

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Woodsville Fire District

v.

Town of Haverhill

215-2020-CV-00128

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT:
DECLARATORY JUDGMENT

Plaintiff Woodsville Fire District (“Woodsville” or “the District”) submits this Memorandum of Law in Support of Motion for Partial Summary Judgment on its Declaratory Judgment claim against the Town of Haverhill (“Haverhill” or the “Town”).

INTRODUCTION

The District is a municipal corporation located within the physical boundaries of the Town of Haverhill, and residents who live in the District are considered residents of the both the District and the Town. For more than 100 years, the Town has shared in the costs of maintaining roads located in the District by appropriating and distributing highway funds to the District in accordance with the various legislative acts that have been in effect at the relevant time. Since 2009, the Town’s obligation to appropriate and distribute highway funds to the District has been governed by Laws 2009, Chapter 147, SB 75 (“SB 75”)¹, which states in relevant part as follows:

The money appropriated for the distribution of highway funds in the district which is attributable to the Town of Haverhill shall be determined by a fraction, the numerator of which shall be the assessed valuation of the properties in the district, and the denominator of which shall be the assessed valuation of the

¹ See Laws 2009, Chapter 147, SB 75: <http://www.gencourt.state.nh.us/legislation/2009/SB0075.html> (last accessed May 21, 2021). Statement of Material Facts (“SMF”) Ex. H.

properties in the entire Town of Haverhill as determined annually for the Town MS-1 form. The Town of Haverhill shall appropriate the percentage represented by such fraction for distribution to the highway funds in the care of the Woodsville fire district commissioners.

From 2009 to 2019, the Town complied with the statutory obligations of SB 75 by appropriating and distributing highway funds to the District in accordance with the formula set forth in the law. For example, in 2009 the Town appropriated and distributed \$273,848 in highway funds to the District. This amount was calculated taking the amount budgeted to operate the Town of Haverhill Highway Department (\$714,774) and dividing it by the percentage of assessed property value located in the Town (72.3%) to calculate a total highway budget of \$988,622. The Town's share of the total highway budget was \$714,774 (72.3% of \$988,622) and the District's share of the total highway budget was \$273,848 (27.7% of \$988,622). The Town appropriated and distributed highway funds to the District using the same formula from 2009 through most of 2019.²

In late 2019, the Town made the unilateral decision to cease making payments to the District in accordance with the formula in SB 75 (and in accordance with the formulas used by the parties for past decade) and instead started using a different formula to calculate the highway funds owed to the District. The Town, based on its new formula, further demanded that the District reimburse it for alleged overpayments since 2016. The Town's justification for these actions is unclear; however, in its Answer the Town suggests that its reasoning is two-fold. First, the Town appears to claim that the payment obligations in SB 75 are purely voluntary and, thus, that it has no legal obligation to appropriate and distribute any highway funds to the District.

² As explained more fully below, the statutory predecessor to SB 75, which was in effective from 1990-2008, utilized a similar formula based on the Town's total highway budget to calculate the amount the Town was required to appropriate and distribute to the District.

Second, the Town appears to claim that the parties previously “miscalculated” the highway funding and, in fact, an entirely different formula should now be used to calculate the Town’s legal obligations. The precise formula proposed by the Town remains unclear, but would apparently significantly reduce the Town’s obligations.

As explained more fully below, the Town’s positions are contrary to the clear and unambiguous language in SB 75, which mandates that the Town appropriate and distribute funds to the District’s highway fund and which further mandates that the Town do so in accordance with the unambiguous formula set forth in SB 75. Even if the statutory language was somehow deemed to be ambiguous, the legislative history, the agreements between the parties, and the consistent application of SB 75 for a decade, establishes that the District’s interpretation of SB 75, including the funding obligations and the application of the formula, are correct and consistent with the intent of the law and of the parties. Accordingly, the District is entitled to a declaration that SB 75 mandates that the Town fund the District highway budget and that it do so consistent with the statutory formula as consistently calculated by the parties and paid by the Town for the past decade.

STANDARD OF REVIEW

“Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” RSA 491:8-a, III. “In acting upon a motion for summary judgment, the trial court is required to construe the pleadings, discovery and affidavits in the light most favorable to the non-moving party to determine whether the proponent has established the absence of a dispute over any material fact and the right to judgment as a matter of law.” Panciocco v. Lawyers Title

Ins. Corp., 147 N.H. 610, 613 (2002). The party objecting to a motion for summary judgment “may not rest upon mere allegations or denials of his [or her] pleadings, but his [or her] response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue [of material fact] for trial.” Id.; RSA 491:8-a, IV. An issue of fact is material if it affects the outcome of the litigation. Id. (citation omitted).

