

**MINUTES**  
**Wolfeboro Board of Selectmen Meeting**  
**In-Person Session at the Great Hall 2nd Floor, 9 Union St., Wolfeboro**  
**Notice of Libby Trustees Meeting**  
**6:30 PM-Regular Session**

**BoS members Present: Brad Harriman, David Senecal, Linda Murray, Brian Deshaies**  
**Absent: Luke Freudenberg**  
**Staff: James Pineo**

**6:30 PM-Regular Session**

**Chairman Brad Harriman calls meeting to order.** Need for non-public session?  
**Mr. Pineo: Yes;** Non-Public Session RSA 91-A: 3- employment

- 1. Consideration of Minutes**
  - i. February 21, 2024 Regular Meeting

**Motion by Mrs. Murray to accept the minutes of Feb. 21, 2024 as written. Second Mr. Deshaies.**  
**Approved 4-0.**

**2. Public Hearing(s)**  
***Alcohol Beverage permit***

i. The Wolfeboro Board of Selectmen will hold a Public Hearing on Wednesday, March 6, 2024, on or about 6:30 PM in the Great Hall of Wolfeboro Town Hall, to consider the application for an issuance of an Alcoholic Beverages Permit to Lakes Region Newcomers Club for their new member reception May 2, 2024, at the Abenaki Ski Lodge on 390 Pine Hill Rd from 5:00 PM – 7:30 PM.

**Jim Connor, co-president LRNC:** November new members event attended by about 50; About 500 members in the group; 12-15 new members added every year. Not just newcomers in the group. This second gathering in May is a BYOB event and will be similar. November event included tours of Pop Whalen; received very well. Impressed by Pop and Abenaki ski slope snow-making.

**Mr. Harriman** opens the public hearing; no public comments; closes the public hearing.

**Mr. Deshaies:** Amy says all police/fire/departments have approved/signed off on this permit request. Our document has not signed off on yet.

**MOTION by Mr. Deshaies to issue an Alcoholic Beverages Permit to Lakes Region Newcomers Club for their new member reception May 2, 2024, at the Abenaki Ski Lodge on 390 Pine Hill Rd from 5:00 PM – 7:30 PM. Second Mr. Senecal. Approved 4-0.**

***Temporary Event Permits***

i. The Wolfeboro Board of Selectmen continued a Public Hearing from Wednesday, February 21, 2024, to March 6, 2024 at approximately 6:30 PM at the Great Hall Town Hall, 84 South Main Street, Wolfeboro, New Hampshire to consider a temporary event permit for American Legion Post 18 to host 4<sup>th</sup> of July Parade on July 4, 2024, (rain date 7/5/2024) from 8:30 AM to 12:30 PM. Permit #2024-21.

**Mr. Harriman:** No one from the legion in attendance to speak to the permit request; Re-opens the public hearing; no public comments. Closes the public hearing.

**MOTION by Mrs. Murray to approve temporary event permit for American Legion Post 18 to host 4th of July Parade on July 4, 2024, (rain date 7/5/2024) from 8:00 AM to 12:30 PM. Permit #2024-21. Contingent upon receiving a current insurance rider two weeks prior to the event; the legion information tent is in town park; the police parking and closure plan be brought to the BoS prior to the event. Second Mr. Senecal. Approved 4-0.**

### **3. Bulk Vote**

- A. Weekly Manifests
  - i. February 23, 2024 \$ 813,792.16
  - ii. March 1, 2024 \$ 1,679,798.40 (school payment)
- B. Property Tax Credit/Exemption
  - i. 2 Santis Way Tax Map 177 Block 10 Lot 139
- C. Property Tax Refund/ Abatement
  - i. 35 Endicott St Tax Map 217 Lot 119
- D. Yield Tax Levy
  - i. Taylor Community Tax Map 145-22 & 145-1-1 \$2,412.21
- E. Raffle Permit: *[addressed later in the meeting]*
  - i. Lakes Region Technology Center-March 20, 2024

**MOTION by Mrs. Murray to approve the BULK VOTE items A-D. Second Mr. Deshaies Approved 4-0.**

- 4. Board/Committee Appointments:  
N/A

### **5. New Business**

**A. Discussion: Education Funding lawsuit ruling (Wolfeboro impact) with State Legislators attending:**

**Katy Paternal: Wolfeboro representative; education committee**

**Glenn Cordelli; Tuftonboro, Wolfeboro, Ossipee; vice-chair education committee**

**John McDonald: representative Wolfeboro/Tuftonboro; municipal and county government**

**Ms. Paternal:** Discussing the most recent lawsuit findings: Rand and ConVal and how the rulings will affect the town and school district. This is all in flux; numbers being presented are accurate as of this moment.

Fall court rulings On-going lawsuits from the Claremont decision in the 1990s; education funding and where does the funding come from are the issues.

ConVal decision stated adequate funding in NH would rise from \$4,100 to \$7,356/year per pupil; Rand decision impacts Wolfeboro significantly since it has to do with the statewide education property tax. "State" portion of a tax bill is an 'education' tax in addition to the local school tax – which would be impacted. Judge's ruling would increase the state's financial obligation by \$537.55 million annually.

Wolfeboro was known as 'donor' town and puts that back in play – though the term is not being used now. Judge Ruoff decided the Monday should be collected by April 1. Appeals have been denied.

**Mr. Cordelli:** \$1.5 million for Wolfeboro – \$1.3 or \$1.4 million for Tuftonboro. This is the excess or swept of what's required by the town to fund an adequate education.

**Ms. Paternal:** NH legislature last year voted to increase state education funding by \$160 million increasing the base adequacy rate to \$4100. This year's bill increased it to \$4400. Amendment to bill yesterday increases base costs to the court decision of \$7,356.01 – per student/per year.

**Mr. Cordelli:** This is a finance committee amendment; Sweeping change to education funding in the state.

**Ms. Paternal:** Increases the amount of statewide education property tax collected by the municipality. Rate is calculated by state: \$363 million; property values equalized; then state decides what the tax rate should be. Now in Wolfeboro it's \$1.22/thousand of valuation. This amendment if it passes, increases state property tax rate to \$773 million from \$363 million. Overall excess swept from 'donor' towns would rise from \$29 million to \$90 million. NH Department of Education stated today that Wolfeboro's excess swept - if it had to be collected would be \$5.3 million.

**Mr. Cordelli:** That would be sent to NH in fall 2025. Number of excess swept or donor towns would increase from 25 to 100 towns around the state sending money to state to find other towns around the state.

**Mrs. Murray:** Is it taken into effect that we are a regional school district? Wolfeboro and Tuftonboro already pay more to support the other towns?

**Ms. Paternal:** That is not how it works; tax rate calculated based on what the towns owe [the state].

**Mr. Cordelli:** Increase of adequacy from \$4400 to \$7356.01 to educate a child – takes effect July 1, 2025. Increase in swept from \$363 million to \$773 million – takes effect July 2024 to bump up the excess swept calculation. Impact to towns will be coming at a future finance committee meeting.

**Ms. Paternal:** says there is no mechanism in place to collect the increased swept yet. That would have to be part of any amendment. No decisions being made now about actually collecting money from the towns.

**Mr. Cordelli:** This amendment happened Tuesday afternoon 3/5; new finance amendments are possible. Not sure of these numbers or if they are final. Full finance committee would have to vote; then to full house for a vote; then to senate and starts all over again. If everything passes and goes to the governor's desk – it would be May 2024 at the earliest.

