department of Business and Economic Affairs, *The Zoning Board of Adjustment in New Hampshire—A Handbook for Local Officials* at IV-3 (2022) (“[N]o purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce *new evidence that was not available to him at the time of the first hearing.*”) (emphasis added).

The only evidence on property values offered at the hearing came from the abutter, and, as the supreme court has stated, ZBA members may rely on their own knowledge on this issue. Because there was no evidence to support the claim that the variances would not diminish surrounding property values, the ZBA’s finding that this criterion was not satisfied was reasonable. On this basis alone, it was proper for the ZBA to deny the variances.

### Conclusion

The ZBA denied the petitioner’s requested variances because it found that (1) the variances would violate the spirit of the Ordinance; (2) the petitioner did not identify “special conditions” of the property and thus failed to establish an unnecessary hardship; and (3) granting the variances would diminish the value of surrounding properties. While it is conceivable that others might have reached different conclusions on any one of these criteria, it cannot be said that the ZBA’s conclusions were unreasonable based on the evidence presented. If the ZBA’s decision on any one of these elements was reasonable, the decision must be upheld.

WHEREFORE, the Town of Sunapee respectfully requests the Board to:

- A. Deny the relief requested by the applicants;
- B. Affirm the decision of the ZBA; and
- C. Grant such other relief as may be appropriate.

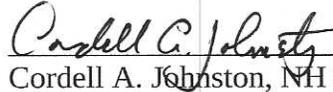
Respectfully submitted,

TOWN OF SUNAPEE

By its Attorney,

Cordell A. Johnston

Date: November 14, 2023



Cordell A. Johnston, NH Bar # 1275

P.O. Box 252

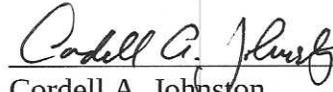
Henniker, NH 03242

603-748-4019

[cordell@cajohnston.com](mailto:cordell@cajohnston.com)

CERTIFICATE OF SERVICE

I certify that a copy of this Pre-Hearing Memorandum of Law has been sent by electronic mail and first-class U.S. mail to Roy W. Tilsley, Jr., Esq., and A. Eli Leino, Esq., counsel for the petitioner, this 14th day of November, 2023.



Cordell A. Johnston

**TOWN OF SUNAPEE,  
NEW HAMPSHIRE**

**ANNUAL FINANCIAL REPORT**

**AS OF AND FOR THE FISCAL YEAR ENDED  
DECEMBER 31, 2022**

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**ANNUAL FINANCIAL REPORT**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

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**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**ANNUAL FINANCIAL REPORT**  
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# PLODZIK & SANDERSON

*Professional Association/Certified Public Accountants*

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## ***INDEPENDENT AUDITOR'S REPORT***

To the Members of the Board of Selectmen and Town Manager  
Town of Sunapee  
Sunapee, New Hampshire

### **Report on the Financial Statements**

#### ***Adverse and Unmodified Opinions***

We have audited the accompanying financial statements of the governmental activities, business-type activities, each major governmental and proprietary fund, and aggregate remaining fund information of the Town of Sunapee as of and for the year ended December 31, 2022, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements as listed in the table of contents.

#### **Summary of Opinions**

<u>Opinion Unit</u>	<u>Type of Opinion</u>
Governmental Activities	Adverse
Business-type Activities	Adverse
Water Enterprise Fund	Adverse
Sewer Enterprise Fund	Adverse
Hydroelectric Enterprise Fund	Adverse
General Fund	Unmodified
Aggregate Remaining Fund Information	Unmodified

#### ***Adverse Opinion on Governmental Activities and Business-type Activities and Proprietary Funds***

In our opinion, because of the significance of the matters described in the "Matters Giving Rise to Adverse Opinion on Governmental Activities, Business-type Activities and Proprietary Funds" paragraphs, the financial statements referred to above do not present fairly the financial position of the governmental activities financial statements of the Town of Sunapee, as of December 31, 2022, or the changes in financial position thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### ***Unmodified Opinions on The Major Governmental Fund and Aggregate Remaining Fund Information***

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of each major governmental and proprietary fund and aggregate remaining fund information of the Town of Sunapee as of December 31, 2022, and the respective changes in financial position and, the respective budgetary comparison for the general fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### ***Basis for Adverse and Unmodified Opinions***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the "Auditor's Responsibilities for the Audit of the Financial Statements" section of our report. We are required to be independent of the Town of Sunapee and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

***Town of Sunapee  
Independent Auditor's Report***

***Matters Giving Rise to Adverse Opinion on Governmental Activities, Business-type Activities and Proprietary Funds***

As discussed in Note 1-B to the financial statements, management has not recorded the capital assets and related accumulated depreciation in the governmental activities, business-type activities, and proprietary funds, and accordingly, has not recorded depreciation expense on those assets. Accounting principles generally accepted in the United States of America require that capital assets, be capitalized and depreciated, which would increase the assets, net position, and expenses of the governmental activities and business-type activities and proprietary funds. The amount by which this departure would affect the assets, net position, and expenses of the governmental activities and business-type activities and proprietary funds is not reasonably determinable.

As discussed in Note 15-B to the financial statements, management has not recorded the long-term costs of retirement healthcare costs and obligations for other postemployment benefits for the single employer plan in the governmental activities and business-type activities and proprietary funds. Accounting principles generally accepted in the United States of America require that those costs be recorded, which would increase the liabilities, decrease the net position, and increase the expenses of the governmental activities and business-type activities and proprietary funds. The amount by which this departure would affect the liabilities, net position, and expenses on the governmental activities, business-type activities, and proprietary funds. is not readily determinable.

***Responsibilities of Management for the Financial Statements***

The Town of Sunapee's management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Town of Sunapee's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Town of Sunapee's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Town of Sunapee's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

**Town of Sunapee  
Independent Auditor's Report**

**Change in Accounting Principle**

As discussed in Note 2-D to the financial statements, in fiscal year 2022 the Town adopted new accounting guidance, Governmental Accounting Standards Board (GASB) Statement No. 87, *Leases*. Our opinions are not modified with respect to this matter.

**Required Supplementary Information** – Accounting principles generally accepted in the United States of America require that the following be presented to supplement the basic financial statements:

- Schedule of the Town's Proportionate Share of Net Pension Liability,
- Schedule of Town Contributions – Pensions,
- Schedule of the Town's Proportionate Share of the Net Other Postemployment Benefits Liability,
- Schedule of Town Contributions – Other Postemployment Benefits, and
- Notes to the Required Supplementary Information.

Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

**Management's Discussion and Analysis** – Management has omitted a Management's Discussion and Analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by the missing information.

**Supplementary Information** – Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Town of Sunapee's basic financial statements. The accompanying combining and individual fund schedules are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The combining and individual fund schedules are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining and individual fund schedules are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

**Other Reporting Required by Government Auditing Standards**

In accordance with *Government Auditing Standards*, we have also issued our report dated October 20, 2023, on our consideration of the Town of Sunapee's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Town of Sunapee's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Town of Sunapee's internal control over financial reporting and compliance.

*Sheryl A. Platt, CPA*

October 20, 2023  
Concord, New Hampshire

PLODZIK & SANDERSON  
Professional Association

***BASIC FINANCIAL STATEMENTS***

**EXHIBIT A**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Statement of Net Position**  
**December 31, 2022**

	Governmental Activities	Business-type Activities	Total
<b>ASSETS</b>			
Cash and cash equivalents	\$ 10,621,520	\$ 4,435,819	\$ 15,057,339
Investments	241,526	-	241,526
Taxes receivables (net)	840,022	-	840,022
Account receivables	-	465,102	465,102
Intergovernmental receivable	223,361	679,041	902,402
Prepaid items	87,299	-	87,299
Tax dedeed property, subject to resale	6,361	-	6,361
Total assets	<u>12,020,089</u>	<u>5,579,962</u>	<u>17,600,051</u>
<b>DEFERRED OUTFLOWS OF RESOURCES</b>			
Amounts related to pensions	557,663	106,221	663,884
Amounts related to other postemployment benefits	7,782	1,482	9,264
Total deferred outflows of resources	<u>565,445</u>	<u>107,703</u>	<u>673,148</u>
<b>LIABILITIES</b>			
Accounts payable	116,149	65,326	181,475
Accrued salaries and benefits	155,699	-	155,699
Accrued interest payable	13,078	28,910	41,988
Intergovernmental payable	5,430,630	-	5,430,630
Internal balances	19,927	(19,927)	-
Other	12,225	-	12,225
Long-term liabilities:			
Due within one year	119,790	199,930	319,720
Due in more than one year	4,912,458	3,019,513	7,931,971
Total liabilities	<u>10,779,956</u>	<u>3,293,752</u>	<u>14,073,708</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Unavailable revenue - property taxes	40,085	-	40,085
Unavailable revenue - grants	280,595	-	280,595
Unavailable revenue - received in advance	95,890	14,926	110,816
Amounts related to pensions	11,997	2,285	14,282
Total deferred inflows of resources	<u>428,567</u>	<u>17,211</u>	<u>445,778</u>
<b>NET POSITION</b>			
Net investment in capital assets	(1,286,305)	(2,540,714)	(3,827,019)
Restricted	465,358	4,917,416	5,382,774
Unrestricted	2,197,958	-	2,197,958
Total net position	<u>\$ 1,377,011</u>	<u>\$ 2,376,702</u>	<u>\$ 3,753,713</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT B**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Statement of Activities*  
**For the Fiscal Year Ended December 31, 2022**

	Program Revenues			Net (Expense) Revenue and Change in Net Position		
	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-type Activities	Total
<b>Governmental activities:</b>						
General government	\$ 1,813,869	\$ -	\$ -	\$ (1,797,839)	\$ -	\$ (1,797,839)
Public safety	1,618,562	54,247	-	(1,558,130)	-	(1,558,130)
Highways and streets	2,040,045	41,635	226,445	(1,771,965)	-	(1,771,965)
Sanitation	669,547	88,090	-	(337,051)	-	(337,051)
Health	15,843	-	-	(15,843)	-	(15,843)
Welfare	28,394	-	-	(28,394)	-	(28,394)
Culture and recreation	737,937	15,052	-	(631,839)	-	(631,839)
Conservation	12,723	-	-	(12,723)	-	(12,723)
Interest on long-term debt	15,666	-	-	(15,666)	-	(15,666)
Total governmental activities	6,952,586	199,024	226,445	(6,169,450)	-	(6,169,450)
<b>Business-type activities:</b>						
Water	571,845	2,193	-	-	104,888	104,888
Sewer	1,058,687	13,670	-	-	348,567	348,567
Hydroelectric	138,085	-	-	-	100,373	100,373
Total business-type activities	1,768,617	15,863	-	-	553,828	553,828
Total	\$ 8,721,203	\$ 214,887	\$ 226,445	(6,169,450)	553,828	(5,615,622)
General revenues:						
Taxes:						
Property				4,818,871	-	4,818,871
Other				231,784	-	231,784
Motor vehicle permit fees				1,080,705	-	1,080,705
Licenses and other fees				92,829	-	92,829
Grants and contributions not restricted to specific programs				294,330	-	294,330
Unrestricted investment earnings				80,092	(71,948)	8,144
Miscellaneous				49,420	-	49,420
Total general revenues				6,648,031	(71,948)	6,576,083
Principal forgiveness on long-term debt				-	164,000	164,000
Total general revenues and transfers				6,648,031	92,052	6,740,083
Change in net position				478,581	645,880	1,124,461
Net position, beginning, as restated (see Note 20)				898,430	1,730,822	2,629,252
Net position, ending				\$ 1,377,011	\$ 2,376,702	\$ 3,753,713

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT C-1**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Governmental Funds**  
**Balance Sheet**  
**December 31, 2022**

	General	Other Governmental Funds	Total Governmental Funds
<b>ASSETS</b>			
Cash and cash equivalents	\$ 8,344,205	\$ 599,928	\$ 8,944,133
Receivables:			
Taxes	850,004	-	850,004
Intergovernmental receivable	8,807	50,000	58,807
Interfund receivable	151,560	97,489	249,049
Prepaid items	87,299	-	87,299
Tax deeded property, subject to resale	6,361	-	6,361
Restricted assets:			
Cash and cash equivalents	1,677,387	-	1,677,387
Investments	241,526	-	241,526
Total assets	<u>\$ 11,367,149</u>	<u>\$ 747,417</u>	<u>\$ 12,114,566</u>
<b>LIABILITIES</b>			
Accounts payable	\$ 116,149	\$ -	\$ 116,149
Accrued salaries and benefits	155,699	-	155,699
Intergovernmental payable	5,430,630	-	5,430,630
Interfund payable	173,091	95,885	268,976
Other	12,225	-	12,225
Total liabilities	<u>5,887,794</u>	<u>95,885</u>	<u>5,983,679</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Unavailable revenue - Property taxes	102,590	-	102,590
Unavailable revenue - grants	280,595	-	280,595
Unavailable revenue - received in advance	-	95,890	95,890
Total deferred inflows of resources	<u>383,185</u>	<u>95,890</u>	<u>479,075</u>
<b>FUND BALANCES (DEFICIT)</b>			
Nonspendable	93,660	70,833	164,493
Restricted	309,111	85,414	394,525
Committed	1,613,312	400,566	2,013,878
Assigned	378,279	-	378,279
Unassigned (deficit)	2,701,808	(1,171)	2,700,637
Total fund balances	<u>5,096,170</u>	<u>555,642</u>	<u>5,651,812</u>
Total liabilities, deferred inflows of resources, and fund balances	<u>\$ 11,367,149</u>	<u>\$ 747,417</u>	<u>\$ 12,114,566</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT C-2**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Reconciliation of the Balance Sheet - Governmental Funds to the Statement of Net Position**  
**December 31, 2022**

Amounts reported for governmental activities in the Statement of Net Position are different because:		
Total fund balances of governmental funds (Exhibit C-1)		\$ 5,651,812
Differences between expected and actual experiences, assumption changes and net differences between projected and actual earnings and contributions subsequent to the measurement date for the post-retirement benefits (pension and OPEB) are recognized as deferred outflows of resources and deferred inflows of resources on the Statement of Net Position.		
Deferred outflows of resources related to pensions	\$ 557,663	
Deferred inflows of resources related to pensions	(11,997)	
Deferred outflows of resources related to OPEB	<u>7,782</u>	553,448
Interfund receivables and payables between governmental funds are eliminated on the Statement of Net Position.		
Receivables	\$ (249,049)	
Payables	<u>249,049</u>	-
Other long-term assets are not available to pay for current period expenditures, and therefore, are reported as deferred inflows of resources in the governmental funds.		
		164,554
Property taxes not collected within 60 days of fiscal year-end are not available to pay for current period expenditures, and therefore are deferred in the governmental funds.		
Deferred property taxes	\$ 62,505	
Allowance for uncollectible taxes	<u>(9,982)</u>	52,523
Interest on long-term debt is not accrued in governmental funds.		
Accrued interest payable		(13,078)
Long-term liabilities that are not due and payable in the current period, therefore, are not reported in the governmental funds.		
Bonds	\$ 1,231,113	
Unamortized bond premium	55,192	
Compensated absences	193,616	
Accrued landfill postclosure care costs	285,000	
Net pension liability	3,125,172	
Other postemployment benefits	<u>142,155</u>	(5,032,248)
Net position of governmental activities (Exhibit A)		<u><u>\$ 1,377,011</u></u>

**EXHIBIT C-3**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Governmental Funds**  
**Statement of Revenues, Expenditures, and Changes in Fund Balances**  
**For the Fiscal Year Ended December 31, 2022**

	General	Other Governmental Funds	Total Governmental Funds
<b>REVENUES</b>			
Taxes	\$ 4,943,394	\$ 97,918	\$ 5,041,312
Licenses and permits	1,173,534	-	1,173,534
Intergovernmental	806,585	54,247	860,832
Charges for services	131,937	98,300	230,237
Miscellaneous	125,034	2,098	127,132
Total revenues	<u>7,180,484</u>	<u>252,563</u>	<u>7,433,047</u>
<b>EXPENDITURES</b>			
Current:			
General government	1,726,542	-	1,726,542
Public safety	1,508,605	59,141	1,567,746
Highways and streets	1,984,626	-	1,984,626
Sanitation	552,192	-	552,192
Health	15,843	-	15,843
Welfare	28,394	-	28,394
Culture and recreation	607,151	114,337	721,488
Conservation	4,323	8,400	12,723
Debt service:			
Principal	140,477	-	140,477
Interest	33,429	-	33,429
Capital outlay	130,836	-	130,836
Total expenditures	<u>6,732,418</u>	<u>181,878</u>	<u>6,914,296</u>
Excess of revenues over expenditures	<u>448,066</u>	<u>70,685</u>	<u>518,751</u>
<b>OTHER FINANCING SOURCES (USES)</b>			
Transfers in	-	40,000	40,000
Transfers out	(40,000)	-	(40,000)
Proceeds from refunded bonds	534,263	-	534,263
Premium from refunded bonds	55,191	-	55,191
Payments to currently refund bonds	(581,887)	-	(581,887)
Debt issuance costs	(7,567)	-	(7,567)
Total other financing sources (uses)	<u>(40,000)</u>	<u>40,000</u>	<u>-</u>
Net change in fund balances	408,066	110,685	518,751
Fund balances, beginning, as restated (see Note 20)	4,688,104	444,957	5,133,061
Fund balances, ending	<u>\$ 5,096,170</u>	<u>\$ 555,642</u>	<u>\$ 5,651,812</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT C-4**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Reconciliation of the Statement of Revenues, Expenditures, and**  
**Changes in Fund Balances - Governmental Funds to the Statement of Activities**  
**For the Fiscal Year Ended December 31, 2022**

Amounts reported for governmental activities in the Statement of Activities are different because:		
Net change in fund balances of governmental funds (Exhibit C-3)		\$ 518,751
Transfers in and out between governmental funds are eliminated on the Statement of Activities.		
Transfers in	\$ (40,000)	
Transfers out	<u>40,000</u>	-
Revenue in the Statement of Activities that does not provide current financial resources are not reported as revenue in the governmental funds.		
Change in deferred tax revenue	\$ 9,343	
Change in long-term state aid receivables	<u>(11,223)</u>	(1,880)
Bond and other debt proceeds provide current financial resources to governmental funds, but issuing debt increases long-term liabilities in the Statement of Net Position. Repayment of bond and other debt principal is an expenditure in the governmental funds, but repayment reduces long-term liabilities in the Statement of Net Position.		
Proceeds of debt	\$ (534,263)	
Bond premium on new issuance	(55,192)	
Repayment of bond principal	746,190	
Amortization of bond premium	<u>24,993</u>	181,728
Some expenses reported in the Statement of Activities do not require the use of current financial resources, and therefore, are not reported as expenditures in governmental funds.		
Decrease in accrued interest expense	\$ 339	
Increase in compensated absences payable	(193,616)	
Increase in accrued landfill postclosure care costs	(9,000)	
Net change in net pension liability, and deferred outflows and inflows of resources related to pensions	(14,260)	
Net change in net other postemployment benefits liability and deferred outflows and inflows of resources related to other postemployment benefits	<u>(3,481)</u>	(220,018)
Change in net position of governmental activities (Exhibit B)		<u><u>\$ 478,581</u></u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT D**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Statement of Revenues, Expenditures, and Changes in Fund Balance**  
**Budget and Actual (Non-GAAP Budgetary Basis)**  
**General Fund**  
**For the Fiscal Year Ended December 31, 2022**

	Original and Final Budget	Actual	Variance Positive (Negative)
<b>REVENUES</b>			
Taxes	\$ 4,926,361	\$ 4,952,737	\$ 26,376
Licenses and permits	1,133,280	1,173,534	40,254
Intergovernmental	543,749	707,075	163,326
Charges for services	136,200	131,937	(4,263)
Miscellaneous	50,000	87,809	37,809
Total revenues	<u>6,789,590</u>	<u>7,053,092</u>	<u>263,502</u>
<b>EXPENDITURES</b>			
Current:			
General government	1,755,987	1,761,127	(5,140)
Public safety	1,564,355	1,533,028	31,327
Highways and streets	1,963,883	2,032,126	(68,243)
Sanitation	640,288	565,092	75,196
Health	16,138	15,843	295
Welfare	43,149	28,394	14,755
Culture and recreation	722,418	647,117	75,301
Conservation	4,500	4,323	177
Debt service:			
Principal	135,328	140,477	(5,149)
Interest	39,594	33,429	6,165
Capital outlay	195,000	171,978	23,022
Total expenditures	<u>7,080,640</u>	<u>6,932,934</u>	<u>147,706</u>
Excess (deficiency) of revenues over (under) expenditures	<u>(291,050)</u>	<u>120,158</u>	<u>411,208</u>
<b>OTHER FINANCING SOURCES (USES)</b>			
Transfers in	195,000	66,002	(128,998)
Transfers out	(488,250)	(488,250)	-
Total other financing sources (uses)	<u>(293,250)</u>	<u>(422,248)</u>	<u>(128,998)</u>
Net change in fund balances	<u>\$ (584,300)</u>	<u>(302,090)</u>	<u>\$ 282,210</u>
Increase in nonspendable fund balance		(87,299)	
Decrease in restricted fund balance		3,092	
Unassigned fund balance, beginning, as restated (see Note 20)		<u>3,140,628</u>	
Unassigned fund balance, ending		<u>\$ 2,754,331</u>	

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT E-1**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Proprietary Funds**  
**Statement of Net Position**  
**December 31, 2022**

	Business-type Activities			Total Enterprise Funds
	Enterprise Funds			
	Water	Sewer	Hydroelectric	
<b>ASSETS</b>				
Cash and cash equivalents	\$ 1,040,662	\$ 2,819,453	\$ 575,704	\$ 4,435,819
Receivables:				
Accounts	213,596	251,506	-	465,102
Intergovernmental	74,078	604,963	-	679,041
Internal balances	428	-	75,858	76,286
Total assets	<u>1,328,764</u>	<u>3,675,922</u>	<u>651,562</u>	<u>5,656,248</u>
<b>DEFERRED OUTFLOWS OF RESOURCES</b>				
Amounts related to pensions	33,194	73,027	-	106,221
Amounts related to other postemployment benefits	463	1,019	-	1,482
Total deferred outflows of resources	<u>33,657</u>	<u>74,046</u>	<u>-</u>	<u>107,703</u>
<b>LIABILITIES</b>				
Current liabilities:				
Accounts payable	5,580	16,660	43,086	65,326
Accrued interest payable	4,399	24,511	-	28,910
Internal balances	8,264	48,095	-	56,359
Long term liabilities:				
Due within one year	129,874	70,056	-	199,930
Due in more than one year	724,768	2,294,745	-	3,019,513
Total liabilities	<u>872,885</u>	<u>2,454,067</u>	<u>43,086</u>	<u>3,370,038</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>				
Unavailable revenue - received in advance	3,954	10,972	-	14,926
Amounts related to pensions	714	1,571	-	2,285
Total deferred inflows of resources	<u>4,668</u>	<u>12,543</u>	<u>-</u>	<u>17,211</u>
<b>NET POSITION</b>				
Net investment in capital assets	(631,968)	(1,908,746)	-	(2,540,714)
Restricted	1,116,836	3,192,104	608,476	4,917,416
Total net position	<u>\$ 484,868</u>	<u>\$ 1,283,358</u>	<u>\$ 608,476</u>	<u>\$ 2,376,702</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT E-2**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Proprietary Funds**  
**Statement of Revenues, Expenses, and Changes in Net Position**  
**For the Fiscal Year Ended December 31, 2022**

	Business-type Activities			Total Enterprise Funds
	Enterprise Funds			
	Water	Sewer	Hydroelectric	
Operating revenues:				
User charges	\$ 602,927	\$ 799,450	\$ 238,458	\$ 1,640,835
Other sales	67,815	484,076	-	551,891
Fees and interest	3,798	28,411	-	32,209
Miscellaneous	-	81,647	-	81,647
Total operating revenues	<u>674,540</u>	<u>1,393,584</u>	<u>238,458</u>	<u>2,306,582</u>
Operating expenses:				
Salaries and wages	219,173	542,192	39,733	801,098
Operation and maintenance	189,662	425,020	95,957	710,639
Contractual services	43,019	26,826	1,838	71,683
Materials and supplies	32,358	62,195	557	95,110
Total operating expenses	<u>484,212</u>	<u>1,056,233</u>	<u>138,085</u>	<u>1,678,530</u>
Operating income	<u>190,328</u>	<u>337,351</u>	<u>100,373</u>	<u>628,052</u>
Nonoperating revenue (expense):				
Intergovernmental revenues	-	13,670	-	13,670
Interest income	6,289	8,437	1,313	16,039
Contributions and donations	2,193	-	-	2,193
Principal forgiveness on debt	164,000	-	-	164,000
Interest expense	(23,137)	(64,850)	-	(87,987)
Other	(87,633)	(2,454)	-	(90,087)
Total nonoperating revenues (expense)	<u>61,712</u>	<u>(45,197)</u>	<u>1,313</u>	<u>17,828</u>
Change in net position	252,040	292,154	101,686	645,880
Net position, beginning, as restated (see Note 20)	232,828	991,204	506,790	1,730,822
Net position, ending	<u>\$ 484,868</u>	<u>\$ 1,283,358</u>	<u>\$ 608,476</u>	<u>\$ 2,376,702</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT E-3**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Proprietary Funds**  
**Statement of Cash Flows**  
**For the Fiscal Year Ended December 31, 2022**

	Business-type Activities			Total Enterprise Funds
	Enterprise Funds			
	Water	Sewer	Hydroelectric	
<b>Cash flows from operating activities:</b>				
Receipts from customers and users	\$ 637,836	\$ 1,386,866	\$ 238,458	\$ 2,263,160
Payments to employees for salaries and benefits	(219,173)	(542,192)	(39,733)	(801,098)
Payments to suppliers	(264,482)	(470,826)	(505,618)	(1,240,926)
Net cash provided by (used for) operating activities	<u>154,181</u>	<u>373,848</u>	<u>(306,893)</u>	<u>221,136</u>
<b>Cash flows from capital and related financing activities:</b>				
Intergovernmental grants	16,758	48,632	-	65,390
State revolving loan drawdowns	87,634	4,310	-	91,944
Bond and note issuances	-	1,708,663	-	1,708,663
Premium on bonds issued	-	170,143	-	170,143
Principal paid on and refunding payments capital debt	(123,908)	(1,864,218)	-	(1,988,126)
Debt issuance costs	-	(49,088)	-	(49,088)
Acquisition and construction of capital assets	(87,633)	(43,790)	-	(131,423)
Interest paid on capital debt	(23,137)	(31,542)	-	(54,679)
Net cash used for capital and related financing activities	<u>(130,286)</u>	<u>(56,890)</u>	<u>-</u>	<u>(187,176)</u>
<b>Cash flows from investing activities:</b>				
Interest received	6,289	8,437	1,313	16,039
Net increase (decrease) in cash and cash equivalents	30,184	325,395	(305,580)	49,999
Cash and cash equivalents, beginning	1,010,478	2,494,058	881,284	4,385,820
Cash and cash equivalents, ending	<u>\$ 1,040,662</u>	<u>\$ 2,819,453</u>	<u>\$ 575,704</u>	<u>\$ 4,435,819</u>

**Reconciliation of Operating Income to Net Cash Provided by (Used for) Operating Activities**

Operating income	\$ 190,328	\$ 337,351	\$ 100,373	\$ 628,052
Adjustments to reconcile operating income to net cash provided by (used for) operating activities:				
Increase in other receivables	(36,854)	(18,388)	-	(55,242)
Decrease in intergovernmental receivables	-	9,731	-	9,731
(Increase)/Decrease in internal balances	22,547	35,924	(450,352)	(391,881)
Increase/(Decrease) in accounts payable	(1,495)	10,979	43,086	52,570
Decrease in retainage payable	(20,286)	-	-	(20,286)
Decrease in intergovernmental payable	(209)	(3,688)	-	(3,897)
Increase in deferred inflows of resources	150	1,939	-	2,089
Total adjustments	<u>(36,147)</u>	<u>36,497</u>	<u>(407,266)</u>	<u>(406,916)</u>
Net cash provided by (used for) operating activities	<u>\$ 154,181</u>	<u>\$ 373,848</u>	<u>\$ (306,893)</u>	<u>\$ 221,136</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT F-1**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Fiduciary Funds**  
**Statement of Fiduciary Net Position**  
**December 31, 2022**

	Private Purpose Trust Funds	All Custodial Funds
<b>ASSETS</b>		
Cash and cash equivalents	\$ 159,170	\$ 943,296
Intergovernmental receivable	-	5,402,814
Total assets	159,170	6,346,110
<b>LIABILITIES</b>		
Intergovernmental payables:		
School	-	5,159,622
Escrow payable	-	7,885
Due to others	700	-
Total liabilities	700	5,167,507
<b>NET POSITION</b>		
Restricted	\$ 158,470	\$ 1,178,603

The Notes to the Basic Financial Statements are an integral part of this statement.

**EXHIBIT F-2**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Fiduciary Funds**  
**Statement of Changes in Fiduciary Net Position**  
**For the Fiscal Year Ended December 31, 2022**

	Private Purpose Trust Funds	All Custodial Funds
<b>ADDITIONS</b>		
Contributions	\$ -	\$ 100,000
Investment earnings	1,393	7,856
Tax collections for other governments	-	15,735,029
State motor vehicle fees collected	-	346,769
Other	-	26,856
Total additions	<u>1,393</u>	<u>16,216,510</u>
<b>DEDUCTIONS</b>		
Benefits paid	3,000	-
Payments for escrow purposes	-	10,909
Payments of taxes to other governments	-	15,735,029
Payments of motor vehicle fees to State	-	346,769
Total deductions	<u>3,000</u>	<u>16,092,707</u>
Net increase (decrease) in fiduciary net position	(1,607)	123,803
Net position, beginning	<u>160,077</u>	<u>1,054,800</u>
Net position, ending	<u>\$ 158,470</u>	<u>\$ 1,178,603</u>

The Notes to the Basic Financial Statements are an integral part of this statement.

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

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**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

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**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

**NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The financial statements of the Town of Sunapee, New Hampshire (the Town), have been prepared in conformity with U.S. Generally Accepted Accounting Principles (GAAP) for governmental units as prescribed by the Governmental Accounting Standards Board (GASB) and other authoritative sources.

The more significant of the Town's accounting policies are described below.

***1-A Reporting Entity***

The Town of Sunapee is a municipal corporation governed by an elected 5-member Board of Selectmen and Town Manager. In evaluating how to define the Town for financial reporting purposes, management has considered all potential component units. The decision to include a potential component unit in the reporting entity is made by applying the criteria set forth by the GASB. The Town has no component units to include in its reporting entity.

***1-B Basis of Accounting and Measurement Focus***

The accounts of the Town are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, deferred outflows of resources, liabilities, deferred inflows of resources, fund equity, revenues, and expenditures or expenses, as appropriate. Governmental resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

***Government-wide Financial Statements*** – The Town's government-wide financial statements include a Statement of Net Position and a Statement of Activities. These statements present summaries of governmental and business-type activities for the Town accompanied by a total column. Fiduciary activities of the Town are not included in these statements.

