STATE OF NEW HAMPSHIRE

GRAFTON, SS. **SUPERIOR COURT**

Woodsville Fire District

v.

Town of Haverhill

DOCKET NO. 215-2020-CV-00128

TOWN'S OBJECTION TO
WOODSVILLE'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Defendant, Town of Haverhill, by and through its counsel, and hereby OBJECTS to Woodsville Fire District's Motion for Summary Judgment as follows:

WOODSVILLE'S MOTION AND CLAIM IS MOOT

Late last week, the Governor signed HB2[1] into law. HB2 is an omnibus bill that includes an amendment of the statute at issue in this case. The amendment removes all the language that underlies this dispute. Woodsville's sole claim is for declaratory judgment and, like its pending Motion for Summary Judgment, essentially requests this Court to order the Town to comply with Woodsville's interpretation of a statute that is now no longer in effect. "Generally a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead." *N.H. Ass'n of Counties v. State*, 158 N.H. 284, 292 (2009). "A challenge seeking only prospective or declaratory relief is generally mooted where

[1] http://gencourt.state.nh.us/bill_status/Bill_status.aspx?lsr=1082&sy=2021&txtsessionyear=2021&txtbillnumber=hb2&sortoption=

intervening legislative activity renders the prior law inapplicable." *ld.* at 292. As a result, Woodsville's claim and motion are now moot.

Although Woodsville's claim is now moot, given the timing of HB2 relative to the objection deadline, and the possibility that the legal issues in raised by Woodsville may be germane to the Town's remaining claims and/or Woodsville may try to claim its Motion somehow seeks retrospective relief, the Town is filing a fulsome objection. Further, notwithstanding the enactment of HB2, rather than continually refer to SB75 and Woodsville's arguments in the past tense, this objection will generally use the present tense to avoid confusion and coherently address Woodsville's motion as written.

INTRODUCTION

Woodsville Fire District is a village district whose boundaries lie entirely within the Town of Haverhill. Although their physical boundaries overlap in this way, each is a separate municipal entity, with their own legislative body (voters), governing body (board of selectmen/commissioners), taxpayers, and municipal administration and employees. Woodsville contends that the state statute governing Woodsville's authority as a village district, as amended in 2009 by SB75, requires the Town to raise and appropriate funds each year from **Town** taxpayers for transfer to Woodsville for its Highway Department. Not only that, but according to Woodsville SB75[2] sets forth a particular "formula" the Town is required to use when calculating

[2] Because the language at issue in the subject statute arises from a 2009 amendment set forth in SB75, the Town, like Woodsville, will use "SB75" as shorthand to refer to the version of the statute "as amended" by that bill.

this appropriation, and that the formula requires the use of the Town's Highway Department's gross (or total) operating budget as a variable.

To be sure, the Town concedes that in the past it did raise and appropriate funds for transfer to Woodsville for Woodsville's Highway Department (this will be referred to as the "Yearly Appropriation" in this memorandum) in the manner sought by Woodsville. For example, the Town concedes that during Glenn English's tenure as Town Manager, he – or those under his direction – calculated the Yearly Appropriation using the gross operating budget of the Town's highway department as a base and generally applied a formula similar to that proffered by Woodsville. However, regardless of the parties' past, misguided, conduct, SB75 contains no particular requirement that the Town appropriate *anything* for the benefit of another municipality, much less a formula.

Woodsville could, of course, raise and appropriate funds from its own taxpayers for operation of its own highway department. It has that authority.

If, as it has repeatedly maintained, this arrangement is simply for the "return" of so-called "Woodsville funds," it could skip a step and raise and appropriate the money directly. But, Woodsville knows this was not really "returning" funds, but is a handout from the Town to Woodsville; in its own words, "relieving Haverhill taxpayers in Woodsville from paying for the Town highway department." MEMO. p. 6. Therefore, in the broader context, this is a case about Woodsville's greed.

