STATE OF NEW HAMPSHIRE

GRAFTON, SS. **SUPERIOR COURT**

Woodsville Fire District

v.

Town of Haverhill

DOCKET NO. 215-2020-CV-00128

TOWN'S MOTION TO RECONSIDER ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES the Defendant, Town of Haverhill, by and through its counsel, and hereby moves the Court to reconsider its order as follows:

1. In its order, the Court concluded that "the Legislature intended to apply the fraction prescribed by SB 75 to the Total Highway Budget as exemplified in the Addendum Proposal and the First Amended MOU" and ruled that "[t]he District is therefore entitled to partial summary judgment as a matter of law." ORDER p. 11. In so ruling, and while ruling on ancillary matters, the Court overlooked or misapprehended several points of law or fact, identified below. Additionally, the Court's order, in addition to ruling on the proper interpretation of SB75, appears to also reach the net effect of this interpretation on these parties under these particular facts; i.e., whether Woodsville is entitled to money damages. However, only the former issue is properly before the Court at this stage, and in this particular case Woodsville could never be entitled to any further relief. For these, and other, reasons, the Town respectfully requests the Court reconsider its order.

I. THE COURT ERRED IN ITS INTERPRETATION OF SB75

2. When interpreting SB75 to have required the Town to distribute money to the district until the passage of HB2, the Court misconstrued its text and misapplied the canons of statutory interpretation. As a threshold matter, the Court found that by SB75 "the Legislature made this distribution mandatory only when the Town appropriates money 'for the distribution of highway funds' that is 'attributable to the [T]own" effectively ruling that if the Town had a highway budget, it was obligated to make this distribution. ORDER p. 7. This is not supported by the plain language of SB75. Nothing in SB75 references the *Town's* highway budget, whether net or gross. The reference to "distribution of highway funds" refers to Woodsville's fund, not the Town's highway budget.

3. Further, the Court failed to recognize the distinction between an appropriation and expenditure. To "[a]ppropriate means to set apart from the public revenue of a municipality a certain sum for a specified purpose and to authorize the expenditure of that sum for that purpose," and it is essentially the earmarking of certain amounts of funds for a certain purpose. RSA 32:3, I. Even assuming SB75 required the Town to raise and appropriate money for the *purpose* of transferring the same to Woodsville, it contains **no** mandate requiring the **expenditure** of the appropriated funds for that purpose. The legislature understands the difference between appropriations and expenditures and knows how to mandate the latter. *See, e.g.,* RSA 482-A:3, III("The filing fees collected pursuant to paragraphs I, V(c), XI(h), XII(c), and X are continually appropriated to and shall be expended by the

department for paying per diem and expenses…") Under New Hampshire municipal budgeting law, the governing body decides whether to expend funds. Even if the legislative body appropriates funds for a particular purpose, the governing body is under no obligation to actually expend those funds and can even transfer those funds to a different line item. *See* RSA 32:10.

4. The Court also erred in ruling that the "formula in SB 75 is plain and unambiguous." COURT p. 7. First, the Court conflates the existence of a "fraction" in SB75 with the existence of a formula. SB75 does not contain a complete formula. The Court appears to recognize this when it states the "fraction itself is plain, but…the fund to which it applies is ambiguous." COURT p. 8. However, the "fund" the Court references is actually another *variable* in the so-called "formula" that is not contained *anywhere* in SB75, and without it, SB75 is facially defective.

5. Similarly, the Court erred when it ruled that "fund to which [the fraction] applies is ambiguous." *Id.* A non-existent term cannot be "ambiguous;" it simply does not exist. The Court's reliance on *Wolfgram v. New Hampshire Dep't of Safety*, 169 N.H. 32, 36 (2016) to essentially fix the statute is misplaced: that doctrine regarding nullities does not operate to save a defective statute, but instead is intended to give effect to *existing* language (when given the choice between multiple interpretations.) *See, e.g. Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009)("The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.") Here, the Court

is not giving effect to existing language but *adding* non-existent language to SB75. This was error.