These statements are presented on an "economic resources" measurement focus and the accrual basis of accounting. Accordingly, all of the Town's assets, deferred outflows of resources, liabilities, and deferred inflows of resources, including capital assets and long-term liabilities, are included in the accompanying Statement of Net Position, with the exception of the capital assets and related accumulated depreciation/amortization, which have been omitted because they have not been inventoried at historical cost. In addition, long-term costs of retirement healthcare and obligations for other postemployment benefits of the Town's single employer plan have also been omitted because the liability and expense have not been determined. The Statement of Activities presents changes in net position. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned while expenses are recognized in the period in which the liability is incurred, regardless of the timing of related cash flows. As in the Statement of Net Position the Town has not recorded depreciation expense nor other postemployment benefit expense in the Town's single employer plan in this statement. The types of transactions reported as program revenues for the Town are reported in three categories: 1) charges for services, 2) operating grants and contributions, and 3) capital grants and contributions.

Certain eliminations have been made to interfund activities, payables, and receivables. All internal balances in the Statement of Net Position have been eliminated, except those representing balances between the governmental activities and the business-type activities, which are presented as internal balances and eliminated in the total primary government column.

***Governmental Fund Financial Statements*** – Include a Balance Sheet and a Statement of Revenues, Expenditures, and Changes in Fund Balances for all major governmental funds and nonmajor funds aggregated. An accompanying statement is presented to reconcile and explain the differences in fund balances and changes in fund balances as presented in these statements to the net position and changes in net position presented in the government-wide financial statements. The Town has presented all major funds that met those qualifications.

Governmental fund financial statements are reported using the *current financial resources* measurement focus and the *modified accrual basis* of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the Town generally considers revenues to be available if they are collected within 60 days of the end of the current fiscal period, with the exception of reimbursement-based grants, which use a period of one year. Property taxes, licenses, and permits, intergovernmental revenue, and interest associated with the current fiscal period are all considered to

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

be susceptible to accrual and so have been recognized as revenues of the current fiscal period. Expenditure-driven grants are recognized as revenue when the qualifying expenditures have been incurred and all other grant requirements have been met. All other revenue items are considered to be measurable and available only when cash is received by the government.

Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

The Town reports the following major governmental fund:

**General Fund** – is the Town’s primary operating fund. The general fund accounts for all financial resources except those required to be accounted for in another fund. The primary revenue sources include property taxes, State grants and motor vehicle permit fees. The primary expenditures are for general government, public safety, highways and streets, sanitation, culture and recreation, debt service and capital outlay. Under GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, guidance the library, bandstand, drug forfeiture, ARPA grants, and expendable trust funds are consolidated in the general fund.

Additionally, the Town reports the following fund types:

**Special Revenue Funds** – are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes.

**Permanent Fund** – are held in the custody of the Trustees of Trust Funds and are used to account for resources held in trust for use by the Town. These include legal trusts for which the interest on the corpus provides funds for the Town’s cemetery operations.

All the governmental funds not meeting the criteria established for major funds are presented in the other governmental column of the fund financial statements. The Town reports nine nonmajor governmental funds.

**Proprietary Fund Financial Statements** – Include a Statement of Net Position, a Statement of Revenues, Expenses, and Changes in Net Position, and a Statement of Cash Flows for each major proprietary fund.

Proprietary funds are reported using the “economic resources” measurement focus and the accrual basis of accounting. Accordingly, all assets, deferred outflows of resources, liabilities (whether current or noncurrent), and deferred inflows of resources are included on the Statement of Net Position. The Statement of Revenues, Expenses, and Changes in Net Position presents increases (revenues) and decreases (expenses) in total net position. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned while expenses are recognized in the period in which the liability is incurred, regardless of the timing of related cash flows.

Operating revenues in the proprietary funds are those revenues that are generated from the primary operations of the fund. All other revenues are reported as non-operating revenues. Operating expenses are those expenses that are essential to the primary operations of the fund. All other expenses are reported as non-operating expenses.

The Town reports the following major proprietary funds:

**Water Fund** – accounts for the activities related to the operation of the water treatment plant, wells, and water system. Under GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, guidance the water expendable trust funds are consolidated in the water fund.

**Sewer Fund** – accounts for the activities related to the operation of the sewer treatment plant, pumping station, and sewer lines. Under GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, guidance the sewer expendable trust funds are consolidated in the sewer fund.

**Hydroelectric Fund** – accounts for the operation of the Town’s hydroelectric plant.

**Fiduciary Fund Financial Statements** – Include a Statement of Fiduciary Net Position and a Statement of Changes in Fiduciary Net Position. The Town’s fiduciary funds are private purpose trust and custodial funds, which are custodial in nature. These funds are accounted for on a spending, or “economic resources” measurement focus and the accrual basis of accounting as are the proprietary funds explained above.

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The Town reports the following fiduciary funds:

**Private Purpose Trust Fund** – is used to report trust arrangements, other than pension and investment trusts, under which principal and income benefit individuals, private organizations, or other governments.

**Custodial Fund** – is custodial in nature and do not belong to the primary government. A custodial fund is used to account for assets held on behalf of outside parties, including other governments.

***1-C Cash and Cash Equivalents***

The Town considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. Deposits with financial institutions consist primarily of demand deposits, certificates of deposits, and savings accounts. A cash pool is maintained that is available for use by all funds. Each fund's portion of this pool is reflected on the combined financial statements under the caption "cash and cash equivalents."

The treasurer is required to deposit such moneys in solvent banks in state or the Public Deposit Investment Pool pursuant to New Hampshire RSA 383:22. Funds may be deposited in banks outside of the state if such banks pledge and deliver to a third party custodial bank or the Federal Reserve Bank, collateral security for such deposits, United States government or government agency obligations or obligations to the State of New Hampshire in value at least equal to the amount of the deposit in each case.

***1-D Restricted Assets***

Certain Town assets are classified as restricted assets because their use is restricted by statutory limitation, and they are earmarked for a specific purposes.

***1-E Statement of Cash Flows***

For purposes of the Statement of Cash Flows, the Town considers all highly liquid investments (including restricted assets) with a maturity when purchased of three months or less and all local government investment pools to be cash equivalents.

***1-F Investments***

State statutes place certain limitations on the nature of deposits and investments available as follows:

New Hampshire law authorizes the Town to invest in the following type of obligations:

- Obligations of the United States government,
- The public deposit investment pool established pursuant to RSA 383:22,
- Savings bank deposits,
- Certificates of deposit and repurchase agreements of banks incorporated under the laws of the State of New Hampshire or in banks recognized by the State treasurer.

Any person who directly or indirectly receives any such funds or moneys for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at the time of such deposit or investment an option to have such funds secured by collateral having a value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the Town. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 386:57 shall be eligible to be pledged as collateral.

**Fair Value Measurements of Investments** – In accordance with GASB Statement No. 72, *Fair Value Measurement and Application*, except for investments measured using net asset value (NAV) as a practical expedient to estimate fair value, the Town categorizes the fair value measurements of its investments within the fair value hierarchy established by US GAAP. The fair value hierarchy categorizes the inputs to valuation techniques used for fair value measurement into three levels as follows:

**Level 1** – Inputs reflect quoted prices (unadjusted) in active markets for identical assets or liabilities that the Town has the ability to access at the measurement date.

**Level 2** – Inputs are other than quoted prices that are observable for the assets or liabilities, either directly or indirectly, including inputs in markets that are not considered to be active. Because they most often are priced on the basis of transactions involving similar but not identical securities or do not trade with sufficient frequency.

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**Level 3** – Inputs are significant unobservable inputs, using assumptions in determining the fair value of investments and derivative instruments.

The fair value hierarchy gives the highest priority to Level 1 inputs and the lowest priority to Level 3 inputs. In certain instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, is the level in the fair value hierarchy based on the lowest level of input that is significant to the fair value measurement. Investments are reported at fair value. If an investment is held directly by the Town and an active market with quoted prices exists, such as for domestic equity securities, the market price of an identical security is used to report fair value and is classified in Level 1. Corporate fixed income securities and certain governmental securities utilize pricing that may involve estimation using similar securities or trade dates and are classified in Level 2. Fair values for shares in registered mutual funds and exchange-traded funds are based on published share prices and classified in Level 1.

In determining fair value, the Town utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible.

***1-G Receivables***

Receivables recorded in the financial statements represent amounts due to the Town at December 31. They are aggregated into a single accounts receivable (net of allowance for uncollectibles) line for certain funds and aggregated columns. They consist primarily of taxes, billing for charges, and other user fees.

***1-H Prepaid Items***

Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items. The nonspendable fund balance at the governmental fund level is equal to and includes the amount of prepaid items at year-end to indicate a portion of the governmental fund balance that is nonspendable.

***1-I Interfund Activities***

Interfund activities are reported as follows:

***Interfund Receivables and Payables*** – Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as “due to/from other funds” (i.e., the current portion of interfund loans). All other outstanding balances between funds are reported as “due to/from other funds.” Any residual balances outstanding between the governmental activities and business activities are reported in the government-wide financial statements as “internal balances.” Interfund receivables and payables between funds are eliminated in the Statement of Net Position.

***Interfund Transfers*** – Interfund transfers represent flows of assets without equivalent flows of assets in return and without a requirement for repayment. In governmental funds, transfers are reported as other financing uses in the funds making the transfers and other financing sources in the funds receiving the transfers. In proprietary funds, transfers are reported after nonoperating revenues and expenses. In the government-wide financial statements, all interfund transfers between individual governmental funds have been eliminated.

***1-J Property Taxes***

Property tax billings occur semi-annually and are based on the assessed inventory values as of April 1 of each year. Warrants for the year were issued on May 16, 2022 and November 17, 2022, and due on July 1, 2022 and December 19, 2022. For any regular property taxes issued, the interest accrues at a rate of 8% on bills outstanding after the due date and 14% on tax liens outstanding.

Property tax receivables are recognized on the levy or lien date, which is the date the tax warrant is issued. Current year property tax receivables represent taxes levied but not remitted to the Town at December 31, 2022 and unpaid taxes. The succeeding year property tax receivable represent taxes certified by the Town to be collected in the next fiscal year for the purposes set out in the budget for the next fiscal year. Although the succeeding year property tax receivable have been recorded, the related revenue is reported as a deferred inflow of resources in both the government-wide and fund financial statements and will not be recognized as revenue until the year for which it is levied.

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In connection with the setting of the tax rate, Town officials with the approval of the Department of Revenue Administration, establish and raise through taxation an amount for tax abatement and refunds, known as overlay. This amount is reported as a reduction in tax revenue and is adjusted by management for any reserve for uncollectable at year-end. The property taxes collected by the Town include taxes levied for the State of New Hampshire, Sunapee School District, and Sullivan County, which are remitted to these entities as required by law.

The Town net assessed valuation as of April 1, 2022 utilized in the setting of the tax rate was as follows:

Total assessment valuation with utilities	\$ 1,456,025,412
Total assessment valuation without utilities	\$ 1,481,348,412

The tax rates and amounts assessed for the year ended December 31, 2022 were as follows:

	Per \$1,000 of Assessed Valuation	Property Taxes Assessed
Municipal portion	\$3.35	\$ 4,957,635
School portion:		
State of New Hampshire	\$1.24	1,812,575
Local	\$6.51	9,646,153
County portion	\$2.89	4,276,301
Total	\$13.99	\$ 20,692,664

***1-K Accounts Payable***

Accounts payable represent the gross amount of expenditures or expenses incurred as a result of normal operations, but for which no actual payment has yet been issued to vendors/providers as of December 31, 2022.

***1-L Deferred Outflows/Inflows of Resources***

*Deferred outflows of resources*, a separate financial statement element, represents a consumption of net position or fund balance that applies to a future period(s) and thus will not be recognized as an outflow of resources (expenses) until then. The Town has two items that qualify for reporting in this category. Deferred outflows related to pensions and deferred outflows related to OPEB are reported in the government-wide Statement of Net Position for various estimate differences that will be amortized and recognized over future years.

*Deferred inflows of resources*, a separate financial statement element, represents an acquisition of net position or fund balance that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. Although certain revenues are measurable, they are not available. Available means collected within the current year or expected to be collected soon enough thereafter to be used to pay liabilities of the current year. The Town has three types of items which qualify for reporting in this category. Deferred inflows of resources related to pensions and OPEB are reported in the government-wide Statement of Net Position for various estimate differences that will be amortized and recognized over future years. In addition, unavailable revenues from grants and other payments arises when the related eligible expenditures will not be made until the subsequent period.

***1-M Compensated Absences***

General leave for the Town includes vacation, sick, and compensatory pay. General leave is based on an employee's length of employment and is earned ratably during the span of employment. Upon retirement or termination, employees are paid full value for any accrued general leave earned as set forth by the Town's personnel policy.

Vested or accumulated general leave that is expected to be liquidated with expendable available financial resources is reported as an expenditure and a fund liability of the governmental fund that will pay it. Amounts of vested or accumulated general leave that are not expected to be liquidated with expendable available resources are maintained separately and represent a reconciling item between the fund and government-wide presentations.

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***1-N Long-term Obligations***

In the government-wide financial statements and proprietary fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the governmental activities, business-type activities, and proprietary fund Statement of Net Position. Bond premiums are deferred and amortized over the life of the bonds using the straight-line method. Bonds payable are reported net of the bond premium.

In the fund financial statements, governmental fund types recognize bond premiums as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while issuance costs, whether or not withheld from the actual debt proceeds received, are reported as expenditures.

In accordance with GASB Statement No. 88, *Certain Disclosures Related to Debt, Including Director Borrowings and Direct Placements*, the Town utilizes the following classifications to categorize the financial transactions:

**Direct Borrowings** – financial transactions for a note or a loan where the Town negotiates certain terms with a single lender and are not offered for public sale.

**Direct Placements** – financial transactions for the sale of bonds where the Town engages with a single buyer or limited number of buyers without a public offering.

***1-O Defined Benefit Pension Plan***

GASB Statement No. 68, *Accounting and Financial Reporting for Pensions – an amendment of GASB Statement No. 27* and as amended by GASB Statement No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date* and GASB Statement No. 82 *Pension Issues – an amendment of GASB Statement No. 67, No. 68 and No. 73* requires participating employers to recognize their proportionate share of collective net pension liability, deferred outflows of resources, deferred inflows of resources, and pension expense, and schedules have been prepared to provide employers with their calculated proportionate share of these amounts. The collective amounts have been allocated based on employer contributions during the respective fiscal years. Contributions from employers are recognized when legally due, based on statutory requirements.

The schedules prepared by New Hampshire Retirement System, and audited by the plan's independent auditors, require management to make a number of estimates and assumptions related to the reported amounts. Due to the inherent nature and uncertainty of these estimates, actual results could differ, and the differences may be material.

***1-P Postemployment Benefits Other Than Pensions (OPEB)***

The Town maintains two separate other postemployment benefit plans, as follows:

***New Hampshire Retirement System Plan*** – For the purposes of measuring the total other postemployment benefit (OPEB) liability, deferred outflows of resources and deferred inflows of resources related to OPEB, and OPEB expense, information about the fiduciary net position of the New Hampshire Retirement System OPEB Plan (the plan) and additions to/deductions from the plan's fiduciary net position has been determined on the same basis as they are reported by the New Hampshire Retirement System. For this purpose, the plan recognizes benefit payments when due and payable in accordance with the benefit terms. Investments are reported at fair value, except money market investments and participating interest earning investment contracts that have a maturity at the time of purchase of one year or less, which are reported at cost.

***Single Employer Plan*** – The Town maintains a single employer plan but has not obtained an actuarial report calculating the other postemployment benefit liability, deferred outflows of resources, and deferred inflows of resources in accordance with Government Accounting Standards Board pronouncement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*.

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***1-Q Net Position/Fund Balances***

***Government-wide Statements*** – Equity is classified as net position and displayed in three components:

**Net investment in capital assets** – Consists of capital assets, net of accumulated depreciation, and reduced by the outstanding balances of any bonds, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets. Because the Town has not reported its capital assets, this amount is a negative balance.

**Restricted net position** – Results when constraints placed on net position use are either externally imposed by a third party (statutory, bond covenant, or granting agency) or are imposed by law through constitutional provisions or enabling legislation. The Town typically uses restricted assets first, as appropriate opportunities arise, but reserves the right to selectively defer the use until a further project.

**Unrestricted net position** – Consists of net position not meeting the definition of the preceding categories. Unrestricted net position is often subject to constraints imposed by management which can be removed or modified.

***Fund Balance Classifications*** – GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, provides more clearly defined fund balance categories to make sure the nature and extent of the constraints placed on a government's fund balances are more transparent. The following classifications describe the relative strength of the spending constraints:

**Nonspendable** – Amounts that cannot be spent because they are either (a) not in spendable form (such as prepaid items, inventory, or tax deeded property subject to resale); or (b) are legally or contractually required to be maintained intact.

**Restricted** – Amounts for which constraints have been placed on the use of the resources either (a) externally imposed by creditors (such as through a debt covenant), grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation.

**Committed** – Amounts that can be used only for specific purposes pursuant to constraints imposed by formal action of the legislative body (Town Meeting). These amounts cannot be used for any other purpose unless the legislative body removes or changes the specified use by taking the same type of action that was employed when the funds were initially committed. This classification also includes contractual obligations to the extent that existing resources have been specifically committed for use in satisfying those contractual requirements.

**Assigned** – Amounts that are constrained by the Town's intent to be used for a specific purpose but are neither restricted nor committed. This intent can be expressed by the Board of Selectmen and Town Manager through the budgetary process.

**Unassigned** – Amounts that are available for any purpose. Positive amounts are reported only in the general fund. The unassigned classification also includes negative residual fund balance of any other governmental fund that cannot be eliminated by the offsetting of assigned fund balance amounts.

When multiple net position/fund balance classifications are available for use, it is the government's policy to utilize the most restricted balances first, then the next most restricted balance as needed. When components of unrestricted fund balance are used, committed fund balance is depleted first followed by assigned fund balance. Unassigned fund balance is applied last.

In the general fund, the Town strives to maintain an unassigned fund balance to be used for unanticipated emergencies of approximately 5-17% of the total appropriations of the community (this is calculated by adding the municipalities appropriations, the statewide enhanced education amount, the local school net tax commitment, and the county appropriation).

***1-R Use of Estimates***

The financial statements and related disclosures are prepared in conformity with accounting principles generally accepted in the United States. Management is required to make estimates and assumptions that affect the reported amounts of assets, deferred outflows of resources, liabilities, and deferred inflows of resources, the disclosure of contingent assets and liabilities at the date of the financial statements, and revenues and expenses/expenditures during the period reported. These estimates include assessing the collectability of receivables, net pension liability, other postemployment benefit liability, deferred outflows and inflows of resources related to both pension and other postemployment benefits, and accrued landfill closure and postclosure care costs, among others. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected in the financial statements in the period they are determined to be necessary. Actual results could differ from estimates.

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**NOTE 2 – STEWARDSHIP, COMPLIANCE, AND ACCOUNTABILITY**

**2-A Budgetary Information**

General governmental revenues and expenditures accounted for in budgetary funds are controlled by a formal integrated budgetary accounting system in accordance with various legal requirements which govern the Town’s operations. At its annual meeting, the Town adopts a budget for the current year for the general fund, as well as the major water, sewer, and hydroelectric enterprise funds. Except as reconciled below, the budget was adopted on a basis consistent with US generally accepted accounting principles.

Management may transfer appropriations between operating categories as deemed necessary, but expenditures may not legally exceed budgeted appropriations in total. All annual appropriations lapse at year-end unless encumbered.

Encumbrance accounting, under which purchase orders, contracts, and continuing appropriations (certain projects and specific items not fully expended at year-end) are recognized, is employed in the governmental funds. Encumbrances are not the equivalent of expenditures, and are therefore, reported as part of the assigned fund balance at year-end, and are carried forward to supplement appropriations of the subsequent year.

State statutes require balanced budgets but provide for the use of beginning unassigned fund balance to achieve that end. For the fiscal year 2022, \$500,000 of the beginning general fund unassigned fund balance was applied for this purpose and \$84,300 was voted from unassigned fund balance as a transfer to the capital reserve funds.

**2-B Budgetary Reconciliation to GAAP Basis**

While the Town reports financial position, results of operations, and changes in fund balance on the basis of generally accepted accounting principles (GAAP), the budgetary basis as provided by law is based upon accounting for certain transactions on a basis of cash receipts, disbursements, and encumbrances. The Statement of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual is presented for the major governmental fund which had a budget. Differences between the budgetary basis and GAAP basis of accounting for the general fund are as follows:

Revenues and other financing sources:	
Per Exhibit D (budgetary basis)	\$ 7,119,094
Adjustments:	
Basis differences:	
Proceeds from refunded bonds	589,454
GASB Statement No. 54:	
To record miscellaneous income of the blended funds	136,735
To eliminate transfers between blended funds expendable trust funds and general fund	(66,002)
Change in deferred tax revenue relating to 60-day revenue recognition	(9,343)
Per Exhibit C-3 (GAAP basis)	<u>\$ 7,769,938</u>
Expenditures and other financing uses:	
Per Exhibit D (budgetary basis)	\$ 7,421,184
Adjustments:	
Basis differences:	
Payment to currently refund bonds and debt issuance costs	589,454
Encumbrances, beginning	79,400
Encumbrances, ending	(378,279)
GASB Statement No. 54:	
To record expenditures of the blended funds during the year	98,363
To eliminate transfers between general and blended expendable trust funds	(448,250)
Per Exhibit C-3 (GAAP basis)	<u>\$ 7,361,872</u>

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**2-C Deficit Fund Balances**

The public safety services special revenue fund had a deficit fund balance of \$1,171 at December 31, 2022. This deficit will be financed through future revenues of the fund.

**2-D Accounting Change**

Governmental Accounting Standards Board Statement No. 87, *Leases*, was implemented during fiscal year 2022. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities. As a result of implementation of this Statement, prior year capital leases payable were reclassified as notes payable.

**DETAILED NOTES ON ALL FUNDS**

**NOTE 3 – CASH AND CASH EQUIVALENTS**

The Town's deposits and certificates of deposit are entirely covered by Federal Depository Insurance Corporation (FDIC) or by collateral held by the Town's agent in the Town's name. The FDIC currently insures the first \$250,000 of the Town's deposits at each financial institution, per case custodian. Deposit balances over \$250,000 are insured by the collateral. As of year-end, the carrying amount of the Town's deposits was \$16,159,805 and the bank balances totaled \$16,264,888. Petty cash totaled \$696.

Cash and cash equivalents reconciliation:

Cash per Statement of Net Position (Exhibit A)	\$ 15,057,339
Cash per Statement of Fiduciary Net Position (Exhibit F-1)	<u>1,102,466</u>
Total cash and cash equivalents	<u><u>\$ 16,159,805</u></u>

**Custodial Credit Risk** – The Town's repurchase agreements are all with banking institutions; therefore, are subject to custodial credit risk. The custodial credit risk is the risk that in the event of bank failure, the Town's deposits may not be recovered.

**Interest Rate Risk** – The term repurchase agreements are also subject to interest rate risk. Interest rate risk is the risk that changes in interest rates will adversely affect the value of the Town's investments.

**NOTE 4 – RESTRICTED ASSETS**

Cash and investments are classified as restricted for the following purposes:

Cash and cash equivalents:	
General fund:	
Library	\$ 63,236
Capital reserve funds	1,609,386
Drug forfeiture	<u>4,765</u>
Total restricted cash and cash equivalents	<u><u>1,677,387</u></u>
Investments:	
General fund:	
Library	<u>241,526</u>
Total restricted assets	<u><u>\$ 1,918,913</u></u>

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**NOTE 5 – INVESTMENTS**

Note 1-F describes statutory requirements covering the investment of the Town funds. The Town holds investments that are measured at fair value on a recurring basis. Because investing is not a core part of the Town’s mission, the Town determines that the disclosures related to these investments only need to be disaggregated by major type. The Town categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The Town has the following recurring fair value measurements and maturities as of December 31, 2022:

	Valuation Measurement Method	Reported Balance	1-5 Years
Investments type:			
Certificates of deposit	Level 1	\$ 241,526	\$ 241,526

**Interest Rate Risk** – This is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment the greater the sensitivity of its fair value to changes in market interest rates. The Town does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

**Custodial Credit Risk** – This is the risk that in the event of the failure of the counterparty (e.g., broker/dealer) to honor a transaction, the Town will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. All the Town’s investments are held by third parties in the Town’s name. The Town does not have custodial credit risk policies for investments.

**Concentration of Credit Risk** – The Town places no limit on the amount it may invest in any one issuer. More than 5% of the Town’s investments are in certificates of deposits.

**NOTE 6 – TAXES RECEIVABLE**

Taxes receivable represent the amount of current and prior year taxes which have not been collected as of December 31, 2022. The amount has been reduced by an allowance for an estimated uncollectible amount of \$9,982. Taxes receivable by year are as follows:

	As reported on:	
	Exhibit A	Exhibit C-1
Property:		
Levy of 2022	\$ 773,585	\$ 773,585
Unredeemed (under tax lien):		
Levy of 2021	50,426	50,426
Levy of 2020	25,993	25,993
Less: allowance for estimated uncollectible taxes	(9,982) *	-
Net taxes receivable	\$ 840,022	\$ 850,004

\*The allowance for uncollectible property taxes is not recognized under the modified accrual basis of accounting (Exhibit C-1 and C-3) due to the 60-day rule as explained in Note 1-B. However, the allowance is recognized under the full accrual basis of accounting (Exhibits A and B).

**NOTE 7 – OTHER RECEIVABLES**

Receivables at December 31, 2022, consisted of accounts (billings for police details, water, sewer, and other user charges) and intergovernmental amounts arising from grants. Receivables are recorded on the Town’s financial statements to the extent that the amounts are determined to be material and substantiated not only by supporting documentation, but also by a reasonable, systematic method of determining their existence, completeness, valuation, and collectability.

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**NOTE 8 – PREPAID ITEMS**

Prepaid items at December 31, 2022 in the governmental activities and general fund consisted of the following:

Health insurance	\$ 58,199
Software services	<u>29,100</u>
Total prepaid items	<u><u>\$ 87,299</u></u>

**NOTE 9 – INTERFUND BALANCES AND TRANSFERS**

**Interfund Balances** - The composition of interfund balances as of December 31, 2022 is as follows:

Receivable Fund	Payable Fund	Amount
General	Nonmajor	\$ 95,629
Nonmajor	General	97,233
Hydroelectric enterprise	General	75,858
General	Water enterprise	8,264
General	Sewer enterprise	47,667
Nonmajor	Nonmajor	256
Water enterprise	Sewer enterprise	428
		<u><u>\$ 325,335</u></u>

The outstanding balances among funds result mainly from the time lag between the dates that (1) interfund goods and services are provided or reimbursable expenditures occur, (2) transactions are recorded in the accounting system, and (3) payments between funds are made.

**Interfund Transfers** - The composition of interfund transfers for the year ended December 31, 2022 is as follows:

	Transfers In:
	Nonmajor
	Fund
Transfers out:	
General fund	<u><u>\$ 40,000</u></u>

During the year, transfers are used to (1) move revenues from the fund with collection authority to the fund responsible for expenditure and (2) move general fund resources to provide an annual subsidy.

**NOTE 10 – INTERGOVERNMENTAL PAYABLES**

Amounts due to other governments at December 31, 2022 consist of the following:

	Governmental Fund	Fiduciary Funds
	General	Funds
Miscellaneous fees due to the State of New Hampshire	\$ 5,639	\$ -
Balance due to the Town of Newbury	22,177	-
Balance due to the custodial funds	243,192	-
Property taxes due to the custodial funds	<sup>1</sup> 5,159,622	-
Property taxes due to the Sunapee School District	<sup>2</sup> -	5,159,622
Total intergovernmental payables due	<u><u>\$ 5,430,630</u></u>	<u><u>\$ 5,159,622</u></u>

<sup>1</sup> Property taxes due to the custodial fund represent amounts collected by the Town on behalf of Sunapee School District and are reported as a component of general fund cash at year-end.

<sup>2</sup> Property taxes due to the Sunapee School District represent amounts collected by the Town that will be paid to the School District in incremental payments based upon an agreed schedule in the next calendar year.

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**NOTE 11 – DEFERRED OUTFLOWS/INFLOWS OF RESOURCES**

Deferred outflows of resources are as follows:

	Governmental Activities	Business-type activities		
		Water	Sewer	Total
Amounts related to pensions, see Note 14	\$ 557,663	\$ 33,194	\$ 73,027	\$ 106,221
Amounts related to OPEB, see Note 15	7,782	463	1,019	1,482
Total deferred outflows of resources	<u>\$ 565,445</u>	<u>\$ 33,657</u>	<u>\$ 74,046</u>	<u>\$ 107,703</u>

Deferred inflows of resources are as follows:

	Government- wide	Governmental Funds			Business-type Activities and Proprietary Funds		
		General	Nonmajor	Total	Water	Sewer	Total
Deferred property taxes not collected within 60 days of fiscal year-end	\$ -	\$ 62,505	\$ -	\$ 62,505	\$ -	\$ -	\$ -
Property taxes received in advance	40,085	40,085	-	40,085	-	-	-
Federal grant revenue collected in advance of eligible expenditures being made	280,595	280,595	-	280,595	-	-	-
Other payments received in advance	95,890	-	95,890	95,890	3,954	10,972	14,926
Amounts related to pensions, see Note 14	11,997	-	-	-	714	1,571	2,285
Total deferred inflows of resources	<u>\$ 428,567</u>	<u>\$ 383,185</u>	<u>\$ 95,890</u>	<u>\$ 479,075</u>	<u>\$ 4,668</u>	<u>\$ 12,543</u>	<u>\$ 17,211</u>

**NOTE 12 – DEBT REFUNDING**

On January 31, 2022, the Town issued \$2,242,926 of general obligation refunding bonds at a premium of \$225,334, with an average interest rate of 2.44%. The net proceeds of \$2,537,261, after issuance costs of \$56,655, plus premium of \$225,334 and cash contributions of \$69,003, were used to refund two loans for water and sewer improvements dated August 28, 2015 and March 13, 2015, with a total principal and interest of \$3,246,790 and an average interest rate of 3%. This refunding was undertaken to reduce total debt service payments over the next 20 years by \$227,008.