More fundamentally, this is a narrow case about whether the law **requires** (or could require) the Town to appropriate and raise money through taxation of its

residents for transfer to Woodsville for Woodsville's own highway department. To resolve Woodsville's motion, and this primary legal issue in this case, the Court need only answer one, or perhaps two, questions:

> **Is the Town legally obligated to appropriate funds for transfer to Woodsville each year and, if so, how must it calculate it?**

The answer to the first question is no. The answer to the second question, if necessary, is that the Town should use a net operating budget in any calculation. Woodsville's motion must be denied and judgment on this issue entered in the Town's favor.

ARGUMENT

At its core, this is a dispute about the law. To that end, much of the allegations in Woodsville's statement of facts are irrelevant or immaterial, even if they provide some measure of context. Although the Town has identified where disputes exist, the Town does believe that this is predominantly a legal issue capable of resolution at this time. Much of the factual disputes concern what the parties did, or did not do, and their relative states of minds – facts that do not seem relevant whatsoever to statutory interpretation or any analysis of the legal issues raised by Woodsville in its motion.

Woodsville's primary argument is that "the plain and unambiguous language of SB75 mandates that the Town appropriate and distribute highway funds to Woodsville in accordance with the formula set forth in the law." MEMO. p. 9. However, **nothing** in SB75 requires the Town to appropriate any money for transfer to Woodsville, much less require it to use a particular formula when doing so. Nor could it. Even if that were the intention of the General Court, such a statute would run

afoul of the Municipal Budget law and the New Hampshire Constitution, as discussed in Section II.

I. SB75 does not require the Town to raise money from its own taxpayers for transfer to Woodsville.

To determine the potential effect of the language in SB75, it is important to understand how appropriations work under the Municipal Budget Law, Chapter 32. 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. This power lies solely with the municipality's legislative body, i.e., its voters. RSA 32:6. This authority is no mere formality, but the cornerstone of the municipal budgeting process in New Hampshire.

This is largely because the real property tax is the primary revenue source for municipalities, and the DRA determines a municipality's property tax rate by reference to the total appropriations authorized by the legislative body at its annual meeting. RSA 21:J-35.; *see, also,* RSA 32:5, V-b. Therefore, by controlling appropriations, the legislative body is effectively determining the amount of tax burden, and for what purpose, it is willing to shoulder as a community.

While municipalities generally cannot expend money or incur liabilities in excess of authorized appropriations, the act of appropriating itself does not – and cannot - actually require the governing body to expend any particular funds. RSA 32:8. I; *see also* RSA 32:11 (noting officials can be removed for violating the municipal budget law); RSA 32:7. Instead, unexpended appropriations "lapse." RSA 32:7. In

essence, the legislative body controls the purse strings and earmarks funds, but the governing body decides whether to expend the money or not.

With this framework in mind, it is clear that SB75, *whatever the intent of its drafters*, is ineffectual.

A. SB75 does not direct the Town to appropriate a particular sum for transfer to Woodsville.

As discussed above, a lawful appropriation requires identification of a "certain sum" for a "specified purpose." SB75 amended a portion of Section 3 of the statute governing Woodsville's authority as a village district to read 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 properties in the entire town of Haverhill as determined annually from the town MS-1 form. The town of Haverhill shall appropriate the percentage represented by such fraction for distribution to the highway fund in care of the Woodsville fire district commissioners.

The last sentence contains the only language remotely suggesting the General Court is directing the Town to appropriate funds (ostensibly for the purpose of "distribution to the highway fund[3] in…Woodsville.") However, this language provides that the Town "shall appropriate the percentage," which is a nonsense statement.

Woodsville argues that "[t]he statutory formula in SB75 is…plain and unambiguous" and that "[t]he formula requires that the Town calculate the amount

[3] It is questionable whether a lawful "highway fund" exists in Woodsville. A "fund" is a distinct financial entity. A highway department budget or "account" is not a "fund" as contemplated by the Municipal Budget Law, but rather an account within the village district's "general fund." Rev. 2001.11, 2003.01; *see also* RSA 32:3, VI (requiring special warrant articles for appropriations to special funds); RSA 31:95-c (special reserve funds). Similarly, Woodsville's Petition makes clear Woodsville has used this money for other purposes, like sidewalks and sewers.