Had a conference call with group of 25 'donor' towns that includes Wolfeboro; trying to mobilize to let communities [potentially 100] know what's going on. The coalition and chair are working on having an online meeting with town select board members; a vote could come this spring some time. We could impact the final bill and have amendments to shape what goes to the full house, senate and governor.

*[has handouts that includes the judge's Feb. 20 ruling; affidavit from the chair of department of revenue Administration with the implication of judge's ruling; and a copy the 3/5/24 amendment]*

**Mr. Senecal:** Who benefits from this 100% increase; does money go to state or the school?

**Ms. Paternal:** Argument has been that the state has not adequately funded education. The money would be redistributed to other towns that are unable to collect enough to fulfill their base adequacy requirement. That was the concept of the 'donor' town.

**Mr. Senecal:** So it's a chess game of sorts? Wolfeboro as Tuftonboro is a 'donor' town we do not know who will benefit?

**Mrs. Murray:** We know who will not benefit; we [Wolfeboro] will be more.

**Ms. Paternal:** State would collect and distribute based upon need in other school districts.

**Mr. Senecal:** It's really no different than the earlier configuration?

**Mr. Cordelli:** It's similar in concept. Everything in a state of flux right now. Says judge's ruling indicated the excess swept from donor towns should be returned to the state now since donor towns should have known this would happen. Towns should have been 'saving up' according to the judge's view/ruling. Towns would have to send \$1.5 million when the judge says that should happen.

New stays filed with NH Supreme Court to stay the judge's Feb. 22 ruling about returning the excess swept now; asked for an appeal of his ruling. Amendment is one piece.

Judge wants money collected now and put in an escrow account at NH Department of Education pending the NH Supreme Court ruling.

**Mrs. Murray:** Says we have to stay in touch with the coalition and remain updated since that is our voice.

**Mr. Pineo:** Did you state – if all this goes through – in 2025 our swept payment would be \$5.5 million?

**Ms. Paternal:** That's the excess swept payment you need to collect for adequate education.

**Mr. Cordelli:** That's over and above what the state says you need to

**Ms. Paternal:** We do not have a spread sheet on what the total swept would be [in 2025].

**Mr. Pineo:** Looking at 2023 tax rate, our municipal state education tax rate was \$1.84; based on our assessed valuation is \$4.51 million. Trying to understand if we're looking at \$1 million above that or \$5+million above that?

**Ms. Paternal:** No solid answers right now. Made a special request for the numbers from the education department.

**Mr. Cordelli:** The way I understand it now, Wolfeboro's \$1.5/1.8 million excess swept amount would go up to \$5.3 million [3x what is paid now]

**Ms. Paternal:** Wanted to come in before the BoS before the town votes on the town and school district budgets March 12.

**Mrs. Murray:** Those budgets are ready; you're giving us 'guesses.' So to tell the people not to vote for those budgets...

**Ms. Paternal:** No – we just want people to know about what may be coming down the pike.

**Mrs. Murray:** This does not really have anything to do with what the voters are going to vote on March 12. It's speculation at this point; it could happen further down the line.

**Mr. Cordelli:** We just wanted you to be aware about the information as we get it. We can let you know when the next coalition meeting is scheduled. And when the next special meeting with state representatives and everybody is scheduled.

**Mrs. Murray:** Our job is to keep in contact ourselves with that coalition.

**Mr. McDonald:** We're supposed to do a revaluation this year; how much money are we to pay the state if our value goes up? Will it go up?

**Mr. Cordelli:** Probably, yes. DRA calculates an equalized valuation of property. A revaluation would impact that.

**Mrs. Murray:** Don't they also have a calculation of how far you are from the total assessed value? Deviation? [question to Mr. Pineo] When we see the updates, they do an abatement; they do some of that calculation of where it would be if it was at 100%?

**Mr. Pineo:** I may have misunderstood you, but I thought you also stated there would be a statewide equalization relative to swept – specifically to try to balance that out?

**Ms. Paternal:** I'm not sure it's specific to swept; they do equalize the property tax values in for swept, yes. I do not know if they apply it to any other tax rates?

**Mr. Senecal:** Town will be responsible for \$5.3 million regardless of the court decisions and legislation??

**Mr. Cordelli:** Yes, according to the judge's Feb. 22 ruling.

**Mrs. Murray:** We also have a chance of a NH State Supreme Court stay.

**Mr. Cordelli:** Correct.

**Mr. Senecal:** But we still have to pay the amount ahead of time.

**Mrs. Murray:** If there was a stay, my understanding is everything would be frozen until it's straightened out.

**Mr. McDonald:** Wolfeboro pays money to the GWRSD every two months; shouldn't school district pay to the state since the court case to use that to cover the \$1.5 million?

**Mr. Cordelli:** I think that would be worthy of discussion.

**Mr. Harriman:** Unsettling news – but thank you.

## **B. Discussion: Update from Representative MacDonald on Municipal Law changes**

**Representative John McDonald:** Some good news; HB 1 and HB 2 – returning \$145 million to municipalities; Funding in budget included:

- Cameras for police
- Solid waste management
- Cyanobacteria mitigation -could be an annual appropriation. Praises Senator Bradley for his efforts.
- Housing initiatives – grants totaling \$10 million
- Affordable housing-\$30 million
- Shelter programs -\$10 million

10 GOP 10 Democrats /county group: updates BoS on state legislature housing efforts pertaining to municipalities in the county. Only 67 housing bills came into law last year: a decrease.

Discusses proposed bills that might not pass because they are not feasible in small towns. Does not believe there are any bills in Concord that would impact Wolfeboro.

**Mrs. Murray:** Any chance of adding new bills or emergency bills?

**Mr. McDonald:** Possibility exists to do that.

**Mr. Pineo:** What would the deadline be?

**Mr. McDonald:** At any time we could add something before bills are sent to the state senate.

Grants to towns are possible in the state budget.

BoS letter to NH Municipal Association- result on the bill out of committee – vote was 8-8; will go to the full house for a vote. Says he'll vote the way Wolfeboro asks him to vote. Also

Town Clerks Association; Tax Collectors Association; Chiefs of Police Association and groups that are supported. He supports these groups with funding in the state budget. Board thanks Representative McDonald.

#### **C. Approval: Mast Landing Kiosk- Wentworth Watershed**

*[no representative from WWA attending]*

**Mrs. Murray:** Comfortable moving forward on this; want to get it up by the summer.

**Mr. Harriman:** Seems straightforward.

**MOTION by Mr. Senecal to install the information kiosk at Mast Landing established between the Wentworth Watershed Association and the town. Second Mr. Deshaies. Approved 4-0.**

#### **D. Approval: Downtown Grill Safety Plan**

**Mr. Pineo:** Downtown Grille/Peter Ford, developer want to finalize the second floor deck discussed last spring toward the dockside parking lot; need to protect citizens on Cate Park pathway. A proposed safety fence – [map provided to board] 6-foot safety fence to keep people away. Could be two weeks or more construction time. .

Discussion about securing a bond – naming the town. Asked for a better description/rendition of the screening to shield the trash area/receptacles  
Plan approved by code enforcement officer.