**NOTE 13 – LONG-TERM LIABILITIES**

Changes in the Town's long-term liabilities consisted of the following for the year ended December 31, 2022:

	Balance			Balance December 31, 2022	Due Within One Year	Due In More Than One Year
	January 1, 2022	Additions	Reductions			
<b>Governmental activities:</b>						
Bonds payable:						
Direct placements	\$ 785,463	\$ 534,263	\$ (673,613)	\$ 646,113	\$ 45,354	\$ 600,759
Note/loan payable - direct borrowing	657,577	-	(72,577)	585,000	48,750	536,250
Premium	24,993	55,192	(24,993)	55,192	2,760	52,432
Total bonds/notes payable	1,468,033	589,455	(771,183)	1,286,305	96,864	1,189,441
Compensated absences	-	193,616	-	193,616	13,426	180,190
Accrued landfill postclosure care costs	276,000	9,000	-	285,000	9,500	275,500
Net pension liability	2,411,197	713,975	-	3,125,172	-	3,125,172
Net other postemployment benefits	138,067	4,088	-	142,155	-	142,155
Total long-term liabilities	<u>\$ 4,293,297</u>	<u>\$ 1,510,134</u>	<u>\$ (771,183)</u>	<u>\$ 5,032,248</u>	<u>\$ 119,790</u>	<u>\$ 4,912,458</u>

(Continued)

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Long-term liabilities continued:

	Balance January 1, 2022	Additions	Reductions	Balance December 31, 2022	Due Within One Year	Due In More Than One Year
<b>Business-type activities:</b>						
Bonds payable:						
Direct placements	\$ 2,384,094	\$ 1,708,663	\$ (1,979,703)	\$ 2,113,054	\$ 177,871	\$ 1,935,183
Notes/loans payable - direct borrowings	337,996	91,944	(172,423)	257,517	10,680	246,837
Premium	-	170,143	-	170,143	8,507	161,636
Total bonds/notes payable	<u>2,722,090</u>	<u>1,970,750</u>	<u>(2,152,126)</u>	<u>2,540,714</u>	<u>197,058</u>	<u>2,343,656</u>
Compensated absences	-	56,380	-	56,380	2,872	53,508
Net pension liability	459,276	135,995	-	595,271	-	595,271
Net other postemployment benefits	26,298	780	-	27,078	-	27,078
Total long-term liabilities	<u>\$ 3,207,664</u>	<u>\$ 2,163,905</u>	<u>\$ (2,152,126)</u>	<u>\$ 3,219,443</u>	<u>\$ 199,930</u>	<u>\$ 3,019,513</u>

Long-term bonds/notes are comprised of the following:

	Original Amount	Issue Date	Maturity Date	Interest Rate %	Outstanding at December 31, 2022	Current Portion
<b>Governmental activities:</b>						
Bonds payable:						
Direct placements:						
Perkins pond- refunded	\$ 1,068,525	2022	2042	2.41%	\$ 534,263	\$ 22,113
Water filtration	\$ 1,248,260	2012	2027	5.00%	111,850	23,241
Total direct placements					<u>646,113</u>	<u>45,354</u>
Note/loan payable - direct borrowing:						
Abbott Library	\$ 975,000	2014	2034	2.76%	585,000	48,750
Bond premium					55,192	2,760
Total					<u>\$ 1,286,305</u>	<u>\$ 96,864</u>
<b>Business-type activities:</b>						
Bonds payable:						
Direct placements:						
Perkins pond- refunded	\$ 1,068,525	2022	2042	2.41%	\$ 534,263	\$ 22,113
Lake Avenue	\$ 706,741	2013	2024	2.60%	54,241	45,000
Wastewater treatment plant-refunded	\$ 1,174,400	2022	2042	2.46%	1,174,400	38,000
Water filtration	\$ 1,248,260	2012	2027	5.00%	350,150	72,758
Total direct placements					<u>2,113,054</u>	<u>177,871</u>
Notes/loans payable - direct borrowings:						
Asset management - State revolving loan*	\$ 25,630	2020	-	-	29,940	-
UV Light - State revolving loan	\$ 400,000	2022	2041	1.26%	227,577	10,680
Total direct borrowing					<u>257,517</u>	<u>10,680</u>
Bond premium					170,143	8,507
Total					<u>\$ 2,540,714</u>	<u>\$ 197,058</u>

\**State Revolving Loan Program* – Drawdowns received under the various State Revolving Loan Programs will be consolidated by promissory notes upon substantial completions of the related projects. As of December 31, 2022, drawdowns received to date totaling \$29,940 are recorded on the Town's financial statements, exclusive of any anticipated forgiveness on the loans.

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The annual requirements to amortize all general obligation bonds/notes outstanding as of December 31, 2022, including interest payments, are as follows:

**Governmental activities:**

Fiscal Year Ending December 31,	Bonds - Direct Placements			Note/Loan - Direct Borrowing		
	Principal	Interest	Total	Principal	Interest	Total
2023	\$ 45,354	\$ 23,559	\$ 68,913	\$ 48,750	\$ 15,471	\$ 64,221
2024	48,102	21,218	69,320	48,750	14,126	62,876
2025	49,763	18,780	68,543	48,750	12,780	61,530
2026	51,665	16,780	68,445	48,750	11,435	60,185
2027	36,479	15,514	51,993	48,750	10,089	58,839
2028-2032	132,400	59,189	191,589	243,750	30,265	274,015
2033-2037	139,750	30,421	170,171	97,500	2,687	100,187
2038-2042	142,600	10,926	153,526	-	-	-
Totals	\$ 646,113	\$ 196,387	\$ 842,500	\$ 585,000	\$ 96,853	\$ 681,853

**Business-type activities:**

Fiscal Year Ending December 31,	Bonds - Direct Placements			Note/Loan - Direct Borrowing		
	Principal	Interest	Total	Principal	Interest	Total
2023	\$ 177,871	\$ 75,094	\$ 252,965	\$ 10,680	\$ 2,858	\$ 13,538
2024	149,439	67,266	216,705	10,814	2,724	13,538
2025	146,437	60,016	206,453	10,950	2,588	13,538
2026	153,635	54,199	207,834	11,088	2,451	13,539
2027	107,221	50,621	157,842	11,227	2,312	13,539
2028-2032	399,700	198,899	598,599	58,285	9,407	67,692
2033-2037	462,151	113,481	575,632	62,038	5,654	67,692
2038-2042	516,600	40,127	556,727	52,495	1,659	54,154
Totals	\$ 2,113,054	\$ 659,703	\$ 2,772,757	\$ 227,577	\$ 29,653	\$ 257,230

All debt is general obligation debt of the Town, which is backed by its full faith and credit, and will be repaid from general governmental revenues.

**Accrued Landfill Postclosure Care Costs** –The Town ceased operating its landfill in 1978. Federal and State laws and regulations require that the Town place a final cover on its landfill when closed and perform certain maintenance and monitoring functions at the landfill site after closure. A liability is being recognized based on the future postclosure care costs that will be incurred. The recognition of these landfill postclosure care costs is based on the amount of the landfill used through the end of the year. The estimated liability for landfill postclosure care costs has a balance of \$285,000 as of December 31, 2022. The estimated total current cost of the landfill postclosure care (\$9,500) is based on the amount that would be paid if all equipment, facilities, and services required to close, monitor, and maintain the landfill were acquired as of December 31, 2022. However, the actual cost of postclosure care may be higher or lower due to inflation, changes in technology, or changes in landfill laws and regulations.

**Bonds Authorized and Unissued** – Bonds and notes authorized and unissued as of December 31, 2022 were as follows:

Per Town Meeting Vote of	Purpose	Unissued Amount
March 10, 2020	Wastewater Asset Management	\$ 30,000

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**NOTE 14 – DEFINED BENEFIT PENSION PLAN**

**Plan Description** – The New Hampshire Retirement System (NHRS or the System) is a public employee retirement system that administers one cost-sharing multiple-employer defined benefit pension plan (Pension Plan), a component unit of the State of New Hampshire, as defined in Governmental Accounting Standards Board (GASB) Statement No. 67, *Financial Reporting for Pension Plans* – an amendment of GASB Statement No. 25. The Pension Plan was established in 1967 by RSA 100-A:2 and is qualified as a tax-exempt organization under Sections 401(a) and 501(a) of the Internal Revenue Code. The Pension Plan is a contributory, defined benefit plan providing service, disability, death and vested retirement benefits to members and their beneficiaries. Substantially all full-time state employees, public school teachers and administrators, permanent firefighters and permanent police officers within the State are eligible and required to participate in the Pension Plan. The System issues a publicly available financial report that may be obtained by writing the New Hampshire Retirement System, 54 Regional Drive, Concord, NH 03301.

**Benefits Provided** – Benefit formulas and eligibility requirements for the Pension Plan are set by state law (RSA 100-A). The Pension Plan is divided into two membership groups. State and local employees and teachers belong to Group I. Police and firefighters belong to Group II.

Group I benefits are provided based on creditable service and average final salary for the highest of either three or five years, depending on when service commenced.

Group II benefits are provided based on age, years of creditable service and benefit multiplier depending on vesting status as of 1/1/12. The maximum retirement allowance for Group II members vested by 1/1/12 (45 years of age with 20 years of service or age 60 regardless of years of creditable service) is the average final compensation multiplied by 2.5% multiplied by creditable service. For Group II members not vested by 1/1/12 the benefit is calculated the same way, but the multiplier used in the calculation will change depending on age and years of creditable service as follows:

Years of Creditable Service as of 1/1/12	Minimum Age	Minimum Service	Benefit Multiplier
At least 8 but less than 10 years	46	21	2.4%
At least 6 but less than 8 years	47	22	2.3%
At least 4 but less than 6 years	48	23	2.2%
Less than 4 years	49	24	2.1%

Members of both groups may qualify for vested deferred allowances, disability allowances and death benefit allowances, subject to meeting various eligibility requirements. Benefits are based on AFC or earnable compensation and/or service.

**Contributions** – The System is financed by contributions from both the employees and the Town. Member contribution rates are established and may be amended by the State legislature while employer contribution rates are set by the System trustees based on an actuarial valuation. Group I members are required to contribute 7% of earnable compensation and group II members (police and fire) are required to contribute 11.55% and 11.80% respectively. For fiscal year 2022, the Town contributed 30.67% for police, 29.78% for fire and 13.75% for other employees. The contribution requirement for the fiscal year 2022 was \$374,772, which was paid in full.

**Pension Liabilities, Pension Expense, Deferred Outflows of Resources, and Deferred Inflows of Resources Related to Pensions** – At December 31, 2022 the Town reported a liability of \$3,720,443 (\$3,125,172 in the governmental activities and \$595,271 in the business-type activities) for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2022, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The Town’s proportion of the net pension liability was based on a projection of the Town’s long-term share of contributions to the pension plan relative to the projected contributions of all participating towns and school districts, actuarially determined. At June 30, 2022, the Town’s proportion was 0.06% which was the same as its proportion measured as of June 30, 2021.

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For the year ended December 31, 2022, the Town recognized pension expense of \$380,056. At December 31, 2022 the Town reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Changes in proportion	\$ 74,301	\$ -
Changes in assumptions	197,898	-
Net difference between projected and actual investment earnings on pension plan investments	141,000	-
Differences between expected and actual experience	69,826	14,282
Contributions subsequent to the measurement date	180,859	-
Total	\$ 663,884	\$ 14,282

The \$180,859 reported as deferred outflows of resources related to pensions results from the Town contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended December 31, 2023.

Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Fiscal Year Ending December 31,	
2023	\$ 177,212
2024	151,882
2025	(55,346)
2026	194,995
Thereafter	-
Totals	\$ 468,743

**Actuarial Assumptions** – The collective total pension liability was determined by a roll forward of the actuarial valuation as of June 30, 2021, using the following actuarial assumptions which, accordingly, apply to 2022 measurements:

Inflation:	2.0%	
Salary increases:	5.4% average, including inflation	
Wage inflation:	2.75% (2.25% for teachers)	
Investment rate of return:	6.75% net of pension plan investment expense, including inflation	

Mortality rates were based on the Pub-2010 Health Retiree Mortality Tables with credibility adjustments for each group (Police and Fire combined) and projected fully generational mortality improvements using Scale MP-2019.

The actuarial assumptions used in the June 30, 2021 valuation were based on the results of the most recent actuarial experience study, which was for the period July 1, 2015 – June 30, 2019.

**Long-term Rates of Return** – The long-term expected rate of return on pension plan investment was selected from a best estimate range determined using the building block approach. Under this method, an expected future real return range is calculated separately for each asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rate of return net of investment expenses by the target asset allocation percentage and by adding expected inflation.

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Following is a table presenting target allocations and long-term rates of return for 2022:

Asset Class	Target Allocation	30 Year Geometric Return
Broad US Equity (1)	30.00%	7.60%
Global Ex-US Equity (2)	20.00%	7.90%
Total public equity	50.00%	
Real Estate Equity	10.00%	6.60%
Private Equity	10.00%	8.85%
Total private market equity	20.00%	
Private Debt	5.00%	7.25%
Core U.S. Fixed Income (3)	25.00%	3.60%
Total	100.00%	7.30%

**Discount Rate** – The discount rate used to measure the collective total pension liability was 6.75%. The projection of cash flows used to determine the discount rate assumed that plan member contributions will be made at the current contribution rate and that employer contributions will be made at rates equal to the difference between actuarially determined contribution rates and the member rate. For purposes of the projection, member contributions and employer service cost contributions are projected based on the expected payroll of current members only. Employer contributions are determined based on the Pension Plan’s actuarial funding policy as required by RSA 100-A:16. Based on those assumptions, the Pension Plan’s fiduciary net position was projected to be available to make all projected future benefit payments to current plan members. Therefore, the long-term expected rate of return on Pension Plan investment was applied to all periods of projected benefit payments to determine the collective total pension liability.

**Sensitivity of the Town’s Proportionate Share of the Net Pension Liability to Changes in the Discount Rate** – The following table presents the Town’s proportionate share of the net pension liability calculated using the discount rate of 6.75% as well as what the Town’s proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (5.75%) or 1-percentage point higher (7.75%) than the current rate:

Actuarial Valuation Date	1% Decrease 5.75%	Current Single Rate Assumption 6.75%	1% Increase 7.75%
June 30, 2022	\$ 4,991,897	\$ 3,720,443	\$ 2,663,347

**Pension Plan Fiduciary Net Position** – Detailed information about the pension plan’s fiduciary net position is available in the separately issued New Hampshire Retirement System Cost-Sharing Multiple Employer Defined Benefit Pension Plan financial report.

Reconciliation of the deferred outflows, inflows of resources and net pension liability:

	Deferred Outflows of Resources	Deferred Inflows of Resources	Net Pension Liability
Governmental activities	\$ 557,663	\$ 11,997	\$ 3,125,172
Business-type activities and proprietary funds	106,221	2,285	595,271
Total	\$ 663,884	\$ 14,282	\$ 3,720,443

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**NOTE 15 – POSTEMPLOYMENT BENEFITS OTHER THAN PENSIONS (OPEB)**

**15-A New Hampshire Retirement System (NHRS)**

**Plan Description** – The New Hampshire Retirement System (NHRS or the System) administers a cost-sharing multiple-employer other postemployment benefit plan medical subsidy healthcare plan (OPEB Plan). For additional system information, please refer to the 2022 Comprehensive Annual Financial Report, which can be found on the system’s website at [www.nhrs.org](http://www.nhrs.org).

**Benefits Provided** - Benefit amounts and eligibility requirements for the OPEB Plan are set by state law (RSA 100-A:52, RSA 100-A:52-a and RSA 100-A:52-b), and members are designated in statute by type. The four membership types are Group II, Police Officers, and Firefighters; Group I, Teachers; Group I, Political Subdivision Employees; and Group I, State Employees. The OPEB Plan provides a medical insurance subsidy to qualified retired members. The medical insurance subsidy is a payment made by NHRS to the former employer or its insurance administrator toward the cost of health insurance for a qualified retiree, his/her qualified spouse, and his/her certified dependent children with a disability who are living in the household and being cared for by the retiree. If the health insurance premium amount is less than the medical subsidy amount, then only the health insurance premium amount will be paid. If the health insurance premium amount exceeds the medical subsidy amount, then the retiree or other qualified person is responsible for paying any portion that the employer does not pay.

Group I benefits are based on creditable service, age, and retirement date. Group II benefits are based on hire date, age, and creditable service. The OPEB plan is closed to new entrants.

Maximum medical subsidy rates paid during fiscal year 2022 were as follows:

For qualified retirees not eligible for Medicare, the amounts were \$375.56 for a single-person plan and \$751.12 for a two-person plan.

For those qualified retirees eligible for Medicare, the amounts were \$236.84 for a single-person plan and \$473.68 for a two-person plan.

**Contributions** – The OPEB Plan is funded by allocating to the 401(h) subtrust the lesser of: 25% of all employer contributions made in accordance with RSA 100-A:16 or the percentage of employer contributions determined by the actuary to be the minimum rate necessary to maintain the benefits provided under RSA 100-A:53-b, RSA 100-A:53-c, and RSA 100-A:53-d. For fiscal year 2022, the minimum rates determined by the actuary to maintain benefits were the lesser of the two options and were used to determine the employer contributions due to the 401(h) subtrust. The State Legislature has the authority to establish, amend and discontinue the contribution requirements of the OPEB Plan. Administrative costs are allocated to the OPEB Plan based on fund balances. For fiscal year 2022, the Town contributed 3.21% for police and fire, and 0.31% for other employees. The contribution requirement for the fiscal year 2022 was \$18,155 which was paid in full.

**OPEB Liabilities, OPEB Expense, Deferred Outflows of Resources, and Deferred Inflows of Resources Related to OPEB** – At December 31, 2022, the Town reported a liability of \$169,233 (\$142,155 in the governmental activities and \$27,078 in the business-type activities) for its proportionate share of the net OPEB liability. The net OPEB liability was measured as of June 30, 2022, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of June 30, 2021. The Town’s proportion of the net OPEB liability was based on a projection of the Town’s long-term share of contributions to the OPEB plan relative to the projected contributions of all participating towns and school districts, actuarially determined. At June 30, 2022, the Town’s proportion was 0.04% which was the same as its proportion measured as of June 30, 2021.

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For the year ended December 31, 2022, the Town recognized OPEB expense of \$21,183. At December 31, 2022, the Town reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual investment earnings on OPEB plan investments	\$ 462	\$ -
Contributions subsequent to the measurement date	8,802	-
Total	\$ 9,264	\$ -

The \$8,802 reported as deferred outflows of resources related to OPEB results from the Town contributions subsequent to the measurement date will be recognized as a reduction of the net OPEB liability in the year ended December 31, 2023. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Fiscal Year Ending December 31,	
2023	\$ 77
2024	20
2025	(182)
2026	547
Thereafter	-
Totals	\$ 462

**Actuarial Assumptions** – The total OPEB liability in this report is based on an actuarial valuation performed as of June 30, 2021 and a measurement date of June 30, 2022. The total OPEB liability was determined using the following actuarial assumptions applied to all periods included in the measurement, unless otherwise specified:

- Price inflation: 2.0% per year
- Wage inflation: 2.75% (2.25% for teachers)
- Salary increases: 5.4% average, including inflation
- Investment rate of return: 6.75% net of OPEB plan investment expense, including inflation
- Health care trend rate: Not applicable, given that the benefits are fixed stipends

Mortality rates were based on the Pub-2010 Health Retiree Mortality Tables with credibility adjustments for each group (Police and Fire combined) and projected fully generational mortality improvements using Scale MP-2019.

The actuarial assumptions used in the June 30, 2021 valuation were based on the results of the most recent actuarial experience study, which was for the period July 1, 2015 – June 30, 2019.

**Long-term Rates of Return** – The long-term expected rate of return on OPEB plan investment was selected from a best estimate range determined using the building block approach. Under this method, an expected future real return range is calculated separately for each asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rate of return net of investment expenses by the target asset allocation percentage and by adding expected inflation.

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Following is a table presenting target allocations and long-term rates of return for 2022:

Asset Class	Target Allocation	30 Year Geometric Return
Broad US Equity (1)	30.00%	7.60%
Global Ex-US Equity (2)	20.00%	7.90%
Total public equity	50.00%	
Real Estate Equity	10.00%	6.60%
Private Equity	10.00%	8.85%
Total private market equity	20.00%	
Private Debt	5.00%	7.25%
Core U.S. Fixed Income (3)	25.00%	3.60%
Total	100.00%	7.30%

**Discount Rate** – The discount rate used to measure the total OPEB liability as of June 30, 2022 was 6.75%. The projection of cash flows used to determine the discount rate assumed that employer contributions will be made under the current statute RSA 100-A:16 and that plan member contributions will be made under RSA 100-A:16. Based on those assumptions, the OPEB Plan’s fiduciary net position was projected to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on OPEB Plan investments was applied to all periods of projected benefit payments to determine the collective total OPEB liability.

**Sensitivity of the Town’s Proportionate Share of the OPEB Liability to Changes in the Discount Rate** – The following table presents the Town’s proportionate share of the OPEB liability calculated using the discount rate of 6.75% as well as what the Town’s proportionate share of the OPEB liability would be if it were calculated using a discount rate that is 1-percentage point lower (5.75%) or 1-percentage point higher (7.75%) than the current rate:

Actuarial Valuation Date	1% Decrease 5.75%	Current Single Rate Assumption 6.75%	1% Increase 7.75%
June 30, 2022	\$ 183,730	\$ 169,233	\$ 156,605

**OPEB Plan Fiduciary Net Position** – Detailed information about the OPEB plan’s fiduciary net position is available in the separately issued New Hampshire Retirement System Cost-Sharing Multiple Employer Defined Benefit OPEB Plan financial report.

Reconciliation of the deferred outflows, inflows of resources and net OPEB liability:

	Deferred Outflows of Resources	Deferred Inflows of Resources	Net OPEB Liability
Governmental activities	\$ 7,782	\$ -	\$ 142,155
Business-type activities and proprietary funds	1,482	-	27,078
Total	\$ 9,264	\$ -	\$ 169,233

**15-B Town of Sunapee Retiree Health Benefit Program**

The Town provides postemployment benefit options for health care to eligible retirees, terminated employees, and their dependents in accordance with the provisions of various employment contracts. The benefit levels, employee contributions, and employer contributions are governed by the Town’s contractual agreements. Expenses for the cost of providing health insurance for currently enrolled retirees are recognized in the general fund of the funds financial statements as payments are made.

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
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**DECEMBER 31, 2022**

The Governmental Accounting Standards Board (GASB) issued Statement No. 75, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions* in 2015. GASB Statement No. 75 requires state and local government employers to recognize the net OPEB liability and the OPEB expense on their financial statements, along with the related deferred outflows and inflows of resources. The Town has not fully implemented GASB Statement No. 75 at December 31, 2022, or contracted with an actuarial firm to assist in evaluating the impact of this standard on the Town. The amounts that should be recorded as the net OPEB liability and the OPEB expense is unknown.

**NOTE 16 – STATE AID TO WATER POLLUTION PROJECTS**

The Town is due to receive from the State of New Hampshire the following amounts in the form of state aid to water pollution projects:

<u>Project</u>	<u>Purpose</u>	<u>Amount</u>
C-893	Wastewater treatment	\$ 324,157
C-894	Perkins pond	281,780
95-2271010	Water filtration	97,743
	Total	<u>\$ 703,680</u>

Under New Hampshire RSA Chapter 486, the Town receives from the State of New Hampshire a percentage of the annual amortization charges on the original costs resulting from the acquisition and construction of sewage disposal facilities. At December 31, 2022 the Town is due to receive the following annual amounts to offset debt payments:

<u>Governmental activities</u>		<u>Business-type activities</u>	
<u>Fiscal Year Ending</u>		<u>Fiscal Year Ending</u>	
<u>December 31,</u>	<u>Amount</u>	<u>December 31,</u>	<u>Amount</u>
2023	\$ 11,177	2023	\$ 51,819
2024	11,175	2024	52,065
2025	11,161	2025	30,133
2026	11,208	2026	30,550
2027	8,293	2027	21,702
2028-2032	29,350	2028-2032	75,129
2033-2037	29,350	2033-2037	83,720
2038-2042	29,350	2038-2042	93,926
2043-2047	23,490	2043-2047	100,082
Total	<u>\$ 164,554</u>	Total	<u>\$ 539,126</u>

**NOTE 17 - ENCUMBRANCES**

The outstanding encumbrances are amounts needed to pay any commitments related to purchase orders and contracts that remain unperformed at December 31, 2022 are as follows:

General fund:	
General government	\$ 44,585
Public safety	24,423
Highways and streets	47,500
Sanitation	12,900
Culture and Recreation	53,871
Capital outlay	195,000
Total encumbrances	<u>\$ 378,279</u>

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

**NOTE 18 – GOVERNMENTAL AND BUSINESS-TYPE ACTIVITIES AND FIDUCIARY FUNDS  
NET POSITION**

Governmental and business-type activities and fiduciary fund net position reported on the Statements of Net Position at December 31, 2022 include the following:

	Government-wide Financial Statements			Fiduciary Funds
	Governmental Activities	Business-type Activities	Total	
Net investment in capital assets:				
Net book value, all capital assets	\$ -	\$ -	\$ -	\$ -
Less:				
General obligation bonds/notes payable	(1,231,113)	(2,370,571)	(3,601,684)	-
Unamortized bond premiums	(55,192)	(170,143)	(225,335)	-
Total net investment in capital assets	<u>(1,286,305)</u>	<u>(2,540,714)</u>	<u>(3,827,019)</u>	<u>-</u>
Restricted net position:				
Perpetual care - nonexpendable	70,833	-	70,833	-
Perpetual care - expendable	85,414	-	85,414	-
Library	304,346	-	304,346	-
Drug forfeiture	4,765	-	4,765	-
Water	-	1,116,836	1,116,836	-
Sewer	-	3,192,104	3,192,104	-
Hydroelectric	-	608,476	608,476	-
Individuals, organizations, and other governments	-	-	-	1,337,073
Total restricted net position	<u>465,358</u>	<u>4,917,416</u>	<u>5,382,774</u>	<u>1,337,073</u>
Unrestricted	<u>2,197,958</u>	<u>-</u>	<u>2,197,958</u>	<u>-</u>
Total net position	<u>\$ 1,377,011</u>	<u>\$ 2,376,702</u>	<u>\$ 3,753,713</u>	<u>\$ 1,337,073</u>

**NOTE 19 – GOVERNMENTAL FUND BALANCES**

Governmental fund balances reported on the fund financial statements at December 31, 2022 include the following:

	General Fund	Nonmajor Funds	Total Governmental Funds
<b>Nonspendable:</b>			
Prepaid items	\$ 87,299	\$ -	\$ 87,299
Tax deeded property	6,361	-	6,361
Permanent fund - principal balance	-	70,833	70,833
Total nonspendable fund balance	<u>93,660</u>	<u>70,833</u>	<u>164,493</u>
<b>Restricted:</b>			
Library	304,346	-	304,346
Drug forfeiture	4,765	-	4,765
Permanent - income balance	-	85,414	85,414
Total restricted fund balance	<u>309,111</u>	<u>85,414</u>	<u>394,525</u>

*(Continued)*

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

Governmental fund balances continued:

	General Fund	Nonmajor Funds	Total Governmental Funds
<b>Committed:</b>			
Expendable trusts	1,613,062	-	1,613,062
Bandstand	250	-	250
Conservation	-	228,039	228,039
Recreation	-	124,963	124,963
Bartlett Tyler	-	28,682	28,682
Dewey Woods	-	1,619	1,619
Town Forest	-	17,263	17,263
Total committed fund balance	<u>1,613,312</u>	<u>400,566</u>	<u>2,013,878</u>
<b>Assigned:</b>			
Encumbrances	378,279	-	378,279
<b>Unassigned (deficit)</b>	<u>2,701,808</u>	<u>(1,171)</u>	<u>2,700,637</u>
Total governmental fund balances	<u>\$ 5,096,170</u>	<u>\$ 555,642</u>	<u>\$ 5,651,812</u>

**NOTE 20 – PRIOR PERIOD ADJUSTMENTS**

Net position/fund balance at January 1, 2022 was restated to give retroactive effect to the following prior period adjustments:

	Government-wide Statements	General Fund (Exhibit C-3)	General Fund (Schedule 3)	Business-type Activities		
				Water	Sewer	Total
To restate for amounts recorded as accrued payroll that was not paid in 2022	\$ 21,445	\$ 21,445	\$ 21,445	\$ -	\$ -	\$ -
To record prior year receivables for unbilled warrants	-	-	-	139,047	186,566	325,613
Net position/fund balance, as previously reported	876,985	4,666,659	3,119,183	93,781	804,638	898,419
Net position/fund balance, as restated	<u>\$ 898,430</u>	<u>\$ 4,688,104</u>	<u>\$ 3,140,628</u>	<u>\$ 232,828</u>	<u>\$ 991,204</u>	<u>\$ 1,224,032</u>

**NOTE 21 – RISK MANAGEMENT**

The Town is exposed to various risks of loss related to torts; theft of, damage to, or destruction of assets; errors or omissions; injuries to employees; or natural disasters. During fiscal year 2022, the Town was a member of the New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) Workers' Compensation and Property/Liability Programs.

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) Workers' Compensation and Property/Liability Programs are pooled risk management programs under RSAs 5-B and 281-A. Coverage was provided from January 1, 2022 to December 31, 2022 by Primex<sup>3</sup>, which retained \$2,000,000 of each workers' compensation loss, \$500,000 of each liability loss, and for each property loss it is based upon the Town's property schedule on file with Primex<sup>3</sup>. The Board has decided to self-insure the aggregate exposure and has allocated funds based on actuarial analysis for that purpose. The workers' compensation section of the self-insurance membership agreement permits Primex<sup>3</sup> to make additional assessments to members should there be a deficiency in contributions for any member year, not to exceed the member's annual contribution. GASB Statement No. 10 requires members of a pool with a sharing risk to disclose if such an assessment is probable, and a reasonable estimate of the amount, if any. In fiscal year 2022 the Town paid \$64,593 and \$41,730 respectively, to Primex for property, liability, and worker's compensation. At this time, Primex<sup>3</sup> foresees no likelihood of any additional assessment for this or any prior year.

The Town continues to carry commercial insurance for all other risks of loss. Settled claims resulting from these risks have not exceeded commercial insurance coverage in any of the past three fiscal years.

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

**NOTE 22 – CAFETERIA BENEFIT PLAN**

The Town implemented a cafeteria benefit plan pursuant to Section 125 of the IRS code. Under this plan, eligible employees may direct a contribution, made by the Town, into any combination of the following benefit categories:

1. Medical Insurance Premium Account;
2. Out of Pocket Medical Spending Account; or
3. Dependent Care Spending Account

In addition to directing the Town's contribution to the above categories, eligible employees may elect to contribute pre-tax dollars to these categories. Under no circumstances may an employee direct more than \$5,000 annually into the Dependent Care Spending Account, and \$2,000 into the medical spending account. This cap applies to both Town contributions and employee pre-tax contributions.

All regular full-time and part-time employees employed on a regular and continuous basis, including certain contractual employees, are eligible to participate in this plan. Temporary and casual employees are not eligible. The plan year adopted by the Town begins on January 1 and ends on December 31. To obtain reimbursement of expenses incurred within a plan year within the spending accounts (items 2 and 3 above), employees must submit claims within 90 days of the end of the plan year or separation of service from the Town, whichever occurs first. Funds unclaimed after 90 days of the close of the plan year are then remitted to the Town.

**NOTE 23 – TAX ABATEMENTS**

Governmental Accounting Standards Board Statement No. 77 defines tax abatements as a reduction in tax revenues that results from an agreement between one or more governments and an individual or entity in which (a) one or more governments promise to forgo tax revenues to which they are otherwise entitled and (b) the individual or entity promises to take a specific action after the agreement has been entered into that contributes to economic development or otherwise benefits the governments or the citizens of those governments.

The Town had no such agreements for the year ended December 31, 2022.

**NOTE 24 – COVID-19**

As a result of the spread of COVID-19, Coronavirus, economic uncertainties continue. The duration of these uncertainties and the ultimate financial effects cannot be reasonably estimated at this time.

The Town was allotted a total of \$365,052 in federal funding from the American Rescue Plan Act (ARPA) in 2021. A total of \$182,526 or 50% of the funding was received in 2021. The remaining 50% was received in 2022. Eligible uses of these funds include pandemic response or its negative impacts, workforce/personnel, including payroll and hazard/premium pay, provision of government services to the extent of reduced revenue and necessary water, sewer, and broadband investment. For the year ended December 31, 2022 the Town spent \$84,457 of the funds received. The remaining funds are included in deferred inflows of resources until eligible expenditures have been made.