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." MEMO. p. 11. Where in SB75 does it say that?

SB75 **does not** contain the term "budget," much less "Total Highway Budget."

SB75 **does not** contain the term "appropriated" or "appropriations," much less a specific reference to any particular appropriation *by the Town* (such as the *Town's* appropriation for its highway department, or paving, or highway maintenance).

SB75 **does not** contain any direction to apply the percentage to any other variable.

Appropriations are expressed in dollar figures. At most, SB75 describes a fraction to create percentage, nothing more. Even assuming the General Court has authority to direct the Town to appropriate money, the percentage in SB75 is meaningless without knowing what, exactly, it is to be applied against. Woodsville's argument that SB75 requires application of the percentage to the "Total Highway Budget" has no basis in the statutory text. Because SB75 utterly fails to provide this information, it is ineffectual as a matter of law.

B. SB75 is not merely ambiguous and this Court lacks authority to add terms to the statute that do not otherwise exist.

Woodsville next argues that "even if SB75 [is] ambiguous," "the legislative history and intent of SB75, as well as the consistent interpretation and application thereof by both [the Town] and Woodsville, establish that Woodsville's interpretation of SB75 is correct." MEMO. p. 12. However, "legislative 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). In particular, it is not for a reviewing court "to add terms to the statute that the legislature did not see fit to include." *Id.* at 625. Here, SB75 is not simply ambiguous, it is not capable of meaningful interpretation without *adding* terms that do not exist. In essence, Woodsville is asking this Court to **amend** the statute. That is outside this Court's authority. Woodsville's recourse is with the legislature.

C. Parties cannot legislate through mutual misunderstanding, nor can they create an administrative gloss on the statute.

Much of Woodsville's memorandum is devoted to recounting the long history of handouts the Town has given Woodsville over the years. The Town has given Woodsville significant money over the years. This is not in dispute. Certainly, the more recent decades have seen the Town taxpayers regularly subsidize Woodsville's operations. While perhaps a hundred years ago, the two entities had legitimate reasons for the arrangement, for the past thirty years the relationship has been less than cooperative. Woodsville has manipulated Town affairs (with its Board of Selectmen often stacked with Woodsville residents) and the General Court to its own ends, often threatening to "secede" from the Town unless the Town effectively paid it this ransom money each year. MEMO. p. 6.

Here, Woodsville is using this history, and specifically certain documents and past appropriations, to support its proposed statutory construction. Woodsville cites

to *New Hampshire Retirement System v. Sununu*, 126 N.H. 104, 108 (1985), an administrative gloss case, for the proposition that "the construction of a statute by those charged with its administration is entitled to substantial deference." Woodsville then relies on Mr. English's testimony to "prove" that the Town "constructed" the statute a certain way over the years.

However, administrative gloss is a rule of statutory construction, applied to an ambiguous clause of a statute, regulation or ordinance when those responsible for its implementation interpret the clause in a consistent manner and apply it to similarly situated applicants over a period of years without legislative interference. *See Harborside Associates, L.P. v. City of Portsmouth*, 163 N.H. 439, 442 (2012); *DHB, Inc. v. Town of Pembroke*, 152 N.H. 314, 321 (2005). It could **never** apply here. The Town is not "charged with [the] administration" of SB75 nor has it "applied" SB75 to *other* "similarly situated" entities. Quite the opposite: Woodsville alleges SB75 applies *to* the Town. While over the years the parties may have misunderstood the law as it stood at the time, and drafted various documents under the influence of that misunderstanding, the parties cannot legislate by agreement. The law is the law. No amount of agreeing can change it.

D. Even assuming SB75 is ambiguous and the Court looks to the legislative history, the history does not support Woodsville's interpretation (i.e., amendment).