**Alex Sanders.** [representing Peter Ford, developer/owner of Downtown Grille building]

**Mr. Deshaies:** When will all construction be finished at that site?

**Mr. Sanders:** May 1.

**Mrs. Murray:** Concerns about the issues that took place with the property all last year concerning trash, etc. construction material not being cleaned up. Dumpster had to be hauled away. I have a motion ready; believe we need a use agreement; nail down the dates; We need to have a penalty if they do not meet the dates. Not willing to make a decision tonight about the trash screening. Complaints from community constantly complained about trash receptacles in the walkway.

**Mr. Deshaies:** asks about propane tank lease; landscaping plan.

**Mrs. Murray:** The landscaping plan is not what's here today.

**Mr. Deshaies:** Wants to know when the entire project including landscaping will be complete. And asks about the propane tank lease agreement between Mr. Ford and town. Were we paid for that lease?

**Mr. Pineo:** We were paid. That is up to date. The landscaping plan and town landscaper worked with Mr. Ford; and was re-forwarded to board.

**Mr. Deshaies:** Wants a timeline on the rest of the project. Complaints continue to come from citizens.

**Mrs. Murray:** That propane lease runs to July. Landscaping should be nailed down before the lease agreement is handled.

**Mr. Deshaies:** brings up KRHS prom with students' parade in Cate park and wants Cate Park to be in good condition.

**Mrs. Murray:** Prom promenade night last year was when the Dumpster was hauled away. That's why we need a lease agreement.

**Mr. Deshaies:** A May 1<sup>st</sup> completion date would be best. Praises the construction and rehab of the buildings.

**Mr. Harriman:** Agrees with Linda; need to have a timeline; agrees about the screening on deck to hide the trash receptacles.

**Mr. Sanders:** says he has pictures of what the screening will look like.

**Mrs. Murray:** I want a plan.

**Mr. Sanders:** Image shows the 'textures' of the screening; do you want the pictures?

**Mr. Harriman:** Yes.

*[Mr. Sanders hands out printed photos]*

**Mrs. Murray:** I do not want to OK this based on these photos in our packet. Reads from description in the submitted paperwork from Mr. Ford.

**Mr. Harriman:** We need more detail than what is shown here on how the screening will operate.

**Mr. Sanders:** Would operate like a shower curtain; High end black mesh; Breathable to allow air flow. Proposing Douglas fir lattice work on either side of the mesh screen.

**Mr. Deshaies:** Trash will not be visible?

**Mr. Sanders:** Trash picked up daily seven days a week – Wakefield Disposal. It's a considerable expense. There's no other place to put the trash. We dropped the ball last summer. We are getting better and have a tidy space for community and guests. Committed to May 1 deadline. We want to play nice.

**Mr. Deshaies:** Want it in writing about May 1<sup>st</sup> deadline that debris would be picked up in time for prom – even if construction is not complete.

**Mrs. Murray:** Evening of Lake Winnepesaukee Day photo shows all the trash at Downtown Grill site into Cate Park pathway. Public is tired of seeing this. Concerts impact the most since they are at night. Morning trash pickup does not do it. This was for two restaurants; now you'll have five?

**Mr. Sanders:** Some trash gets carried to under Bayberry Juice Bar. Marker 21 carries their trash out. This is just for Downtown Grille.

**Mrs. Murray:** Downtown Grille did not operate last summer.

**Mr. Sanders:** Says all the trash is not from the restaurants – people come off boats and stuff is loaded into our trash; people use our bathrooms. That's not all our trash; the screens will keep the trash bins out of site.

**MOTION by Mrs. Murray to table any action by Peter Ford and Alex Sanders to use the Town land until the Town has created a temporary use agreement with Peter Ford or Peter Ford's LLC companies: TCW Property Development or Pea Pod; and that the use agreement includes a start and finish date for the proposed safety fence on Town property; provide a penalty fee schedule for any date after the finish date; require a bond in the amount of [to be established by Town Manager] and bring the temporary use permit back to the March 20, 2024 meeting for a review and possible approval and signature that night. Second Mr. Senecal**

**MOTION by Mrs. Murray to take no action at this time on the installation of the deck screening until an adequate, signed plan by the owner is provided to the Town, which includes the material being used; a scale drawing of the deck and screening; a written plan on how the trash will be stored and removed and steps and fees the Town will take if the trash is not stored and removed per the plan.**

Mr. Harriman opens board discussion. I think we should take those one at a time.

Mrs. Murray: Two motions?

Mr. Deshaies: Are you ready to put the screening up and start now.

Mr. Sanders: Yes. If we don't get approval today, May 1<sup>st</sup> can happen. If not, it's less probable.

Mrs. Murray: I think the citizens of this town deserve to know that this will be cleaned up. This is needed to protect the town property and let the citizens know we heard them and we are taking action.

Mr. Deshaies: I just don't want this to drag into the summer season again.

Mr. Harriman: They're projecting a two-week construction duration; a little longer if there are weather issues. It could get done in April and be done May 1.

Mr. Sanders: Could have issues getting contractors in nicer weather. We have this set up to start March 18. Two general contractors in the past year did not work out; Peter has take it over himself. We have an opening date for Down Grille of May 1.

Mr. Deshaies: We need to hold them accountable and how the construction goes. But wants the project done.

Mrs. Murray: If we go in with no guarantees, we'll be back where we were. You learn from experience. I'm willing to negotiate this out; Jim will not be here next week. We have to listen to the citizens of this town.

Mr. Pineo: The onus is on Mr. Ford to create the draft document which can then be reviewed in house. Suggest the board meet March 14 to discuss it. That would allow them to get this lined up and be on time with construction.

Mr. Deshaies [to Mr. Sanders] – Do you need to meet with Mrs. Murray/Mr. Pineo to discuss what needs to be addressed?

Mr. Sanders: Yes.

Mrs. Murray: I've expressed the issues but am willing to talk about it.

Mr. Sanders: Good.

Mr. Pineo: Amy can coordinate this; send documents to Mr. Ford and communicate with Mr. Sanders.

Mrs. Murray: I can sit with Mr. Harriman – the BoS chair – on this.

Withdraws first motion rereads motion/changing the date.

**MOTION by Mrs. Murray to table any action by Peter Ford and Alex Sanders to use the Town land until the Town has created a temporary use agreement with Peter Ford or Peter Ford's LLC companies: TCW Property Development or Pea Pod; and that the use agreement includes a start and finish date for the proposed safety fence on Town property; provide a penalty fee schedule for any date after the finish date; require a bond in the amount of [to be established by Town Manager] and bring the temporary use agreement back to the BoS March 14, 2024 meeting for a review and possible approval and signature. Second Mr. Senecal. Approved 4-0.**

Mrs. Murray: First motion and second by Mr. Senecal withdrawn.

Mr. Harriman: Get these agreements and details worked out and meet on March 14.

**MOTION by Mrs. Murray to take no action at this time on the installation of the deck screening until an adequate, signed plan by the owner is provided to the Town, which includes the material being used; a**

scale drawing of the deck and screening; a written plan on how the trash will be stored and removed and steps and fees the Town will take if the trash is not stored and removed per the plan.

Second Mr. Deshaies.

AMENDED to include possible review of the trash screening and removal plan for Downtown Grille site on March 14<sup>th</sup>. Approved 4-0

Discussion – **Mr. Deshaies:** Is that plan included for March 14?

**Mrs. Murray:** That's not included.

**Mr. Harriman:** If it's ready, we could look at it March 14.

**Mr. Deshaies:** Can you have it ready by March 14?

**Mr. Sanders:** Yes.

*[motion amended as shown above]*

**Mr. Pineo:** Contact Amy to set something up.

**Mr. Sanders:** We'll meet ahead of March 14<sup>th</sup> to has all this out so it can be addressed March 14<sup>th</sup>?