The full extent of the financial impact cannot be determined as of the date of the financial statements.

**NOTE 25 – CONTINGENT LIABILITIES**

The Town participates in various federal grant programs, the principal of which are subject to program compliance audits pursuant to the Single Audit Act as amended. Accordingly, the government's compliance with applicable grant requirements will be established at a future date. The amount of expenditures which may be disallowed by the granting agencies cannot be determined at this time, although the government anticipates such amounts, if any, will be immaterial.

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**AS OF AND FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

**NOTE 26 – SUBSEQUENT EVENTS**

Subsequent events are events or transactions that occur after the balance sheet date, but before the financial statements are issued. Recognized subsequent events are events or transactions that provided additional evidence about conditions that existed at the balance sheet date, including the estimates inherent in the process of preparing the financial statements. Nonrecognized subsequent events are events that provide evidence about conditions that did not exist at the balance sheet date but arose after the date. Management has evaluated subsequent events through October 20, 2023, the date the December 31, 2022 financial statements were available to be issued, and the following event occurred that require recognition or disclosure:

- At the Town's March 2023 annual meeting the voters approved one warrant article for \$3,800 that involves the use of December 31, 2022 unassigned fund balance to be added to the Cemetery Expendable Trust Fund.

***REQUIRED SUPPLEMENTARY INFORMATION***

**EXHIBIT G**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Schedule of the Town's Proportionate Share of Net Pension Liability*  
*New Hampshire Retirement System Cost Sharing Multiple Employer Defined Benefit Plan*  
*For the Fiscal Year Ended December 31, 2022*

*Unaudited*

Fiscal year-end	December 31,		December 31,									
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2021	2022	
Measurement date	June 30,											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2021	2022	
Proportion of the net pension liability	0.07%	0.07%	0.07%	0.06%	0.07%	0.06%	0.06%	0.06%	0.06%	0.06%	0.06%	
Proportionate share of the net pension liability	\$ 2,904,344	\$ 2,497,942	\$ 2,625,454	\$ 3,356,147	\$ 3,215,890	\$ 2,938,239	\$ 2,991,833	\$ 4,073,165	\$ 2,870,473	\$ 3,720,443		
Covered payroll	\$ - *	\$ - *	\$ 1,774,027	\$ 1,704,498	\$ 1,722,872	\$ 1,819,570	\$ 1,951,640	\$ 2,075,426	\$ 2,238,077	\$ 2,272,975		
Proportionate share of the net pension liability as a percentage of its covered payroll	-%	-%	147.99%	196.90%	186.66%	161.48%	153.30%	196.26%	128.26%	163.68%		
Plan fiduciary net position as a percentage of the total pension liability	59.81%	66.32%	65.50%	58.30%	62.66%	64.73%	65.59%	58.72%	72.22%	65.12%		

\*Information not available

The Note to the Required Supplementary Information – Pension Liability is an integral part of this schedule.

**EXHIBIT H**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Schedule of Town Contributions - Pensions*  
**New Hampshire Retirement System Cost Sharing Multiple Employer Defined Benefit Plan**  
**For the Fiscal Year Ended December 31, 2022**

*Unaudited*

Fiscal year-end	December 31, 2013	December 31, 2014	December 31, 2015	December 31, 2016	December 31, 2017	December 31, 2018	December 31, 2019	December 31, 2020	December 31, 2021	December 31, 2022
Measurement date	June 30, 2013	June 30, 2014	June 30, 2015	June 30, 2016	June 30, 2017	June 30, 2018	June 30, 2019	June 30, 2020	June 30, 2021	June 30, 2022
Contractually required contributions	\$ 167,800	\$ 215,897	\$ 218,780	\$ 225,285	\$ 246,009	\$ 264,786	\$ 282,265	\$ 281,213	\$ 343,120	\$ 372,154
Contributions in relation to the contractually required contributions	(167,800)	(215,897)	(218,780)	(225,285)	(246,009)	(264,786)	(282,265)	(281,213)	(343,120)	(372,154)
Contribution deficiency (excess)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Town's covered payroll	\$ -	\$ -	\$ 1,704,798	\$ 1,722,872	\$ 1,819,570	\$ 1,951,640	\$ 2,075,426	\$ 2,103,121	\$ 2,268,087	\$ 2,245,834
Contributions as a percentage of covered payroll	-%	-%	-12.83%	-13.08%	-13.52%	-13.57%	-13.60%	-13.37%	-15.13%	-16.57%

\* Information not available

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTE TO THE REQUIRED SUPPLEMENTARY INFORMATION –**  
**PENSION LIABILITY**  
**FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

***Schedule of the Town's Proportionate Share of Net Pension Liability and  
Schedule of Town Contributions - Pensions***

***Changes in Benefit Terms*** – There were no changes in benefit terms for the current period.

***Changes in Assumptions*** – Salary increases changed to 5.4% from 5.6% in the current period.

***Methods and Assumptions Used to Determine Contribution Rates*** – A full list of the methods and assumptions used to determine the contribution rates can be found in the most recent actuarial valuation report. This report can be located at [www.nhrs.org](http://www.nhrs.org).

As required by GASB Statement No. 68, and as amended by GASB Statement No. 71, Exhibits G and H represent the actuarial determined costs associated with the Town's pension plan at December 31, 2022. These schedules are presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled, information is presented for those years for which information is available.

**EXHIBIT I**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Schedule of the Town's Proportionate Share of the Net Other Postemployment Benefits Liability*  
*New Hampshire Retirement System Cost Sharing Multiple Employer Defined Benefit Plan*  
*For the Fiscal Year Ended December 31, 2022*  
**Unaudited**

Fiscal year-end	December 31, 2017	December 31, 2018	December 31, 2019	December 31, 2020	December 31, 2021	December 31, 2022
Measurement date	June 30, 2017	June 30, 2018	June 30, 2019	June 30, 2020	June 30, 2021	June 30, 2022
Town's proportion of the net OPEB liability	0.03%	0.04%	0.04%	0.04%	0.04%	0.04%
Town's proportionate share of the net OPEB liability (asset)	\$ 138,196	\$ 198,818	\$ 193,998	\$ 178,687	\$ 164,365	\$ 169,233
Town's covered payroll	\$ 1,821,232	\$ 1,906,032	\$ 1,951,640	\$ 2,075,426	\$ 2,238,077	\$ 2,272,975
Town's proportionate share of the net OPEB liability (asset) as a percentage of its covered payroll	7.59%	10.43%	9.94%	8.61%	7.34%	7.45%
Plan fiduciary net position as a percentage of the total OPEB liability	7.91%	7.53%	7.75%	7.74%	11.06%	10.64%

The Notes to the Required Supplementary Information – Other Postemployment Benefit Liability is an integral part of this schedule.

**EXHIBIT J**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Schedule of Town Contributions - Other Postemployment Benefits*  
*New Hampshire Retirement System Cost Sharing Multiple Employer Defined Benefit Plan*  
*For the Fiscal Year Ended December 31, 2022*  
**Unaudited**

Fiscal year-end	December 31, 2017	December 31, 2018	December 31, 2019	December 31, 2020	December 31, 2021	December 31, 2022
Measurement date	June 30, 2017	June 30, 2018	June 30, 2019	June 30, 2020	June 30, 2021	June 30, 2022
Contractually required contribution	\$ 17,914	\$ 20,299	\$ 19,964	\$ 18,813	\$ 19,635	\$ 18,782
Contributions in relation to the contractually required contribution	(17,914)	(20,299)	(19,964)	(18,813)	(19,635)	(18,782)
Contribution deficiency (excess)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Town's covered payroll	\$ 1,819,570	\$ 1,951,640	\$ 2,075,426	\$ 2,103,121	\$ 2,268,087	\$ 2,245,834
Contributions as a percentage of covered payroll	-0.98%	-1.04%	-0.96%	-0.89%	-0.87%	-0.84%

The Notes to the Required Supplementary Information – Other Postemployment Benefit Liability is an integral part of this schedule.

**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**NOTE TO THE REQUIRED SUPPLEMENTARY INFORMATION –**  
**OTHER POSTEMPLOYMENT BENEFIT LIABILITY**  
**FOR THE FISCAL YEAR ENDED**  
**DECEMBER 31, 2022**

***Schedule of the Town's Proportionate Share of Net Other Postemployment Benefits Liability and  
Schedule of Town Contributions – Other Postemployment Benefits***

***Changes in Benefit Terms*** – There were no changes in benefit terms for the current period.

***Changes in Assumptions*** – Salary increases changed to 5.4% from 5.6% in the current period.

***Methods and Assumptions Used to Determine Contribution Rates*** – A full list of the methods and assumptions used to determine the contribution rates can be found in the most recent actuarial valuation report. This report can be located at [www.nhrs.org](http://www.nhrs.org).

As required by GASB Statement No. 75, Exhibits I and J represent the actuarial determined costs associated with the Town's other postemployment benefits at December 31, 2022. These schedules are presented to illustrate the requirement to show information for 10 years. However, until a full 10-year trend is compiled, information is presented for those years for which information is available.

***COMBINING AND INDIVIDUAL FUND SCHEDULES***

**SCHEDULE 1**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Major General Fund**  
*Schedule of Estimated and Actual Revenues (Non-GAAP Budgetary Basis)*  
*For the Fiscal Year Ended December 31, 2022*

	Estimated	Actual	Variance Positive (Negative)
<b>Taxes:</b>			
Property	\$ 4,836,361	\$ 4,818,871	\$ (17,490)
Land use change	48,000	97,917	49,917
Yield	2,000	1,027	(973)
Interest and penalties on taxes	40,000	34,922	(5,078)
Total from taxes	<u>4,926,361</u>	<u>4,952,737</u>	<u>26,376</u>
<b>Licenses, permits, and fees:</b>			
Business licenses, permits, and fees	1,280	1,587	307
Motor vehicle permit fees	1,067,000	1,081,245	14,245
Building permits	46,200	69,202	23,002
Other	18,800	21,500	2,700
Total from licenses, permits, and fees	<u>1,133,280</u>	<u>1,173,534</u>	<u>40,254</u>
<b>Intergovernmental:</b>			
State:			
Meals and rooms distribution	294,330	294,330	-
Highway block grant	122,420	226,445	104,025
Water pollution grants	7,508	14,856	7,348
Other	9,491	-	(9,491)
Federal:			
FEMA	-	41,635	41,635
From other governments	110,000	129,809	19,809
Total from intergovernmental	<u>543,749</u>	<u>707,075</u>	<u>163,326</u>
<b>Charges for services:</b>			
Income from departments	136,200	131,937	(4,263)
<b>Miscellaneous:</b>			
Interest on investments	35,000	62,186	27,186
Other	15,000	25,623	10,623
Total from miscellaneous	<u>50,000</u>	<u>87,809</u>	<u>37,809</u>
<b>Other financing sources:</b>			
Transfers in	195,000	66,002	(128,998)
Total revenues and other financing sources	6,984,590	<u>\$ 7,119,094</u>	<u>\$ 134,504</u>
Unassigned fund balance used to reduce tax rate	500,000		
Amounts voted from fund balance	84,300		
Total revenues, other financing sources, and use of fund balance	<u>\$ 7,568,890</u>		

See Independent Auditor's Report.

**SCHEDULE 2**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Major General Fund**  
*Schedule of Appropriations, Expenditures, and Encumbrances (Non-GAAP Budgetary Basis)*  
**For the Fiscal Year Ended December 31, 2022**

	Encumbered from Prior Year	Appropriations	Expenditures	Encumbered to Subsequent Year	Variance Positive (Negative)
Current:					
General government:					
Executive	\$ -	\$ 325,455	\$ 342,729	\$ -	\$ (17,274)
Election and registration	10,000	280,570	272,057	10,000	8,513
Financial administration	-	357,040	441,295	26,400	(110,655)
Revaluation of property	-	101,301	73,043	-	28,258
Legal	-	18,000	66,935	-	(48,935)
Personnel administration	-	1,000	9,531	-	(8,531)
Planning and zoning	-	290,399	135,669	-	154,730
General government buildings	-	313,904	300,202	8,185	5,517
Cemeteries	-	14,392	11,471	-	2,921
Insurance, not otherwise allocated	-	8,068	6,983	-	1,085
Advertising and regional associations	-	13,890	12,490	-	1,400
Other	-	31,968	54,137	-	(22,169)
Total general government	<u>10,000</u>	<u>1,755,987</u>	<u>1,726,542</u>	<u>44,585</u>	<u>(5,140)</u>
Public safety:					
Police	-	977,826	958,616	18,168	1,042
Ambulance	-	64,980	63,743	-	1,237
Fire	-	373,949	346,432	-	27,517
Emergency management	-	500	309	-	191
Other	-	147,100	139,505	6,255	1,340
Total public safety	<u>-</u>	<u>1,564,355</u>	<u>1,508,605</u>	<u>24,423</u>	<u>31,327</u>
Highways and streets:					
Highways and streets	-	1,948,883	1,974,245	47,500	(72,862)
Street lighting	-	15,000	10,381	-	4,619
Total highways and streets	<u>-</u>	<u>1,963,883</u>	<u>1,984,626</u>	<u>47,500</u>	<u>(68,243)</u>
Sanitation:					
Solid waste disposal	-	640,288	552,192	12,900	75,196
Health:					
Administration	-	462	819	-	(357)
Pest control	-	500	-	-	500
Health agencies	-	15,176	15,024	-	152
Total health	<u>-</u>	<u>16,138</u>	<u>15,843</u>	<u>-</u>	<u>295</u>
Welfare:					
Administration and direct assistance	-	43,149	28,394	-	14,755
Culture and recreation:					
Parks and recreation	-	199,554	155,996	53,871	(10,313)
Library	-	470,814	420,221	-	50,593
Patriotic purposes	-	300	50	-	250
Other	-	51,750	16,979	-	34,771
Total culture and recreation	<u>-</u>	<u>722,418</u>	<u>593,246</u>	<u>53,871</u>	<u>75,301</u>
Conservation	-	4,500	4,323	-	177

(Continued)

See Independent Auditor's Report.

**SCHEDULE 2 (Continued)**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Major General Fund**  
*Schedule of Appropriations, Expenditures, and Encumbrances (Non-GAAP Budgetary Basis)*  
**For the Fiscal Year Ended December 31, 2022**

	Encumbered from Prior Year	Appropriations	Expenditures	Encumbered to Subsequent Year	Variance Positive (Negative)
Debt service:					
Principal of long-term debt	-	135,328	140,477	-	(5,149)
Interest on long-term debt	-	38,594	33,429	-	5,165
Interest on tax anticipation notes	-	1,000	-	-	1,000
Total debt service	-	174,922	173,906	-	1,016
Capital outlay	69,400	195,000	46,378	195,000	23,022
Other financing uses:					
Transfers out	-	488,250	488,250	-	-
Total appropriations, expenditures, other financing uses, and encumbrances	\$ 79,400	\$ 7,568,890	\$ 7,122,305	\$ 378,279	\$ 147,706

**SCHEDULE 3**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
**Major General Fund**  
**Schedule of Changes in Unassigned Fund Balance**  
**For the Fiscal Year Ended December 31, 2022**

Unassigned fund balance, beginning (Non-GAAP Budgetary Basis), as restated (see Note 19)		\$ 3,140,628
Changes:		
Unassigned fund balance used to reduce 2022 tax rate		(500,000)
Amounts voted from fund balance		(84,300)
2022 Budget summary:		
Revenue surplus (Schedule 1)	\$ 134,504	
Unexpended balance of appropriations (Schedule 2)	<u>147,706</u>	
2022 Budget surplus		282,210
Increase in nonspendable fund balance		(87,299)
Decrease in restricted fund balance		<u>3,092</u>
Unassigned fund balance, ending (Non-GAAP Budgetary Basis)		2,754,331
<b><i>Reconciliation on Non-GAAP Budgetary Basis to GAAP Basis</i></b>		
To record deferred property taxes not collected within 60 days of the fiscal year-end, not recognized on a budgetary basis		(62,505)
Elimination of the allowance for uncollectible taxes		<u>9,982</u>
Unassigned fund balance, ending, GAAP basis (Exhibit C-1)		<u><u>\$ 2,701,808</u></u>

**SCHEDULE 4**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Nonmajor Governmental Funds*  
**Combining Balance Sheet**  
**December 31, 2022**

	Special Revenue Funds										Total
	Conservation Commission	Recreation	Bartlett Tyler	Dewey Woods	Coffin Memorial	Town Forest	Public Safety Services	Grants	Permanent Fund		
<b>ASSETS</b>											
Cash and cash equivalents	\$ 130,806	\$ 223,376	\$ 28,682	\$ 1,619	\$ 256	\$ 17,263	\$ -	\$ 41,935	\$ 155,991	\$ 599,928	
Intergovernmental receivables	-	-	-	-	-	-	-	50,000	-	50,000	
Interfund receivable	97,233	-	-	-	-	-	-	-	256	97,489	
Total assets	\$ 228,039	\$ 223,376	\$ 28,682	\$ 1,619	\$ 256	\$ 17,263	\$ -	\$ 91,935	\$ 156,247	\$ 747,417	
<b>LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</b>											
<b>Liabilities:</b>											
Interfund payable	\$ -	\$ 94,458	\$ -	\$ -	\$ 256	\$ -	\$ 1,171	\$ -	\$ -	\$ 95,885	
<b>Deferred inflows of resources:</b>											
Unavailable revenue - received in advance	-	3,955	-	-	-	-	-	91,935	-	95,890	
<b>Fund balances (deficit):</b>											
Nonspendable	-	-	-	-	-	-	-	-	70,833	70,833	
Restricted	-	-	-	-	-	-	-	-	85,414	85,414	
Committed	228,039	124,963	28,682	1,619	-	17,263	-	-	-	400,566	
Unassigned (deficit)	-	-	-	-	-	-	(1,171)	-	-	(1,171)	
Total fund balances (deficit)	228,039	124,963	28,682	1,619	-	17,263	(1,171)	-	156,247	555,642	
Total liabilities, deferred inflows of resources, and fund balances	\$ 228,039	\$ 223,376	\$ 28,682	\$ 1,619	\$ 256	\$ 17,263	\$ -	\$ 91,935	\$ 156,247	\$ 747,417	

**SCHEDULE 5**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Nonmajor Governmental Funds*  
**Combining Schedule of Revenues, Expenditures, and Changes in Fund Balances**  
**For the Fiscal Year Ended December 31, 2022**

	Special Revenue Funds											Total
	Conservation Commission	Recreation	Bartlett Tyler	Dewey Woods	Coffin Memorial	Town Forest	Public Safety Services	Grants	Permanent Fund			
<b>Revenues:</b>												
Taxes	\$ 97,918	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 97,918
Intergovernmental	-	-	-	-	-	-	-	54,247	-	-	-	54,247
Charges for services	-	92,375	-	-	-	-	5,925	-	-	-	-	98,300
Miscellaneous	65	557	55	4	-	53	-	-	1,364	-	-	2,098
Total revenues	97,983	92,932	55	4	-	53	5,925	54,247	1,364	-	-	252,563
<b>Expenditures:</b>												
Current:												
Public safety	-	-	-	-	-	-	4,894	54,247	-	-	-	59,141
Culture and recreation	-	108,637	-	-	-	5,700	-	-	-	-	-	114,337
Conservation	8,400	-	-	-	-	-	-	-	-	-	-	8,400
Total expenditures	8,400	108,637	-	-	-	5,700	4,894	54,247	-	-	-	181,878
Excess (deficiency) of revenues (under) over expenditures	89,583	(15,705)	55	4	-	(5,647)	1,031	-	1,364	-	-	70,685
<b>Other financing sources:</b>												
Transfers in	40,000	-	-	-	-	-	-	-	-	-	-	40,000
Net change in fund balances	129,583	(15,705)	55	4	-	(5,647)	1,031	-	1,364	-	-	110,685
Fund balances (deficit), beginning	98,456	140,668	28,627	1,615	-	22,910	(2,202)	-	154,883	-	-	444,957
Fund balances (deficit), ending	\$ 228,039	\$ 124,963	\$ 28,682	\$ 1,619	\$ -	\$ 17,263	\$ (1,171)	\$ -	\$ 156,247	\$ -	\$ -	\$ 555,642

See Independent Auditor's Report.

**SCHEDULE 6**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Combining Schedule of Custodial Funds Fiduciary Net Position*  
**December 31, 2022**

	Custodial Funds					Total
	Taxes	School Trust Funds	Land Disturbance	Planning & Zoning Escrows	State Motor Vehicle	
<b>ASSETS</b>						
Cash and cash equivalents	\$ -	\$ 933,436	\$ 9,860	\$ -	\$ -	\$ 943,296
Intergovernmental receivables	5,159,622	-	96,193	146,999	-	5,402,814
Total assets	<u>5,159,622</u>	<u>933,436</u>	<u>106,053</u>	<u>146,999</u>	<u>-</u>	<u>6,346,110</u>
<b>LIABILITIES</b>						
Intergovernmental payables:						
School	5,159,622	-	-	-	-	5,159,622
Escrow payable	-	-	-	7,885	-	7,885
Total liabilities	<u>5,159,622</u>	<u>-</u>	<u>-</u>	<u>7,885</u>	<u>-</u>	<u>5,167,507</u>
<b>NET POSITION</b>						
Restricted	<u>\$ -</u>	<u>\$ 933,436</u>	<u>\$ 106,053</u>	<u>\$ 139,114</u>	<u>\$ -</u>	<u>\$ 1,178,603</u>

**SCHEDULE 7**  
**TOWN OF SUNAPEE, NEW HAMPSHIRE**  
*Combining Schedule of Custodial Funds Changes in Fiduciary Net Position*  
*For the Fiscal Year Ended December 31, 2022*

	Custodial Funds					Total
	Taxes	School Trust Funds	Land Disturbance	Planning & Zoning Escrows	State Motor Vehicle	
<b>Additions:</b>						
Contributions	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ 100,000
Investment earnings	-	7,856	-	-	-	7,856
Tax collections for other governments	15,735,029	-	-	-	-	15,735,029
State motor vehicle fees collected	-	-	-	-	346,769	346,769
Other	-	-	26,855	1	-	26,856
Total additions	<u>15,735,029</u>	<u>107,856</u>	<u>26,855</u>	<u>1</u>	<u>346,769</u>	<u>16,216,510</u>
<b>Deductions:</b>						
Payments for escrow purposes	-	-	9,500	1,409	-	10,909
Payments of taxes to other governments	15,735,029	-	-	-	-	15,735,029
Payments of motor vehicle fees to State	-	-	-	-	346,769	346,769
Total deductions	<u>15,735,029</u>	<u>-</u>	<u>9,500</u>	<u>1,409</u>	<u>346,769</u>	<u>16,092,707</u>
Net increase (decrease) in fiduciary net position	-	107,856	17,355	(1,408)	-	123,803
Net position, beginning	-	825,580	88,698	140,522	-	1,054,800
Net position, ending	<u>\$ -</u>	<u>\$ 933,436</u>	<u>\$ 106,053</u>	<u>\$ 139,114</u>	<u>\$ -</u>	<u>\$ 1,178,603</u>



# PLODZIK & SANDERSON

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## ***INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS***

To the Members of the Board of Selectmen and Town Manager  
Town of Sunapee  
Sunapee, New Hampshire

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, business-type activities, each major governmental and proprietary fund, and aggregate remaining fund information of the Town of Sunapee, as of and for the year ended December 31, 2022, and the related notes to the financial statements, which collectively comprise the Town of Sunapee's basic financial statements and have issued our report thereon dated October 20, 2023.

### ***Internal Control Over Financial Reporting***

In planning and performing our audit of the financial statements, we considered the Town of Sunapee's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town of Sunapee's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town of Sunapee's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as described below, we identified certain deficiencies in internal control that we consider to be a material weakness and significant deficiencies.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Town's financial statements will not be prevented or detected and corrected on a timely basis. We consider the deficiency described below to be material weaknesses:

### ***2022-01 General Town Policies***

During our audit, we noted that at the end of 2022, the Town has experienced a high turnover in its accounting positions. As a result, well-defined accounting policies and procedures have not been established and many review and reconciliation policies and procedures have not been consistently or continuously maintained. We suggest that a formal accounting policies and procedures manual be developed, documented, and distributed to all employees. A well-structured accounting policies and procedures manual can be very helpful in ensuring that proper procedures and related internal controls are in place and consistently followed.

The Town is lacking formal policies over investments, purchasing, anti-fraud, transfers of appropriations, credit card use and capital assets. In addition, the Town is receiving federal funds and should have policies in accordance with 2 CFR 200 in place which include procurement, cash management and allowable costs. An investment policy is required per NH State statute RSA 41:9 *Financial Duties and* should be adopted and reviewed by the Board of Selectmen annually. Credit card use by

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employees should be controlled via a detailed credit card policy which includes cardholder responsibilities, limitations on card use, processes for submitting documentation etc. A capital asset policy is an integral part of the recording and maintenance of the Town's capital asset records. Without such a policy in place there can be inconsistency in the tracking, recording, and disposal of assets. We recommend that the Town establish and formally adopt the above noted policies.

**Management's Response:**

- Our overarching response, to all audit recommendations, is that current team members were not in place in FY2021 and cannot speak to the management of Town finances. The current team is taking the recommendations, from the FY2021 audit, and using them as a roadmap to course correct significant deficiencies and to establish industry standard financial management systems.
- A new Town Manager joined the team in November of 2021. An Assistant Administrator/Finance Director joined in April of 2022 and a Finance Associate joined at the end of July 2022. Recommendations, in the FY2021 Audit, will be used to help rebuild the financial management systems employed by the Town of Sunapee's Finance Team and Department Heads.
- The newly appointed team will begin to craft a formal accounting policies and procedures manual. Concurrently, and as part of the overall policies and procedures development process, the team will craft polices addressing purchasing, credit card usage, anti-fraud, transfers of appropriations, credit card use, and tracking capital assets.
- The Town Manager, Treasurer, and interim Finance Director will work with the Board of Selectmen to establish an investment policy.

*2022-02 Staffing of Accounting Department*

We noted the Town is experiencing significant delays in its accounting and reporting processes, as well as timely account reconciliations being performed in the accounting department, due to turnover in finance positions at the end of 2022. Best practices suggest that an accounting department be properly staffed so that there is a clear segregation of duties and allows those in the department to report financial information on an accurate and timely basis. It will also allow the Town to properly track the Town's capital assets which is not presently being done. Adequate time must be spent on preparation, review, and reconciliation of records to properly and efficiently accomplish the accounting process at the Town. Continued problems in receiving timely and current financial information can significantly impact senior management's abilities, such as providing relevant oversight and budgetary control. In addition, the Town presently receives an adverse opinion because the Town's capital assets are not being reported. We suggest the Town evaluate the staffing of the accounting department as soon as possible, because time must be allowed for training any new hires. The Town should give the accounting department staffing issue the highest priority in upcoming months.

**Management's Response:**

- The previous administration's response to the retirement of the longtime Finance Director was to hire an out-side contractor and to increase the hours of the account clerk. That arrangement did not allow for the creation of clear segregation of duties and resulted in burdening one position with too many responsibilities.
- In response to the recommendation, a full-time Assistant Administrator/Finance Director has been hired and has a full-time Finance Associate. Because of the level of clean-up work still required, a full-time interim Finance Director has been contracted from a third-party vendor. While this has created incredibly large costs to the Town, the level of effort is required to design and implement the vast number of systems required.
- The aforementioned staffing structure affords the Town the opportunity to begin to institute clear segregation of duties.

*2022-03 Accounting Discipline*

In the process of performing our audit, we noted that there was a certain lack of review and reconciliation in many areas of the accounting function. Accounting tasks such as monthly reconciliations, cross checks, and reviews play a key role in proving the accuracy of accounting data and financial information that comprise interim and year-end financial statements. This can increase the chance of accounting data and financial information that is not accurate or misstated could be reported in any interim and/or year-end financial statements. We strongly suggest that the Town establish effective review and reconciliation policies and procedures as a customary part of the accounting process.

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**Management's Response:**

- A clear review and reconciliation process is being undertaken. A new policy is currently being drafted.

*2022-04 Town Treasurer*

The following was noted during review of processes and procedures related to the activities of the Town Treasurer:

- i. The Treasurer is not completing a bank reconciliation for any Town accounts and is not reviewing the reconciliations completed by the Finance Office.
- ii. The Treasurer is not maintaining a cash book to use in comparison with the Town's general ledger.

The Treasurer should be approving the Finance Office's reconciliation as well as creating their own reconciliation for each account. State RSA 41:29-a, *Duties of Elected and Appointed Town Treasurers*, requires the Treasurer to maintain a cashbook for each account in their custody. We recommend that the Treasurer review and sign off on the Finance Office's reconciliation. The Treasurer also should create their own reconciliation and make sure that it ties out to the Finance Office's reconciliation for each account in their custody. Further, a cashbook should be maintained for each account in the Treasurer's custody.

**Management's Response:**

- A new Treasurer was elected in March of 2022. In FY2022, efforts will be made to institute the recommendations above.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the following deficiencies in the Town of Sunapee's internal control to be significant deficiencies:

*2022-05 Disbursement Procedures*

As noted previously the Town is lacking a purchasing policy and is not utilizing a purchase order system to manage purchases. Utilizing a purchase order system can provide a more accurate way for the Town to ensure budget compliance and provides a trail of approval for all departments. We strongly recommend that all check disbursements be dated in sequence using the date the check is actually produced and if accounts payables exist at year end a journal entry be recorded to post the payables rather than back dating the checks. Further we recommend that the Town review and implement a purchasing policy which includes the use of purchase orders to properly encumber appropriations.

**Management's Response:**

- A policy will be created to ensue petty cash checks written out to the individual who has custody of the petty cash.
- A purchasing policy will be designed and implemented.
- Checks will no longer be written out to cash.

*2022-06 Town Trust Funds*

While documenting internal controls and testing the Town's trust funds we noted there is a small cash balance in a Sugar River Savings Bank account of \$32.18 that the Trustees are unaware of what it relates to. This could result in misstated MS-9 forms and bank balances. We recommend that the Trustees research the small bank account and determine the purpose of the funds and close it into the appropriate trust account.

**Management's Response:**

Town management has reviewed and accepts the three findings concerning the management of the Town's Trust Funds and has initiated the following corrective actions to close the findings:

1. The Trustee of The Trust Funds assistant has been preparing monthly reconciliation reports for the trustees since the auditors attended the Selectmen's meeting It should be noted that while a systematic reconciliation was not performed on a monthly basis, the monthly bank statements for the Trust accounts were reviewed by both the Town's Finance Department and the Trustees and the accounts audited on an annual basis.

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2. At the beginning of the fiscal year the Trustees identified that the two funds the Town had voted to close in 2019 remained open. Accordingly, the Trustees instructed TD Bank to close the two accounts on March 9, 2022 and the same day TD Bank confirmed that the accounts had been closed and the remaining balances transferred to the disbursement account, as shown in the attached correspondence. This finding should be closed.
3. Similarly, at the start of the Fiscal Year the Trustees identified the dormant Sugar River Savings Bank account with a balance of \$32 as a matter requiring attention. Following consultation with the Town management and with the Department of Revenue Administration, the Trustees and the Town determined that a warrant article would be required to close this account. Accordingly, the Town has drafted the required article and this matter will be brought to the Town's voters as part of the normal FY 2023 budget process. Once the warrant article passes at the 2023 Town Meeting the account will be closed and the balance transferred to the Town's General Account. This will constitute final resolution of this matter.