While arguing that the legislative history supports its interpretation of SB75, Woodsville spends five pages discussing documents that predate the legislation,

including the MOU, First Amendment to the MOU, and the alleged Addendum[4]. *See* MEMO. pp. 12-17. In the sole paragraph actually devoted to legislative history, Woodsville notes that all of these documents were in Public and Municipal Affairs Committee when it held on hearing on SB75 in February 2009. MEMO. p. 17. Woodsville appears to advance two primary arguments why its proposed construction of SB75 is consistent with legislative intent: 1) that the statute and various documents supports the conclusion that there existed an obligation and formula to follow, and 2) that the Committee reviewed these documents when enacting SB75 and therefore must have intended to mirror the language therein.

In Woodsville's words, "SB75 merely changed the formula to be used for calculation of the amount of highway funds to be returned to Woodsville," and "[t]he legislature adopted and enacted the change that was agreed to by the Haverhill Selectboard and the Woodsville Fire District Commissioners." MEMO. p. 19. As discussed above SB75 does not contain any formula. Moreover, to the extent SB75 could be construed as containing a partial formula, as discussed below, the prior statute contained only a cap, and no version of the statute has **ever** imposed an obligation on the Town to appropriate money. It was impossible for SB75 to "merely change" a formula requiring a certain appropriation because there was no formula to change in the first place.

[4] The "Addendum" proffered by Woodsville is clearly not the one supposedly "approved" by the parties in the manner Woodsville suggests. Woodsville relies on meeting minutes from October and November 2008, for the Town and Woodsville, respectively, as "proof" the addendum was approved. However, the addendum provided by Woodsville is dated December 2008.

1. The prior history of the statute does not support Woodsville's contention that the Town is *obligated* to appropriate funds for transfer to it.

Distilled down, Woodsville's reliance on documents created during the existence of prior versions of the statute appears to be a misplaced attempt to prove the existence of a current obligation by proving the existence of an older obligation. Although this is questionable logic at best, the history simply demonstrates that the Town was **never** obligated to appropriate anything.

a. The early years.

In 1887, the General Court enacted Chapter 204, the statute that addresses the scope of Woodsville's authority. WOODSVILLE SMF Exh. A. Chapter 204 (1887) did not contain any reference to any appropriation by the Town for transfer to Woodsville. In 1899, the General Court enacted Chapter 196, amending Chapter 204. WOODSVILLE SMF Exh. B. Chapter 196 (1899) did not contain any reference to any transfer by the Town to Woodsville for any particular purpose, nor in any particular amount. From 1899 through 1990, the statute remained unchanged. During that time, it appears the Town raised and appropriated funds at least once for transfer to Woodsville despite there being no mandate to do so.

b. The 1990 Amendment to Chapter 204, the 1990 MOU, and the 1995 Amendment to the MOU.

In March 1990, the General Court enacted Chapter 37 which further amended Chapter 204 (1887), effective January 1, 1991. WOODSVILLE SMF Exh. C. The relevant amendment in Chapter 37 simply provided that "[t]he money appropriated for 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." *Id.* (emphasis added).

In June 1990, the Town and Woodsville entered into a Memorandum of Understanding that contained references to a so-called "road money computation" but did not contain any specific any formulas. In January 1995, the Town and Woodsville executed a document entitled "First Amendment to 'Memorandum of Understanding'." *See* English Depo. Exh. 13, WOODSVILLE SMF Exh. E.