**Mr. Harriman:** recognizes John Thurston who wants to make a comment.

**John Thurston:** Sitting on Planning Board when the Downtown Grill application came to the planning board.

Most troublesome about this site was the trash issue and screening.

This is unhealthy/unsanitary situation. Bugs/flies everywhere. Disgusting area. Mesh screening will not do anything. Need a sophisticated disposal plan. Town and planning board and codes officer not doing their jobs.

**E. Approval: E-911 Addressing without voluntary compliance**

**Mr. Pineo:** Requested memo has been updated regarding 9-1-1 Furber Lane and Lady Slipper Lane; April 3<sup>rd</sup> public hearing scheduled; abutters advised.

**MOTION by Mrs. Murray to set a public hearing Wednesday, April 3, 2024, 6:30 PM to assign a street name and street address to tax map lot 130-025 and lot 130-030, in accordance with RSA 231:133-a. Second Mr. Deshaies. Approved 4-0.**

**MOTION by Mrs. Murray to go into Libby Museum Trustees meeting. Second Mr. Senecal. Approved. 4-0.**

## **LIBBY MUSEUM TRUSTEES MEETING**

### **i. Follow up of meeting with Attorney General**

**Mr. Pineo:** Met with legal counsel in conjunction with the charitable trust unit for the Libby Museum. He is new in the role as charitable trust director. He came in to discuss a path forward for the Libby Museum. Interesting conversation.

He understands challenges associated with a community running a museum; and intricacies of the challenges; might be interesting for the town to potentially either get out of the museum business or pursue another purpose for the building which might not be a natural history museum. Board can discuss this further.

**Mr. Harriman:** We know the museum needs work – regardless of whether it stays a natural history museum. Future of the museum would be discussed in the future. Need to come up with a plan for repairs. Bergeron Technical Services had to pull out of the process to reevaluate and prioritize repairs; RFQ out for another company to provide plan/repairs for the museum building.

**Mr. Deshaies:** Discussed at that meeting with then attorney ways to improve the museum structure and potentially keep it as a natural history museum and more purposes for the building. Have a section of the museum that could be used for ecology, environmental studies; environmental camps for children. Potential collaborating with non-profit groups to keep it operating; mentioned Lakes Region Conservation Trust; Squam Lakes Association; Lake



Winnepesaukee Association – to see if we can have somebody operate the building as a museum and for environmental education; not have it be the Trustees and Select Board have to run. Do not want to close it down; trying to look at 2025 and beyond. That is our intent.

**Mrs. Murray:** Perhaps have a public hearing on what to do with the museum. If there was a buyer and get the Town out of the museum business would be good. Don't see that happening. Trying to be creative and maintain what the museum can be. We are looking for someone to run and manage it. Would like as many ideas as possible on this and hear from the public on that.

**Mr. Pineo:** Any of these changes would have to go to the voters through warrant article. This would not be a unilateral decision made by the BoS.

**Mrs. Murray:** We want public input on the creative ideas that can be out there. We need to think about the possibilities. We'd have to go to probate court to get any changes approved by the court – in addition to the voters.

**Mr. Deshaies:** The Libby waterfront lot is valuable to the town; we would do our best to retain and maintain that waterfront/dock area for its current use.

**Mrs. Murray:** The Libby will stipulates nothing can be built there; it's what we would do with the dock area.

**Mr. Deshaies:** Dock area should be maintained at its current use even if a group took over operation of the Libby Museum because of its value to the community and those who service the lake.

**Mr. Harriman:** Meeting with the attorney also included that the state attorney wanted to be kept informed about progress moving forward related to ideas and building maintenance.

**Mr. Pineo:** agree. Brian had ideas he wanted to investigate. Do we hold off until after elections and set a work plan on the Libby after that.

**Mrs. Murray:** No problem with Brian moving forward with his ideas. I can help you – as we bring all the options forward.

**Mr. Harriman:** Opens a public hearing on Libby Museum/trustees.

**Suzanne Ryan:** If building diversified how would the building be 'divided?' The will states a museum is run; Just putting this question out there. During the new process – trusteeship could be discussed. The new process would include trusteeship and how to form the trusteeship.

**Mrs. Murray:** Court would have to approve any changes in trustees.

**Mr. Harriman:** Other comments while we're meeting as the trustees?

**Mr. Pineo:** Schedule another Libby Trustees meeting? Wed., April 17.

**MOTION by Mr. Deshaies to come out of Libby Museum Trustees. Second Mrs. Murray. Approved 4-0.**

## 6. Other Business

**MOTION Mr. Deshaies to approve Raffle Permit for the Lakes Region Technology Center dinner event [March 20, 2024] pursuant to RSA 287-a:7. Second Mr. Senecal. Approve 4-0.**

**Mrs. Murray:** Asks about when Town financial report; we have not received Dec. 31, 2023.

**Mr. Pineo:** March 20<sup>th</sup> is when town finance director KC Carpentier will be before the board.

## 7. Committee Reports

**Mr. Deshaies:** Candidates night, Feb. 27; EDC conversation about Winnepesaukee Day.

**Mrs. Murray:** Attended candidates' night; Last Night Wolfeboro – looking at venues and events to add for Dec. 31. Met with Jim and Brad on a software asset management program. Been pushing for this for years; this is a good program.

**Mr. Harriman:** Planning Board; Candidates' night well attended; looked at the software package; attended bid opening for the S. Main Water line.

**Mr. Senecal:** no meetings

## 8. Town Manager's Report

**Mr. Pineo:** S. Main water line project; significant update at the April 3 meeting; work should begin around then. Project will get into downtown area. Based on costs, RR Ave. and Central Ave. will NOT be done. Contract awarded to Dawson. Well work from April to the June timeframe; Will shut down in the summer; then resume September/October time frame and finish the project.

Final stages for the two sewer pump stations. Painful process. Last steps for Mill Street – getting inspections services and awarding the contract.

Asset management software: funded through a grant; the asset management program will streamline a significant amount of town operations. It has multiple packages and is expandable.

Packages we are looking at securing include:

- road surface plan
- water system plan
- wastewater plan
- stormwater plan
- sidewalk plan
- fleet
- facilities

Program will give us the ability to track inventories in real time; configurable to auto-order products. End of year issue with enterprise funds – we have to inventory stock for audit purposes. This software allows us to hit a button to determine what the value of the inventory is; saves a significant amount of staff time. Again – this is all through a grant – approximately \$25,000. Annual maintenance subscription \$15,000-\$18,000.

Will streamline communications between departments.

If someone calls town hall to report a missing sign, work order can be issued and will go to the appropriate individual.

Another example- a report of a dead animal on the road; police/fire get auto-notified from the program of the location.

Optimistic that this will be an effective program. Kudos to Steve Randall for finding the grant, provider and moving this forward.

Letters to the Editor in the past few weeks. Encourages citizens to look at town operating budget. There is misinformation being distributed.

Example: Our employees DO contribute to health plans; a negotiated item.

Other Letters to the Editors call out budgets of other municipalities. Not sure where the writer's data came from.

Letter to the Editor related to local 2023 town budgets:

stated the Alton budget was \$10,200,000; On the NH DRA web site, the tax rate operating budget - \$28 million.

Letter stated Gifford budget was \$18 million; NH DRA web site - \$36 million.