UNDISPUTED FACTS³

The Woodsville Fire District comprises a physical region within the Town of Haverhill. SMF ¶ 3. All Woodsville residents are also residents of the Town of Haverhill. SMF ¶ 4. Woodsville’s history dates back to at least 1887, when the New Hampshire General Court passed an act granting Woodsville certain powers as a village district. SMF ¶ 5. For over one hundred years, Haverhill has annually appropriated highway funds for transfer to Woodsville for use by Woodsville’s highway department. SMF ¶ 7.

In early 1990, Woodsville sought to “amend Section 3 [of the enabling legislation] to impose a 20% Percentage Factor for the calculation of the Yearly Appropriation” and to expand its boundaries. SMF ¶ 9. The 1990 legislation provides that the “money appropriated for the distribution of highway funds in the district which is attributable to the town of Haverhill shall not exceed 20 percent of the total amount of expenditures authorized at the town meeting.” SMF ¶ 11.

In June 1990, the District and the Town entered into a Memorandum of Understanding (“MOU”) related to expansion of the District’s boundaries and the computation of highway funds pursuant to the 1990 legislation. SMF ¶ 12. The MOU provides, in relevant part, “[t]hat

³ Woodsville relies upon and incorporates herein its Statement of Material Facts in Support of Motion for Partial Summary Judgment, filed contemporaneously with this Memorandum of Law.

grader purchase will be excluded from the road money computation;” that “the vehicle capital reserve fund will be used for the purchase of police cruisers and graders—but if it should be used for trucks or the purchase of a loader—Woodsville Fire District will get their proportionate share;” and that “the Woodsville Fire District will receive their proportionate share on all special highway projects.” SMF ¶ 13. “Special highway projects” includes capital projects, road reconstruction, paving, and drainage. SMF ¶ 14.

In January of 1995, Haverhill and Woodsville amended the MOU and created a document entitled “First Amendment to ‘Memorandum of Understanding’”. SMF ¶ 15. The First Amendment to the MOU states that “With respect to the calculation of tax monies to be returned by the Town of Haverhill to the Woodsville Fire District, it is agreed that: (a) the language of the Special Act authorizing and mandating such payment(s) is in need of interpretation, and (b) the Board of Selectmen and Board of Commissioners have determined that the following formula represents their best judgment and agreement as to the proper implementation of said Special Act:

The net operating budget of the Town of Haverhill Highway Department, including the budget for the Town Highway Garage, shall be divided by a factor of 80%. The resulting figure shall be the total amount of money budgeted for road maintenance by the Town of Haverhill and 20% of that amount shall be returned to the Woodsville Fire District as the so-called “Woodsville Road Money” pursuant to said Special Act.

By way of example, for the 1994 fiscal year the amount budgeted to operate the Town of Haverhill Highway Department was \$359,436.00. Eighty per cent divided into \$359,436.00 equals \$449,295.00. The Woodsville Fire District received 20% of the latter amount or \$89,859.00.

The above formula shall remain in effect unless and until amended or rescinded by agreement of the Town of Haverhill and the Woodsville Fire District.

SMF ¶ 16.

Glenn English became Town Manager of Haverhill in September of 1995, and served

until March of 2016. He was also interim Town Manager from November 2018 – May 2019. SMF ¶ 19. As Town Manager, Mr. English was directly involved in administering and calculating the amount of highway funds to be returned to Woodsville pursuant to the 1990 legislation and First Amendment to the MOU. SMF ¶ 20. Mr. English confirms that the way “net operating budget” in the First Amendment to the MOU was applied was to the “Town Highway Budget” figure, meaning the total Town (Haverhill) highway expenditure taken from the budget. SMF ¶ 21. Using the example in the First Amendment to the MOU, the “Town Highway Budget” amount is \$359,436.00, which represents the “net” operating budget for the Town of Haverhill Highway Department. SMF ¶ 22. That number was divided by 80% to reach the total appropriation for both highway departments (\$449,295.00), of which Woodsville received 20%. SMF ¶¶ 22-24. 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, in order to relieve the Haverhill taxpayers in Woodsville from paying for the Town highway department in addition to Woodsville’s own highway department. SMF ¶ 25. Each year from 1995 to 2008, Haverhill returned to the District approximately 20% of the total budgeted highway funds. SMF ¶ 26. Haverhill viewed this obligation as mandatory. SMF ¶ 27.