***2022-07 Journal Entries***

During both documentation of journal entry internal controls and during journal entry testing it was noted that there was no approval of journal entries. Additionally, journal entries were lacking appropriate support to verify that the entries made were appropriate. All journal entries should have formal approval and supporting documentation to ensure that they are appropriate. Continuation of this practice can lead to incorrect journal entries being posted to the general ledger. We recommend the Town to implement a formal review and approval process for journal entries.

**Management's Response:**

- The Town will implement a formal review and approval process for journal entries.

***2022-08 Capital Asset Records***

At the present time, the capital asset records are not being maintained by the Town. GASB Statement No. 34, *Basic Financial Statements-Management's Discussion and Analysis - For State and Local Governments*, requires that the capital assets are reported for the governmental and business-type activities. The Town is not complying with GASB Statement No. 34 and as a result the Town is receiving an adverse opinion on the governmental and business-type activities and proprietary funds for the period ending December 31, 2021. We recommend that the Town maintain capital asset records and reconcile them to the general ledger, as appropriate, on a timely basis to ensure that accurate accounting for the assets. Specifically, the capital asset records should include the following information: description of the asset; cost, vendor name and date purchased; date placed in service; estimated useful life; depreciation method; depreciation expense and accumulated depreciation for the year; date asset retired and selling price, if applicable. Complete information such as the above on all the capital assets would provide excellent control for the safeguarding of these assets, which are significant in costs.

**Management's Response:**

- The Town is working to establish a capital assets records management plan. It expects to begin implementation of the plan in late 2023.

***Compliance and Other Matters***

As part of obtaining reasonable assurance about whether the Town of Sunapee's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. We noted certain matters that we have reported to management of the Town of Sunapee in a separate letter dated October 20, 2023.

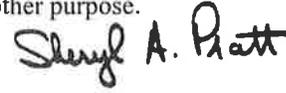
***Town of Sunapee's Responses to Findings***

The Town of Sunapee's responses to the findings identified in our audit are described above and the Town's responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

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***Purpose of This Report***

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Town's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Town's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



October 20, 2023  
Concord, New Hampshire

PLODZIK & SANDERSON  
Professional Association

**PRESS RELEASE**

**CONTACT: MARK DECOTEAU, CHAIR**  
**COALITION COMMUNITIES, 2.0**  
**603-254-8303**

**COURT DECISION CALLS FOR FAILED FUNDING FORMULA & CREATION OF DONOR TOWNS**

Concord – Today’s Rand school funding decision by the Court was disappointing for municipalities throughout New Hampshire when it said that municipalities that raise tax revenue in their respective cities and towns cannot be retained by those communities to fund the decision making that those deliberative bodies made in their own hometowns and cities.

“This is not a fair solution,” said Mark Decoteau, Chair of the Coalition Communities 2.0. “To have a Court ruling say that the State of New Hampshire can legally take revenue from a community raised by taxpayers in that city or town and give it to another city or town without any accountability is just plain wrong. This order is a “back to future” ruling that creates winners and losers with failed funding structure that has been rejected by the NH Legislature.

“While the Coalition does not take issue with the Court’s decision ending the small number of negative tax rate communities, the decision to reinstitute the failed donor-received model is a serious mistake. The State has been down this road before and this Court’s methodology of pitting town against town with a proposal that is unequal in its application will only serve to bring about more acrimony and certainly more court challenges. This method is not fair, it is not right and must not be allowed to be implemented again despite this decision.”

“The Court’s decision also gets the New Hampshire constitution wrong. The Legislature’s 2011 decision to end donor-receiver towns is not a tax but a spending decision by the Legislature. Under our Constitution, the Legislature has the authority to fund education and wisely decided to spend education tax dollars in the local communities where the taxes were raised.”

Coalition Communities 2.0 is an association of municipalities that have shared concerns regarding state education funding proposals, chief among them any re-consideration to have property tax receipts of one town being expended for another town’s education costs. Decoteau went on to say, “The unfair redistribution of property tax revenue being raised in one town and expended in another has been tried in the past and it was an utter failure in terms of fairness and fiscal responsibility. The State needs a new education formula that has a structure or guardrails so the State and its communities do not find themselves with the same (or similar) unfair funding system from the early 2000’s.”

“Coalition Communities 2.0 appreciates the challenges in addressing school funding in our State. We care deeply about ensuring a quality education for our children and we will continue our advocacy for a fair and comprehensive approach for education funding in New Hampshire. Working with legislators, community leaders and the general public, our members are confident that an appropriate resolution can be developed that does not treat different towns disproportionately or differently”

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

“...it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country...” Part II, Article 83 N.H Constitution, June 2, 1784.

**Summary**

What is the base cost to provide the opportunity for an adequate education 239 years after that fundamental right was ratified in our Constitution? The short answer is that the Legislature should have the final word, but the base adequacy cost can be no less than \$7356.01 per pupil per year and the true cost is likely much higher than that. At a minimum this is an increase of \$537,550,970.95 in base adequacy aid to New Hampshire Schools. Thus, the current allocation of \$4100 per pupil is unconstitutional.

**ORDER ON THE MERITS**

In this case, the plaintiffs challenge the constitutionality of RSA 198:40-a, II(a), contending that “local school districts require substantially more funding” to “deliver the opportunity for a constitutionally adequate education, as defined in RSA 193-E:2-a . . . .”

Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 157 (2021) (“ConVal”). The Court held a three-week bench trial on the matter in April of 2023. During trial, the State moved for a directed verdict. See Doc. 235; see also Doc. 236 (State’s Dir. Ver. Mem.); Doc. 238 (Pls.’ Obj. Doc. 235). The Court took that motion under advisement, conditionally allowing trial to proceed. Post-trial, the parties submitted legal memoranda. See Doc. 242 (State’s Tr. Mem.); Doc. 244 (State’s Sep. Powers Mem.); Doc. 245 (Pls.’ Post-Tr. Mem.); see also Doc. 243 (State’s Req. Findings & Rulings). The Court has carefully considered the evidence presented at trial, the parties’ arguments, and the applicable law. After review, the Court finds and rules as follows.<sup>1</sup>

### 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.

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<sup>1</sup> The Court’s findings and rulings are in narrative form in this Order. The State’s requests for findings of fact and rulings of law are thus granted, denied, or deemed unnecessary, consistent with the following. See Geiss v. Bourassa, 140 N.H. 629, 632–33 (1996); Howard v. Howard, 129 N.H. 657, 659 (1987).

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. School districts receive base adequacy aid for each pupil in the average daily membership in residence (“ADMR”).<sup>2</sup> Id. By contrast, school districts only receive differentiated aid for each pupil in the ADMR that meets certain statutory criteria. Id.<sup>3</sup> Pursuant to RSA 198:40-a, III, the “sum total” of base adequacy aid and differentiated aid, if any, “shall be the cost of an adequate education.”

Effective July 1, 2023, the legislature amended RSA 198:40-a to provide for base adequacy aid of \$4,100 per pupil in the ADMR. See RSA 198:40-a, II(a) (2023). 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

At issue in this case is the funding amount set forth in RSA 198:40-a, II(a): i.e., the amount of base adequacy aid. See ConVal, 174 N.H. at 159; see also id. at 157

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<sup>2</sup> Under prior versions of RSA 198:40-a, per pupil calculations considered average daily membership in attendance (“ADMA”), not ADMR. See Doc. 194 (Mar. 20, 2023 Order on Cross-Mots. Summ. J.) at 2–3.

<sup>3</sup> 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.

(noting plaintiffs “do not challenge the constitutionality of the definition of an adequate education set forth in RSA 193-E:2-a”). In support of their claim that base adequacy aid is constitutionally insufficient, the plaintiffs highlight the costs of: employee salaries and benefits; transporting students to and from school; maintaining appropriate and realistic teacher-to-student ratios; providing food services; and facilities operation and maintenance. See Doc. 245. In response, the State questions whether and to what extent it must fund these cost-drivers. See Doc. 242. The State further questions the sufficiency of the plaintiffs’ evidence concerning the relevant costs. See id.

Prior to the April 2023 trial, the parties filed two rounds of cross-motions for summary judgment. Upon review of the first round of motions, the Court concluded that the plaintiffs were entitled to partial summary judgment. See Doc. 51 (June 5, 2019 Order). In reaching this conclusion, the Court analyzed certain flaws in a 2008 report and accompanying spreadsheet generated by the Joint Legislative Oversight Committee on Costing an Adequate Education (the “2008 Report”). See ConVal, 174 N.H. at 158, 166; see also Pls.’ Ex. 18 (2008 Report). Because the base adequacy aid figure initially set by the legislature matched the figure set forth in the 2008 Report, the Court reasoned that faulty costing determinations and rationale in the 2008 Report demonstrated the insufficiency of base adequacy aid. See Doc. 51.

On appeal, the Supreme Court concluded that this Court erred in basing its summary judgment ruling on the contents of the 2008 Report because that report is not incorporated by reference into RSA 198:40-a, II(a). See ConVal, 174 N.H. at 166. The Supreme Court explained that in order 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 (remanding case for trial, and noting determination of components and costs presents mixed question of law and fact). Following remand, the parties again moved for summary judgment. Citing the Supreme 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 at 10 (citing ConVal, 174 N.H. at 167, n.1).

Nevertheless, the second round of summary judgment motions afforded the Court an opportunity to resolve a significant preliminary question: how, if at all, the Court should consider differentiated aid in ruling on the plaintiffs’ claims. See id. at 6. Addressing this issue, the State argued that the correct inquiry is whether the total amount of funding (base adequacy aid plus differentiated aid) is constitutionally sufficient. See id. at 7. The Court disagreed, reasoning that “differentiated aid is intended to fund extra services for those pupils who meet the statutory criteria,” and the State’s approach could improperly divert differentiated aid funds to other purposes. See id. (citing RSA 198:40-a). The Court recognized, however, that “costs attributable to the extra services contemplated by” the differentiated aid scheme “cannot support the plaintiffs’ challenge to the amount of base adequacy aid.” Id. Accordingly, in analyzing the sufficiency of base adequacy aid, the Court clarified that it could not consider “costs attributable to additional services provided to students who qualify for differentiated aid.” Id.; but see Doc. 232 (Apr. 6, 2023 Order on Mots. In Limine) at 18–19 (acknowledging questions regarding degree to which costs can be cleanly divided). In the Court’s view, under the current statutory scheme, a school must be able to provide the opportunity for an adequate education if it had no students who qualified for differential aid. In fact, as

the evidence at trial clearly demonstrates, many schools receive very little differential aid.<sup>4</sup> Consistent with that clarification, the sole issue before the Court is the constitutional sufficiency of base adequacy aid. See Doc. 194 at 10.

#### Standard of Review and Burden of Proof

Although the Court has resolved the above-described preliminary question concerning the relevance of differentiated aid, there are additional preliminary questions the Court must now address. The first two concern the applicable standard of review and burden of proof. With respect to the standard of review, the State argues that the Court must presume RSA 198:40-a, II(a), is constitutional. See Doc. 242 at 3 (quoting ConVal, 174 N.H. at 161, for proposition that Court must not declare statute invalid “except on inescapable grounds”). Relying on such a presumption, the State further argues that the plaintiffs must establish “a clear and substantial conflict . . . between [the statute] and the constitution.” Id. (quoting ConVal, 174 N.H. at 161). The State acknowledges, however, that “the right to a State funded constitutionally adequate education” is a fundamental right. See id. at 4 (citing Akins v. Sec’y of State, 154 N.H. 67, 71 (2006), and Claremont Sch. Dist. v. Governor, 142 N.H. 462, 473 (1997) (“Claremont II”)); see also Claremont II, 142 N.H. at 473 (“We hold that in this State a constitutionally adequate public education is a fundamental right.”). Thus, as the State recognizes, if the plaintiffs establish such a clear and substantial conflict, then “the

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<sup>4</sup> Even though the Court granted the plaintiff’s Motion in Limine concerning differential aid, substantial evidence about differential aid was admitted at trial. Many of the plaintiff’s financial spreadsheets contained accountings for the amounts of differential aid received. Thus, the Court allowed cross examination on those figures during trial. The only real impact of the Court’s ruling was that it limited the scope of one expert’s testimony concerning the total amount of differential aid provided to the schools. However, all the numbers and arguments based on them are before the Court.

burden shifts to the government to justify the law under the strict scrutiny standard.”  
Doc. 242 at 5 (quoting Akins, 154 N.H. at 71).

The plaintiffs maintain that they have “proved a deprivation of the fundamental right to a State-funded adequate education,” thereby shifting the burden to the State to justify the amount of base adequacy aid. See Doc. 245 at 2. The State disagrees. See Doc. 242 at 23–36. Indeed, both at summary judgment and at trial, the State took the position that the plaintiffs’ evidence is so fundamentally flawed that it cannot satisfy their burden. See id. Relying on that view, the State’s trial strategy was to criticize or otherwise attempt to undermine the plaintiffs’ evidence, rather than presenting affirmative evidence defending the sufficiency of base adequacy aid. The State presented no evidence to justify the current base adequacy amount. As predicted by the Court in its prior order on summary judgment, the evidence at trial overwhelmingly established that no school could provide the opportunity for an adequate education if it had to rely solely on the base adequacy aid from the State.

For the reasons set forth below, the Court concludes that the plaintiffs have made the showing necessary to defeat any applicable presumption of constitutionality, thus shifting the burden of proof to the State. More specifically, the plaintiffs have established a clear and substantial conflict between the current amount of base adequacy aid funding, and Part II, Article 83 of the State Constitution. Accordingly, the Court will assume for the purposes of this Order that the above-described standard of review and burden of proof apply here. Cf. Canty v. Hopkins, 146 N.H. 151, 156 (2001) (declining to reach arguments that would not alter court’s conclusion).

### Nature of Plaintiffs' Claim

The final preliminary question the Court must address is the appropriate scope of the plaintiffs' claim. This question arises because, though the plaintiffs have asserted both a facial challenge and an as-applied challenge to RSA 198:40-a, II(a), see Joint Ex. 248, the State argues that this statute cannot be challenged on an as-applied basis. See Doc. 242 at 39–40. As the State correctly notes, a facial challenge to a statute requires a much broader showing than an as-applied challenge. See id. at 4–5 (citations omitted). Indeed, an as-applied challenge “concedes” that the statute at issue “may be constitutional in many . . . applications, but contends that it is not constitutional under the particular circumstances of the case.” Working Stiff Partners, LLC v. City of Portsmouth, 172 N.H. 611, 622 (2019). By contrast, a “facial challenge is a head-on attack of a legislative judgment, an assertion that the challenged statute violates the Constitution in all, or virtually all, of its applications.” Id. The State argues that because RSA 198:40-a, II(a), establishes a “universal cost” figure, the plaintiffs cannot seek to invalidate that figure by establishing a unique entitlement to a greater amount of base adequacy aid as compared to other school districts. See Doc. 242 at 39–40. The State thus maintains that an as-applied challenge to the statute is improper.

For the reasons set forth below, the Court concludes that the plaintiffs have carried their burden with respect to their facial challenge to RSA 198:40-a, II(a). The Court further concludes that the plaintiffs would not be entitled to any greater relief arising out of an as-applied challenge as compared to their facial challenge. Accordingly, the Court need not reach the State's argument concerning the propriety or availability of an as-applied challenge in this context. See Canty, 146 N.H. at 156.

### Questions Presented

Consistent with the rulings set forth above, and given the nature of the plaintiffs' claim, there are three inquiries before the Court: (I) what are the necessary components or cost-drivers of a constitutionally adequate education, as defined by the legislature, exclusive of additional services provided to students eligible for differentiated aid?; (II) what funding is necessary for school districts to provide those components and cost-drivers?; and (III) how does that amount compare to the funding currently provided via base adequacy aid? As the third inquiry is a matter of simple mathematics, the evidence presented at trial largely focused on the first two inquiries.

### Factual Findings

During trial, the Court heard testimony from twenty-seven witnesses, most of whom work (or worked) for one or more of the plaintiff school districts. Much of the testimony concerned amounts individual school districts actually spend on cost-drivers such as employee salaries, benefits, student transportation, and facilities operation and maintenance. In providing testimony on those topics, witnesses relied on personal knowledge as well as information contained in various financial reports, including annual reports submitted to the Department of Education (the "DOE") by each school district. See, e.g., Pls.' Ex. 60 (2017-18 annual DOE report ("DOE 25") for Fall Mountain Regional School District). The data contained in the financial reports was undisputed. Each plaintiff submitted five years of accounting data. There was no dispute at trial about how much school districts spent or received. The central issue for the Court was to discern the difference between the "costs" for an adequate education and "expenditures" contained in the evidence.

Throughout trial, the State attempted to undermine this testimony on two key fronts. First, the State emphasized that RSA 193-E:2-a defines a constitutionally-adequate education as including instruction in specific content areas. The State further emphasized that school districts could organize their financial ledgers in a manner that allocates expenses to individual content areas, but school districts generally have not done so. The State emphasized these points in support of its theory that the plaintiffs chose to gather the wrong kinds of evidence, and thus could not prove their claim.

In response to questioning about these points, the plaintiffs' witnesses testified that a content-based allocation of expenses would be impractical and imprecise because modern teaching methods incorporate a multi-disciplinary approach. Notably, DOE Commissioner Edelblut endorsed this instruction approach during his testimony, agreeing that interconnecting subject matter is a better educational model.<sup>5</sup> Because individual lessons often incorporate several RSA 193-E:2-a content areas, the plaintiffs' witnesses explained that there is no benefit to attempting to track expenses by content area, and any such benefit would be outweighed by the resulting cost. Some witnesses testified that such an endeavor would not be possible, especially in lower grades where one teacher teaches multiple subjects and where blended curriculum is the rule and not the exception.

Upon review, the Court concludes that this issue is largely immaterial. A content-based accounting system might have proven necessary had the evidence demonstrated that school districts devote substantial classroom resources to pursuits outside of the

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<sup>5</sup> By way of example, a math lesson that incorporates word problems also improves a student's reading comprehension. Similarly, assignments involving historical literature (such as Thomas Paine's Common Sense) provide instruction in several content areas, including English, social studies, and history.

content areas delineated in RSA 193-E:2-a. However, the evidence establishes that with respect to classroom instruction, school districts devote at most a negligible amount of resources to such pursuits.

The lone possible exception concerns high school elective courses. See Pls.’ Ex. 16 at 24–25 (Ed 306.27(m)) (requiring that high school students earn at least 20 credits to graduate, including 6 credits in “Open electives”). While the plaintiffs’ witnesses opined that such courses fall within the delineated content areas, reasonable minds could disagree with respect to some specific offerings discussed at trial. Notably, however, the plaintiffs do not maintain that base adequacy aid should cover all school district expenses. Indeed, as explained in more detail below, the plaintiffs’ trial evidence took a conservative approach when identifying the costs associated with providing the opportunity for a constitutionally adequate education, seeking base adequacy aid funding at a level that is approximately half of statewide average expenditures. Given the manner in which the plaintiffs have calculated what they claim to be the requisite amount of base adequacy aid, any constitutional inefficiencies resulting from high school elective offerings do little to undermine the plaintiffs’ overall position.

In summary, the Court finds that school districts devote few if any classroom instruction costs (i.e., teacher salaries and benefits, instructional materials, etc.) to pursuits that fall outside the content areas set forth in RSA 193-E:2-a. The Court further finds that the plaintiffs’ conservative approach to calculating what they claim to be the requisite amount of base adequacy aid corrects for any such unrelated costs. The plaintiffs’ evidence of “costs” significantly discounted the actual instructional expenditures. For these reasons, the Court concludes that the State’s arguments

concerning the possibility of implementing a content area-specific accounting system are unavailing.

The second way in which the State attempted to undermine the plaintiffs' cost evidence was to emphasize that actual costs may not equate to necessary costs, because school districts could choose to spend more than the "bare minimum." For example, a school district could choose to pay higher teacher salaries in an effort to attract the most qualified candidates, or maintain lower teacher-to-student ratios in an effort to improve the quality of instruction. In the State's view, any resulting cost increase would be the product of local control, and would accordingly fall outside of the State's constitutional obligations.

In responding to questioning about this issue, the vast majority of the plaintiffs' witnesses rejected the premise that relevant actual costs are distinguishable from those that are constitutionally required. In particular, the witnesses explained that market forces require school districts to offer a certain caliber employment package—including salary, benefits, and working conditions—in order to recruit and retain qualified teachers and other employees. As was conclusively proven at the three-week trial: a school needs teachers to teach. Witnesses further explained that without such offerings, New Hampshire school districts would be unable to compete with other employers, including school districts in neighboring states. In addition, several witnesses noted that in some cases, actual existing employment packages have proven insufficient to recruit all necessary personnel, resulting in numerous vacancies.

To be sure, the evidence demonstrates that certain individual school districts (such as Oyster River) choose to spend more than is strictly necessary to educate their

students.<sup>6</sup> Nevertheless, the evidence overwhelmingly establishes that statewide (or regional) market forces give rise to a threshold level of employment package that school districts must provide in order to recruit and retain personnel. While school districts do not offer perfectly uniform employment packages, the Court finds that the costs reflected in the plaintiffs' aforementioned conservative calculations generally account for any minor differences in such offerings. For these reasons, the Court concludes that any discrepancies between the relevant actual costs and those that are constitutionally necessary do not meaningfully undermine the plaintiffs' position.

Having addressed the State's broader arguments concerning the sufficiency of the plaintiffs' evidence, the Court now turns to the specifics of that evidence. In brief, the evidence the plaintiffs offered at trial was intended to establish two points: (1) the existing amount of base adequacy aid is constitutionally insufficient; and (2) base adequacy aid funding must be increased to no less than \$9,900 plus actual transportation costs. See Doc. 245 at 33–34. The plaintiffs offered three methodologies in support of these points. First, the plaintiffs presented calculations completed by Dr. Kimberly Rizzo Saunders, superintendent of schools for the Contoocook Valley School District ("ConVal"). See Pls.' Ex. 1 (spreadsheet reflecting calculations). Second, the plaintiffs presented a statistical analysis performed by Dr. Bruce Baker. See Pls.' Ex. 111 (Baker Report). Lastly, the plaintiffs presented evidence concerning the per pupil cost some school districts pay to educate their

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<sup>6</sup> To be clear, Dr. Morse testified that he is fortunate enough to have voters in his SAU who support academics and the many various initiatives that function on the Oyster River School District. He also testified that his teacher salary costs are also attributable to competition in the employment market with several communities in Massachusetts – where teachers make considerably more money.

students in other districts. See Joint Ex. 248 ¶ 112 (“Winchester must pay tuition of \$14,023 to . . . Keene”). The Court will address each methodology, in turn.

I. Calculations Performed by Dr. Rizzo Saunders

Prior to July 1, 2023, base adequacy aid funding was roughly equivalent to the cost figure established in the 2008 Report, adjusted for inflation. Compare Pls.’ Ex. 2 (Compl. Ex. A – 2008 Report Spreadsheet) (reflecting base per pupil cost of \$3,456) with RSA 198:40-a, II(a) (2009) (setting base adequacy aid at \$3,450) and RSA 198:40-a, II(a) (2016) (setting base adequacy aid at \$3,561.27, plus adjustments). To calculate what she characterizes as a more realistic base adequacy aid amount, Dr. Rizzo Saunders modelled her work after the 2008 Report, see Pls.’ Ex. 2, as well as an updated 2018 Report completed by the legislature’s Committee to Study Education Funding and the Cost of an Opportunity for an Adequate Education. See Pls.’ Ex. 19 (2018 Report) at 17–19 (2018 Updated Spreadsheet and Explanations).<sup>7</sup> Dr. Rizzo Saunders explained at trial that after significant discussion with peers in the educational community and review of data gathered by or submitted to the DOE, she affirmatively assessed the validity of each cost figure included in the 2008 and 2018 Report spreadsheets. She then attempted to correct those figures she determined to be the least consistent with real world costs.<sup>8</sup> In light of the foregoing, although the 2008 and 2018 Reports were not incorporated into RSA 198:40-a, see ConVal, 174 N.H. at 166, both provide important context for Dr. Rizzo Saunders’ work.

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<sup>7</sup> As the Court ruled at trial, the exhibit was admitted for the limited purpose.

<sup>8</sup> Given Dr. Rizzo Saunders’ credible testimony, to the extent she retained any 2008 or 2018 Report figures in her own calculations, the Court finds that she deemed such figures sufficiently realistic as to remain part of her conservative cost calculations.

Based on this work, Dr. Rizzo Saunders concluded that base adequacy aid should be funded at \$9,929 excluding transportation. See Pls.' Ex. 4. The following spreadsheet contains the figures used in the 2008 Report and the 2018 Report, as well as the adjustments performed by Dr. Rizzo Saunders:

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TOTALS	2008		2018		Petitioners	
	K-2	3-12	K-2	3-12	K-2	3-12
Teachers	\$2,269	\$1,891	\$2,470	\$2,058	\$7,694	\$6,295
Principal	\$202	\$202	\$223	\$223	\$262	\$262
Admin. assistant	\$84	\$84	\$96	\$96	\$115	\$115
Guidance counselor	\$130	\$130	\$141	\$141	\$182	\$182
Library/media specialist	\$95	\$95	\$102	\$102	\$123	\$123
Technology coordinator	\$39	\$39	\$106	\$106	\$121	\$121
Custodian	\$73	\$73	\$81	\$81	\$98	\$98
Instructional materials	\$250	\$250	\$300	\$300	\$300	\$300
Technology	\$75	\$75	\$100	\$100	\$100	\$100
Prof. development	\$20	\$20	\$30	\$30	\$30	\$30
Facilities	\$195	\$195	\$250	\$250	\$1,400	\$1,400
Transportation	\$315	\$315	\$315	\$315	\$(actual)	\$(actual)
Food services	\$0	\$0	\$0	\$0	\$66	\$66
Nurse services	\$0	\$0	\$0	\$0	\$294	\$294
Superintendent services	\$0	\$0	\$0	\$0	\$158	\$158
Total per pupil universal cost	\$3,747	\$3,369	\$4,214	\$3,802	\$11,213	\$9,544
Blended per pupil cost	\$3,456		\$3,897		\$9,929	

Id.; see Pls.’ Exs. 1–3 (individual spreadsheets).<sup>9</sup>

A. *Per Pupil Teacher Costs*

As set forth below, in analyzing the per pupil cost of teachers, Dr. Rizzo Saunders used the total salary figure set forth in the 2018 Report, but adjusted the cost of benefits, as well as the teacher-to-student ratios used to derive a per pupil figure:

TEACHERS	2008			2018			Petitioners		
		K-2	3-12		K-2	3-12		K-2	3-12
Salary	\$ 33,847			\$ 36,845			\$ 36,845		
+ 5% Salary Increase	\$ 1,692			\$ 1,842			\$ 1,842		
= Total Salary	\$ 35,539			\$ 38,667			\$ 38,667		
+ Benefits	\$ 11,728			\$ 12,767			\$ 27,418		
= Total Teacher	\$ 47,267			\$ 51,454			\$ 66,105		
1 / # Students		1:25	1:30		1:25	1:30		1:9.96	1:12.6
		\$ 1,891	\$ 1,576		\$ 2,058	\$ 1,715		\$ 6,637	\$ 5,246

Pls.’ Ex. 4. As per pupil teacher costs dramatically impact the necessary funding level, the Court will address each component of the relevant calculations, in turn.

i. Teacher Salary

In discussing the \$38,867 salary figure used in the 2018 Report and in her own calculations, Dr. Rizzo Saunders credibly characterized this as a realistic salary level for a first-year teacher. She explained, however, that school districts cannot staff schools with only first-year teachers, as such a staffing pattern would be impossible to maintain from a market perspective. Upon inquiry, Dr. Rizzo Saunders testified that statewide, the average teacher salary is “about \$60,000.” See Tr. Audio 04/10/2023 9:33:03 –

<sup>9</sup> The blended per pupil cost is derived from a simple mathematical formula: because there are 13 school years between kindergarten and grade 12, the formula weights the K–2 per pupil cost at 3/13, and the 3–12 per pupil cost at 10/13. See Pls.’ Ex. 19 (2018 Report) at 16, n.2 (“Blended’ per pupil universal cost is a weighted average of the Grades K–2 cost and the Grades 3–12 cost based on 13 grades.”). The Court finds that this is a logical and appropriate way to blend the respective figures.

9:33:10. She explained that she knows this because she reviews statewide data concerning teacher salaries at least every few years to assess the strength of the employment packages offered in ConVal. The Court finds that this testimony provides ample foundation for her credible claim as to the \$60,000 average salary figure.<sup>10</sup> As explained below, the Court further concludes that in calculating the requisite amount of base adequacy aid, it is appropriate to use a teacher salary figure between \$38,867 (approximate first-year salary) and \$60,000 (approximate statewide average salary).

ii. Teacher Benefits

In her calculations, Dr. Rizzo Saunders used a substantially larger teacher benefits figure (\$27,418) as compared to the 2018 Report (\$12,767). See Pls.' Ex. 4. She explained at trial that RSA 100-A:16, III, requires school districts to contribute the equivalent of 17.80% of teacher salaries to the New Hampshire Retirement System ("NHRS"). See Pls.' Ex. 5 (detailing benefits calculations). School districts also pay 7.65% of a teacher's salary in federal income taxes ("FICA"). Id. Further, school districts pay unemployment insurance of at least \$147.52 per teacher, per year. See id.

In addition, Dr. Rizzo Saunders explained that school districts generally pay for a significant portion of teachers' health insurance benefit premiums. As set forth above, the Court credits the substantial testimony presented at trial indicating this is a significant and essential component of the overall employment package school districts must offer to recruit and retain teachers. In calculating the cost of this benefit, Dr. Rizzo Saunders used actual costs and employer contribution levels from ConVal. She

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<sup>10</sup> In particular, the Court finds that information school districts report to the DOE is credible. This data informs the level of funding school districts receive from the State, and school districts know that the DOE could audit their submissions. The school districts' compelling interest in reporting accurate data establishes the data's credibility.

credibly explained that because there are few health insurance providers in New Hampshire, the actual costs are quite uniform. She further explained that she reviewed collective bargaining agreements from other school districts to confirm that the 88% employer contribution level offered by ConVal is generally consistent with the percentage paid by other school districts. She acknowledged, however, that ConVal will be reducing its contribution level to 86% under its next collective bargaining agreement.

On cross-examination, the State asked Dr. Rizzo Saunders why her calculations used figures for family and two-person benefit plans<sup>11</sup> and did not account for single-person coverage or individuals who forego insurance benefits. In response, Dr. Rizzo Saunders explained that because affordable health insurance has become part of the requisite total employment package for teachers, few opt out of coverage. She elaborated that for most married teachers, it would be far more expensive to obtain coverage through a spouse's employer. Testimony offered by other school district employees echoed the notion that although some teachers may pursue a buy-out or single-person coverage, the vast majority obtain two-person or family plan coverage.

In light of the testimony presented at trial, and subject to the qualifications outlined below, the Court finds that the methodology employed by Dr. Rizzo Saunders in determining the requisite cost of providing necessary teacher benefits is reasonable and sound. In particular, the Court concludes that in calculating teacher benefits, it is reasonable and appropriate to include the cost of health insurance benefits, NHRS contributions, FICA payments, and unemployment insurance.