Letter stated Laconia budget was \$22 million; NH DRA web site - \$54 million .

Letter stated Meredith budget was \$18 million; NH DRA web site - \$37 million

Letter stated Moultonborough budget was \$11 million; NH DRA web site - \$31 million

Letter stated Tuftonboro budget was \$5million; NH DRA web site - \$13 million

Wolfeboro budget 2023 – all in - \$35 million.

Misinformation out there; go to town web site; become informed about the budget.

Additionally, encourage people to understand – over \$10 million is for the electric department.

Our rates are attractive compared to some neighboring communities.

Other Enterprise Funds include:

Water fund- \$1.7 million; Sewer fund- \$1.8 million; Pop Whalen fund- \$460,000 – paid for by the users – not necessarily the taxpayers.

Where we raise and appropriate – the actual general fund is \$19 million; 54% of the \$34 million that we raise in the operating budget. On the web site – you see the operating that breakdown of that:

Employee wages, benefits, etc.

Please, inform yourself and get out and vote.

There's another article out there encouraging you to vote against the operating budget and ambulance budget. Information in that that paints a picture that states that of the Select Board said 'we will find the money.' If we go to a default budget, the citizens of Wolfeboro will have ambulance services, but we have to make management decisions as to service cuts to provide ambulance services at those increased costs. That's what the board meant in their statement that "we'll find the money."

In the closing comment in that letter to the editor, it's stated we have \$2 million we can use.

That money is accounted for in unassigned fund balance. Contrary to implications of that letter, we cannot simply 'use it.' Voters either have to approve us using it as a project in the warrant or we have to use it to buy down the tax rate – which is our intention when we get into setting the tax rate in October and November.

Become informed; form your opinion; if you have questions, reach out to me, department heads or board of selectmen members.

We think we will know in a week or so – we think we will be getting about a \$1 million grant for the public safety building which will reduce the amount that we have to bond. Kudos to Captain Livie for moving that forward. We will let you know when that comes forward.

9. Questions from the Press- [Elissa Paquette promotes newspaper for people to get information.]

10. **Public Input** (Limited to 3 minutes per person and not to exceed 15 minutes in total)

**John Thurston:** Candidates' night, questions given to the moderator and were not asked of the candidates. Asked what board feels on that. Maybe those questions could be put in the Granite State News. Questions were given to Randy Walker; he said he could not ask the questions because they were not given to him in a timely manner.

**Mr. Harriman:** Community TV ran the event. Perhaps they ran out of time.

**Mrs. Murray:** We should take a look at that.

**Derek Brown, 30 Libby Street:** We have to listen to the citizens of this town. Brought handouts of his statement. Mentions issues brought up during the candidates' night –

During candidates' night, question was asked – What is your position on enforcing planning and zoning regulations with regards to violations?

Stormwater issues affect people not living on the lakes.

Enforcing town laws/rules is the job of the town manager and planning manager.

If the planning director and planning department not doing their job – isn't it the town manager's job to correct or deal with the situation?

Used the Beckwith/Libby Street project as an example- charges that the town manager and planning director mishandled the project and site plan review. Referring to it as a civil matter does not make it go away.

68 Center Street project: site is a house and construction storage site. What's being done about that property? Receive many answers. Is this a residential property with a business running off the site?

Begging the BoS to get the planning department to do the right thing. [hands out his statement]

11. Non-Public Session RSA 91-A

**MOTION by Mrs. Murray to adjourn into non-public session. Second Mr. Senecal. Approved 4-0.**

**MOTION by Mr. Harriman to seal the non-public minutes of March 6. Second Mr. Deshaies. Approved 4-0.**

In public the BOS discussed the need for a letter to the editor in the Conway Daily Sun.


Mr. Harriman moved, and Mrs. Murray seconded to have Mrs. Murray and Mr. Harriman write a letter to the editor in the Conway Daily Sun on behalf of the Wolfeboro Board of Selectmen.

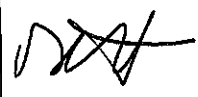
Roll call vote: Dave Senecal-yes, Brad Harriman-yes, Linda Murray-yes and Brian Deshaies-yes. The motion passed.

MOTION by Mr. Senecal to adjourn at 9:27 pm. Second Mr. Harriman. Approved 4-0.

Next Meeting dates:    March 12, 2024 Town vote  
                                 March 20, 2024 Regular Meeting  
                                 April 3, 2024 Regular Meeting

Submitted by:

  
Brenda Jorett



To: Wolfeboro Selectboard

Da: Feb 29, 2024

Re: Follow up to Meet the Candidates Night- Feb 27, 2024

Fm: Derrick Brown

Issue: I submitted the following question considered "broad"

*"If you were elected to the Selectboard, what would be your position on enforcement of planning and zoning regulations as well as any violations to these?"*

*.....there was a sense of this being a broad question*

A distinction between public and private was mentioned. - A new candidate

Public Land- Selectmen guide and decide  
Private Land- Stay out of it

Zoning and Planning boards should not overrule one another - Sitting Selectman

Also agreed with new candidates position of Private vs Public

Of particular significance was a comment that "Boards should not overrule one another". As a member of the Zoning board does this mean you are against the appeal process?

At the "Meet the Candidates" night there was much talk about "concern for the people of Wolfeboro" as Selectmen.

There appears to be a considerable amount of concern for where the storm water goes when it is headed towards our beautiful lakes and their tributaries.

What about the townspeople not on the lake and their storm water issues?

Now we are talking about private land matters and how that is handled at the town level.

I personally have spent many of the past 20 years wrestling with this issue at a localized level with less than stellar results, to put it mildly.

I have personally watched the "Town of Wolfeboro" turn its back on citizens and ill quote the Town Manager: "this is a civil matter". Leaving its own townspeople to hire legal counsel simply because the Planning Department will not follow procedures and guidelines already in place to protect existing property owners. We can certainly blame specific individuals along the way but I think the buck stops right here in this room.

The flow of process: Selectboard>Town Manager> Planning Director>Planning Department

If the town planning director (overseeing the planning department) isn't doing what he / she is supposed to do, isn't it the town manager who is to redirect or correct this? If the Town manager is correcting the planning director and the planning director is ignoring the corrective actions where do we go from here? As I understand it, we go to the Selectboard.

Since we all want to say we are accountable, why don't we actually be just that? How much of town budget monies have been wasted on legal fees and professional services by both the

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town and its citizens just because persons in paying, as well as elected, positions for the town are not doing what they are supposed to do.

So to give two examples of the above:

Example 1 *"Civil Matters"*

Libby Street: I may not think favorably of Mr Beckwith at the top of the hill but that project and the homeowners were knowingly misled by the town of Wolfeboro. It has cost him a much greater expense than anticipated if for no other reason than the town manager and planning departments ( including a sitting select board member) lack of guidance, or misguidance. If codes and zoning were followed much would have been saved not only on the town side, but the homeowner as well as the abutting neighbors. The town of Wolfeboro turned this into a "civil matter". Town administration might think that's what they've done but in fact the lack of due diligence at the Town Manager and Planning director level, and yes, one current selectman, has in fact cost the town a lot of money and it is far from over.

This oversight has caused neighborhood conflict

Citizens requiring attorneys

Town attorney legal fees

Significant property damage to abutters

This doesn't include any of the lost work or wages by the citizens having to defend

"why" the town should follow their own construction and land use guidelines

One selectmen even had the lack of sensitivity to stand up and call this a "Game".