6. The Court's error was further compounded when it used extrinsic evidence to fill in this gap. The Court reasoned that the "legislative history confirms" that the legislature intended to use the formula expressed in the Addendum Proposal (but completely omitted from the actual statute). ORDER p. 9. However, that is not the right question. "[L]egislative intent is to be found not in what the legislature might have intended, but rather, in the meaning of what it did say." *Psychiatric Institute v. Mediplex*, Inc., 130 N.H. 125, 128 (1987). "Courts have no right to redraft legislation to make it conform to an intention not fairly expressed therein." *Ahern v. Laconia Country Club*, 118 N.H. 623, 625 (1978). Whether or not the legislature intended to use the formula in the Addendum Proposal the plain language of SB75 demonstrates that they **failed** to do so. The legislature possessed these documents, and had access to Woodsville's proffered language, yet **failed** to include it in the text of the bill. The **<u>only</u>** conclusion to draw is that they considered, and rejected, the language. In any event, it is not within the Court's authority to fix the legislature's failure.

7. The Court also erred in considering the parties' conduct when interpreting SB75. ORDER p.10-11. The parties' mutual misunderstanding of the law, or even their expectation as to what the legislature was going to enact, has no bearing on the legislative intent under any canon of statutory interpretation known to the Town. Neither the Town nor the District are "parties" to the legislation. *Grayson v.*

LaBranche, 107 N.H. 504, 505-06 (1967), cited by the Court, was a contract interpretation case and is inapposite.

II. <u>The Court erred in declining to determine whether SB75 can lawfully mandate that the Town raise, appropriate, and expend money by transfer to the District.</u>

8. Even assuming the Court's interpretation of SB75 is correct, the Court erred in declining to reach the additional issues raised by the Town, including whether, assuming SB75 contains a mandate, such a mandate is lawful. *See* Part 1, article 28-a of the New Hampshire Constitution ("The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state."); RSA 31:3, 31:4; *Clapp v. Jaffrey*, 97 N.H. 456 (1952). Put simply: under New Hampshire law, the voters control appropriations and the governing body controls expenditures. If the legislature wants to impose its will in this manner, it must fund the mandate. This is especially important in light of the issues identified below, including mootness.

III. <u>The Court erred in finding that Woodsville is asserting a claim for payment of funds from 2019 through the passage of HB2. Woodsville's motion did not, and could not, seek an order requiring the Town to pay it money damages.</u>

9. The Court also erred when it characterized Woodsville's pending motion as "asking the Court to issue declaratory judgment to enforce the formula in SB 75 and require the Town to pay funds it withheld from 2019 through the passage of HB2 in June 2021" or that Woodsville has "claims for payment prior to the amendment."

10. First, Woodsville's motion sought "[p]artial [s]ummary [j]udgment as to Woodsville's Declaratory Judgment claim" specifically to "rule and declare" that Woodsville's interpretation of SB75 is correct and that the "formula **to be** used" is as set therein. MOTION p. 3 (emphasis added). Woodsville's *motion* did not seek an order requiring the Town to pay funds from 2019 through the passage of HB2. While Woodsville embedded a request for the "Town to reimburse the District for the funds unlawfully withheld by the Town since the end of 2019," in its memorandum of law, it is not part of its prayer for relief in its motion. *Compare* MEMO p. 20 *with* MOTION.

11. Second, there is not even viable claim pending before this Court that could justify that form of relief. Woodsville, through competent counsel, brought a declaratory judgment action. It has never pleaded, much less proven, the elements of any *other* cause of action that could ever give rise to a claim for money damages. ORDER p. 4, 5; *compare* COMPLAINT with COUNTERCLAIMS. RSA 491:22 governs declaratory judgment actions and provides that "[a]ny person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive." Declaratory judgment is both the relief available and the name of the cause of action; it is a creature of statute. *Faulkner v. Keene*, 85 N.H. 147 (1931). Ultimately, a declaratory judgment action is one for determining rights between parties; it is not for awarding other relief, whether by way of damages or other equitable relief.

12. While Woodsville's complaint sought an order that "Haverhill adhere to [SB75]" and "*complete* its payments," these are requests for injunctive relief to order Haverhill to take certain *actions* to comply with Woodsville's *interpretation* of the law (a law that is no longer in effect), not claims for money damages.