In 2008, the Woodsville Commissioners raised concerns to the Town’s Board of Selectmen that the 20 percent cap was not working anymore in terms of the actual value of the Woodsville assessed property in comparison to the town. SMF ¶ 28. Woodsville is where most of the commercial growth was occurring in Haverhill in 2008. SMF ¶ 30. Haverhill’s Board of Selectmen became concerned the District might attempt to secede from the Town. SMF ¶ 29.

On or about September 2, 2008, Haverhill’s Town Manager, Glenn English, drafted a memorandum addressed to Haverhill’s Selectboard regarding the potential impact of the District

seceding from the Town of Haverhill. SMF ¶ 31. The Town Manager concluded that “[i]t seems that logic, fairness to all the taxpayers and financial implications support a renegotiation of the Highway Department funding issue between the Woodsville Commissioners and the Selectmen which could eliminate the issue of Woodsville forming a separate town.” SMF ¶ 32.

On or about September 16, 2008, Haverhill’s Selectboard created a document entitled “Haverhill Selectboard Addendum Proposal (9/16/08) to First Amendment of ‘Memorandum of Understanding,’” (“Addendum Proposal”). SMF ¶ 33. The Addendum Proposal was intended to change the fixed percentage of 20 percent contained in the 1990 legislation to a variable annual percentage factor that would be based on the published assessed valuation of the Fire District in proportion to the entire Town. SMF ¶ 34. The Addendum Proposal provides that “[a]ll sections of the First Agreement will remain the same as dated January 1995, with the exception of section 2.b that is changed to read:

The net operating budget of the Town of Haverhill Highway Department, including the budget for the Town Highway Garage, shall be divided by an annual percentage factor based upon the annual updated Woodsville Fire District Property valuation percentage of the Town of Haverhill property valuation as determined from the Annual Town of Haverhill MS-1 Summary Inventory of Valuation. The resulting figure shall be the total amount of money budgeted for road maintenance by the Town of Haverhill with the annual percentage factor (determined from the above stated MS-1 report) of the total road budget returned to the Woodsville Fire District as the so-called “Woodsville Road Money” pursuant to said Special Act.

By way of example, the 2009 fiscal year budgeted amount to operate the Town of Haverhill Highway Department is \$714,774. 72.3% (based upon the 2008 MS-1) divided into \$714,774 equals \$988,622 (Total Highway Budget). The Woodsville Fire District would receive 27.7% of the Total Highway Budget) or \$273,848.

SMF ¶ 35-37.

In 2008, the Chair of Haverhill’s Selectboard was Roderick (“Rick”) Ladd. SMF ¶ 42.

In 2008, Mr. Ladd was a representative to the New Hampshire State Legislature. SMF ¶ 43. Mr. Ladd led the effort to propose the Addendum Proposal to the Commissioners, and later co-

sponsored SB 75. SMF ¶ 44. As reflected in Haverhill’s Selectboard minutes, the Addendum Proposal was unanimously approved by Haverhill’s Selectboard on October 27, 2008. SMF ¶ 45.

On November 4, 2008, the Woodsville Commissioners agreed to accept the Addendum Proposal. SMF ¶ 46. The Addendum Proposal, original MOU, and First Amendment to the MOU were subsequently considered by the N.H. Senate Public and Municipal Affairs Committee (the “Committee”), which held a hearing on the proposed SB 75 on February 5, 2009. SMF ¶ 47. The minutes for the Committee hearing reflect that Rep. Rick Ladd testified that “Woodsville’s property valuation – due to increases and Wal-Mart coming into town, various restaurants – has gone up in regard to the total whole. We were capped before at a maximum of 20 percent. Now, due to the increased retail stores and that which have come to Woodsville, the property valuation in Woodsville has become 27.7 percent of the whole.” SMF ¶ 48. Rep. Ladd explained that Woodsville could not maintain the existing infrastructure with the amount it was currently receiving. SMF ¶ 49. The Committee recommended that SB 75 ought to pass. SMF ¶ 51. SB 75 was signed into law on June 30, 2009. SMF ¶ 52.

Haverhill Town Manager Glenn English testified that thereafter, Haverhill followed the formula set forth in SB 75 and the Addendum Proposal during his time as Town Manager. SMF ¶ 54. In the period 2009 through most of 2019, Haverhill conducted itself according to the 2009 Legislation (SB 75) and Amended MOU. SMF ¶ 56. From at least 1995 to 2019, the parties consistently construed “net operating budget” as referring to Haverhill’s Total Road Maintenance Budget for operating the Town of Haverhill Highway Department, plus the budgeted amount for Highway Vehicles and special highway projects. SMF ¶ 57.