Example 2. 68 Center Street- *Site Plan Review- Lead by Example*

I was walking the Wolfeboro rail trail recently and saw an inordinant amount of construction equipment which begs the question since this is a commercial district in Wolfeboro falls, did the homeowner ever submit a request for a formal site plan review for this business and all of this construction equipment storage ?

If this is a "Private land" matter, why isn't the planning department performing this task as it is a requirement for a commercial business? The town all knows it is there.

I have asked about this since last summer and it is appears to be a familiar topic to several members of the town administration staff.

This same property rents scooters and various other either rental or for sale items that sit out adjacent to the sidewalk all spring , summer and fall more like a temporary estate sale impromptu sort of thing, but it isn't temporary. Has a site plan review been submitted for this?

Does anyone on this board tonight have any comments? How do we get answers?

In closing,

I would agree with the comment that private land issues should be left to planning department and zoning boards. Unfortunately you have to make a HUGE LEAP here. A leap that reflects a working/ functioning town management and planning department. The current one does not, just look at North Main Street!

Does anyone here actually think that water doesn't make its way to the lake?

If it is not working we end up here. One does not need to spend much time here to find that many share this opinion. Ultimately this is your responsibility as the Selectboard.

Sincerely

Derrick Brown, Wolfeboro, NH

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

No. 215-2022-CV-00167

Steven Rand, et al.

v.

The State of New Hampshire

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**AFFIDAVIT OF LINDSEY M. STEPP**

I, Lindsey M. Stepp, being duly sworn, do hereby attest to the following statements of fact of which I have personal knowledge:

1. My name is Lindsey M. Stepp, I am the Commissioner of the State of New Hampshire Department of Revenue Administration ("DRA"), and my business address is 109 Pleasant Street, Concord, New Hampshire.
2. I was first confirmed to my office by governor and counsel on December 20, 2017.
3. Among my statutory duties is to "establish and approve tax rates as required by law." RSA 21-J:3, XV. I am required by RSA 21-J:35, I, to "compute and establish the tax rate of each town, city or unincorporated place."
4. I have delegated the tax rate setting mechanics to the Director of the Municipal and Property Division of DRA (the "Division") who in turn supervises several Division employees who review the reports submitted by each municipal entity and develop tax rates using the criteria set forth in RSA 21-J:35 and RSA 76:8.
5. Among the tax rates set for each municipal entity are the Statewide Education Property Tax Rate ("SWEPT Rate"), and the local education property tax rate ("Local Education Rate").
6. We set a variety of tax rates for 259 cities, towns, and unincorporated towns.
7. Among my other statutory duties is to "exercise general supervision over the administration of the assessment and taxation laws of the state and over all assessing officers in the performance of their duties ... to the end that all assessments of

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property be made in compliance with the laws of the state.” RSA 21-J:3, V. My duties also include conferring with, advising and giving instruction to local assessing officers throughout the state as to the laws governing the assessment and taxation of all classes of property, and to require public officials to report to me as to the assessment of property and the collection of taxes. RSA 21-J:3, VI & VIII. This information includes the reports from municipalities submitted to us pursuant to RSA 21-J:34 which we use to establish and finalize the various tax rates for each municipal entity, including the SWEPT Rate and the Local Education Rate.

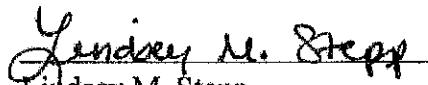
8. I and my employees have come to understand the process by which municipalities compile and adopt their municipal and education budgets, appropriations, and revenue sources each year.
9. Municipalities typically vote on their budgets at annual meetings held in March, April, or May, which budgets are applicable for the “current” year (for some towns starting January 1, for others, July 1).
10. The process to get the budget before town or school district voters at the annual meeting begins much earlier, however. Municipal and school officials begin meeting in the fall of the year before to determine what the appropriation needs are for the coming year and the availability of revenue sources to cover the appropriations and determine the anticipated level of “tax effort” that may be required.
11. Once the budget has been built, in SB2 towns most deliberative sessions or hearings will be held before dates in January through March, depending on when the entity holds its annual meeting, so that voters can learn about the budgets before the annual meeting where they will vote on them. See RSA 32:5, RSA 40:13, RSA 197:1, and RSA 195:12.
12. In “traditional” towns, the budget is warranted 14 days before the annual meeting and voted on at the business session of the meeting.
13. Once the budget is approved by the voters at the annual meeting, the municipal entity issues a first tax bill in June. This first bill is in essence a first payment on the tax effort for the entire period covered by the budget.
14. By September 1, the municipal entities report to DRA their budget and other reports. The Department gathers information from other sources, including the Department of Education, to inform the process for rate setting for each municipal entity.



15. The DRA sets rates for municipal uses, SWEPT, local education and county apportionments during October, November and early December and communicates those rates to the municipal entities.
16. With rates, the municipal entities bill taxpayers for amounts due in December which reconciles the estimated bill issued the previous June for the entire tax efforts for that year.
17. Between the prior June and December, however, the municipal entities will have already begun to expend funds to meet local needs including schools.
18. This year, municipal entities are already well into the budget creating process. By the time this affidavit will be presented to the court, many municipal entities will have completed the required public hearing and procedural requirements, and the voters will have seen the recommended budgets, which will subsequently be printed and identified on warrants or ballots that will be provided to voters at and prior to the annual meetings.
19. If a determination is made that municipal entities cannot use so-called "Excess SWEPT" to fund local education needs, it would be very disruptive to the budgeting and expenditure activities of towns and schools if that were to have immediate effect. The appropriations voted in the annual meetings are based on decisions made and legal processes employed for a number of months before. A loss of revenues after the voters approve the budgets at the annual meeting, that were anticipated at the town and school districts when they began the budget process, would likely result in cash flow problems for the entity. To avoid a tax rate spike in the fall, and to resolve the immediate cash flow problem, school districts will likely seek approval from the Superior Courts pursuant to RSA 197:3 to hold special meetings to amend the budget to reflect the reduced revenues caused by the unavailability the Excess SWEPT that had been built into the budget as long ago as the previous December.
20. If the court believed it needed to do so, it would be far less disruptive to put in place a prohibition on using Excess SWEPT beginning with the coming year's budget process which will be voted on in March/April 2024. This would give my agency time to inform the municipal entities next fall that their revenues to be considered when building their next budgets cannot include any Excess SWEPT.
21. There are occasions where the DRA sets negative tax rates, including negative local education tax rates. These scenarios occur when the combination of state education grants, SWEPT, and non-property tax revenues, exceeds the total of appropriations

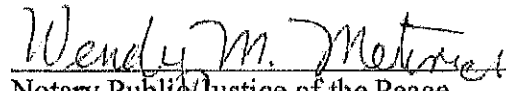
voted for local education needs. It would not make sense to then set a local education rate to generate additional un-needed education revenues and would be unfair to taxpayers. But the calculation of a negative tax rate is not confined to situations involving the local school tax rate for an unincorporated town. The Town of Benton, for example, has received a "negative" municipal tax rate in the years 2009 - 2010, 2016 - 2020, and most recently, 2022. As with any other negative tax rate this result occurs when non-property tax revenues are greater than the tax effort required. In the case of Benton the substantial amount of White Mountain National Forest payment-in-lieu-of taxes paid to Benton by the federal government result in a total greater in certain years than the taxes required for the town.

SIGNED AND SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY THIS  
3RD DAY OF FEBRUARY 2023.

