

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Woodsville Fire District

v.

Town of Haverhill

215-2020-CV-00128

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT:
DECLARATORY JUDGMENT**

NOW COMES the Plaintiff, Woodsville Fire District (“Woodsville” or “the District”) by and through its attorneys, Devine, Millimet & Branch, P.A., and pursuant to N.H. Superior Court Rule 12(g), submits the following Motion for Partial Summary Judgment on its Declaratory Judgment claim, stating in support thereof as follows:

1. The Woodsville Fire District is a municipal corporation located in the Town of Haverhill, NH (“Defendant” or “Town”). The District comprises a physical region in the most commercially developed part of the Town. This dispute arises from the Town’s sudden refusal to comply with its statutory obligation to return highway funds to the District that are necessary for the District to maintain its roads, and the Town’s attempt to re-interpret a statutory formula that has been implemented since 2009.

2. The 2009 legislation, which amended legislation dating back to 1887, requires the Defendant to appropriate and return highway funds to the District, to help maintain the highways, roads, sidewalks and storm drains within the District’s boundaries. The legislation specifies the formula to be used, and was the result of a compromise agreement between Woodsville and the Town of Haverhill. The intent of the 2009 legislation was for Haverhill to

provide the District with a share of Haverhill's total highway budget that corresponded to a percentage of Haverhill's total taxable property that is located within the District.

3. From 2009 to 2019, the parties followed the established formula and were in agreement regarding the calculation and amount of highway funds to be returned to the District. However, suddenly in the fourth quarter of 2019 (after making its customary payments for the first three quarters), Haverhill began claiming that it had improperly calculated the amount to be paid, and demanded that Woodsville give back the money previously returned to Woodsville. Further, Haverhill demanded back-payment of "miscalculated" funds dating back to 2016 – even though Haverhill had, itself, calculated the proper amount pursuant to the established formula for those years.

4. The undisputed facts establish that Woodsville is entitled to a declaratory relief as a matter of law. The 2009 legislation (SB 75) and amended Memorandum of Understanding between Woodsville and Haverhill that precipitated SB 75, are unambiguous. Until late 2019, Haverhill had always returned highway funds to Woodsville pursuant to legislative directive and the common understanding of the parties. Under new leadership, in the middle of a tax year with an already-approved budget, Haverhill suddenly withheld payment to Woodsville and unilaterally reinterpreted the formula, without any legal or factual basis. The Town's unsupported assertions of "miscalculation" are insufficient to create a genuine dispute of material fact in light of the unambiguous 2009 legislation and 2008 compromise between the parties, entitling Woodsville to judgment as a matter of law.

5. This Court should reject Haverhill's attempt to re-write decades of implemented legislation, and rule and declare that Haverhill must adhere to the 2009 legislation and 2008

amended Memorandum of Understanding by calculating the payment of highway funds to the District pursuant to the established formula as it was correctly applied from 2009-2019.

6. In further support of this Motion, Woodsville relies upon and incorporates herein by reference its Memorandum of Law and Statement of Material Facts in Support of Motion for Partial Summary Judgment, filed contemporaneously with this Motion.

WHEREFORE, Woodsville Fire District respectfully requests that this Honorable Court grant the following relief:

- A. Grant this Motion for Partial Summary Judgment as to Woodsville's Declaratory Judgment claim;
- B. Rule and Declare that the 2009 legislation ("SB 75") is unambiguous with respect to Haverhill's obligation to appropriate and return highway funds to Woodsville pursuant to the legislative formula;
- C. Rule and Declare that the formula to be used for calculating the amount of highway fund money to be returned to Woodsville after appropriation by Haverhill is as set forth in SB 75 and the 2008 Amended MOU and that Haverhill has not demonstrated any "mistake" in interpretation of SB 75 or the calculations at issue; and
- D. Grant such other and further relief as the Court deems just and equitable.

Respectfully submitted,

WOODSVILLE FIRE DISTRICT

By its attorneys,

DEVINE, MILLIMET & BRANCH, PA

Date: May 27, 2021

By: /s/ Donald L. Smith
Donald L. Smith, Esq. (No. 13525)
Lynnette V. Macomber, Esq. (No. 271596)
111 Amherst Street
Manchester, NH 03101
(603)669-1000
dsmith@devinemillimet.com
lmacomber@devinemillimet.com

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