ARGUMENT

Declaratory judgment “affords relief from uncertainty and insecurity created by a doubt

as to rights, status, or legal relations existing between the parties.” Radkay v. Confalone, 133 N.H. 294, 296 (1990) (quoting Portsmouth Hospital v. Indemnity Ins. Co., 109 N.H. 53, 56 (1968)). “The justiciability of a declaratory judgment action is not dependent upon proof of a wrong committed by one party against the other.” Radkay, 133 N.H. at 297-98. Petitions for declaratory relief must be “liberally construed so as to effectuate the evident purpose of the law.” Id. at 298 (citation omitted).

In this case, declaratory judgment is appropriate because the parties dispute Woodsville’s legal entitlement to receive a return of highway funds appropriated for it by the Town of Haverhill consistent with the 2009 legislation (“SB 75”) and 2008 Addendum Proposal. The plain language of SB 75 mandates that Haverhill employ the formula contained in SB 75 and agreed to by the parties in the 2008 Addendum Proposal.

A. SB 75 Unambiguously Mandates that the Town Appropriate and Distribute Highway Funds to the District in Accordance with the Statutory Formula.

The courts are the final arbiters of the intent of the legislature as expressed in the words of the statute. Polosky v. Town of Bedford, 171 N.H. 89, 93 (2018). In matters of statutory interpretation, courts “first look to the plain and ordinary meaning of the words used.” In re Barney, 142 N.H. 798, 801 (1998). When a statute’s language is plain and unambiguous, the Court need not examine its legislative history or material outside the statutory text. Sutton v. Town of Gilford, 160 N.H. 43, 54 (2010).

The plain and unambiguous language of SB 75 mandates that the Town appropriate and distribute highway funds to the District in accordance with the formula set forth in the law. In this regard, SB 75 states that the highway funds distributed to the District “shall be determined” using the statutory formula set forth in SB 75, and that the Town “shall appropriate the percentage represented by such [formula] for distribution to the highway funds in the care of the

Woodsville fire district commissioners.” See SB 75 (emphasis added), SMF ¶ 55. The legislative use of the word “shall” establishes that the Town’s obligation to appropriate and distribute highway funds in accordance with the statutory formula is mandatory. Barney, 142 N.H. at 801 (holding that “‘shall’ generally indicates a mandatory provision.”); see also Appeal of Nguyen, 170 N.H. 238, 246 (2017) (“shall be made available” means “must make the . . . report accessible, obtainable, or capable of being used . . .”); McCarthy v. Wheeler, 152 N.H. 643, 645 (2005) (use of the word “shall” is “generally regarded as a command; although not controlling, it is significant as indicating the intent that the statute is mandatory.”).

Despite this unambiguous mandate, the Town argues that SB 75 “does not impose any legally enforceable obligation on the Town to appropriate money for transfer to Woodsville,” and, thus, that any obligation to appropriate and distribute highway funds to the District is purely voluntary.⁴ Answer, ¶ 110. In support of its position, the Town argues that the statutory language is “legally meaningless because it is legally impossible to ‘appropriate [a] percentage.’” Id. ¶108. The Town’s argument, of course, writes the words “shall be determined” and “shall appropriate” entirely out of the statute and relegate SB 75 to nothing more than a “legislative suggestion” that the Town provide highway funds to the District using the statutory formula, if it so chooses. To construe SB 75 in this manner impermissibly ignores the statutory language and the rule of statutory construction that “all of the words of a statute must be given effect and . . . the legislature is presumed not to have used superfluous or redundant words.” Rankin v. South St. Downtown Holdings, Inc., 172 N.H. 500, 508 (2019) (citation omitted). The use of the word “shall” establishes that the Town’s obligation to appropriate and distribute highway funds to the District is mandatory and not merely permissive. The Town’s focus on the isolated phrase

⁴ Elsewhere in its Answer, the Town concedes that “there is arguably a statutory directive to the Town to appropriate money for transfer to Woodsville.” Answer, ¶ 7.

“appropriate the percentage” to suggest that SB 75 is “meaningless” is also misguided. In making this argument, the Town conveniently omits the language following “percentage,” which provides that the Town “shall appropriate the percentage represented by the [formula] for distribution. . . .” The statute does not require the Town to simply “appropriate a percentage”; it requires the Town to appropriate and distribute highway funds based on the formula set forth in SB 75. This obligation is anything but “meaningless.”