By its own language, the First Amendment contained a "formula" that the then-current "Board of Selectmen and Board of Commissioners have determined…represents their best judgement as to the proper implementation of [the] Special Act." As Woodsville acknowledges, the reference to Special Act "refers to the 1990 legislation," i.e. Chapter 37. MEMO. p. 13. According to Woodsville, this means that the parties "recognized that the transfer of highway funds to Woodsville [was] mandatory." *Id.*

Woodsville relies heavily on former Town Manager Glenn English's deposition as support for this proposition. To be sure, this does appear to be what the then-current leadership **believed**, but even a cursory review of the text of the statute reveals they were **mistaken**. And, if anything, Mr. English's deposition testimony reveals just how sorely mistaken and unqualified they were: he could not even keep his own deposition testimony straight and was unable to identify any source of authority in any statute, i.e., the law, that *required* this result. *See, e.g.,* ENGLISH DEPO. pp. 151-196. Indeed, he inexplicably testified that although the law at the time

only imposed a cap of 20 percent, it could only be less than that "if all parties agree." *Id.* p. 161. His reasoning was, essentially, that the "20 percent formula was agreed to" by the parties. ENGLISH DEPO. p. 163.

Mr. English is neither a lawyer nor a judge. ENGLISH DEPO. p. 157-158. He admitted that "interpreting a legal obligation may be beyond [his] scope." ENGLISH DEPO. p. 170. Alarmingly, even with respect to basic municipal budget concepts, he fared no better. For example, he lacked an understanding as to the difference between an appropriation and expenditure, although he knew they were different concepts. *See* ENGLISH DEPO. p. 48, 143. He did not understand the difference between a net operating budget and a gross operating budget. ENGLISH DEPO. p. 142.

Ultimately, Mr. English's – or any other local official's - subjective beliefs do not matter. That is why we have judges. Nothing in the Special Act required any appropriation, much less required the use of any particular formula. It was, at most, a cap. Woodsville appears to acknowledge this in its memo. MEMO. p. 6 ("[T]he Woodsville Commissioners raised concerns…that the 20 percent cap was not working anymore.") Rick Ladd testified to this in front of the Committee.

2. The committee history of SB75 does not support Woodsville's construction.

Woodsville next relies on Committee documents, including the testimony of Mr. Ladd, to support its construction. In essence, Woodsville wants this Court to rule that SB75 requires the Town to apply the "percentage" to the Town's "Total Operating Budget" for its Highway Department and then transfer it to Woodsville because similar language is present in documents that were before the committee. However,

it appears that, having reviewed the documents and considered the language in them, **the legislature did not see fit to include** the same language in SB75.

If the General Court intended to codify those documents or so-called "agreements" into law, it could have copied and pasted the language therein. If the General Court intended to apply the "percentage" to an operating budget, it would have said so. Even if the legislators were taking the easy way out, they could have *referenced* the agreements, perhaps "ratifying" the language therein. But, the legislature did not do that either.

Woodsville makes much of Mr. Ladd's involvement with SB75, to avoid this inevitable result, as he was both a sponsor of the bill and the Chair of the Town Board of Selectmen at the time. This only counsels against Woodsville's interpretation. Mr. Ladd ostensibly had a hand in drafting SB75. He was also familiar with the documents Woodsville relies on. Yet, Mr. Ladd and his co-sponsors failed to duplicate the language of the documents in SB75 or even reference them in the law. This would have been as easy as a "copy and paste."

There is, perhaps, a more likely explanation. As discussed below, for reasons that are not entirely clear, the parties historically "agreed" to the Yearly Appropriation. However, prior to SB75, the law did **cap** the Yearly Appropriation the Town *could* make for transfer to Woodsville.

Prior to SB75, the two municipalities' leadership met and, again for reasons that are not entirely clear, decided that Woodsville should get even more money. So what did the Town and Woodsville do? According to Woodsville, the parties executed

the Addendum, which "changed" the "formula." However, the cap still stood in the way.

According to Woodsville, pile of documents in hand, including a fresh "addendum," the parties then petitioned the General Court to codify the arrangement. This makes no sense. The agreement occurred **before** SB75. If the parties truly thought the General Court was going to change the **law** for them, no agreement would have ever been necessary. If the parties intended to reach another (mis)understanding of the law after it changed, they would have executed further documents **after** SB75 passed.