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<sup>11</sup> Dr. Rizzo Saunders reports that at an employer contribution level of 88 percent, a school district's portion of the annual premium is \$19,967.64 for a family plan, and \$14,790.84 for a two-person plan. See Pls.' Ex. 5. Dr. Rizzo Saunders used an average of these two figures—\$17,378.92—in her calculations.

iii. Teacher-to-Student Ratios

The next area in which Dr. Rizzo Saunders' approach substantially deviates from the 2008 and 2018 Reports is in calculating per pupil teacher costs. Because the DOE permits maximum class sizes<sup>12</sup> of 25 in grades K–2 and 30 in grades 3–12, the 2008 and 2018 Reports simply divided the total teacher costs by those numbers to derive grade range-specific per pupil costs. See Pls.' Ex. 4 (reflecting teacher ratios of 1:25 and 1:30 in 2008 and 2018 Report calculations). By contrast, Dr. Rizzo Saunders used ratios of 1:9.96 for grades K–2 and 1:12.6 for grades 3–12 in her calculations. See id. This issue necessarily has a dramatic impact on per pupil cost figures.

In an effort to justify her chosen ratios, Dr. Rizzo Saunders opined that maximum classroom size is not and cannot be equivalent to a teacher-to-student ratio. She explained that because public school districts must accept all eligible students, they cannot artificially fill every seat in every classroom. If a school district was somehow able to fill every seat, the addition of a single student would require that school district to create another class, thus reducing the overall teacher-to-student ratio. The evidence at trial established that this is the rule rather than the exception and that such a scenario occurs regularly. Schools must budget for it accordingly.

In addition, the Court heard considerable testimony about the need for teacher break or preparation periods during the day. The evidence demonstrates that at most, teachers are routinely scheduled to teach 75% of the school day (i.e., six out of eight blocks in an eight-block day, or three out of four blocks in a four-block day). The evidence further demonstrates that this is not the product of local control, but rather is

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<sup>12</sup> As discuss at trial, "class size" is very different from "student to teacher ratio". It is very curious that the DOE regulations and rules use class size and not student to teach ratio as a metric.

necessary for teachers to perform their work and for school districts to recruit and retain teachers. At least one defense witness (a former teacher himself) agreed with this. In light of the foregoing, although the Court does not adopt Dr. Rizzo Saunders' ratios, the Court generally credits her rationale for reducing the ratios used in the 2008 and 2018 Reports.

*B. Non-Teacher Employee Costs*

In calculating the costs associated with the following non-teacher employees, Dr. Rizzo Saunders maintained the salary figures and student ratios set forth in the 2018 Report, but adjusted benefit costs in a manner similar to her work with teacher benefits:

<b>Principal</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
= Total Salary	\$ 78,917	\$ 89,417	\$ 89,417
+ Benefits	\$ 22,097	\$ 22,354	\$ 41,404
= Total	\$ 101,014	\$ 111,771	\$ 130,821
1 / # Students	1:500	1:500	1:500
PER PUPIL	\$ 202	\$ 223	\$ 262
<b>Administrative assistant</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
= Total Salary	\$ 31,712	\$ 35,912	\$ 35,912
+ Benefits	\$ 10,465	\$ 11,851	\$ 21,477
= Total	\$ 42,177	\$ 47,763	\$ 57,389
1 / # Students	1:500	1:500	1:500
PER PUPIL	\$ 84	\$ 96	\$ 115
<b>Guidance counselor</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
= Total Salary	\$ 38,998	\$ 42,458	\$ 42,458
+ Benefits	\$ 12,869	\$ 14,011	\$ 30,334
= Total	\$ 51,867	\$ 56,469	\$ 72,792
1 / # Students	1:400	1:400	1:400
PER PUPIL	\$ 130	\$ 141	\$ 182
<b>Library/media specialist</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
= Total Salary	\$ 35,539	\$ 38,487	\$ 38,487
+ Benefits	\$ 11,728	\$ 12,701	\$ 22,835
= Total	\$ 47,267	\$ 51,188	\$ 61,322
1 / # Students	1:500	1:500	1:500
PER PUPIL	\$ 95	\$ 102	\$ 123

<b>Technology coordinator</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
= Total Salary	\$ 35,539	\$ 39,718	\$ 39,718
+ Benefits	\$ 11,728	\$ 13,107	\$ 20,882
= Total	\$ 47,267	\$ 52,825	\$ 60,600
1 / # Students	1:1,200	1:500	1:500
<b>PER PUPIL</b>	<b>\$ 39</b>	<b>\$ 106</b>	<b>\$ 121</b>

<b>Custodian</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
Total Salary	\$ 27,540	\$ 30,446	\$ 30,446
Benefits	\$ 9,088	\$ 10,047	\$ 18,592
Total	\$ 36,628	\$ 40,493	\$ 49,038
1 / # Students	1:500	1:500	1:500
<b>PER PUPIL</b>	<b>\$ 73</b>	<b>\$ 81</b>	<b>\$ 98</b>

See id. (cleaned up). As with teachers, the Court concludes that the benefit costs Dr. Rizzo Saunders used for these non-teacher employees are credible and generally conservative. It may be that Dr. Rizzo Saunders could have been more conservative in calculating the employer contribution (and associated cost) for some benefits offered to these professionals.<sup>13</sup> Nevertheless, given the highly conservative per pupil ratios she used for these employees, the Court finds that any potential overstatement of benefit costs has a negligible impact (if any) on the resulting per pupil costs.

Further, testimony provided by numerous witnesses compels the conclusion that the services provided by these professionals are essential to the provision of the opportunity for a constitutionally adequate education. Principals are necessary to keep a school building running and staffed with qualified teachers. Administrative assistants augment that work, and they also maintain student records and other critical information. Guidance counselors assist students in navigating the day-to-day

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<sup>13</sup> At trial, the State questioned the necessity of certain benefits offered to principals under Dr. Rizzo Saunders' cost model. In response, Dr. Rizzo Saunders testified that the overall cost she assigned to the total principal employment package (salary and benefits) is a conservative figure demonstrating the minimum value school districts must offer to recruit and retain principals. Given the credible testimony offered by Dr. Rizzo Saunders, and the absence of contrary evidence on this point, the Court finds that the overall cost Dr. Rizzo Saunders assigned to principals is a credible, conservative figure.

requirements of the school setting, and in selecting the courses necessary to eventually fulfill graduation requirements. Both library/media specialists and technology coordinators are required for school districts to purchase and maintain necessary instructional materials and technological resources. Lastly, custodians are necessary in order to keep school buildings clean and otherwise appropriately maintained.

Consistent with the foregoing, the Court concludes that the per pupil costs Dr. Rizzo Saunders reports for the above-described cost-drivers are appropriately included in calculating the requisite amount of base adequacy aid.

*C. Instructional Materials, Technology, and Professional Development*

To determine the per pupil cost of instructional materials, technology, and professional development, Dr. Rizzo Saunders again used the same cost figures as those set forth in the 2018 Report:

<b>INSTRUCTIONAL MATERIALS</b>	<b>2008</b>	<b>2018</b>	<b>Petitioners</b>
PER PUPIL	\$ 250	\$ 300	\$ 300
<b>TECHNOLOGY</b>			
PER PUPIL	\$ 75	\$ 100	\$ 100
<b>PROF. DEVELOPMENT</b>			
PER PUPIL	\$ 20	\$ 30	\$ 30

See id. Drawing on common sense and the testimony presented at trial, the Court concludes that these figures are both credible and highly conservative. See 1 NH Civil Jury Instruction 3.2 (2023) (instructing factfinder to “judge the case on the basis of the evidence and the inferences [factfinder] can reasonably draw from it,” and explaining that “[a] reasonable inference is a deduction which common sense and reason lead [factfinder] to draw from the evidence”). The Court further concludes that these cost-drivers are essential to the provision of the opportunity for a constitutionally adequate

education. Instructional materials and technology are obvious necessities. See RSA 193-E:2-a, I(a)(11) (requiring instruction in computer science, among other things). With respect to professional development, the evidence demonstrates that school districts must provide these opportunities to maintain a viable job market to recruit and retain teachers and staff. Absent such a market, the public school system would eventually fail because schools need teachers to teach. The Court thus finds that a modest amount of professional development, such as that contemplated in Dr. Rizzo Saunders’ model, is essential in this context. Accordingly, the Court concludes that the per pupil costs Dr. Rizzo Saunders reports for these cost-drivers are appropriately included in calculating the requisite amount of base adequacy aid.

*D. Facilities*

Facilities operation and maintenance is another cost-driver for which Dr. Rizzo Saunders reports a significantly higher per pupil figure (\$1,400) than the 2008 (\$195) or 2018 (\$250) Reports.

	2008	2018	Petitioners
<b>FACILITIES</b>			
<b>PER PUPIL</b>	\$ 195	\$ 250	\$ 1,400

See Pls.’ Ex. 4. In justifying her figure, Dr. Rizzo Saunders noted at trial that utility costs such as heat and electricity have increased significantly over time. See Pls.’ Ex. 12 (reflecting that statewide, per pupil average facilities costs increased by nearly \$400 between 2017–18 and 2021–22 fiscal years). In addition, she noted that school districts must incur snow removal and other winter maintenance costs to keep schools open and safe. She further explained that these necessary costs are not funded by other State sources such as building aid.

In calculating the relevant costs, Dr. Rizzo Saunders omitted amounts attributable to athletics, which she conceded are not part of the State's base adequacy aid funding obligations. Nevertheless, on cross-examination, Dr. Rizzo Saunders acknowledged that she had not further reduced her figure to account for community use of school facilities (such as the use of schools as polling stations, or after-hours scout meetings in school cafeterias). Dr. Rizzo Saunders opined, however, that such uses are minimal and have little impact on overall costs. She further noted that her per pupil facilities cost figure of \$1,400 is quite close to the \$1,375 difference between State funding provided to in-person versus online charter schools, suggesting that difference is attributable to the need to operate and maintain facilities. She is right.

Again drawing on both common sense and the credible testimony offered at trial, see 1 NH Civil Jury Instruction 3.2, the Court concludes that the methodology Dr. Rizzo Saunders used to calculate facilities costs was generally reasonable and sound. The Court further concludes that facilities costs, including (but not limited to) heat, electricity, and winter maintenance, are essential to providing the opportunity for a constitutionally adequate education in this state. Accordingly, this cost-driver is appropriately included in calculating the requisite amount of base adequacy aid.

#### *E. Transportation*

Transportation is another cost-driver about which the plaintiffs presented substantial evidence. Specifically, Dr. Rizzo Saunders and numerous other witnesses credibly testified that the \$315 per pupil figure used in the 2008 and 2018 Report spreadsheets is woefully inadequate. Indeed, although transportation costs vary amongst school districts—with rural school districts tending to incur higher costs—the

evidence demonstrates that many school districts incur per pupil transportation costs of over \$1,000. See, e.g., Pls.’ Ex. 29 (ConVal 2021 fiscal year DOE 25) (indicating ConVal spent \$1,109.12 per elementary school pupil—\$772,405.62 (total expenditure) / 696.41 (average daily membership)—on transportation costs in 2021); Pls.’ Ex. 62 (Winchester 2021 fiscal year DOE 25) (indicating Winchester spent \$1,619.51 per elementary school pupil—\$595,980.11 / 368—on transportation costs in 2021). Given the range in costs, Dr. Rizzo Saunders recommends funding transportation at actual, district-specific levels:

	2008	2018	Petitioners
<b>TRANSPORTATION</b>			
<b>PER PUPIL</b>	\$ 315	\$ 315	\$ [actual]

See Pls.’ Ex. 4.

The Court credits Dr. Rizzo Saunders’ testimony (which was supported by testimony from many other witnesses) that transportation is essential to the provision of the opportunity for a constitutionally adequate education, is a significant cost-driver, and necessarily gives rise to varying cost levels throughout the State. The Court thus concludes that it was reasonable for Dr. Rizzo Saunders to characterize these costs as a necessary component of base adequacy aid, but to leave these costs out of her reported figure, with the recommendation that they be addressed separately.

*F. Cost-Drivers Added by Dr. Rizzo Saunders*

In calculating what she characterizes as the minimum amount of base adequacy aid, Dr. Rizzo Saunders included three cost-drivers that were not included in the 2008 and 2018 Reports: food services, nurse services, and superintendent services:

2008	2018	Petitioners
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<b>FOOD SERVICES</b>			
PER PUPIL	\$ 0	\$ 0	\$ 66
<b>NURSE SERVICES</b>			
PER PUPIL	\$ 0	\$ 0	\$ 294
<b>SUPERINTENDENT SERVICES</b>			
PER PUPIL	\$ 0	\$ 0	\$ 158

See Pls.’ Ex. 4. The Court will address each additional cost-driver, in turn.

i. Food Services

Emphasizing that hungry or malnourished students do not learn well, Dr. Rizzo Saunders and other witnesses reasonably opined that school districts must offer food services in order to provide students with the opportunity for a constitutionally adequate education. The evidence demonstrates, however, that some food service programs are able to operate in a self-funding manner. The evidence further demonstrates that the unreduced meal costs charged to paying students and staff is incredibly affordable. This suggests prices could be raised by some margin to reduce (if not eliminate) program deficits. The Court heard no evidence indicating such a shift was impossible. The Court takes no position as to the ultimate feasibility or prudence of such a step. On the record presented, however, the Court cannot conclude that food services must be funded via base adequacy aid. In other words, although the Court finds that food services are essential in this context, the evidence does not demonstrate such services are a cost-driver that must be funded via base adequacy aid. Despite the fact that RSA 189:11-a mandates all schools to provide food and nutritional programs, the Court

cannot conclude that it was reasonable for Dr. Rizzo Saunders to include food service costs in her reported base adequacy aid figure.<sup>14</sup>

ii. Nurse Services

With respect to nurse services, Dr. Rizzo Saunders and numerous other witnesses credibly testified to the practical reality that many students require medications that must be administered to them throughout the school day. Witnesses also credibly testified about the likelihood that illness or injury would necessitate nurse services during the school day, on an unpredictable schedule. The Court credits this testimony. Indeed, the recent worldwide pandemic demonstrates how quickly disease can spread, particularly in a population of young students. While school staff might be capable of administering medications or basic first aid, non-nurse staff cannot exercise appropriate medical judgment in determining whether, for example, a stomachache is the product of hunger or a contagious virus. Absent the prompt and accurate exercise of such judgment, illness spreads, temporarily depriving affected students of the opportunity for a constitutionally adequate education. For these reasons, the Court finds that nurse services are a necessary component of base adequacy aid. Though not germane to the Court's constitutional analysis, the Court notes that DOE regulations (Ed 306:12) require schools to provide nursing services. Such a nurse is regulated by the requirements of RSA 200:29.

The Court further finds that the \$294 per pupil cost Dr. Rizzo Saunders attributes to these services is a reasonable, conservative figure. In calculating this figure, Dr.

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<sup>14</sup> The Court notes that food services is also the largest cost per pupil of the differential aid categories. By finding that this should not be included as a cost driver, the State's argument concerning differential aid is deflated.

Rizzo Saunders relied on a 2014 survey of school nurses performed by the New Hampshire Department of Health and Human Services. See Pls.' Ex. 14. Among other things, this report indicates that nurse service needs vary throughout the state: a sentiment confirmed by the testimony presented at trial. See id. Of those schools that employ a full-time nurse, reported nurse-to-student ratios varied from 1:257 in the North Country to 1:528 in South Central New Hampshire. Id. at 13. The statewide average nurse-to-student ratio for all schools, including those employing part-time nurses, was reported to be 1:223. See id. at 3.

Multiplying Dr. Rizzo Saunders' per pupil cost of \$294 by the statewide average number of students for whom a single nurse is responsible (223) leads to a product of \$65,562. Thus, under average conditions, a school nurse's total employment package would need to cost school districts no more than \$65,562. This demonstrates the conservative nature of Dr. Rizzo Saunders' per pupil figure. Indeed, like fuel costs, healthcare costs (and salaries) have risen dramatically since 2014. As a result, a total nurse cost figure of \$65,562 is likely far too low.

Moreover, the Court heard considerable testimony at trial regarding the difficulty of sharing a nurse amongst schools, and the benefits of having a full-time on-site nurse at each school location. In light of that credible testimony, the Court cannot conclude that a funding model requiring schools to routinely share nurses would be constitutionally sufficient. As a result, to the extent more rural schools have lower nurse-to-student ratios, the Court is persuaded that such ratios are largely unavoidable.<sup>15</sup> On the other end of the spectrum, the fact that some schools have

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<sup>15</sup> The Court is not prepared to say that the State must provide funding for a nurse in every school, regardless of size, as this issue implicates some amount of local decision making. Yet, there are some

historically maintained higher nurse-to-student ratios does not prove those ratios are constitutionally sufficient. As explained above, the realistic concern that emergency nurse services become necessary on an unpredictable basis renders a shared nurse model inadequate.

In addition, the Court concludes that although school nurses may provide services to students who qualify for differentiated aid, the entire \$294 per pupil cost included in Dr. Rizzo Saunders' calculations is properly characterized as a necessary component of base adequacy aid. In reaching this conclusion, the Court relies on the fact that a hypothetical school with no differentiated aid-eligible students would still require nurse services to address illnesses, injuries, or medication issues throughout the school day. Such a school could include students who do not qualify for differentiated aid, but require daily medical assistance (such as blood sugar monitoring). Given the conservative nature of the \$294 per pupil figure, and the need for nurse services in all schools, the Court concludes that it is appropriate to include all of this cost in base adequacy aid calculations.

iii. Superintendent Services

The Court takes a different view regarding superintendent services, the last cost-driver added by Dr. Rizzo Saunders. See Pls.' Ex. 4. Like nurse services, the evidence demonstrates that superintendents often perform services that are important to successful school operations. Though required by Ed. 302.01, the Court is not convinced these services fall entirely within the definition set forth in RSA 193-E:2-a. In particular, the evidence did not clearly define the degree to which work customarily

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schools where a lower nurse-to-student ratio is a product of geography and population size, and could not be corrected without incurring substantial transportation costs.

performed by a superintendent could instead be performed by a school principal or other staff member. As a result, on the record presented, the Court has lingering doubts as to whether most school districts must employ a full-time superintendent, or whether they simply choose this approach. Accordingly, although Dr. Rizzo Saunders attributes a conservative per pupil cost to these services (\$158), the Court cannot conclude that it was reasonable to include that cost in base adequacy aid calculations. In other words, the Court finds that some amount of superintendent services is necessary in this context, but the Court cannot ascertain the degree to which base adequacy aid must fund these services.

In so ruling, the Court is in no way finding that superintendent services are not essential to the functioning of a school district. To the contrary, they clearly are essential. The Court is simply making an assessment of the evidence before it.

G. *Impact of Criticisms Offered by Dr. Greene*

In an effort to undermine the credibility of Dr. Rizzo Saunders' work, the State presented expert testimony from Dr. Jay Greene. In brief, Dr. Greene juxtaposed Dr. Rizzo Saunders' process with that underlying the 2008 Report. See Doc. 242 at 26. He opined that the latter approach, which involved consideration of substantial data from diverse sources and viewpoints, was a reliable method for determining base adequacy aid.<sup>16</sup> He further opined that the release of the 2008 Report permitted others to analyze the underlying methodology. Because Dr. Rizzo Saunders relied on more limited data

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<sup>16</sup> As the Court noted in ruling on the parties' motions *in limine*, see Doc. 232, the process underlying the 2008 Report—a process Dr. Greene endorses—is strikingly similar to the Court's experience in presiding over the trial in this matter: *i.e.*, considering substantial data from diverse sources and viewpoints in order to determine an appropriate amount of base adequacy aid.

sources and did not draft a written report, Dr. Greene contends that her work is unreliable, incapable of sufficient review, and otherwise undeserving of weight.

Upon review, Dr. Greene's criticisms do not demonstrate that the work performed by Dr. Rizzo Saunders cannot, in conjunction with other evidence, carry the plaintiffs' burden of proof. The evidence presented at trial empowers the Court to effectively gauge the reasonableness of the input figures used by Dr. Rizzo Saunders. Thus, the absence of a written report explaining the genesis of those figures is not as problematic as Dr. Greene suggests. Moreover, although the Court does not adopt every figure Dr. Rizzo Saunders input into her methodology, any defects concerning those numbers are readily identifiable, and can either be excised or corrected based on other evidence. See Shaw's Supermarkets, Inc. v. Town of Windham, 174 N.H. 569, 573 (2021) ("As the trier of fact, the trial court may accept or reject any portion of the evidence as it finds proper, including that of expert witnesses."); see also 1 NH Civil Jury Instruction 3.2. For these reasons, any limitations of Dr. Rizzo Saunders' data sources or other aspects of her process criticized by Dr. Greene do not undermine the conclusions the Court reaches in partial reliance on Dr. Rizzo Saunders' work.

Consistent with the foregoing, the Court concludes that in calculating the minimum necessary level of base adequacy aid, Dr. Rizzo Saunders used a reliable and otherwise appropriate methodology: analyzing discrete cost-drivers and calculating relevant per pupil costs. The Court further finds that her input figures are generally credible and conservative. Although the Court does not conclude that all such costs should be included in base adequacy aid, any necessary adjustments are readily identifiable and supported by other evidence. Accordingly, the opinions offered by Dr.

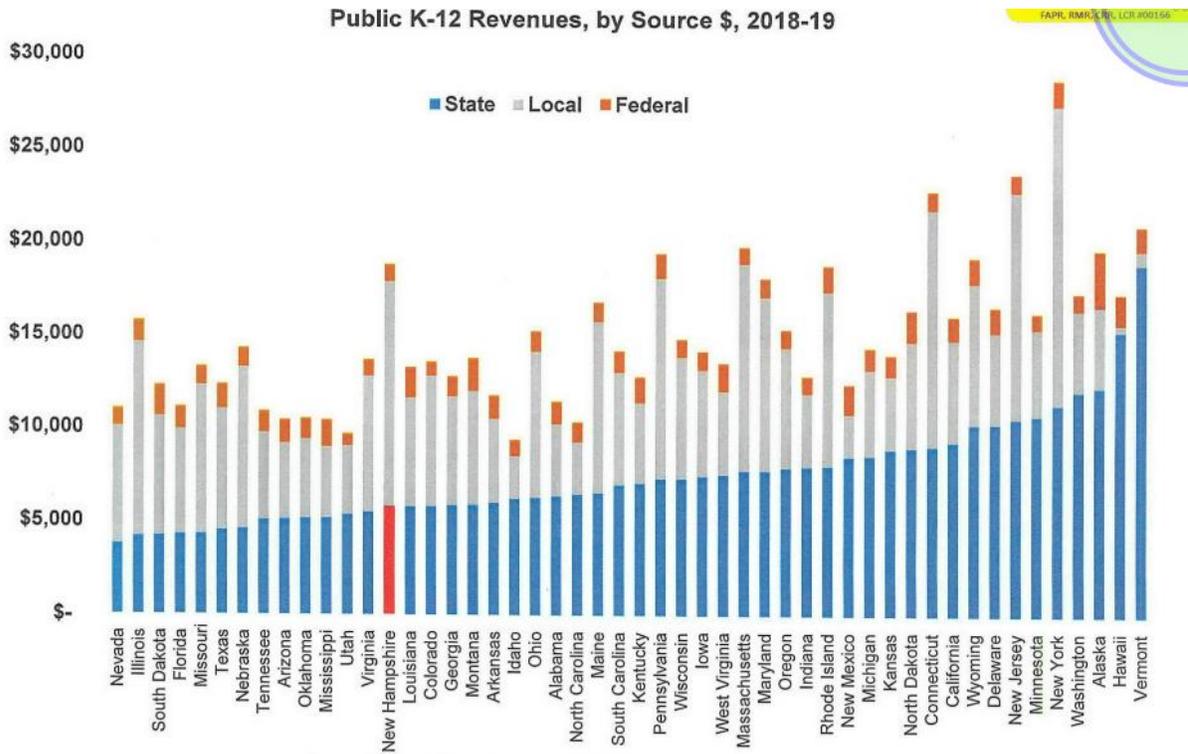
Rizzo Saunders, viewed in conjunction with the other evidence presented at trial, are capable of carrying the plaintiffs' burden of proof in this action.

II. Statistical Analysis Performed by Dr. Baker

In further support of their claim, the plaintiffs presented testimony from Dr. Bruce Baker. See Pls.' Ex. 111 (Baker Report). Dr. Baker described the process he used and conclusions he reached in connection with an outputs-based analysis he performed in 2020 at the request of the legislature's Commission to Study School Funding. See id. Based on this work, Dr. Baker concluded that the cost of an adequate education in a district of average size and grade-level distribution (without adjustments for students who qualify for differentiated aid) is \$9,964 excluding transportation. See id. Dr. Baker explained that to arrive at this figure, he analyzed current spending and various risk factors or needs to determine the spending necessary to achieve certain outcome goals. He further explained that most of the data he used came from the DOE.

Dr. Robert Costrell, another expert witness retained by the State, testified to numerous criticisms of Dr. Baker's work. The evidence demonstrates that this is not the first time Dr. Baker and Dr. Costrell have testified as to their conflicting views on school funding. In this case, Dr. Costrell criticized various aspects of Dr. Baker's methodology, including choices he made in creating and applying his statistical models. Emphasizing that New Hampshire public school students achieve outcomes which exceed constitutional adequacy, Dr. Costrell opined that Dr. Baker's outcome-based analysis does not establish the costs necessary to achieve base adequacy, but rather something more. Dr. Costrell further noted that in 2019, New Hampshire had the eighth highest level of per pupil education expenditures in the nation, suggesting Dr. Baker's reliance

on actual spending gave rise to inflated cost figures. See Joint Ex. 235. Dr. Costrell acknowledged, however, that as of the 2018–19 school year, New Hampshire was on the lower end of the nationwide spectrum vis-à-vis state funding for public schools:



See Joint Ex. 237 (indicating New Hampshire had fourteenth lowest level of state funding for public education in 2018–19 school year).

To summarize, Dr. Baker and Dr. Costrell emphatically defended their respective positions as to whether, and if so how, certain aspects of Dr. Baker’s methodology could undermine the reliability thereof. Ultimately, the Court need not resolve these differences of opinion at this time. Rather, upon reflection, the Court is persuaded that Dr. Baker’s work was designed to answer a different question than that presented here: this case concerns the State’s obligation to fund the opportunity for a constitutionally adequate education, whereas Dr. Baker analyzed the spending necessary to achieve a particular result. While the quality of instruction may be a significant factor impacting

actual student performance, it is not the only such factor. For this reason, the Court cannot conclude that Dr. Baker's work is directly applicable to the inquiry before the Court. Nevertheless, as explained below, it provides a helpful benchmark in measuring the plaintiffs' claim concerning the requisite level of base adequacy aid funding.

### III. Tuition Agreements

The final method by which the plaintiffs attempted to prove their claim was to present evidence concerning the per pupil cost some school districts pay to educate their students in other districts. See Joint Ex. 248 ¶ 112 ("Winchester must pay tuition of \$14,023 to have . . . students attend Keene High School."). Several witnesses credibly testified that school districts enter tuition agreements based on the conclusion that it would cost more to educate those students within the tuitioning (sending) school district. As a result, these witnesses opined that tuition figures constitute the lowest per pupil cost at which the school districts can educate those students. Via cross-examination, however, the State established that tuition figures generally include costs associated with athletics and other pursuits that fall outside of the State's base adequacy aid funding obligations. In addition, the plaintiffs' witnesses were unable to meaningfully refute the State's suggestion that some school districts choose to tuition students to academically strong districts when consolidating with other smaller districts might lower per pupil costs. On the record presented, the Court cannot conclude that tuition costs are necessarily the lowest achievable cost of delivering the opportunity for a constitutionally adequate education to the relevant students.

## Analysis

### I. Sufficiency of Plaintiffs' Evidence

Given the above-described standard of review and burden of proof, see Doc. 242 at 3 (quoting ConVal, 174 N.H. at 161, for proposition that Court must presume statute is constitutional and “not declare it invalid except on inescapable grounds”), and in light of the State’s pending motion for a directed verdict, see Doc. 235, the Court’s first task is to analyze whether the plaintiffs put forth sufficient evidence to demonstrate that the existing level of base adequacy aid is constitutionally insufficient “in all, or virtually all,” of New Hampshire’s school districts. See Working Stiff Partners, 172 N.H. at 622. Based on the evidence the plaintiffs presented at trial, the Court is persuaded that the costing methodology employed by Dr. Rizzo Saunders is a reliable way to determine the requisite level of base adequacy aid funding. Thus, as a preliminary step, the Court applies that methodology to those cost-drivers that are essential to educating students in the content areas set forth in 193-E:2-a.<sup>17</sup> In completing this task, the Court employs conservative figures that likely undervalue the requisite level of funding. In the Court’s view, such a conservative approach best reflects the standard of review and burden of proof, particularly in the context of the plaintiffs’ facial challenge. In addition, as discussed below, this approach affords appropriate deference to the legislature.

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<sup>17</sup> As explained above, those cost-drivers include: teachers, principals, administrative assistants, guidance counselors, library/media specialists, technology coordinators, custodians, nurses, instructional materials, technology, professional development, transportation, and facilities operation and maintenance. Although some amount of superintendent services is also necessary, the Court cannot reliably quantify the corresponding level of necessary funding.

A. *Per Pupil Teacher Costs*

The first necessary cost-driver is teachers. To calculate an appropriate per pupil amount for this cost-driver, the Court must determine what salary figure and benefit costs should be input into Dr. Rizzo Saunders' model. The Court must then determine an appropriate teacher-to-student ratio.

i. Teacher Salary

As previously noted, in calculating a highly conservative per pupil teacher cost, Dr. Rizzo Saunders utilized a total salary figure of \$38,867. See Pls.' Ex. 4. She credibly testified that this figure represents a realistic statewide average for a first-year teacher salary, see Joint Ex. 481 (chart depicting minimum starting teacher salaries for 2021–22 school year, and reflecting average starting salary of \$40,478.90), whereas the statewide average teacher salary is approximately \$60,000. As set forth above, the Court credits Dr. Rizzo Saunders' explanation as to why school districts cannot hire only first-year teachers. Thus, in calculating the requisite level of base adequacy aid, it is appropriate to use a figure higher than \$38,867 as the teacher salary cost.