The statutory formula in SB 75 is similarly plain and unambiguous. The formula requires that the Town calculate the amount owed to the District for highway funds by taking the total highway funds appropriated for use by the Town and District (the “Total Highway Budget”) and multiplying it by the percentage of assessed property located in the District. The resulting figure is that amount of highway funds the Town must appropriate and distribute to the District. SB 75 is clear that the District is entitled to a percentage of the total highway appropriation that equates to the District’s percentage of the Town’s total assessed property valuation.

Again, the 2009 calculation (the first year SB 75 was in effect) demonstrates how the formula works. In 2009, the Town appropriated \$714,774 for its budgeted highway operations. SMF ¶ 40. At that time, 72.3% of the assessed property value was located in the Town. SMF ¶ 37. $\$714,774 / .723 = \$988,622$, which is the total highway budget (inclusive of both the Town and the District). *Id.* The District’s share of the total highway budget would be 27.7% (the percentage of assessed property in the District) which is \$273,838. *Id.* In fact, this is precisely what happened in 2009. SMF ¶¶ 40-41.

The plain and unambiguous language of SB 75 mandates that the Town appropriate and distribute highway funds to the District based on the formula set forth in SB 75. The formula also unambiguously requires that the Town calculate the highway funds owed to the District

based on the total highway funds appropriated by the Town and the percentage of assessed property value located within the District. Accordingly, the District is entitled to a declaration that its interpretation of SB 75 is correct and the Town is obligated to pay it the amounts unlawfully withheld from the District in 2019, 2020 and 2021.

B. Even if SB 75 was Ambiguous, the Legislative History, the Parties’ Intent, and Consistent Application of the Law Establish that the District’s Interpretation of the Law is Correct.

“We construe an ambiguous statute by examining the legislative intent and the statute's objective.” N.H. Ret. Sys. v. Sununu, 126 N.H. 104, 108 (1985). The New Hampshire Supreme Court has long held that “the construction of a statute by those charged with its administration is entitled to substantial deference.” Id. (collecting authority). In this case, the legislative history and intent of SB 75, as well as the consistent interpretation and application thereof by both Haverhill and Woodsville, establish that Woodsville’s interpretation of SB 75 is correct.

1. Legislative History and the Statute’s Objective

The history leading to the enactment of SB 75 (2009) is significant. For over one hundred years, Haverhill has annually appropriated highway funds for distribution to Woodsville for use by Woodsville’s highway department. SMF ¶ 7. Pursuant to legislation passed in 1990, the amount of funds Woodsville received from Haverhill was capped at 20 percent. See SMF ¶ 10-11 (1990 legislation). In June of 1990, Woodsville and Haverhill entered into a Memorandum of Understanding (“MOU”) related to expansion of the District’s boundaries and the computation of highway funds pursuant to the 1990 legislation. SMF ¶ 12. The MOU established the parties’ agreement that (1) a certain grader purchase would be excluded from the road money computation; (2) the vehicle capital reserve fund would be used for the purchase of police cruisers and graders – but if it should be used for trucks or the purchase of a loader, the District

would receive its proportionate share; and (3) the District would receive its proportionate share on all special highway projects. SMF ¶ 13. Former Haverhill Town Manager Glenn English testified that special highway projects was interpreted to mean capital projects, road reconstruction, paving, and drainage. SMF ¶ 14.

In January 1995, Haverhill and Woodsville amended the MOU by creating a document entitled “First Amendment to ‘Memorandum of Understanding.’” SMF ¶ 15. The First Amendment to the MOU states in relevant part that:

1. Conditions One (1) through Six (6) [of the MOU] shall remain in full force and effect.
2. With respect to the calculation of tax monies to be returned by the Town of Haverhill to the Woodsville Fire District, it is agreed that:
 - a. The language of the Special Act authorizing and mandating such payment(s) is in need of interpretation, and
 - b. The Board of Selectmen and Board of Commissioners have determined that the following formula represents their best judgment and agreement as to the proper implementation of said Special Act:

The net operating budget of the Town of Haverhill Highway Department, including the budget for the Town Highway Garage, shall be divided by a factor of 80%. The resulting figure shall be the total amount of money budgeted for road maintenance by the Town of Haverhill and 20% of that amount shall be returned to the Woodsville Fire District as the so-called “Woodsville Road Money” pursuant to said Special Act.

By way of example, for the 1994 fiscal year the amount budgeted to operate the Town of Haverhill Highway Department was \$359,436.00. Eighty per cent divided into \$359,436.00 equals \$449,295.00. The Woodsville Fire District received 20% of the latter amount or \$89,859.00.