Much of Mr. Ladd's testimony concerned the purported effect of the cap on Woodsville. It seems more likely that the legislature simply changed the cap to mirror relative property values in order to allow them to operate under their new arrangement, but not to **impose** a new obligation. Perhaps the General Court realized that, as Mr. Ladd testified, this was all based on "agreements" and simply wanted these handshake deals to continue, *should the parties wish*, without state intervention.

II. The General Court could not lawfully direct the Town to appropriate funds for transfer to Woodsville.

Assuming the SB75 can be interpreted to require the Town to appropriate money for transfer to Woodsville, it is void as a matter of law. Put simply: the General Court cannot lawfully direct the Town to appropriate and transfer (i.e. expend) funds in this manner.

First, as discussed above, the power to appropriate lies solely with the legislative body of the Town, i.e., the voters. The General Court cannot force the Town's legislative body to appropriate any particular amount for any particular purpose *unless* the State provides funding for it. This would constitute an unfunded mandated in violation of Part 1, article 28-a of the New Hampshire Constitution. That article provides that:

> 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.

Here, the State did not fully fund the transfers.

Second, towns may only appropriate funds for a public purpose. *See* RSA 31:3, 31:4; *Clapp v. Jaffrey*, 97 N.H. 456 (1952). Notably, "public purpose" necessarily means a purpose in furtherance of the municipality's interests, not the interests of other municipalities. Here, although Woodsville's boundaries fall within the Town's boundaries, the Town and Woodsville are separate and distinct municipal entities. While all residents of Woodsville are necessarily residents of the Town, not all Town residents are residents of Woodsville. The Town voters have no oversight or authority over Woodsville's operations or expenditures. In essence, Woodsville wants the power of a municipality without the responsibility of raising its own funds or accountability to the taxpayers funding its operations. Just as it would be improper for one town to fund the police department of another town, it is improper for Town taxpayers to fund Woodsville's operations under these circumstances.

III. Assuming the Court determines SB75 requires the Town to appropriate funds for transfer to Woodsville, the missing variable must be the net operating budget for the Town's Highway Department.

Assuming the Court determines SB75 requires the Town to appropriate funds for transfer to Woodsville, it must determine what the Town is supposed to apply the percentage against to calculate the Yearly Appropriation.

A. Gross vs. net operating budget.

As a threshold matter, Woodsville expresses confusion over the difference between a gross operating budget and a net operating budget. Fundamentally, it is simple. A gross operating budget is just that: the list of anticipated expenditures, in gross, without regard to revenue source. BOUCHER AFF. ¶ 16. A net operating budget takes into consideration anticipated revenue and generally indicates how much revenue needs to be raised through taxation. BOUCHER AFF. ¶ 16.

B. Use of a gross operating budget is inconsistent with the purported purpose of the arrangement.

Woodsville asks the Court read in "Total Operating Budget," i.e., "Gross Operating Budget" as the missing factor. According to Woodsville, this *must* be what the legislature intended despite A) SB75 not using the term "budget" at all, and B) despite the First Amendment to the MOU **and** the Addendum Proposal, the documents Woodsville relies on to interpret SB75, both using the term "net operating budget." Woodsville's argument is generally that A) the "examples" in the documents show a gross or total budget amount, not a "net operating budget" and

therefore the parties did not mean what they said, and B) the parties historically used a gross or total operating budget, therefore the law must require it.

Neither of these arguments is compelling. As discussed above, it is clear that the parties' leadership lacked a fulsome understanding of the budgeting process and the requirements, if any, of the law. As Mr. English testified, the leadership was most concerned with being "fair" and reaching "agreements." Technical accuracy was lacking all around (the most striking of which is SB75 itself).

Woodsville has repeatedly maintained that the purpose of the law was to "return" tax money paid by Woodsville residents to the Town for highway purposes to Woodsville. This is also what Mr. Ladd told the legislature and, assuming the legislature intended to impose a mandate in SB75, ostensibly what the legislature thought it was doing when enacting it.