  
Lindsey M. Stepp  
Commissioner

  
MERRIMACK, ss.

Subscribed and sworn to before me, in my presence, this 3rd day of February 2023.

  
Notary Public/Justice of the Peace

Commission Expires: 3/25/2025

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

Steven Rand, et al.

v.

The State of New Hampshire

No. 215-2022-CV-00167

**ORDER ON PENDING MOTIONS CONCERNING SWEPT CLAIMS**

In this case, the plaintiffs challenge the manner in which the State carries out education-related obligations imposed by the State Constitution. See Doc. 17 (Pls.' Am. Compl.). On November 20, 2023, the Court granted the plaintiffs' motion for partial summary judgment, concluding that certain practices concerning the Statewide Education Property Tax ("SWEPT") are unconstitutional, and enjoining the State from continuing those practices "[b]eginning with the budget cycle commencing in late-2023 and culminating in budget votes in March or April 2024[.]" See Doc. 86 (the "SWEPT Order"). The State now moves for a stay of the SWEPT Order pending appeal. See Doc. 91. To expedite the appellate process, the State also seeks a ruling that the SWEPT Order constitutes a final decision on the merits. See Doc. 92 (the "Rule 46(c) Request"); see also Super. Ct. R. 46(c). The Coalition, an intervenor representing certain New Hampshire cities and towns, joins in the State's motions, see Doc. 93, and moves for partial reconsideration of the SWEPT Order, see Doc. 94. The plaintiffs object to reconsideration and the requested stay, but assent to the Rule 46(c) Request. See Doc. 95. After review, the Court finds and rules as follows.

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## Background

The SWEPT Order includes a detailed summary of New Hampshire's education funding jurisprudence. See Doc. 86 at 2–9. To the extent relevant, that summary is incorporated by reference here. By way of brief background, "Part II, Article 83 of the State Constitution imposes a duty on the State to . . . define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability." Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 156–57 (2021) ("ConVal") (citations and quotations omitted). Pursuant to Part II, Article 5 of the State Constitution, "constitutional taxes" must "be proportionate and reasonable—that is, equal in valuation and uniform in rate." Claremont Sch. Dist. v. Governor, 142 N.H. 462, 468 (1997) ("Claremont II") (citations and quotations omitted)).

Over time, the legislature has crafted several tax schemes aimed at complying with the above-described constitutional obligations. See, e.g., id. In resolving questions regarding those tax schemes, the New Hampshire Supreme Court has also clarified the nature of the State's constitutional obligations. In Claremont II, for example, the court explained that because taxes intended to raise education funds serve a "State purpose"—i.e., fulfilling the State's duty "to provide a constitutionally adequate education . . . and to guarantee adequate funding"—such taxes must be "proportional and reasonable throughout the State in accordance with" Part II, Article 5. Id. at 469–70 (emphasis added). The supreme court reaffirmed this ruling in Opinion of the Justices (School Financing), concluding that a proposed "special abatement" intended to offset excess tax revenues—that is, education tax revenues generated by a given community above the amount necessary for that same community "to provide the legislatively

defined 'adequate education' for its children"—would run afoul of Part II, Article 5. 142 N.H. 892, 899–902 (1998). One year later, the Supreme Court tripped down on the requirement that education tax schemes be uniformly applied, concluding that the State could not perpetuate the unconstitutional application of such a tax via a five-year phase-in of the uniform tax rate. Claremont Sch. Dist. v. Governor (Statewide Property Tax Phase-In), 144 N.H. 210, 212 (1999) ("Claremont III").

Today, RSA 198:40-a, II, sets forth the annual per-pupil cost of providing the opportunity for a constitutionally adequate education ("adequacy aid"). The State raises adequacy aid funds via the SWEPT. See ConVal, 174 N.H. at 159. Since 2011, the State has allowed communities that raise SWEPT revenues above their respective adequacy aid levels to retain the excess. See Laws 2011, 258:7 (eff. July 1, 2011) (eliminating requirement that communities pay excess SWEPT funds to Department of Revenue Administration ("DRA") for deposit in education trust fund). For certain other locations, the DRA has set negative local education tax rates to offset the applicable SWEPT rate. See Doc. 86 at 10. In December of 2022, the plaintiffs successfully moved for summary judgment with respect to their claim that both practices result in an effective SWEPT tax rate that is not uniform, in violation of Part II, Article 5. See Doc. 50 (Pls.' Mem. Law) at 3, 14; Doc. 86 (SWEPT Order) at 15–16 ("[T]here can be no meaningful dispute that allowing communities to retain excess SWEPT funds lowers the effective SWEPT rate paid by those communities"); id. at 16–18 (emphasizing that public education system benefits entire State, and concluding that "setting of negative local education tax rates which offset the SWEPT . . . runs afoul of Part II, Article 5"). As a result, the Court enjoined the State from continuing either practice. See id. at 21.

### Analysis

As noted at the outset, the State and the Coalition have filed several motions concerning the SWEPT Order. See, e.g., Doc. 94. The Court will first address the Coalition's motion for partial reconsideration. See id. Notably, this motion does not challenge the substance of the legal rulings set forth in the SWEPT Order, but rather the remedy provided in response to those rulings. See id. In particular, the Coalition suggests that an immediate suspension of the practices at issue—i.e., allowing communities to retain excess SWEPT funds or to avoid such an excess via negative tax rates—will cause substantial hardship to those communities that have benefitted from these unconstitutional practices for the past twelve years. See id. at 2. In addition, the Coalition argues that it would be too disruptive to adjust local budgets in response to the SWEPT Order at the current stage of that process. See id. at 3–6 (arguing this shift will result in voter confusion and prevent communities from completing important projects) Given these concerns, the Coalition argues that the “public interest and balance of harms” weigh against injunctive relief. See id. at 7–8 (noting excess SWEPT funds would be held in escrow pending appeal, and citing Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 534 (1987) in support of claim that if enjoined party “would suffer injury” and injunction “does not remedy” plaintiffs’ harm, “injunction should be denied”).

This is not the first time the Coalition has raised these concerns. Rather, the Coalition voiced substantially similar concerns in connection with a November 28, 2022 hearing on the plaintiffs’ request for preliminary injunctive relief. See Doc. 41 (Coalition’s Obj. Pls.’ Mot. TRO & Prelim. Injunct.). At that stage of the proceedings, the Coalition argued that the “mere” fact that the plaintiffs’ “constitutional rights . . . have

been allegedly violated” did not amount to irreparable harm. See id. at 4. Moreover, in comparing the plaintiffs’ claimed injuries to the potential fiscal impact on Coalition members, the Coalition took the position that the relevant harms were “obviously one-sided[.]” Id. at 6. Significantly, however, that view was premised on the Coalition’s perception that preliminary injunctive relief would put “dozens of communities in ‘crisis’ and facing a million-dollar deficit in sixty days.” Id.

In denying the plaintiffs’ request for preliminary injunctive relief, the Court was persuaded by the Coalition’s time-based arguments, noting:

The Court in no way wishes to minimize the significance of the plaintiffs’ claimed constitutional injuries. Nevertheless, the Court cannot ignore the substantial, immediate, and concrete harm that the Coalition members and their constituents would suffer if the Court were to grant the plaintiffs’ request for preliminary injunctive relief. Because the Commissioner [of the DRA] is responsible for carrying out the State’s education funding scheme, the Court cannot fault the Coalition members for relying on the Commissioner’s years-long practice of allowing them to retain excess SWEPT funds or offset their respective SWEPT rates.