3. The above formula shall remain in effect unless and until amended or rescinded by agreement of the Town of Haverhill and the Woodsville Fire District.

SMF ¶ 16. The “Special Act authorizing and mandating such payment(s)” refers to the 1990 legislation. The First Amendment to the MOU demonstrates that both parties, at least as of 1995,

recognized that the transfer of highway funds to Woodsville is mandatory. First Amendment to the MOU, ¶ 2(a). Further, the parties agreed that the “net operating budget” for Haverhill includes the budget for the Town Highway Garage, and that the provisions of the 1990 MOU remain in full force and effect (including provisions [3] and [4] relating to Woodsville’s entitlement to a proportionate share of truck or loader purchases and a proportionate share of special highway projects). See SMF Ex. D; Ex F. To dispel any doubt about the formula for the distribution of highway funds, there is an example of the calculation attached to the First Amendment to the MOU that sets forth the mathematical expression of the formula as applied to Haverhill’s 1994 budget figures:

EXAMPLE OF
 ADDENDUM TO MEMORANDUM OF UNDERSTANDING
 (Using 1994 Budget Figures)

NOTE: Town Highway Budget = 80% of Total Budget
 Woodsville Precinct = 20% of Total Budget

TOWN HIGHWAY BUDGET	÷	TOWN HIGHWAY % OF TOTAL BUDGET	=	TOTAL BUDGET (Town/Woodsville Prec.)
\$359,436	÷	80%	=	\$449,295
TOTAL BUDGET	X	WOODSVILLE PREC. % OF TOTAL BUDGET	=	WOODSVILLE PORTION
\$449,295	X	20%	=	\$ 89,859

SMF Ex. F. To phrase it simply, Haverhill’s highway budget would be divided by 80 percent, with the result being the “Total Budget” (or “Total Highway Budget”) for both Haverhill and Woodsville; then Woodsville received 20 percent of the Total Highway Budget. Former Haverhill Town Manager Glenn English testified that the intent of the formula was that the proportion of tax money raised from Woodsville residents for the maintenance of roads is expended in Woodsville, in order to relieve the Haverhill taxpayers in Woodsville from paying

for Haverhill's highway department in addition to Woodsville's own highway department. SMF ¶ 25. Haverhill and Woodsville both applied the formula as it was set forth in the First Amendment to the MOU from 1995 through 2008. SMF ¶ 26.

By 2008, Woodsville's portion of the assessed property values in the Town was higher than 20 percent, and there were concerns that Woodsville might secede from the Town. SMF ¶¶ 28-29. Woodsville is where most of the commercial growth was occurring in Haverhill in 2008. SMF ¶ 30. In September of 2008, Haverhill Town Manager Glenn English drafted a memorandum to the Haverhill Selectboard regarding the potential impact of the District seceding from Haverhill. SMF ¶¶ 31-32.

In September and October of 2008, the Haverhill Selectboard unanimously agreed to put forth an Addendum Proposal to the MOU which was accepted by the Woodsville Commissioners, and formed the basis for the 2009 legislation at issue in this case (SB 75). SMF ¶¶ 33, 45-52. The Addendum Proposal, "Haverhill Selectboard Addendum Proposal (9/16/08) to First Amendment of 'Memorandum of Understanding,'" was intended to change the fixed percentage of 20 percent contained in the 1990 legislation to a variable annual percentage factor that would be based on the published assessed valuation of the Fire District in proportion to the entire Town. SMF ¶ 34. The Addendum Proposal provides that "[a]ll sections of the First Agreement will remain the same as dated January 1995, with the exception of section 2.b that is changed to read:" SMF ¶ 35. It goes on to provide that

The net operating budget of the Town of Haverhill Highway Department, including the budget for the Town Highway Garage, shall be divided by an annual percentage factor based upon the annual updated Woodsville Fire District Property valuation percentage of the Town of Haverhill property valuation as determined from the Annual Town of Haverhill MS-1 Summary Inventory of Valuation. The resulting figure shall be the total amount of money budgeted for road maintenance by the Town of Haverhill with the annual percentage factor (determined from the above stated MS-1 report) of the total road budget returned

to the Woodsville Fire District as the so-called “Woodsville Road Money” pursuant to said Special Act.

SMF ¶ 36. The Addendum Proposal also added a formula for distribution of Highway Block Grant Funds, which would later also be reflected in SB 75 (and is not presently at issue). SMF ¶ 38.