The only way to achieve this purpose is by using a net operating budget. This is because the DRA looks to the municipality's total net operating budget, which is calculated by subtracting revised estimated revenues from the total appropriations voted on at Town meeting, to determine tax rates. *See* RSA 21-J:35. If the DRA did not consider revenues while calculating the Annual Tax Rate, the municipality would be overtaxing its citizens. The net effect is that using a gross or total operating budget results in Woodsville receiving <u>more</u> than the amount of taxes its residents paid to the Town for "highway" purposes.

Indeed, this result is obvious and is the only explanation for Woodsville even fighting this dispute: Woodsville realizes it was getting more than its residents was giving….otherwise it would just tax its residents directly.

Woodsville feigns ignorance of the calculations underlying this dispute. However, Woodsville knows the Town provided it the relevant calculations at the time. BOUCHER AFF. ¶¶ 18-19; TOWN RESPONSE TO STATEMENT OF MATERIAL FACTS ¶¶ 85-93. Rather than go through the particular calculations, a simple example divorced from actual figures will serve to illustrate the difference in effect between the use of a net operating budget and a gross operating budget under these circumstances.

Assume the following figures:

- Woodsville's assessed values are 20% of the Town's total (the "percentage" factor).
- The Town's Gross (Total) Highway Department Operating Budget is $500,000.
- The Town revenues apportioned to the Highway Department are $50,000.

Using a Gross Operating Budget like Woodsville requests, the Town would be obligated to transfer 20% ($100,000) of the $500,000 Gross Operating Budget to Woodsville. In order to fund this $500,000 budget, the Town only needs to raise $450,000 in tax revenues because it has $50,000 in non-tax revenues available. Of that $450,000, Woodsville residents account for 20%, or $90,000. In other words, Woodsville residents pay in $90,000 in and get back $100,000. No wonder Woodsville likes that arrangement.

Now, running the same scenario using a net operating budget produces the exact result Woodsville **claims** it is seeking: return of the tax money actually paid.[5] The Town would be legally obligated to transfer 20% ($90,000) of the $450,000 Net Operating Budget to Woodsville. In order to pay for this $500,000 budget, the Town only needs to raise $450,000 in tax revenues because it has $50,000 in non-tax revenues available. Of that $450,000, Woodsville residents account for 20% of it, or $90,000. Woodsville residents paid $90,000 in and got back $90,000.

If the intent is to "return" the money raised from Woodsville residents for the Highway Department, the use of a net operating budget – as referenced in the various documents – is the only way to achieve that intent.

CONCLUSION

Woodsville cannot force the Town to do anything more than the law requires and SB75 never required the Town to appropriate anything for Woodsville, much less use a particular formula. Woodsville is free, as it always has been, to raise and appropriate funds **from its own taxpayers**. While Woodsville has pretended that was always its goal (simply "returning" funds to its taxpayers), the math – and common sense – demonstrates that is simply not true. In any event, HB2 now largely, if not entirely, moots Woodsville's claims and much of this dispute. Regardless of prior law, the legislature has spoken. The handouts will stop.

[5] This reasoning is fundamentally flawed: Woodsville residents are also residents of the Town. Why would they be excused from helping to fund the Town's highway budget just because they live in a village district that has authority over roads within its boundaries.

WHEREFORE, the Town respectfully requests this Honorable Court:

A) DENY Woodsville's Motion for Summary Judgment; and

B) ENTER an Order in the Town's favor consistent with the foregoing; and

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

Respectfully Submitted,

Town of Haverhill

By its attorneys,

Drummond Woodsum & MacMahon, P.A.

Dated: June 28, 2021

By: *<u>/s/ Demetrio Aspiras</u>*
Demetrio Aspiras (NH Bar #19518)
670 N. Commercial Street, Suite 207
Manchester, NH 03101
(603) 792-7414
daspiras@dwmlaw.com

<u>CERTIFICATE OF SERVICE</u>

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: June 28, 2021

<u>/s/ Demetrio Aspiras</u>
Demetrio Aspiras, Esq.