Nevertheless, the Court cannot conclude that it would be appropriate to use the statewide average teacher salary figure of \$60,000. The Court credits evidence presented at trial indicating that at least one school district—Oyster River—chooses to pay teachers more than the bare minimum, a choice that necessarily raises the state average. See id. (reflecting first-year teacher salary in Oyster River of \$43,864.00 for 2021–22 school year). On the other hand, the Court also credits testimony offered by numerous witnesses indicating that the vast majority of New Hampshire school districts keep costs as low as possible to minimize local property tax rates. Having weighed the

evidence, and drawing on the Court's common sense, see 1 NH Civil Jury Instruction 3.2, the Court concludes that an average teacher salary figure of \$57,000—five percent less than the average figure reported by Dr. Rizzo Saunders—is a conservative estimate of the average statewide teacher salary level necessary to maintain an education market in New Hampshire, and to recruit and retain qualified teachers.<sup>18</sup> The evidence at trial clearly established that the school districts with low teacher salaries cannot retain teachers or recruit new ones to replace the ones that leave. Some of the plaintiff districts have had vacancies that have gone unfilled for years because they cannot compete with the salaries (or employment packages) of other districts. While the five percent reduction (from an already conservatively low number) is almost certainly an overcorrection in the State's favor, this is the most reasonable approach under the circumstances.

ii. Teacher Benefits

The Court's conclusion regarding teacher salary impacts the relevant benefit costs. As set forth above, the Court finds that in calculating teacher benefits, it is reasonable and appropriate to include the cost of health insurance benefits, NHRS contributions, FICA payments, and unemployment insurance. Using the above-described conservative average salary figure of \$57,000 and given the contribution level of 17.80% of teacher salaries, see Pls.' Ex. 5, the average cost associated with NHRS benefits is \$10,146. Applying that same approach to FICA payments, which total 7.65% of teacher salaries, see id., the average cost associated with FICA payments is \$4,361.

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<sup>18</sup> The 2008 Report, the 2018 Report, and Dr. Rizzo Saunders' calculations all included a 20% increase for "specialty teachers." See Pls.' Ex. 4. The Court has no basis to conclude such an adjustment is necessary when using a salary figure close to the statewide average. Accordingly, the Court will not make a similar adjustment in its own cost calculations.

Because the Court cannot discern whether an increased salary figure leads to a higher cost of unemployment insurance, the Court will maintain the \$147.52 yearly figure used in Dr. Rizzo Saunders' calculations. Accordingly, the evidence demonstrates that \$14,654.52 is a conservative average cost of teacher benefits excluding health insurance.

In calculating the cost of health insurance benefits, Dr. Rizzo Saunders used an average of the costs associated with a two-person plan and a family plan, funded at an employer contribution level of 88%. See Pls.' Ex. 5 (indicating school district portion of two-person plan is \$14,790.84, and school district portion of family plan is \$19,967.64, when funded at 88% level). As set forth above, however, there was evidence presented at trial indicating that some teachers opt for a single person plan, a buyout, or no health insurance coverage at all. Unlike teacher salary information, the record does not contain concrete information concerning the number of teachers pursuing each type of coverage. While the Court credits testimony reflecting that the vast majority of teachers avail themselves of two-person or family plans, the Court concludes that some adjustment to Dr. Rizzo Saunders' input figure is necessary.

Once again taking an overly conservative view of the evidence, the Court concludes that in gauging the sufficiency of base adequacy aid, it is appropriate to consider the cost associated with a two-person health insurance plan. Again drawing on common sense and the evidence presented at trial, see 1 NH Civil Jury Instruction 3.2, the Court concludes that this approach will overcorrect for Dr. Rizzo Saunders' failure to account for the minority of teachers who obtain single-person or no health insurance coverage. In light of the Court's overarching conservative approach, the

Court also concludes that it is appropriate to calculate health insurance costs using the 86% funding level included in ConVal's forthcoming collective bargaining agreement, rather than the present 88% funding level used by Dr. Rizzo Saunders. As a result, the evidence demonstrates that \$14,454.68<sup>19</sup> is a conservative average cost of teacher health insurance benefits. Adding this figure to the aforementioned \$14,654.52 cost of other benefits and the \$57,000 salary figure leads to a conservative per teacher cost of \$86,109.20.

iii. Teacher-to-Student Ratios

The Court must next convert this figure into a per pupil cost. As previously explained, the 2008 and 2018 Reports used maximum class sizes of 25 (for grades K–2) and 30 (for grades 3–8) to derive per pupil costs, whereas Dr. Rizzo Saunders used much lower teacher-to-student ratios. At this stage of the analysis—*i.e.*, determining whether the plaintiffs have met their initial burden of proof—the Court need not determine precisely what ratio is appropriate. It is sufficient to state that using a ratio of 1:25 leads to a per pupil teacher cost of \$3,444.37, whereas a ratio of 1:30 leads to a per pupil cost of \$2,870.30. Blending these numbers in the manner described above (*i.e.*, a weighted average) results in a per pupil teacher cost of \$3,157.34.

B. *Other Necessary Costs*

As set forth above, the Court credits Dr. Rizzo Saunders' per pupil cost figures for principals (\$262), administrative assistants (\$115), guidance counselors (\$182), library/media specialists (\$123), technology coordinators (\$121), custodians (\$98), and nurse services (\$294), totaling \$1,195. See Pls.' Ex. 4. In addition, the evidence

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<sup>19</sup> Since \$14,790.84 constitutes 88% of the two-person premium cost, the total cost must be \$16,807.77 (\$14,790.84 divided by 0.88). 86% of the total figure is thus \$14,454.68.

demonstrates that like teachers, these employees are essential to the delivery of the opportunity for a constitutionally adequate education. Adding these \$1,195 in costs to the aforementioned blended per pupil cost of \$3,157.34 leads to a running total of \$4,352.34: \$252.34 more than the 2023 level of base adequacy aid funding. See Laws 2023, 79:150 (setting amount at \$4,100). Adding the per pupil costs of instructional materials (\$300) and technology (\$100) leads to a running total of \$4,752.34—thus demonstrating the insufficiency of the \$4,100 base adequacy aid figure set in 2023. See id.; Pls.’ Ex. 4.<sup>20</sup>

Notably, the foregoing calculations do not include costs attributable to professional development, facilities operation and maintenance, or transportation. These cost-drivers were included in the 2008 and 2018 Reports, and the evidence demonstrates that they are essential to the provision of the opportunity for a constitutionally adequate education. While the evidence reflects a minimum per pupil professional development cost of only \$30, per pupil facilities and transportation costs often must exceed \$1,000 each. These realities further demonstrate the insufficiency of the \$4,100 base adequacy aid figure set in 2023.

Consistent with the foregoing, the Court concludes that the plaintiffs have defeated any applicable presumption that the current level of base adequacy aid funding is constitutionally sufficient. See Doc. 242 at 3 (quoting ConVal, 174 N.H. at 161). Indeed, the plaintiffs have proven a “clear and substantial conflict” between the current level of base adequacy aid funding and the amount necessary to fulfill the

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<sup>20</sup> It bears repeating that because the per pupil costs attributed to these cost-drivers were derived using highly conservative ratios, the Court is confident that the reported costs are not inflated by the heightened needs of students who qualify for differentiated aid. Rather, these cost figures reflect the minimum costs that would be incurred by a hypothetical school district in which no students qualify for differentiated aid.

State's constitutional obligations "in all, or virtually all," of New Hampshire's school districts. See id. (quoting ConVal, 174 N.H. at 161); see also Working Stiff Partners, 172 N.H. at 622. Accordingly, the burden shifts to the State to justify the law under the strict scrutiny standard. See Akins, 154 N.H. at 71. As explained above, the State did not offer affirmative evidence justifying the sufficiency of the current funding level, instead seeking to undermine the sufficiency of the plaintiffs' evidence. Because the Court concludes that the plaintiffs offered sufficient evidence to carry their burden, the State's mid-trial motion for a directed verdict is **DENIED**. See Doc. 235. Further, in light of the explanations and analysis set forth above, the plaintiffs' request for a declaratory judgment declaring RSA 198:40-a, II(a), unconstitutional on its face is **GRANTED**. See Doc. 83 at 26.

## II. Separation of Powers Considerations

Prior to trial, the Court repeatedly resisted the plaintiffs' requests for an affirmative determination as to the necessary level of base adequacy aid funding. See, e.g., Doc. 51 at 92–94 (denying request for injunctive relief requiring particular level of funding). This resistance stemmed from the Court's appreciation of the great burden school funding imposes on the legislature, as well as the legislature's role in defining an adequate education. See id. at 92–96. In reflecting on the evidence presented at trial, however, the Court's position on this issue has shifted.

To be sure, the Court remains concerned about respecting the legislature's role in this process. Indeed, as the State correctly points out, the Claremont I court expressly declined to "define the parameters of the education mandated by the constitution as that task is, in the first instance, for the legislature and the Governor."

138 N.H. at 192. Since then, the Supreme Court has repeatedly emphasized the significance of the legislature’s role in this context. See Claremont II, 142 N.H. at 476–77 (permitting existing funding mechanism to remain in effect for set period so legislature had “reasonable time to effect . . . a new system”); Londonderry I, 154 N.H. at 163 (indicating Supreme Court’s respect of legislature’s role has led it to “demure[]” each time it “has been requested to define the substantive content of a constitutionally adequate public education”). As set forth above, the parties’ trial presentations leave the Court with lingering doubts as to whether the legislature intended for base adequacy aid to fund all of the costs included in Dr. Rizzo Saunders’ analysis. For this reason, the Court agrees 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 . . . .” Doc. 244 at 1 (emphasis added).

Notwithstanding the foregoing, the Court is mindful that “the judiciary has a responsibility to ensure that constitutional rights not be hollowed out and, in the absence of action by other branches, a judicial remedy is not only appropriate but essential.” Londonderry I, 154 N.H. at 163 (citing Petition of Below, 151 N.H. 135 (2004)); cf. Norelli v. Sec’y of State, 175 N.H. 186, 200 (2022) (rejecting State’s position that despite unconstitutionality of existing congressional districting statute, judicial non-intervention was “more important than protecting the voters’ fundamental rights”). The Court is likewise cognizant that school funding is a complicated and politically-charged issue, with a history that suggests some level of judicial intervention is now necessary. Among other things, though the legislature hired Dr. Baker to analyze school funding

issues and provide an informed recommendation, base adequacy aid is currently funded at less than half of his recommended level. This is just one example that calls into question whether the politics of this issue are impeding the State's constitutional obligation to fully fund the opportunity for children in this state to receive an adequate education. That ends today.

Given the history and significance of this issue, see Claremont II, 142 N.H. at 473 (holding constitutionally adequate public education is a fundamental right), the Court concludes that it is both necessary and appropriate to grant the plaintiffs a measure of additional relief at this juncture. Specifically, although the Court declines to set a definitive level of base adequacy aid funding, it is now appropriate to establish a conservative minimum threshold such funding must exceed. In the Court's view, this approach strikes the appropriate balance between the competing interests involved.

### III. Conservative Threshold for Base Adequacy Aid Funding

Drawing on the credible evidence presented at trial, the Court's next task is to determine a minimum funding level for those cost-drivers that are indisputably part of the State's base adequacy aid funding obligations. Cf. O'Malley v. Little, 170 N.H. 272, 275 (2017) (citing Jesurum v. WBTSCC Ltd. P'ship, 169 N.H. 469, 476 (2016) for proposition that following a trial on the merits, trial court's "judgment on such issues as resolving conflicts in the testimony, measuring the credibility of witnesses, and determining the weight to be given evidence" are entitled to deference). In reaching such a determination, the Court again employs conservative figures that likely undervalue the requisite costs. Such a conservative approach best aligns with the plaintiffs' facial challenge, and affords appropriate deference to the legislature. It also

takes in to account the gravamen of the State's theory of defense: that actual expenditures are not the same as "costs" in this context. However, costs are a recursive set within expenditures.

*A. Per Pupil Teacher Costs*

Once again, the Court begins the analysis with teachers. As explained above, the Court finds that this cost-driver must be funded at a per teacher level of at least \$86,109.20. To reiterate, this figure is derived from a statewide average teacher salary of \$60,000, discounted by 5% to correct for those rare school districts that opt to pay more than the market strictly demands. At trial, the Court heard evidence of only a single school district falling into this category. Thus, the Court is confident that a 5% reduction more than corrects for this issue.

Teacher benefits, including NHRS contributions, FICA payments, unemployment insurance, and health insurance, make up the remainder of the \$86,109.20 figure. As explained above, the Court has calculated the cost of health insurance benefits using the price of a two-person plan, funded at an 86% employer contribution level. Given the evidence presented at trial, the Court is confident that excluding the cost of family plans more than corrects for those few teachers who opt for single person or no coverage, particularly given testimony indicating many "no coverage" teachers receive a buyout.

As above, the Court must next convert the \$86,109.20 teacher cost into a per pupil amount. The evidence demonstrates that it is inappropriate to use maximum class sizes in this conversion, as school districts cannot fill every classroom to maximum capacity. In addition, in light of market demands and the requirements of a teaching position, teachers must be afforded preparation and break periods. The evidence

demonstrates that although some teachers provide classroom instruction for only 62.5% of the school day (five out of eight blocks), others provide instruction for 75% of the school day (six out of eight or three out of four blocks). Given the conservative inquiry at issue, the Court uses the 75% model to calculate per pupil costs.

Based on a 75% model, each teacher can provide three blocks of instruction in a four-block day. Filling the remaining 25% would use up one third of a second teacher's teaching capacity (i.e., one of the second teacher's three daily teaching blocks). Thus, even if a school district could fill every seat in every classroom, one and one-third teachers would be needed to provide instruction in each classroom for an entire school day. For this reason, in calculating per pupil teacher costs, maximum class sizes must be reduced to account for this reality. This results in teacher-to-student ratios of 1:18.75 for grades K–2 (25 divided by 1 1/3), and 1:22.50 for grades 3–8 (30 divided by 1 1/3), for a blended ratio of 1:21.63.<sup>21</sup>

Although this ratio does not account for the reality that school districts cannot fill every seat in every classroom, the evidence presented at trial does not provide the Court with a reliable way to correct for this. In the Court's view, actual teacher-to-student ratios do not provide meaningful guidance because they are impacted by factors such as the heightened needs of students who qualify for differentiated aid: an issue which, as explained above, the Court has excluded from this inquiry. Moreover, although the DOE encourages school districts to keep certain class sizes below the maximum, the Court concludes that the legislature should determine how, if at all, funding should account for that guidance. For these reasons, in setting a threshold for

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<sup>21</sup> The following calculation determines the blended ratio:  $((3 \times 18.75) + (10 \times 22.50)) / 13$ .

base adequacy aid, the Court employs a highly conservative per pupil teacher cost of \$3,981.01 (\$86,109.20 divided by 21.63).

*B. Non-Teacher Employee Costs*

In addition to teachers, the Court finds that the services provided by principals, administrative assistants, guidance counselors, library/media specialists, technology coordinators, and custodians are all essential to the provision of the opportunity for a constitutionally adequate education. For the reasons articulated above, the Court credits the conservative per pupil cost figures adopted by Dr. Rizzo Saunders with respect to these cost-drivers. These per pupil costs total \$901.<sup>22</sup>

*C. Instructional Materials, Technology, and Professional Development*

The evidence further demonstrates that instructional materials, technology, and professional development costs are inherent in and essential to the provision of the opportunity for a constitutionally adequate education. For the reasons articulated above, the Court credits the conservative per pupil cost figures adopted by Dr. Rizzo Saunders with respect to these cost-drivers. These per pupil costs total \$430.<sup>23</sup>

*D. Facilities*

The Court further finds that facilities operation and maintenance is also essential in this context. The 2008 Report funded this cost-driver at \$195 per pupil, the 2018 Report funded it at \$250 per pupil, and Dr. Rizzo Saunders argues it should be funded at \$1,400 per pupil. See Pls.' Ex. 4. Upon review, the Court concludes that none of

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<sup>22</sup> Component costs include \$262 for principals, \$115 for administrative assistants, \$182 for guidance counselors, \$123 for library / media specialists, \$121 for technology coordinators, and \$98 for custodians.

<sup>23</sup> Component costs include \$300 for instructional materials, \$100 for technology, and \$30 for professional development. See Pls.' Ex. 4. The Court speculates that a per pupil technology cost of \$100 is likely low, but the evidence in the record does not empower the Court to set a higher, more realistic number.

these funding levels are fully supported. Because facilities operation and maintenance includes things like heat, electricity, and winter maintenance, the Court is convinced that the funding levels set forth in the 2008 and 2018 Reports are far too low. This is established by, among other things, the fact that utility and fuel costs (as recorded in the financial reports) have risen sharply in recent years. On the other hand, the State persuasively argued at trial that not all costs included in Dr. Rizzo Saunders' calculations fall within the State's base adequacy aid obligations. The plaintiffs' evidence did not fully refute that argument.

Although the plaintiffs' witnesses opined that community use of school facilities has a negligible impact on costs, the Court has no reliable way to precisely adjust for that reality. Accordingly, the evidence presented at trial does not empower the Court to set a definitive cost figure that excludes unnecessary components, but includes all necessary ones. In addition, the Court perceives that funding this cost-driver involves locally controlled policy determinations: for example, whether to fund air conditioning to prevent school closings on unusually warm days; or whether the local town will cover the costs of snow removal.

Drawing on the evidence presented at trial and the Court's common sense, however, see 1 NH Civil Jury Instruction 3.2, the Court concludes that facilities operation and maintenance must be funded at an amount over \$1,000 per pupil: \$400 less than the \$1,400 figure used in Dr. Rizzo Saunders' calculations.<sup>24</sup> The evidence demonstrates that although some portion of Dr. Rizzo Saunders' \$1,400 figure may be attributable to athletics, community use, or other uses which implicate questions of

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<sup>24</sup> As noted above, \$1,000 is less than the \$1,375 difference in funding the State provides to in-person charter schools as compared to virtual charter schools.

policy, the associated costs account for less than 25% of her figure. Accordingly, reducing that figure by \$400—28.57%—overcorrects for any such issues. However, based on the limitations of the evidence presented at trial, the policy determinations involved, and the conservative nature of the Court’s inquiry, the Court cannot reliably define the requisite funding level to any greater degree.

*E. Transportation*

The next essential cost-driver is transportation. As explained above, the Court concludes that base adequacy aid must include funding for student transportation. New Hampshire is a rural state, and students cannot access the opportunity for a constitutionally adequate education without getting to school. Issues like poverty or parental work schedules cannot be permitted to interfere with such access. Thus, some level of transportation services is undoubtedly essential.

Like facilities costs, however, the Court’s ability to define the requisite funding level for transportation is limited. The evidence amply demonstrates that the \$315 funding level included in the 2008 and 2018 Reports is woefully inadequate. Indeed, as noted above, the evidence indicates transportation costs often exceed \$1,000 per pupil. See, e.g., Pls.’ Ex. 29 (indicating ConVal spent \$1,109.12 per elementary school pupil on transportation costs during 2021 fiscal year); Pls.’ Ex. 62 (indicating Winchester spent \$1,619.51 per elementary school pupil on transportation costs during 2021 fiscal year). Yet, as Dr. Rizzo Saunders acknowledges, it is difficult to determine a reliable, universal figure for this cost-driver, as urban areas will have lower transportation costs than rural ones. Moreover, there are once again policy determinations at play: whether to fund transportation through 12<sup>th</sup> grade when existing statutes only expressly require

transportation through 10<sup>th</sup> grade. Resolution of this issue could have a substantial impact on the requisite level of funding. The legislature should have the opportunity to address this issue in the first instance. See Claremont I, 138 N.H. at 192. However, there must be a floor to this figure given the recursive nature between transportation costs and expenditures. Based on the evidence submitted at trial, the Court finds that approximate mid-point between the costs identified in the 2008 and 2018 Legislative Reports and the actual expenditures is an appropriate – albeit very conservative – figure.

Again drawing on both common sense and the testimony presented at trial, see 1 NH Civil Jury Instruction 3.2, the Court concludes that transportation must be funded at a level that exceeds \$750: slightly more than double the figures used in the 2008 and 2018 Reports, but substantially less than actual per pupil costs incurred by many school districts. Like the above-described threshold for facilities costs, the evidence demonstrates that funding transportation costs at this level would be constitutionally insufficient. However, based on the limitations of the evidence presented at trial, the policy determinations involved with respect to this cost-driver, the wide range of costs incurred in each district, and the conservative nature of the Court’s inquiry, the Court cannot reliably define the requisite funding level with any greater specificity, but there is no doubt that it cannot be lower than \$750.

*F. Cost-Drivers Added by Dr. Rizzo Saunders*

For the reasons articulated above, the Court concludes that nurse services is an essential component of providing the opportunity for a constitutionally adequate education. The Court further finds that in light of the relevant facts and circumstances,

including the practical reasons why a dedicated nurse for each school is far superior to a shared-nurse model, the \$294 per pupil cost assigned by Dr. Rizzo Saunders is a reasonable, conservative figure. Moreover, because schools without differentiated aid-eligible students would still need nurse services, the Court concludes that it is appropriate and necessary to fund the entire \$294 per pupil cost via base adequacy aid.

Although the plaintiffs also urge the Court to require additional funding for food and superintendent services, the Court declines to include these amounts in setting a minimum funding level. As explained above, the evidence demonstrates that some food service programs are self-funding, and that others could potentially become self-funding (or closer to it) by raising meal costs charged to paying customers. Thus, although the legislature may conclude that funding food service programs is necessary or otherwise appropriate, the Court declines to impose such a requirement at this juncture.

Similarly, although the Court finds that some amount of superintendent services is essential, the Court is not convinced that all costs associated with those services fall within the legislature's definition of the opportunity for a constitutionally adequate education. For example, schools require some amount of oversight to secure and pay for necessary staff, materials, and other services, but the evidence does not rule out the possibility that such tasks can be completed by principals and administrative assistants, the costs of which the Court already accounted for in reaching its conclusion. Thus, while school districts may need superintendent services as a practical matter, the Court cannot conclude from the evidence presented that it is appropriate to require a particular level of base adequacy aid funding in connection with those services.<sup>25</sup>

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<sup>25</sup> To the extent the legislature intended to fund these services via base adequacy aid, or otherwise elects to do so, the Court finds that the \$194 per pupil costs calculated by Dr. Rizzo Saunders is a reasonable

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To summarize, the evidence presented at trial demonstrates that the following cost-drivers, and associated per pupil minimum funding levels, are essential to the provision of the opportunity for a constitutionally adequate education, as defined by the legislature: teachers (\$3,981.01); principals, administrative assistants, guidance counselors, library/media specialists, technology coordinators, and custodians (\$901); instructional materials, technology, and professional development (\$430); facilities operation and maintenance (\$1,000); transportation (\$750); and nurse services (\$294). Combined, these amounts establish that base adequacy aid funding must exceed \$7,356.01 per pupil: over \$3,200 more than the current funding level of \$4,100. See Laws 2023, 79:150.

As emphasized above, this \$7,356.01 threshold figure is the product of conservative calculations designed to overcorrect for any conflicts or ambiguities in the evidence, as well as any unresolved policy determinations. The Court's calculations include a \$3,000 (5%) reduction in average teacher salary from that proposed by the Dr. Rizzo Saunders, which in turn reduces NHRS and FICA payments. Further, to overcorrect for the absence of concrete data concerning the number of teachers who opt for single-person or no health insurance coverage, the Court adjusted Dr. Rizzo Saunders' benefits calculations to rely solely on the cost of two-person coverage (whereas Dr. Rizzo Saunders relied on an average of two-person coverage costs and family plan coverage costs). In addition, to establish the ratio used in calculating per pupil teacher costs, the Court relied on a 6 out of 8 (or 3 out of 4) block model, despite

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and conservative figure for funding a full time superintendent position. See Pls.' Ex. 4. Adding that amounts to the threshold figure described above results in a per pupil total of \$7,550.01.

evidence that some teachers only instruct for 5 out of 8 blocks each day. Moreover, the Court did not adjust the ratio to reflect the reality that schools cannot fill every seat in every class.<sup>26</sup> In assigning a facilities cost, the Court reduced Dr. Rizzo Saunders' number by \$400 (28.57%) despite the absence of concrete evidence indicating even 25% of her cost figure could be attributable to unrelated uses. Lastly, although the evidence indicates that transportation costs often exceed \$1,000 per pupil, the Court used a conservative figure of only \$750 in calculating the minimum threshold level set here.

In total, these conservative choices and overcorrections demonstrate that a base adequacy aid figure of \$7,356.01 would in actuality be far too low and would likely not survive scrutiny. Indeed, at the conclusion of this trial the Court felt confident that the requisite level of base adequacy aid funding is quite close to the \$9,929 figure set forth in Dr. Rizzo Saunders' calculations. See Pls.' Ex. 4. That figure is remarkably similar to Dr. Baker's number of \$9,964 which, like Dr. Rizzo Saunders' number, does not include the cost of transportation. See Pls.' Ex. 111 (Baker Report). That figure is also remarkably similar to the results of an analysis Dr. Costrell previously performed to determine the base cost of an adequate education in Massachusetts: an analysis which, adjusted for inflation, suggests that cost would exceed \$10,000 in 2023.<sup>27</sup> It is also closer to the near-unanimous testimony of every school administrator who testified at trial.

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<sup>26</sup> The Court's use of such conservative ratios eliminates any potential impact of increased costs attributable to students who qualify for differentiated aid.

<sup>27</sup> As a matter of interest, the Court observes that in 2023, the 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. See House Bill 334 (2023). Based on DOE estimates for fiscal year 2022, this would have resulted in a funding level of \$9,517.04 per pupil. See id.

Although the evidence demonstrates that a base adequacy aid level of \$7,356.01 would be constitutionally insufficient, the Court cannot set a higher threshold at this time. Such a step is precluded by the limitations of the evidence presented at trial, as well as the involvement of certain policy considerations. The Court is confident, however, that the guidance offered here will empower the legislature to meaningfully consider and appropriately respond to the relevant issues. In light of the compelling evidence presented at trial, the Court trusts that the legislature will set a base adequacy aid figure meaningfully higher than the \$7,356.01 threshold: a figure that will fulfill the State's obligation to fund the opportunity for a constitutionally adequate public education. See Claremont II, 142 N.H. at 473.

Consistent with the foregoing, the plaintiffs' request for injunctive relief is **GRANTED IN PART** and **DENIED IN PART**. See Doc. 83 at 25.

#### Attorney's Fees

Before concluding, the Court must address the plaintiffs' request for an award of attorney's fees. See Doc. 83 at 26; see also Doc. 245 at 33. The State's post-trial filings do not meaningfully address this issue. As explained in the Court's June 5, 2019 Order, the Supreme Court has previously awarded attorney's fees in the school funding context under the substantial benefit theory. See Doc. 51 at 94 (citing Claremont Sch. Dist. v. Governor (Costs and Attorney's Fees) ("Claremont VIII"), 144 N.H. 590, 595–99 (1999)). This theory permits cost shifting when a particular action confers a "substantial benefit" on the public at large. See id. (citation omitted). The intent of the theory is not to penalize the opposing party, but to compensate plaintiffs for efforts undertaken on behalf of the public. See id. (citation omitted).

The plaintiffs brought this action in an effort to hold the State accountable for the school funding obligations imposed by Part II, Article 83 of the New Hampshire Constitution. In doing so, the plaintiffs sought to safeguard the fundamental right held by New Hampshire children to “a constitutionally adequate public education . . . .” Claremont II, 142 N.H. at 473. As set forth above, the plaintiffs have successfully demonstrated that the current amount of base adequacy aid funding is constitutionally insufficient, and must be increased to more than \$7356.01 per pupil. Thus, like the plaintiffs in Claremont VIII, the plaintiffs in this action “have contributed to the vindication of important constitutional rights,” thereby conferring “a significant benefit upon the general public,” which “would have had to pay the fees incurred if the general public had brought the suit.” 144 N.H. at 598. The Court thus concludes that this is “an appropriate, if not compelling, case in which to exercise [the Court’s] inherent equitable powers and award reasonable attorney’s fees to the plaintiff school districts . . . .” Id.

Consistent with the foregoing, the plaintiffs’ request for an award of reasonable attorney’s fees is **GRANTED**. The plaintiffs are directed to file a detailed affidavit of fees **within thirty (30) days** of the date on the Clerk’s Notice of Decision accompanying this Order. See Scheele v. Vill. Dist. of Eidelweiss, 122 N.H. 1015, 1020–21 (1982) (explaining party requesting fees must submit an affidavit “outlining in reasonable detail the actual time spent . . . and setting forth a rate for that person who performed the work”); In re Metevier, 146 N.H. 62, 64 (2001) (explaining that when determining reasonableness of requested attorney’s fees, courts consider “the amount involved, the nature, novelty, and difficulty of the litigation, the attorney’s standing and the skill employed, the time devoted, the customary fees in the area, the extent to which the

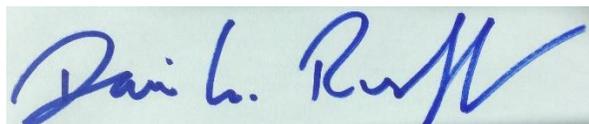
attorney prevailed, and the benefit thereby bestowed on his clients”). The State will thereafter be afforded a period of twenty (20) days to file a response, if any.

Conclusion

For the same reasons articulated in the Court’s June 5, 2019 Order, see Doc. 51 at 96, the Court does not take the decisions outlined here lightly. Moreover, the Court recognizes the significant implications of this Order, and the potential for political strain. However, the Court cannot ignore the substantial evidence put forth by the plaintiffs: evidence that amply demonstrates the insufficiency of the existing base adequacy aid figure. In light of that evidence, the State’s mid-trial motion for a directed verdict is **DENIED**, see Doc. 235, and the plaintiffs’ request for a declaratory judgment deeming RSA 198:40-a, II(a), unconstitutional on its face is **GRANTED**. See Doc. 83 at 26. The plaintiffs’ request for injunctive relief is also **GRANTED** insofar as the Court has established a conservative minimum threshold of \$7,356.01 which base adequacy aid funding must exceed, but is otherwise **DENIED**. See id. at 25. Lastly, the plaintiffs’ request for an award of reasonable attorney’s fees is **GRANTED**. See id. at 26.

Lastly, given the timing of this Order and the fact that the Court is contemporaneously releasing an order in Rand v State of New Hampshire finding the State’s administration of the Statewide Education Property Tax (SWEPT) unconstitutional, the deadline to file a Motion to Reconsider is extended to 30 days.  
SO ORDERED.

Date: November 20, 2023



Hon. David W. Ruoff  
Rockingham County Superior Court

Clerk's Notice of Decision  
Document Sent to Parties  
on 11/20/2023

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 CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT**<sup>1</sup>

In this case, the plaintiffs challenge the manner in which the State carries out certain education-related obligations imposed by the State Constitution. See Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 156–57 (2021) (“ConVal”); see also Doc. 17 (Pls.’ Am. Compl.). The parties now cross-move for partial summary judgment regarding the plaintiffs’ claim that the State administers the Statewide Education Property Tax (“SWEPT”) in an unconstitutional fashion. See Doc. 49 (Pls.’ Mot. Summ. J. – SWEPT); Doc. 56 (State’s Obj. & Cross-Mot. – SWEPT); Doc. 53 (Coalition’s<sup>2</sup> Obj. & Cross-Mot.); see also Doc. 17. The Court held a hearing on the motions on July 12, 2023. For the reasons that follow, the plaintiffs’ motion is **GRANTED**, and the cross-motions filed by the State and the Coalition are **DENIED**.

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<sup>1</sup> The Court intentionally delayed issuing this Order so that it could be issued contemporaneously with the order in Contoocook Valley School District, et al. v. State of New Hampshire, docket no. 213-2019-CV-00069. The Court did this to afford the parties an opportunity to assess how or if that order impacts the procedure in this case. The SWEPT issue in that case was withdrawn by the plaintiff. To the extent the delay has frustrated any of the parties, the Court apologizes but remains convinced it was in the best interest of justice to do so.

<sup>2</sup> The Coalition represents a group of New Hampshire cities and towns that oppose the plaintiffs’ challenge to the SWEPT. See Doc. 48 (Dec. 5, 2022 Order). On December 5, 2022, the Court allowed the Coalition to intervene solely as to this aspect of the case. See id.

