

FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, December 4th, 2017

6:00 p.m.

Hampden Town Office

1. Meeting Minutes
 - a. November 6, 2017
 - b. November 20, 2017
2. Review & Sign Warrants
3. Old Business
 - a. Meeting with Auditor regarding process to complete transition from the enterprise method of accounting to revenue and expense method of accounting in the recreation and pool departments through transfer of funds from clearing accounts to reserve accounts
4. New Business
 - a. Recommend Council authorization for the transfer of \$224,665.43, plus any amount added as a result of close-out of the FY17 Audit, from Recreation Clearing Account (1-199-01) to Recreation Area Reserve (3-767-00)
 - b. Recommend Council authorization for the transfer of \$58,452.92, plus any amount added as a result of close-out of the FY17 Audit, from Pool Clearing Account (1-111-05) to Pool Facility Reserve (3-771-00)
 - c. Recommend Council authorization for the expenditure of an amount up to \$2,592.00 from the Personnel Reserve Account (3-733-00) for the purpose of offsetting costs associated with payroll expenses for a temporary part-time worker
 - d. Recommend Council authorization for the expenditure of \$2,542.04 from the Municipal Building Reserve Account (3-702-00) for repairs to HVAC at Town Office
 - e. Recommend Council authorization for the expenditure of \$1,300 from the Municipal Building Reserve Account (3-702-00) for repairs to the leaking roof at Town Office
 - f. Update on RSU-22 proposed February 2018 Referendum regarding replacement of artificial turf field at Hampden Academy
 - g. Informational update from Special Counsel Kate Grossman, Esq., of Farrell, Rosenblatt & Russell regarding litigation with Acadia Hospital Corp. regarding applicability of Service Charge Ordinance
5. Public Comment

6. Committee Member Comments

7. Adjournment

FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, November 6th, 2017

MINUTES – DRAFT

Hampden Town Office

Attending:

*Councilor Greg Sirois, Chair
Mayor David Ryder
Councilor Ivan McPike
Councilor Stephen Wilde
Councilor Mark Cormier
Councilor Terry McAvoy*

*Councilor Dennis Marble
Town Manager Angus Jennings
Assessor Kelly Karter
Rec Directory Shelley Abbott
Resident Allison Berube
About 4 residents*

Chairman Sirois called the meeting to order at 6:00 p.m.

1. Meeting Minutes

- a. **October 16th, 2017** – *Motion by Councilor Marble seconded by Councilor McAvoy to approve the minutes as written. Passed 6-0.*

2. Review & Sign Warrants – *Warrants were reviewed and signed.*

3. Old Business

4. New Business

- a. **Consideration of a recommendation to Council to exercise the Put Option for the sale of PERC ownership interests** – *Manager Jennings provided background based on the materials in the packet. Motion by Councilor Marble seconded by Councilor McAvoy to recommend that the Council exercise the Town of Hampden Put Option for the sale of its ownership interests in PERC. Motion passed 6-0.*
- b. **Recommend Council authorization for the expenditure of an amount up to \$6,720 from the Economic Development Reserve Account (3-727-00) for the purpose of purchasing town center flags – referral from Infrastructure Committee** – *Mayor Ryder summarized the recommendation in favor of this funding from the Infrastructure Committee, noting that the estimated cost to repair the electrical fixtures to allow safe installation of holiday lighting on the poles would be very costly. Manager Jennings clarified that the amount of requested authorization is \$8,280 which includes the*

amount added to the reserve account in the FY18 budget plus the previous balance in that account. There was a motion by Councilor McPike seconded by Councilor McAvoy to recommend Council authorization of \$8,280 from the Economic Development Reserve Account for the purpose of purchasing town center flags. Motion passed 6-0.