Similar to the First Amendment to the MOU, the Addendum Proposal provides an example of how the formula operates:

By way of example, the 2009 fiscal year budgeted amount to operate the Town of Haverhill Highway Department is \$714,774. 72.3% (based upon the 2008 MS-1) divided into \$714,774 equals \$988,622 (Total Highway Budget). The Woodsville Fire District would receive 27.7% of the Total Highway Budget) or \$273,848.

SMF ¶ 37. \$714,774 represents what the “net operating budget” in the Addendum Proposal is supposed to refer to. SMF ¶ 39; see Ex. F thereto. Additionally, the \$714,774 figure in the Addendum Proposal for the 2009 budget year represents what Haverhill budgeted for “Total Road Maintenance” for Haverhill in 2009, as reflected in the 2008 Town Report. SMF ¶ 40. Thus, the phrase “net operating budget” simply refers to the amount budgeted by Haverhill for its highway department, including the vehicle purchases and special highway projects, as set forth in the initial MOU and First Amendment thereto. See SMF ¶ 36; Ex. D; Ex. F. To the extent the Town intends to argue that “net operating budget” means something other than Haverhill’s highway budget, that argument is unsupported by either the MOU, First Amendment to the MOU, or the Addendum Proposal.

The Town attempts to argue in its Answer that the Addendum Proposal to the MOU was never “actually approved” by the Town and Woodsville. Answer ¶ 15. However, contemporaneous minutes from 2008 and the Senate Committee Report for SB 75, as well as deposition testimony by Haverhill Town Manager Glenn English, all demonstrate that both

parties voted to approve the Addendum Proposal, and that the Addendum Proposal was the basis for the change to the formula set forth in SB 75.

To begin with, in 2008, the Chair of Haverhill's Selectboard was New Hampshire State Representative Roderick ("Rick") Ladd. SMF ¶ 42. Mr. Ladd led the effort to propose the Addendum Proposal to the Woodsville Commissioners, and Mr. Ladd co-sponsored SB 75. SMF ¶ 44. As reflected in Haverhill's Selectboard minutes, the Addendum Proposal was unanimously approved by Haverhill's Selectboard on October 27, 2008:

Chairman Ladd presented a proposal to amend the 'Memorandum of Understanding' between the Selectboard and the Woodsville Fire District Commissioners to change the road funding formula for the District (see attached). All agreed that the changes more fairly reimbursed the residents of the Fire District for their share of road costs. . . . TM English reported that Senator Reynolds has drafted and introduced the legislative changes required. Bob Maccini made a motion to approve the amendment with the concurrence of the Woodsville Fire District Commissioners, seconded by Peter Conrad. Peter Conrad requested that the Chair also vote. The motion was unanimously approved by all Selectboard members. Chairman Ladd said he would present the amendment to the Commissioners.

SMF ¶ 45 (emphasis added). Thus, Haverhill's Selectboard voted unanimously to approve the amendment to the MOU. Subsequently, on November 4, 2008, the Woodsville Commissioners agreed to accept Haverhill's highway funding proposal. SMF ¶ 46.

The Addendum Proposal, original MOU, and First Amendment to the MOU were also before the Senate Public and Municipal Affairs Committee, which held a hearing on the proposed SB 75 on February 5, 2009. SMF ¶ 47, Ex. G (Hearing Report). The minutes for the hearing reflect that Rep. Rick Ladd testified that "Woodsville's property valuation – due to increases and Wal-Mart coming into town, various restaurants – has gone up in regard to the total whole. We were capped before at a maximum of 20 percent. Now, due to the increased retail stores and that which have come to Woodsville, the property valuation in Woodsville has become 27.7 percent

of the whole.” SMF ¶ 48. Rep. Ladd explained that Woodsville could not maintain the existing infrastructure with the amount it was currently receiving. SMF ¶ 49. Rep. Ladd recounted to the Committee that discussions regarding Woodsville possibly seceding from the Town resulted in the Town Selectboard and Woodsville commissioners reaching an agreement, such that “the amount which would go to Woodsville annually would be based on the property valuation, as we have annually on the MS-1 reporting form to DRA.” SMF ¶ 50. The Committee recommended that SB 75 ought to pass, and it was signed into law on June 30, 2009.⁵ SMF ¶¶ 51-52.

Haverhill Town Manager Glenn English testified that thereafter, Haverhill followed the formula set forth in SB 75 and the Addendum Proposal during his time as Town Manager. SMF ¶ 54.