13. That Woodsville has failed to plead and prove an entitlement to money damages is clear by one simple question: what cause of action supports that relief and what are the elements of that cause of action?

14. This is no more technicality. Even assuming the Court is correct in its interpretation of SB75, this does not automatically give rise to a viable claim for money damages on the part of Woodsville. Indeed, Woodsville could *never* be entitled to an order compelling the Town to pay it money damages because it has not, in fact, suffered any *harm*.

15. As Woodsville alleged, historically the Town made these transfers by A) taking the *Town's* highway budget, B) raising an *additional* ~20% on top, and C) transferring that additional money to Woodsville, effectively creating a "Total Highway Budget" by *adding* to the Town's anticipated budget. *See, e.g.,* ORDER p. 9. Woodsville's theory is that "the intent of the formula is that the proportion of tax money raised from Woodsville residents for the maintenance of roads is expended in Woodsville." MEMO p. 6. When the Town stopped appropriating this money in the way Woodsville wanted it calculated, Woodsville either A) stopped pocketing the windfall or B) raised the money from its taxpayers (*who are also taxpayers of the Town*). Notably, in the case of B, assuming Woodsville raised the money from its own

taxpayers, it achieved **exactly what it claimed SB75** was intended to do: "return" that 20% to Woodsville. The only way the District could ever claim to be "harmed" is if it finally admits that this entire scheme resulted in Woodsville receiving *more* than what its taxpayers' paid to the Town each year. Even then, Woodsville itself would have no viable claim, as that kind of "harm" (its own taxpayers paying for its own services) is simply not redressable by the District (what would the cause of action be?).

16. Therefore, the Court erred to the extent that its Order can be construed to conclude that the Town is obligated to "pay funds it withheld from 2019 through the passage of HB 2 in June 2021," i.e. award money damages.

IV. The Court erred in not finding the District's claim moot.

17. For similar reasons, the Court also erred when it did not find the District's claim moot. The Court correctly cited *New Hampshire Ass'n of Cty.s v. State*, 158 N.H. 284, 292 (2009) for the proposition that a declaratory judgment claim is moot when the legislation is repealed, yet overlooked its application to this case: Woodsville's claim **as stated in its complaint** is for declaratory judgment as to the interpretation and application of SB75, a law that is no longer in effect. As discussed above, there is no valid claim for money damages pending. A declaration that the Town did not comply with the law in 2019, 2020, or in early 2021 is effectively an advisory opinion.

18. Further, at this stage, the injunctive relief requested by the District in its complaint is not even available anymore. It is categorically impossible for the

Town to "complete" transfers to Woodsville for 2019 and 2020 because whatever funds were raised have lapsed (and indeed, in 2020, the Town raised funds consistent with its view of the formula, not Woodsville's, so there is nothing to "complete.") *See* RSA 32:7.

19. Notably, Woodsville could have, but did not, seek preliminary injunctive relief while this litigation was pending. Indeed, even assuming that SB75 required the Town to raise and appropriate funds in a certain manner, that ship has sailed. This power lies solely with the municipality's legislative body, i.e., its voters, and only takes place at an annual meeting. RSA 32:6. If Woodsville believed that the Town's voters were legally obligated to raise and appropriate a certain sum for transfer in 2019, it needed to seek injunctive relief **prior** to those annual meetings. So, too with 2020 and 2021. And the same reasoning applies to expenditures. This is precisely why, at the very least, this issue is not properly before the Court: there are a myriad of problems raised by the assertion that the Town must "repay" the District (including, for example, improperly burdening a new set of taxpayers).

WHEREFORE, the Town respectfully requests this Honorable Court:

A) RECONSIDER its order; and

B) For such further relief this Court deems fair and just.

Respectfully Submitted,

Town of Haverhill

By its attorneys,

Drummond Woodsum & MacMahon, P.A.

Dated: November 10, 2021 By: */s/ Demetrio Aspiras*______________

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this date forwarded to all counsel of record via the Court's electronic filing system.

Dated: November 10, 2021 */s/ Demetrio Aspiras*______________
Demetrio Aspiras, Esq.