- c. Recommend Council authorization for the expenditure of an amount up to \$6,800 from the Roads/Streets Reserve Account (3-761-00) for the purpose of town center sidewalk/crosswalk engineering** – *Manager Jennings summarized the materials in the meeting packet. Mayor Ryder expressed support to add two crosswalks in the Town Center (at Cottage Street and at the Kiwanis driveway) but said that MaineDOT doesn't require engineered plans, and that he does not support the funding request. He said he recommends that we get construction quotes and put the funds toward constructing the crosswalks. There was discussion among the Councilors and Manager regarding whether engineered plans would be needed. Resident Allison Berube said that if the contract is written correctly that the contractor would absorb the responsibility to ensure ADA compliance. Mayor Ryder said it's all spelled out in the MDOT specs. There was a motion by Councilor Marble seconded by Councilor McAvoy to recommend Council authorization of the requested funding. The motion failed 0-6.*
- d. Recommend Council authorization for contract extension with Woodard & Curran for the design for parking and permitting on the Lura Hoit Pool Site** – *Manager Jennings summarized the cost proposal received from Woodard & Curran to bring the parking lot and stormwater features through the DEP and site plan approval processes. This had been requested by the Services Committee at its October meeting. He said the existing contract with W&C provides that the contract can be extended, but also provides the Town the option to re-bid services. The Services Committee had indicated that they intended to stay with W&C, but at that time had not received the cost proposal. Manager Jennings said he thinks the cost proposal is somewhat higher than people expected, but his discussions with Jim Wilson provided context for the cost, as Woodard & Curran has not taken a project through the Site Location of Development permit process for less than mid \$60,000 range. Mr. Wilson had described to Manager Jennings that the cost drivers included the overall site stormwater design, and taking into account potential future use of the site. The depth of the current pipeline crossing the site is an important control point, and if there were fields above the pipeline in the future this would affect elevations, grading, and stormwater management design throughout the site. Although a future field is not*

part of what is presently being proposed, Mr. Wilson told Manager Jennings it was his recommendation that this approach would best preserve the Town's future options for the site and would best advance the initial Town direction within this process which was to design things with the long-term in mind so that piping and stormwater structures would not need to be torn up and redone in the future. Manager Jennings said that the proposed fee of \$51,000 was a lot of money, no question about it.

Chairman Sirois asked for clarification as to the current agenda item. Manager Jennings said the current item is to consider authorizing an extension of the contract, and the next agenda item relates to the authorization of reserve funding based on the cost proposal.

Councilor McAvoy expressed confusion about whether the proposal takes into account the pipeline. Manager Jennings said that it does take into account the pipeline, so that this would be taken into account if additional development occurred on the site in the future. Manager Jennings said that if the parking is the last thing the Town ever does on the site, that the engineering costs could be lower.

Councilor McAvoy said that fields have nothing to do with impervious surface or stormwater runoff. Manager Jennings said that fields do have different stormwater runoff patterns than wooded area. He acknowledged that fields are not impervious surface, but that their location and elevation would affect runoff patterns. Paved area to serve the fields would also be a factor.

Councilor McPike said he also feels lost and is trying to get his arms around it. He said he's looking for a cost figure. He asked will it cost \$51,000 to tell us what it will cost us? Manager Jennings said no, that is the cost to get it through DEP permitting and local Site Plan Review, which would take the design work to date to an engineering level, which would refine the construction cost estimates. The estimated construction cost estimates already provided by Woodard & Curran are the best available information, but would be more refined and more accurate based on additional detailed engineering.

Councilor Marble said we need engineered plans in order to get DEP permitting. He asked, if the Town were to switch vendors, what might be lost and if this is a concern? Manager Jennings said that the contract provides that the work products created to date belong to the Town and are not proprietary, so could be transferred to another vendor. He said that, if the Council didn't change the conceptual plan W&C prepared, he didn't think it would be a significant cost impact,

but would impact staff time in terms of scoping and bidding out the next phase of work.

Chairman Sirois said that in order to move the process forward we need to either proceed with Woodard & Curran or seek another vendor. Manager Jennings said yes, a professional engineer will need to create and stamp the plans.

Councilor McPike said if we don't want to spend that amount of money, this whole thing stops? Manager Jennings said that we would need to figure out if there is another way forward and said he's open to suggestions. He said Mr. Wilson had represented to him that the cost proposal he provided was, in his opinion, realistic.

Mayor Ryder said if we cut our losses with Woodard & Curran we could bring them back at a later date. He said he plans to vote no.