Doc. 48 (Dec. 5, 2022 Order) at 11; see UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987) (explaining that in exercising discretion concerning requests for injunctive relief, courts consider circumstances of each case and apply principles of equity).

In the Court’s view, however, the equitable scales have shifted. As an initial matter, the Court remains both unpersuaded and deeply troubled by the characterization of the plaintiffs’ injuries as a “mere” violation of their constitutional rights. See Doc. 41 at 4; see also Doc. 94 at 7–8 (arguing plaintiffs “will not gain any benefit from” injunction because excess SWEPT revenues will be held in escrow pending appeal). New Hampshire Supreme Court Rule 42E requires that every attorney admitted to practice law in New Hampshire “take and subscribe an oath to

support the constitutions of New Hampshire and of the United States." Further, as the Claremont III court recognized, "[t]he New Hampshire Constitution is the supreme law of this State," and "[e]very person chosen governor, councilor, senator, or representative in this State is solemnly committed by oath taken pursuant to Part II, Article 84 to 'support the constitutions' of the United States and New Hampshire." 143 N.H. at 158. Against that backdrop, the Court concludes that although the plaintiffs will not sustain an immediate fiscal benefit from the disgorged funds, they will derive significant benefit from injunctive relief that cures the above-described constitutional violations.

In weighing that benefit against the concerns raised by the Coalition, the Court notes that the Coalition has now been involved in this litigation for well over a year. In addition, having reached the merits of the plaintiffs' Part II, Article 5 SWEPT claims, the Court is persuaded that the clarity of the relevant legal landscape should have inspired Coalition members to plan for the fiscal impacts of the SWEPT Order during the pendency of this action. See, e.g., Opinion of the Justices (School Financing), 142 N.H. at 899–902 (concluding "special abatement" intended to offset excess education tax revenues would run afoul of Part II, Article 5). As the Court previously recognized, it might have been imprudent or impractical for communities to collect additional tax revenues during prior budget cycles in anticipation of the rulings set forth in the SWEPT Order. See Doc. 86 at 20. Given the substantial jurisprudence supporting the plaintiffs' claims, however, it would have been both prudent and practical for those communities to consider the fiscal impact of the plaintiffs' SWEPT claims when planning for this budget year. See Doc. 50 at 1–3 (explaining plaintiffs moved for partial summary judgment in December of 2022 so communities could plan for "next property tax year").



In the Court's view, any failure to prepare for the foreseeable suspension of unconstitutional practices does not justify the continuation of those practices. See Claremont III, 143 N.H. at 158 ("Absent extraordinary circumstances, delay in achieving a constitutional system is inexcusable. The legality of the education funding system in this State has been questioned for at least the past twenty-seven years . . . . The controlling legal principles are plain."); see also Lanfear v. Home Depot, Inc., 679 F.3d 1267, 1270 (11th Cir. 2012) (citing Aesop, "The Ant and the Grasshopper," Aesop's Fables Together with the Life of Aesop 115 (Rand McNally 1897) in support of proposition that if people are "wise like Aesop's ant, during the summer and autumn of their lives they store up something for the winter"). Accordingly, the Coalition's motion for partial reconsideration is **DENIED**.

In moving for a stay of the injunctive relief set forth in the SWEPT Order, the State and the Coalition raise similar arguments concerning the wisdom of directing the DRA to collect excess SWEPT funds and hold them in escrow pending appeal. See Docs. 91, 93. For the reasons outlined above, those arguments are unavailing. In addition, the State also maintains that holding excess SWEPT funds in escrow will prove overly complicated. See Doc. 91 ("The DRA will have to segregate those excess funds by local jurisdiction and . . . account for excess SWEPT that municipalities were unable to collect"). The Court is, again, unpersuaded. The DRA is well-versed in determining tax revenues to be collected from individual communities, and tracking amounts collected and owed. The Court is thus confident that the DRA can readily devise a system for recording the amount of excess SWEPT revenues generated by and collected from individual communities while this matter is pending appeal. To the

extent any communities fail to remit the requisite level of excess SWEPT revenues, the Court is similarly confident that the DRA can follow existing protocols to obtain the missing amounts or offset them through other means.<sup>1</sup>

Consistent with the foregoing, the motions seeking a stay of the remedy set forth in the SWEPT Order pending appeal are **DENIED**.

The final pending SWEPT motion is the State's Rule 46(c) Request. See Doc. 92; see also Super. Ct. R. 46(c). Rule 46(c)(1) provides:

When, in a civil action that presents more than one claim for relief . . . , the court enters an order that finally resolves the case as to one or more, but fewer than all, claims . . . , the court may direct that its order . . . be treated as a final decision on the merits as to those claims . . . if the court:

- (A) explicitly refers to this rule;
- (B) identifies the specific order or part thereof that is to be treated as a final decision on the merits;
- (C) articulates the reasons and factors warranting such treatment; and
- (D) finds that there is an absence of any just reason for delay as to the party or claim that is to be severed from the remainder of the case.

As noted at the outset, all parties assent to the State's Rule 46(c) Request. See Docs. 93–94. Upon review, the Court agrees that the relief requested in that filing is warranted. In particular, while the SWEPT Order pertains to the manner in which the DRA collects education tax revenues from local communities, see Doc. 92 ¶ 2, the plaintiffs' remaining claims concern the sufficiency of the education funding the State provides to local communities. See id. ¶¶ 2–3. Those issues implicate distinct legal

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<sup>1</sup> The State and the Coalition seemingly suggest that the DRA cannot compel communities to collect or remit excess SWEPT revenues. The Court views this suggestion with extreme skepticism. Though the Court has heard no evidence concerning this issue, the Court would be surprised to learn that communities collect and remit State taxes on a purely voluntary basis. Rather, common sense suggests that the DRA has mechanisms in place to enforce the tax scheme, perhaps by offsetting uncollected or improperly retained amounts via a reduction in State grants or aid. If the State wishes to further contest the DRA's authority in this context, it may file a timely motion for reconsideration, following which the Court will schedule an evidentiary hearing regarding this narrow issue.

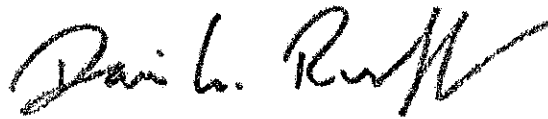
questions. Moreover, given the compelling interests involved, there is no just reason to delay appeal of the SWEPT Order. Accordingly, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92. The Court thus directs that the SWEPT Order is to be treated as a final decision on the merits with respect to the plaintiffs' Part II, Article 5 challenge to the administration of the SWEPT. See Super. Ct. R. 46(c)(1).

#### Conclusion

Consistent with the foregoing, the Coalition's motion for partial reconsideration is **DENIED**. See Doc. 94. The State's motion for a stay of the injunctive relief set forth in the SWEPT Order, see Doc. 91, and the Coalition's joinder in that motion, see Doc. 93, are also **DENIED**. As set forth above, if the State wishes to contest the DRA's authority to enforce the relevant aspects of the tax scheme, it may file a timely motion for reconsideration, following which the Court will schedule an evidentiary hearing concerning that narrow issue. Finally, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92.

SO ORDERED.

Date: February 20, 2024



Hon. David W. Ruoff  
Rockingham County Superior Court

Clerk's Notice of Decision  
Document Sent to Parties  
on 02/20/2024