2. Construction of SB 75 by Those Charged with its Administration

“The construction of a statute by those charged with its administration is entitled to substantial deference.” N.H. Ret. Sys., 126 N.H. at 108. It is undisputed that from 2009 until late 2019, the Town and the District recognized that SB 75 imposes a mandatory obligation on Haverhill to appropriate and transfer highway funds to Woodsville, applying the statutory formula as further detailed in the 2008 Addendum Proposal. The parties’ consistent construction of the statute is entitled to substantial deference. For over ten years, it was understood by those charged with SB 75’s administration that the formula operates as set forth in the 2008 Addendum Proposal. SMF ¶ 56.

Glenn English, Town Manager for the Town from 1995 through 2016, and interim Town Manager from 2018-2019, testified that the Town viewed the return of funds as mandatory and required by law, and that the Town of Haverhill selectmen during his tenure never expressed a belief that the payment of highway funds to Woodsville was a voluntary act by the Town. SMF ¶

⁵ See <http://www.gencourt.state.nh.us/legislation/2009/SB0075.html> (last accessed May 21, 2021). SMF ¶ 51-52, Ex. G (Senate Materials).

28. As its title suggests, SB 75 merely changed the formula to be used for calculation of the amount of highway funds to be returned to Woodsville. See SB 75 (SMF Ex. H). The legislature adopted and enacted the change that was agreed to by the Haverhill Selectboard and the Woodsville Fire District Commissioners. SMF ¶¶ 45-56. Specifically, the legislature removed the 20 percent cap on the appropriation amount for Woodsville, and replaced that with a flexible number that would accord with Woodsville's greater-than-20 percent share of assessed property values in the Town. See SB 75 (SMF Ex. H). After SB 75 was enacted, the formula was applied in the same manner it had been previously, but with a percentage factor that varied based on property valuations, instead of a static 80% (Haverhill) vs. 20% (Woodsville) split. SMF ¶¶ 57-58. Nothing else was changed.

Haverhill's recently manufactured confusion regarding the application of the formula is easily remedied by examining the Addendum Proposal that formed the basis for SB 75. Consistent with the prior First Amendment to the MOU and original MOU, the phrase "net operating budget" in the Addendum Proposal unambiguously refers to the Town of Haverhill's highway department budget. SMF ¶ 57. Town Manager English, who was directly responsible for administering SB 75, confirmed that Woodsville's interpretation of the formula is correct and that the formula was applied consistently throughout his tenure. SMF ¶¶ 21, 26, 56. He further confirmed that "net highway operating budget" was always interpreted to be the total road maintenance budget for Haverhill plus any highway vehicles, except the grader. SMF ¶ 23. Finally, Mr. English reviewed the Town's new calculations as received in discovery from the Town, and stated that they were calculated on some other basis than how the formula was always applied. SMF ¶¶ 59-60. The Town's construction of the formula is simply inconsistent with its own historical calculations, the plain language of SB 75, and the agreed-upon amendments to the

MOU.

Therefore, even if the Court determines that SB 75 contains ambiguity in its plain language (it does not), it is evident from the history leading up to SB 75's enactment that the statute must be interpreted in light of the legislative intent: to make into state law that to which Haverhill and Woodsville agreed in the 2008 Addendum Proposal. Haverhill's position that there is no mandatory obligation to appropriate funds for Woodsville – or that the formula is different than it has always been from at least 1990 through 2019 – is simply unfounded in law or application.

In light of the unambiguous language of SB 75 and the 2008 agreement between Haverhill and Woodsville regarding implementation of the formula, and the legislative intent of SB 75 and consistent interpretation thereof by the parties, Woodsville respectfully requests that this Court Rule and Declare that Haverhill is obligated to appropriate highway funds for Woodsville consistent with the parties' application of the formula from 2009-2019 and to reimburse the District for the funds unlawfully withheld by the Town since the end of 2019.

CONCLUSION

Woodsville's entitlement to reimbursement for highway funds is clear. Haverhill's retroactive attempts to alter the established formula – contrary to its own prior agreement – fail as a matter of law. Woodsville respectfully requests that this Honorable Court rule and declare that the 2009 legislation is unambiguous with respect to Haverhill's obligation to appropriate highway funds for Woodsville's highway department pursuant to the statutory formula, and the mathematical expression of the formula to be applied is as set forth in the 2008 Amended Memorandum of Understanding between the parties, which was properly construed by the parties from 2009 until late 2019.

Respectfully submitted,

WOODSVILLE FIRE DISTRICT

By its attorneys,

DEVINE, MILLIMET & BRANCH, PA

Date: May 27, 2021

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CERTIFICATION

I hereby certify that a copy of the forgoing was forwarded to all parties of record on this date in accordance with the Superior Court Civil Rules.

/s/ Donald L. Smith
Donald L. Smith, Esquire