Councilor McAvoy was surprised that the potential future fields was part of Mr. Wilson's thinking since he thought it was made very clear at the Services Committee meeting that the scope was only for the parking and stormwater. Manager Jennings said Mr. Wilson understands the direction is just the parking, but that his understanding of the Town's objectives is that whatever is done would not need to be torn up and redone in the future if a future Council wanted to do more on the site. Manager Jennings acknowledged to Councilor McAvoy that Mr. Wilson may be looking at this in a way that he as a Councilor may think is outside the scope but that Mr. Wilson is trying to be responsive to the objective in the initial scope. Manager Jennings said that whether Mr. Wilson got that right is subject to debate.

Councilor McAvoy said that, at the public meetings, he didn't hear more people supporting fields than those not supporting the work. Councilor McPike said he thought they would be given two costs, one for the parking and stormwater and another to also do fields, and that he now sees it will cost \$51,000 to get that information. Mayor Ryder said no, we wouldn't even get that, the scope now is limited to just parking and stormwater. Manager Jennings confirmed that is correct, the cost would include engineering the parking and stormwater, including stormwater management for current uses on site constructed since 1973, and would take that through DEP and local permitting. Manager Jennings referred to language in the proposal that says "if during DEP kickoff or design we identify environmental impacts not currently anticipated, or if DEP asks that the Post Office site be reviewed, we will meet with you to refine our approach including fee impacts." Manager Jennings said he didn't initially

understand the language and saw it as a risk factor so had followed up with Mr. Wilson, and Mr. Wilson clarified that the Moyse Environmental review was focused on undeveloped areas of the site that may be developable. For example, Moyse did not flag wetlands on the east side of the Town Office. The W&C proposal was clarifying that, if DEP asked for additional review of environmental areas such as those, this would add cost and would add permitting time. Certain types of analysis, such as vernal pools, can only be done during a certain time of year, and this could result in delays that could affect the potential to be in a position to construct parking prior to the fall 2018 season. He said Mr. Wilson did not expect this, but that it was important that the Town understand this could happen. Manager Jennings described that potential – for DEP to require additional wetlands delineation, for example – as the biggest risk factor he sees to the overall project timeline. Other than that, the timeline will depend on when we get someone under contract for the next phase of engineering and permitting.

Chairman Sirois called for any further discussion or public comment.

Resident Allison Berube complimented the Committee on their critical thinking. She appreciates the work that has been done. She said the cost per parking spot was extremely high. After the \$51,000, then we have to construct the stormwater, all before we can add a single parking spot. She supports voting this down tonight, to look at other options. She would support the Town looking into buying the 25 acre parcel across from her house on Main Road North as a better option for fields. She also said people could park at the Town Office and walk to the Pool site fields. She thanked the Councilors for their hard work.

Motion by Councilor McPike seconded by Councilor Marble to recommend Council authorization to extend the contract with Woodard & Curran for engineering and permitting at the Lura Hoit Pool site. Motion failed 0-6.

- e. **Recommend Council authorization for the expenditure of an amount up to \$51,000 from the Rec Area Reserve Account (3-767-00) for the purpose of contract extension with Woodard & Curran for engineering services for parking and permitting on the Lura Hoit Pool Site –** *There was a motion by Councilor McPike seconded by Councilor Marble to recommend the requested funding. The motion failed 0-6. Manager Jennings asked that the Committee provide some direction as to whether this matter would next be considered at the November Services Committee meeting. Mayor Ryder said that would be too soon and it was agreed this would be*

considered again at the December meeting of the Services Committee. Councilor Marble said that we had contracted with Woodard & Curran because they're more knowledgeable than the Town regarding the DEP permitting process, and he said he doesn't want to lose the value of the work that has been done and would like to build on that work. Mayor Ryder said we're not mothballing anything, but we want to see if there's a better way to move forward.