### Standard of Review

“In considering . . . cross-motions for summary judgment, [courts] consider the evidence in the light most favorable to each party in its capacity as the non-moving party.” ConVal, 174 N.H. at 162–63. Summary judgment shall be granted where “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” RSA 491:8-a, III. As the parties acknowledged during the July 12, 2023 hearing, the facts underlying the plaintiffs’ Part II, Article 5 challenge to the SWEPT are undisputed. Rather, the relevant dispute centers on the proper interpretation of our State’s education funding jurisprudence, and how the law applies to the existing education funding and tax scheme.

### Education Funding Jurisprudence

“Under our education funding jurisprudence, Part II, Article 83 of the State Constitution ‘imposes a duty on the State to provide a constitutionally adequate education . . . in the public schools in New Hampshire and to guarantee adequate funding.’” ConVal, 174 N.H. at 156 (quoting 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.’” Id. at 156–57 (quoting Londonderry Sch. Dist. v. State, 154 N.H. 153, 155–56 (2006) (“Londonderry I”). Under 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. As of December 17, 1997, properties located within a particular school district were taxed at whatever rate was necessary to “meet the obligations of the school budget” within that district. See Claremont II, 142 N.H. at 467 (explaining Department of Revenue Administration (“DRA”) set unique tax rates for properties in each school district). In Claremont II, a group of school districts, students, taxpayers, and parents successfully challenged this tax scheme. See id. at 465. The Claremont II plaintiffs argued (as relevant here) “that the school tax is a unique form of the property tax mandated by the State to pay for its duty to provide an adequate education” and thus “is a State tax that should be imposed at a uniform rate throughout the State.” Id. at 467. The State countered that setting district-specific tax rates was constitutionally appropriate, characterizing the school tax as “a local tax determined by budgeting decisions made by the district’s legislative body and spent only in the district . . . .” Id. at 467–68 (noting State’s argument that this practice allowed each school district “to decide how to organize and operate their schools”). The Claremont II court concluded that because “the purpose of the school tax” was “overwhelmingly a State purpose”—i.e., fulfilling the State’s duty “to provide a constitutionally adequate education . . . and to guarantee adequate funding”—it constituted a State tax. Id. at 469.

Having resolved that issue, the Claremont II court next analyzed whether the tax scheme was “proportional and reasonable throughout the State in accordance with” Part II, Article 5. Id. at 470; see also id. at 468 (“Part II, article 5 of the State Constitution provides that the legislature may ‘impose and levy proportional and reasonable

assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state.”). Citing evidence that the equalized tax rate for the 1994–95 school year was approximately four times higher in Pittsfield than in Moultonborough, the court concluded that the tax was disproportionate and unreasonable. Id. at 470–71. In reaching this conclusion, the court emphasized that “because the diffusion of knowledge and learning is regarded by the State Constitution as ‘essential to the preservation of a free government,’ N.H. CONST. pt. II, art. 83, it is only just that those who enjoy such government should equally assist in contributing to its preservation.” Claremont II, 142 N.H. at 470–71. Given these conclusions, the court explained that “[t]o the extent . . . the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.” Id.

In response to Claremont II, the legislature solicited an advisory opinion from the Supreme Court regarding the legality of an alternative tax scheme. See Opinion of the Justices (School Financing), 142 N.H. at 892–97. As relevant here, the proposed scheme “purport[ed] to establish a uniform State education tax rate based upon the equalized value of all taxable real property in the State.” Id. at 899. However, the scheme included “a ‘special abatement’ for ‘the amount of state education tax apportioned to each town in excess of the product of the statewide per pupil cost of an adequate education times the average daily membership in residence for the town.” Id. (cleaned up). Under the proposed scheme, the DRA would “calculate each town’s tax by multiplying the State education tax rate by the total equalized value of the property within it, less any special abatement.” Id. (cleaned up). “Thus, the special abatement

applie[d] before any taxpayer within a given town receive[d] a tax bill.” Id. (expressing Supreme Court’s view that substantive legal issues would “remain unchanged” if proposed scheme provided for actual collection of revenue raised through uniform State education tax, and thereafter reimbursed taxpayers pursuant to the special abatement).

Ultimately, the Supreme Court concluded that the proposed scheme would not pass constitutional muster. See id. at 902. The court explained that as a result of the special abatement, “the effective tax rate is reduced below the uniform State education tax rate in any town that can raise more revenue than it needs to provide the legislatively defined ‘adequate education’ for its children:”

For example, in those towns where there are no children, the special abatement reduces the effective tax rate to zero. Meanwhile, in any town where the property value is insufficient to support the revenue required to educate local children adequately at the uniform State education tax rate, the effective rate remains equal to the uniform State education tax rate. Those towns receive a grant from the State to meet the otherwise unfunded cost of an adequate education. Although such towns would be fully funded, the owners of property therein would pay taxes at a higher rate than those in towns with a surplus of revenue, which would receive the special abatement.

Id. at 899–900.

Recognizing that tax abatements and exemptions “necessarily result in a disproportionate tax burden,” the Supreme Court explained that such an outcome is permissible under Part II, Article 5 only when abatements are “supported by good cause and exemptions by just reasons.” Id. at 900. The court concluded that the above-described special abatement would not meet that standard:

Proponents . . . assert that the special abatement is designed to protect towns from financially contributing to the adequate education of children in other towns or school districts. Essentially, the proponents seek to measure proportionality and fairness on a municipality-by-municipality or district-by-district basis, rather than statewide. But, to the extent that a property tax is

used to raise revenue to satisfy the State's obligation to provide an adequate education, it must be proportional across the State . . . .

Id. at 901 (also explaining that possibility of “social unrest cannot be a factor in . . . constitutional review” of proposed tax scheme). In addition, the court again emphasized the statewide benefits arising out of public education:

Because the diffusion of knowledge and learning is regarded by the State Constitution as essential to the preservation of a free government, it is only just that those who enjoy such government should equally assist in contributing to its preservation . . . . This obligation cannot be avoided or lessened by the mere circumstance of a town having few children or a town having a wealth of property value, including wealth generated by the presence of heavy industry.

It should not be forgotten that New Hampshire is not a random collection of isolated cities and towns . . . . The benefits of adequately educated children are shared statewide . . . .

Id. at 901–02 (cleaned up). In light of the foregoing, the court concluded that because property owners who did not benefit from the special abatement would bear “an increased tax burden,” and “such disproportionality [wa]s not supported by good cause or a just reason,” the proposed education funding scheme would violate “both the plain wording of Part II, Article 5 and the express language of Claremont II.” Id. at 902.

After receiving the Supreme Court's guidance, “the legislature passed an act in April 1999 ‘establishing a uniform education property tax’” and omitting any special abatement. See Claremont Sch. Dist. v. Governor (Statewide Property Tax Phase-In), 144 N.H. 210, 212 (1999) (“Claremont III”) (citation omitted). Pursuant to the act, “[i]n each municipality in which the education property tax exceed[ed] the amount necessary to fund an adequate education, the excess” was to be “remitted” to the DRA. Id. at 213 (citation omitted). Notably, however, the act included a “phase-in” provision which provided that in certain property-rich towns, the full tax rate would be “imposed

gradually over five years, while taxpayers in the remaining towns [would] pay the full rate immediately.” Id.

In Claremont III, the plaintiffs challenged (among other things) the constitutionality of the phase-in provision. See id. at 212. Although the State “acknowledged . . . that facially the phase-in perpetuate[d] a disproportionality for five years,” the State nevertheless argued that the phase-in could “be viewed as a partial abatement” or a “partial exemption” of the tax liability in property-rich towns. See id. at 213. The Supreme Court summarily dismissed the State’s abatement argument, explaining the phase-in did not constitute a permissible abatement because it did “not limit relief to persons aggrieved by the assessment of a tax.” Id. (citation omitted). Further, the court concluded that the phase-in was not a valid tax exemption because it did not serve the general welfare. See id. at 212–14. In reaching this conclusion, the court reasoned that although the phase-in was intended to “ameliorate the possibility of foreclosures, bankruptcies, or similar adverse economic consequences that could occur” in the property-rich communities, “[t]he classification created by the phase-in encompassed taxpayers who did not merit special tax treatment in accordance with the just reasons offered by the legislature . . . .” Id. at 213–16.

Before considering whether the phase-in provision could be severed from the act (and ultimately concluding that it could not), the Supreme Court took the opportunity to emphasize and clarify important aspects of our State’s taxation jurisprudence:

[W]e give heed to the words of Chief Justice Doe written more than one hundred years ago: “A state law selecting a person or class or municipal collection of persons for favors and privileges withheld from others in the same situation . . . is at war with a principle which this court is not authorized to surrender.” . . . In the field of taxation, the principle of uniformity and equality of rights is of paramount importance and has been embodied in the

“proportional and reasonable” language of Part II, Article 5 of our State Constitution since June 2, 1784.

In this case, the classification at issue imposes a State tax on property at different rates for five years based solely on the location of the property. We can find no case where different rates of taxation exist in a State tax from one municipality to another. We can conceive of none that would pass muster under the words of Chief Justice Doe or the provisions of Part II, Article 5 . . . . our language on taxes requiring uniformity and equality is not something invented in the Claremont cases, but is the far-reaching language of constitutional mandate which has guided every tax decision of this court for over two hundred years.

Id. at 217 (citations omitted) (quoting State v. Griffin, 86 N.H. 609, 614 (1894)).

In response to Claremont III, the legislature “reenacted the statewide property tax without the phase-in . . . .” Sirrell v. State, 146 N.H. 364, 367 (2001). Under that tax scheme, communities which raised funds “beyond that necessary to fund an adequate education for their students” were “required to pay the excess . . . to the education trust fund for distribution to communities unable to raise sufficient funds to meet their cost of adequacy.” See id. By 2006, however, the legislature had again modified the education tax scheme. See Londonderry Sch. Dist. SAU #12 v. State, No. 226-2005-EQ-00406, 2006 WL 563120 (N.H. Super. Mar. 8, 2006) (Groff, J.) (“Londonderry”) at \*6–7 (describing changes to tax scheme arising out of House Bill 616). As relevant here, the legislature eliminated the requirement that excess education funds be remitted to the State, instead permitting property-rich communities to “retain all the revenue they raise[d]” under the education tax scheme “in excess of what [wa]s needed to support the cost of an adequate education.” Id. at \*13. In Londonderry, a group of school districts, School Administrative Units and towns argued that this change “violate[d] Part II, Article 5” because it resulted “in some ‘property poor’ communities bearing a disproportional share of educational expenses through local taxes.” Id.

Citing the jurisprudence discussed above, Judge Groff agreed with the plaintiffs:

Under HB 616, the real effect of having the “property-rich” municipalities retain excess [education tax] proceeds is to permit these municipalities to avoid payment of that amount of the statewide education property tax which exceeds the amount necessary to provide an adequate education for their children. At the same time, “property-poor” municipalities will be required to use the full amount of the statewide enhanced education tax assessment revenues collected to support the cost of an adequate education. Therefore, HB 616 creates a non-uniform tax rate and the Court finds that no constitutional justification can be articulated to permit the retention of those excess funds by the “property-rich” municipalities.

Id. at \*15 (noting “special abatement” and phase-in provisions of prior proposed legislation were deemed unconstitutional because they permitted municipalities to avoid payment of statewide education property tax which exceeded the amount necessary to provide an “adequate education” within relevant school district).

On appeal, the Supreme Court concluded that it could not analyze whether the State was funding public education in a constitutional manner until the legislature appropriately defined the scope of a constitutionally adequate education. See Londonderry I, 154 N.H. at 162. In response, the legislature enacted sweeping changes to the public education laws, including the funding scheme. See Londonderry Sch. Dist. SAU #12 v. State, 157 N.H. 734, 735 (2008) (“Londonderry II”). As a result, the Supreme Court determined that the remaining challenges to House Bill 616 had become moot. See id. at 736. Thus, the Supreme Court has not definitively determined whether allowing a municipality to retain excess education funds—that is, funds generated under a statewide education tax scheme which exceed the cost of providing the opportunity for a constitutionally adequate education to the public school students living in that municipality’s school district—runs afoul of Part II, Article 5.

### Existing Education Funding and Tax Scheme

Today, RSA 198:40-a, II, sets forth the annual per-pupil cost of providing the opportunity for a constitutionally adequate education (hereinafter “adequacy aid”). The State raises adequacy aid funds via the SWEPT. See ConVal, 174 N.H. at 159. Specifically, RSA 76:3 requires that the DRA “set the education tax rate at a level sufficient to generate” a statutorily-defined total “when imposed on all persons and property taxable pursuant to RSA 76:8, except property subject to tax under RSA 82 and RSA 83-F.” Funds raised via this tax are “collected and distributed at a local level and . . . used to meet the cost of an adequate education.” See Doc. 18 (State’s Am. Answer 1st Am. Compl.) ¶ 19.

“The State admits that since 2011, communities for which the amount raised by the SWEPT exceeds the total amount of adequacy aid paid [to that community] by the State have been permitted to retain the excess . . . .” Id. ¶ 22; see also Laws 2011, 258:7 (eff. July 1, 2011) (eliminating requirement that excess SWEPT funds be paid to DRA “for deposit in the education trust fund”). The State further acknowledges that for certain areas in New Hampshire, the DRA has “set negative local education tax rates” which mathematically offset most if not all of the applicable equalized SWEPT rate. See Doc. 18 ¶ 35; Doc. 59 (Aff. Bruce Kneuer) ¶ 18 (“A negative Local Education Rate may occur . . . when a municipal entity . . . has minimal or no public education responsibilities within its boundaries . . . .”). For example, for the 2020–21 school year, the DRA set a local education tax rate for Hale’s Location of negative \$1.84 / \$1000, whereas the equalized SWEPT rate for that same area was \$1.85 / \$1000. See Doc. 18 ¶ 36.

## Analysis

The plaintiffs argue that because the State allows communities to retain excess SWEPT funds or offsets the equalized SWEPT rate via negative local education rates, the SWEPT is not being administered in a manner that is “uniform in rate,” as required by Part II, Article 5. See Doc. 50 (Pls.’ Mem Law) at 3, 14. The parties now cross-move for summary judgment with respect to this issue. Compare Doc. 49 with Docs. 53 and 56. Before turning to the merits of the parties’ arguments, the Court must address two preliminary matters. First, in support of their cross-motions for summary judgment, the State and the Coalition maintain that the SWEPT should be presumed constitutional, and that the plaintiffs bear the burden of establishing a “clear and substantial conflict” between the SWEPT and the State Constitution. See Doc. 53 at 3 (citing ConVal, 174 N.H. at 161, for proposition that Court may only declare SWEPT unconstitutional “upon ‘inescapable grounds’”); accord Doc. 57 (State’s Mem. Law) at 6. For the reasons outlined below, the Court concludes that if the State and the Coalition have appropriately framed the relevant standards, the plaintiffs have overcome the presumption of constitutionality and met their burden of showing a clear and substantial conflict. Accordingly, the Court will assume, without deciding, that those standards apply here. Cf. Canty v. Hopkins, 146 N.H. 151, 156 (2001) (declining to reach arguments that would not alter court’s conclusion).

Second, in support of their motion for partial summary judgment, the plaintiffs have submitted data tables generated by Douglass Hall. See Doc. 51 (Pls.’ State. Mat. Facts) Ex. A (Aff. Douglass Hall) (“Hall Aff.”). These tables indicate which New Hampshire communities generated “SWEPT in Excess of Adequacy” in certain tax

years, and they also reflect Hall’s calculations as to what the SWEPT rate would have been had such communities only collected the funds necessary to cover their own adequacy aid needs. See id. ¶¶ 4–9. The tables contain similar information concerning communities for which the DRA has set negative local tax rates. See id. ¶¶ 10–13.

The Coalition suggests Hall’s work deserves little weight. Doc. 53 at 14 n.3 (noting Hall’s affiliation with N.H. School Funding Fairness Project, and that Hall did not “explain why he selected” data points reflected in tables). Notably, however, the Coalition concedes that Hall’s tables were “created from State data,” and the Coalition does not suggest that Hall misreported the data, or that the data is otherwise unreliable. See id. Nor does the Coalition assign error to Hall’s calculations. See id. As there is no dispute regarding the validity of the data underlying his work, the Court concludes that it is appropriate to substantively consider Hall’s calculations, as reported in the tables, in ruling on the parties’ cross-motions for summary judgment.

The Court now turns to the substance of the parties’ cross-motions. As the parties raise somewhat distinct arguments concerning “excess” SWEPT communities and “negative tax rate” communities, the Court will address each category, in turn.

I. Excess SWEPT Communities

Relying on the caselaw discussed above, the plaintiffs argue that allowing municipalities to retain “excess” SWEPT funds beyond those needed to meet local adequacy aid requirements is the functional equivalent of the special abatement and phase-in schemes which the Supreme Court previously deemed unconstitutional. See Doc. 50 at 14. In particular, the plaintiffs argue that property-poor communities which do not generate excess SWEPT funds are effectively paying a higher SWEPT rate than

those which do generate and are allowed to retain excess funds. See id. at 15. As a result, the plaintiffs argue that the SWEPT is being administered in a manner which is not “uniform in rate,” as required under Part II, Article 5. See id. at 15–18. In response, the State and the Coalition argue that the legislature’s decision to permit retention of excess SWEPT funds constitutes a spending decision and not a tax, rendering the prior school funding cases distinguishable. See Doc. 57 at 1–2; Doc. 53 at 2. The State and the Coalition thus assert that the plaintiffs’ Part II, Article 5 challenge to the SWEPT must fail. See Doc. 57 at 2; Doc. 53 at 2.

Upon review, the Court agrees with the plaintiffs’ characterization of this issue. The plaintiffs do not challenge the amount of money the State spends on education in one community versus another. Rather, as in Claremont II, the plaintiffs in this case emphasize that the SWEPT “is a unique form of the property tax mandated by the State to pay for its duty to provide an adequate education.” See Claremont II, 142 N.H. at 467; see also Doc. 61 (Pls.’ Reply – SWEPT) at 1–2 (noting in a footnote that SWEPT “is not a generic tax for education” but “a specific state tax to pay for the State’s constitutional duty to fund adequacy”). The plaintiffs thus contend that by allowing property-rich communities to retain excess SWEPT funds, the State is administering the SWEPT in a manner which effectively reduces the SWEPT rate paid by those communities. In other words, although the SWEPT rate is uniform on its face, the plaintiffs argue that any scheme which diverts SWEPT funds to purposes other than adequacy aid lowers the effective SWEPT rate paid by certain communities, thus running afoul of Part II, Article 5.

As set forth above, the plaintiffs' contention finds substantial support in our State's education funding jurisprudence. Indeed, the Claremont II court expressly noted that "[t]o the extent . . . the property tax is used . . . to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State." 142 N.H. at 470 (emphasis added). The court's broader discussion of the administration of such a tax, rather than just the facial tax rate, aligns with the plaintiffs' position. See id. Similarly, in Opinion of the Justices (School Financing), the Supreme Court concluded that the proposed "special abatement" impermissibly resulted in a lower "effective" education tax rate for certain communities. See 142 N.H. at 902. While recognizing that the proposed tax would be uniform on its face, the Supreme Court concluded that the proposed tax would violate Part II, Article 5 because "[a]pplication of the special abatement [would] guarantee[] that property owners paying the full rate [bore] an increased tax burden . . . ." Id. at 901–02 (explaining that "effective tax rate is reduced below the uniform State education tax rate in any town that can raise more revenue than it needs to provide the legislatively defined 'adequate education' for its children"); see also id. at 899 (noting court's conclusions "would remain unchanged" if proposed scheme had provided for actual collection of revenue, then reimbursed taxpayers pursuant to special abatement).

Relying on this reasoning, Judge Groff determined in Londonderry that the retention of surplus education tax funds violated Part II, Article 5 because it allowed property-rich municipalities "to avoid payment of that amount of the statewide education property tax which exceeds the amount necessary to provide an adequate education for their children." 2006 WL 563120, at \*15. While Judge Groff's holding on this issue and

other aspects of the jurisprudence discussed above do not constitute binding precedent, the Court is persuaded by the reasoning set forth therein. As Judge Groff noted, where education taxes like the SWEPT are intended to fulfill the State's constitutional obligation to fund adequacy aid, the effective rate of such a tax is only uniform if all proceeds of the tax are directed to that purpose. See id.

In this case, the existing education funding and tax scheme permits communities to retain surplus SWEPT funds which exceed local adequacy aid needs. As a result, such funds are not remitted to the State for use in meeting the adequacy aid needs of other communities where SWEPT revenues fall short of adequacy. While communities which retain excess SWEPT funds must use those funds for education, the excess funds are not used to satisfy the State's adequacy aid obligations.<sup>3</sup> By contrast, communities which do not generate such an excess must use all collected SWEPT revenue to satisfy the State's adequacy aid obligations. In short, communities which do not generate excess SWEPT funds use all revenues generated under the facial SWEPT rate for adequacy aid purposes, and excess SWEPT communities do not.

Given the unique nature of the SWEPT—a State tax meant to generate the funding necessary to meet the State's constitutional adequacy aid obligations, see Claremont II, 142 N.H. at 467—there can be no meaningful dispute that allowing communities to retain excess SWEPT funds lowers the effective SWEPT rate paid by those communities. See Hall. Aff. Table 1. Accordingly, the Court concludes that allowing some communities to retain excess SWEPT funds impermissibly results in a

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<sup>3</sup> In the event the amount of adequacy aid is increased in the future, such a change would not undermine the conclusion that a community's retention of SWEPT funds generated in excess of adequacy aid effectively reduces the SWEPT rate for that community, in violation of Part II, Article 5.

disproportionate tax rate, in violation of Part II, Article 5. See Claremont II, 142 N.H. at 467; see also Opinion of the Justices (School Financing), 142 N.H. at 902; Londonderry, 2006 WL 563120, at \*15. In light of the foregoing, the plaintiffs have overcome any applicable presumption of constitutionality regarding the retention of excess SWEPT funds, and have further established a “clear and substantial conflict” between this aspect of the SWEPT, as administered, and Part II, Article 5 of the State Constitution. See Doc. 53 at 3; Doc. 57 at 6. The plaintiffs’ motion for summary judgment is thus **GRANTED** with respect to this issue, and the corresponding aspects of the competing motions filed by the State and the Coalition are **DENIED**.

II. Negative Tax Rate Communities

The plaintiffs similarly argue that by setting negative local education tax rates in communities with little to no education expenses, the State is impermissibly reducing the effective SWEPT rate for those communities. See Doc. 50 at 16 (arguing this scheme is “virtually identical” to the special abatement scheme deemed unconstitutional in Opinion of the Justices, 142 N.H. at 899); see also Hall Aff. Table 3. In response, the State contends that the communities at issue, which are generally “unincorporated places,” are not and need not be part of the SWEPT tax base. See Doc. 57 at 14–18.<sup>4</sup> In other words, the State does not deny that negative local education tax rates effectively reduce or eliminate SWEPT liability, but argues this outcome is contemplated by the relevant statutory scheme and is constitutionally permissible. See id.

Upon review, the Court again agrees with the plaintiffs. As the Supreme Court has repeatedly emphasized, the public education system benefits the entire State, not

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<sup>4</sup> The Coalition does not directly address the negative local education tax rate issue in their filings. See Docs. 53; 63 (Coalition’s Reply).

merely those communities in which publicly-educated children reside. See Claremont II, 142 N.H. at 470 (“[B]ecause the diffusion of knowledge and learning is regarded by the State Constitution as ‘essential to the preservation of a free government’ . . . it is only just that those who enjoy such government should equally assist in contributing to its preservation.”); Opinion of the Justices (School Financing), 142 N.H. at 901–02 (“The benefits of adequately educated children are shared statewide . . .”). Of particular relevance here, even property owners in uninhabited locations benefit from the preservation of our State’s government, without which their property interests would be put in jeopardy. See Claremont II, 142 N.H. at 470. Accordingly, the fact that few if any publicly-educable children reside within some unincorporated places does not constitute a “just reason[]” for reducing or eliminating SWEPT liability in those locations. See Opinion of the Justices (School Financing), 142 N.H. at 900 (explaining Part II, Article 5 requires that tax exemptions be “supported by . . . just reasons”).

In light of this conclusion, the Court is not persuaded by the State’s proffered interpretation of the term “municipalities,” as used in RSA 76:3 and 76:8. See Doc. 57 at 14–15 (arguing “municipalities,” as used in relevant statutes, does not include unincorporated places). It is well settled that New Hampshire courts “must construe a statute to avoid a conflict with constitutional rights whenever reasonably possible.” Bellevue Properties, Inc. v. 13 Green St. Properties, LLC, 174 N.H. 513, 517 (2021) (citation and quotations omitted). For the reasons outlined above, if the legislature intended to exempt unincorporated places from contributing to the State’s education funding obligations, such an exemption would not be supported by the requisite “just reasons.” See Opinion of the Justices (School Financing), 142 N.H. at 900.

Accordingly, the Court cannot construe the term “municipalities” as excluding unincorporated places in this context. See Bellevue Props., 174 N.H. at 517.<sup>5</sup>

For the reasons outlined above, the Court concludes that the setting of negative local education tax rates which offset the SWEPT to any degree runs afoul of Part II, Article 5. Accordingly, the plaintiffs have overcome any applicable presumption of constitutionality regarding the offsetting of SWEPT rates via negative local tax rates, and have further established a “clear and substantial conflict” between this aspect of the SWEPT, as administered, and Part II, Article 5 of the State Constitution. See Doc. 53 at 3; Doc. 57 at 6. The plaintiffs’ motion for summary judgment is thus **GRANTED** with respect to this issue, and the corresponding aspects of the competing motions filed by the State and the Coalition are **DENIED**.

### III. Remedy

Having found that the plaintiffs are entitled to judgment as a matter of law regarding their Part II, Article 5 challenge to the administration of the SWEPT, the Court must now determine the appropriate remedy. As noted in the Court’s December 5, 2022 Order on the plaintiffs’ motion for preliminary injunctive relief, “[t]he issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy.” Doc. 48 at 8 (quoting N.H. Dept. Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007)). Moreover, “the granting of an injunction ‘is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.’” Id. (citing UniFirst Corp. v. City of

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<sup>5</sup> Although the State’s Reply identifies other property types which are not subject to the SWEPT under the existing scheme, see Doc. 64 at 3, the State does not cite (and the Court is not aware of) any legal basis for rejecting a valid Part II, Article 5 challenge because the relevant tax may also run afoul of the constitution in other respects.

Nashua, 130 N.H. 11, 14 (1987) for proposition that courts may consider public interest in evaluating requests for injunctive relief).

Given the lengthy history of constitutional violations arising out of the State's various education tax schemes, the plaintiffs urge the Court to act swiftly in curing the above-described constitutional infirmities. See Doc. 50 at 18–19 (quoting Claremont III, 143 N.H. at 158, for proposition that “[a]bsent extraordinary circumstances, delay in achieving a constitutional system is inexcusable”); see also Doc. 61 at 12–14 (noting plaintiffs first sought preliminary injunctive relief in October 2022). For its part, the State urges the Court not to “impose any remedy that disrupts the current municipal budget cycle,” arguing that if any remedy is warranted, “it would be far less disruptive for the remedy to become effective with the next budget cycle, which will commence in late-2023 and culminate in budget votes in March or April 2024.” Doc. 57 at 20. In addition, the State maintains that because the legislature repealed any statutory authority for remitting excess SWEPT revenues to the education trust fund, the Court should order those funds held in escrow pending further legislative action. See id.<sup>6</sup>

The parties' arguments implicate important considerations regarding the roles of the respective branches of State government. See Londonderry I, 154 N.H. at 163. The Supreme Court's respect of those roles has led it to “demure[]” each time the court “has been requested to define the substantive content of a constitutionally adequate public education . . . .” Id. However, as the Londonderry I court recognized, “the judiciary has a responsibility to ensure that constitutional rights not be hollowed out and,

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<sup>6</sup> The Coalition's filings do not directly address the issue of an appropriate remedy. See Docs. 53; 63.

in the absence of action by other branches, a judicial remedy is not only appropriate but essential.” Id. (citing Petition of Below, 151 N.H. 135 (2004)).

In light of the substantial guidance that can be gleaned from the jurisprudence discussed above, the plaintiffs are understandably frustrated by the manner in which the State is currently administering the SWEPT. However, any immediate remedy which impacts the current budget cycle will necessarily have a far greater impact on the Coalition’s members and other similarly-situated communities than on the State. See Doc. 60 (Aff. Lindsey Stepp) ¶ 20 (explaining prospective remedy would allow affected communities to consider this change “when building their next budgets”). While those communities also could have benefitted from the guidance discussed above, the Court recognizes that it may have been impractical or imprudent for communities to collect a surplus of tax revenue before the Court ruled on the merits of the relevant constitutional issues. On the other hand, the Court is mindful that communities which do not generate excess SWEPT funds or offset the SWEPT with negative local tax rates continue to shoulder an unfair burden as it relates to the State’s adequacy aid obligations.

Having considered all of the relevant facts and circumstances, the Court concludes that the following remedy strikes the appropriate equitable balance:

Beginning with the upcoming budget cycle (i.e., the budget cycle the State characterizes as commencing “in late-2023” and culminating in “budget votes in March or April 2024,” Doc. 57 at 20), the State is enjoined from permitting communities to retain excess SWEPT funds or offset the equalized SWEPT rate via negative local tax rates. Further, any SWEPT funds generated by a community which exceed the amount of adequacy aid to which that community is statutorily entitled must be remitted to the

DRA. While the Court declines to direct that the State place such revenue in a particular fund, the Court reiterates that such funds must be used for the exclusive purpose of satisfying the State's adequacy aid obligations.

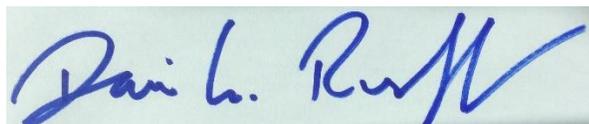
Conclusion

Consistent with the foregoing, the Court concludes that by administering the SWEPT in a manner which allows communities to retain excess SWEPT funds or offset the equalized SWEPT rate via negative local tax rates, the State has violated Part II, Article 5 of the State Constitution. Accordingly, the plaintiffs' motion for partial summary judgment as to this issue (Doc. 49) is **GRANTED**, and the cross-motions filed by the State (Doc. 56) and the Coalition (Doc. 53) are **DENIED**. Beginning with the budget cycle commencing in late-2023 and culminating in budget votes in March or April 2024, the State is enjoined from permitting communities to retain excess SWEPT funds or offset the equalized SWEPT rate via negative local tax rates. Further, any SWEPT funds generated in excess of the adequacy aid to which any community is statutorily entitled must be remitted to the DRA, and thereafter used for the exclusive purpose of satisfying the State's constitutional adequacy aid obligations.

Lastly, given the timing of this Order and the fact that the Court is contemporaneously releasing an order in Contoocook Valley School District, et al. v State of New Hampshire, finding the current base adequacy amount unconstitutional, the deadline to file a Motion to Reconsider is extended to 30 days.

SO ORDERED.

Date: November 20, 2023



Hon. David W. Ruoff  
Rockingham County Superior Court

Clerk's Notice of Decision  
Document Sent to Parties  
on 11/20/2023