- f. Referral to Council for referral to Public Hearing, a proposed Zoning Map Amendment to reflect the proposed rezoning of a portion of parcel 33-0-11-A located at the intersection of US Route 202 and Coldbrook Road, from Residential A District to Commercial Services District – referral from Planning & Development Committee – Councilor McPike, Chairman of the P&D Committee, said that the Committee is supportive of the proposed rezoning. Motion by Councilor McPike seconded by Councilor Marble to refer to Council for referral to public hearing proposed zoning amendments related to recreational marijuana. Motion passed 6-0.**
- g. Referral to Council for referral to Public Hearing, a proposed Zoning Ordinance Amendment to define Retail Marijuana, Retail Marijuana Store, Retail Marijuana Social Clubs, Drug Store or Pharmacy and to amend existing Definitions relative to Retail Marijuana and related uses, with the intent to prohibit Retail Marijuana Stores and Retail Marijuana Social Clubs in the Town of Hampden – referral from Planning & Development Committee – Motion by Councilor McPike seconded by Councilor Marble to refer to Council for referral to public hearing proposed zoning amendments related to recreational marijuana. Motion passed 6-0.**
- h. Request for a tax abatement for property located at 501 Western Avenue for FY 14-15, FY 15-16 and FY 16-17 – Assessor Karter summarized the materials in the meeting packet. Motion by Councilor Marble seconded by Councilor McAvoy to recommend Council approval of the requested tax abatements for the years noted and in the amounts recommended by the Assessor. Motion passed 6-0.**

5. Public Comment – None.

6. Committee Member Comments – None.

7. Adjournment

There being no further business, the meeting was adjourned at 6:51 PM.

Respectfully submitted – Angus Jennings, Town Manager

FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, November 20th, 2017

MINUTES – DRAFT

Hampden Town Office

Attending:

*Councilor Greg Sirois, Chair
Mayor David Ryder
Councilor Terry McAvoy
Councilor Stephen Wilde*

*Councilor Mark Cormier
Councilor Dennis Marble
Councilor Ivan McPike
Town Manager Angus Jennings
Town Clerk Paula Scott*

Chairman Sirois called the meeting to order at 6:30 p.m.

- 1. Meeting Minutes** – *None.*
- 2. Review & Sign Warrants** – *Warrants were reviewed and signed.*
- 3. Old Business**
- 4. New Business**
 - a. Auditor's letter regarding completing the process to move from the method of enterprise accounting to revenue and expense accounting in the recreation and pool departments** – *Manager Jennings summarized the Auditor's memo in the packet, noting that the recommended transfer of funds was part of completing the transfer away from enterprise budgeting. He said he is not seeking a Council vote tonight but that this item will be placed on the next agenda for action. Councilor Marble said that it sounds pretty straightforward. Manager Jennings said that his understanding is that the Council's policy intent in establishing enterprise budgeting in the first place was to make funds above expenses available for recreation and pool uses. Councilor McAvoy asked whether the funds could simply be put into the General Fund instead of reserve and Manager Jennings said that the Council has the authority to put the funds into the General Fund. Manager Jennings noted that a representative from the Auditor's firm would be present at the next meeting to answer questions.*
 - b. Recommend Council authorization for the expenditure of an amount up to \$6,300 from the Roads/Streets Reserve Account (3-761-00) for town center crosswalk engineering – referral from**

Services Committee – *There was a motion by Councilor Marble seconded by Councilor McAvoy to recommend Council authorization for the expenditure of an amount up to \$6,300 from the Roads/Streets Reserve Account for town center crosswalk engineering. Motion passed 6-1 with Mayor Ryder in opposition.*

- c. Town Manager’s Financial Summary Report** – *Manager Jennings said that the report in the packet demonstrates month-end bank balances over the past couple of years and shows a generally positive trend. He said he is continuing to work on a format for periodic reporting to the Finance Committee and that this will be part of it. He noted that the bank balances do not reflect a true picture of financial resources because they do not factor in funds that are there because of interfund transfers, TANs, etc., but that he has a different report that he updates regularly that does include this information. This item was informational and no action was taken.*

5. Public Comment – *None.*

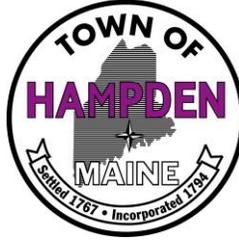
6. Committee Member Comments – *None.*

7. Adjournment

There being no further business, the meeting was adjourned at 6:42 PM.

Respectfully submitted –
Angus Jennings, Town Manager

Town of Hampden
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
Email:
townmanager@hampdenmaine.gov

TO: Finance Committee and Town Council
FROM: Angus Jennings, Town Manager
DATE: November 30, 2017
RE: Transition from Enterprise to Revenue/Expense Budgeting

Please find enclosed the memo from the Auditor reviewed at the previous Finance Committee meeting.

Background: A review of Town financial records shows that the policy intent of “enterprise” budgeting was to provide a non-taxation revenue source for Recreation and Pool reserve needs instead of budgeting taxation funds into those reserve accounts. As a result, these are reported as “committed” funds in Town Audits.

“Enterprise” budgeting for Recreation began in the 1990s. A review of archived accounting filed dating back to FY05 shows that no budgeted funds were put toward Recreation Reserve over that period of time (although \$10,000 was budgeted toward the Playground Reserve in both FY05 and FY07, totaling \$20,000).

In FY17, \$80,000 was placed in the Recreation Reserve to fund the ongoing work related to the Pool/Town Building site. An additional \$10,000 was budgeted toward this account, for these purposes, in the FY18 Budget. These were the first budgeted funds added to the Recreation Reserve account since FY05, at least. (Access to pre-FY05 TRIO accounting records is not readily available).

“Enterprise” budgeting for Pool began in 2013. A review of adopted Town Budgets shows that, from FY05 through FY12, the Town’s operating budget committed \$10-15,000 per fiscal year to the Pool Reserve account (a total of \$110,000 over that time). No funds were budgeted toward Pool Reserve in FY13 through FY16. In FY17 and FY18, \$5,000 each year was placed in Pool Reserve toward the cost of repainting the pool interior.

Town budgeting over the period of time that “enterprise” budgeting was used supports other references (i.e. Town Manager memos, meeting minutes) that the “enterprise” method was intended *instead of* budgeting reserve funds. Funds budgeted toward Rec and Pool Reserves in FY17 and FY18 were toward specific initiatives (Pool site) and repairs (Pool painting), and do not begin to cover known and anticipated costs of future investments toward Rec and Pool facilities (as set out in the Capital Program).

In order to put the Town in a better position to absorb these future costs, and to maintain previous policy, and public commitments, regarding the use of Rec and Pool program proceeds, I recommend authorizing the transfers included on the agenda (from Rec Clearing to Rec Reserve, and from Pool Clearing to Pool Reserve). FY17 numbers will not be final until the Audit is complete.

James W. Wadman

Certified Public Accountant

Telephone 207-667-6500

Facsimile 207-667-3636

James W. Wadman, C.P.A.

Ronald C. Bean, C.P.A.

Kellie M. Bowden, C.P.A.

Wanese L. Lynch, C.P.A.

Amy E. Atherton, C.P.A.

Town of Hampden
RECEIVED

OCT 23 2017

Office of the
Town Manager

October 18, 2017

Town of Hampden
Town Council
106 Western Avenue
Hampden, ME 04444

The recreation enterprise fund and the pool enterprise fund are committed funds. Committed funds include fund balance amounts that are constrained for specific purposes that are internally imposed by the government through town council voting, and does not lapse at fiscal year-end. The town shows the activity for the fund in the general fund expense account. At year end these accounts are closed into the liability account on the general fund.

For financial statement purposes the recreation and pool enterprise funds have been reported as reserve funds. We are aware that, in the current fiscal year budget, the prior method of enterprise accounting for recreation and pool has been changed to standard expense and revenue budgeting. To complete this transition, in the accounting system it would make sense for the enterprise funds (which are reported in general ledger "clearing accounts" in the general fund) to be reported within the reserve fund. Votes of the Town Council to transfer the balance from the recreation enterprise fund into a recreation reserve fund, and to transfer the balance from the pool enterprise fund into a pool reserve fund, would be necessary to execute these transfers.

If you have any questions, please do not hesitate to contact our office.

Best regards,



James W. Wadman, C.P.A.

Town Budgeted Funds toward certain Reserve accounts, FY02-FY18

Acct	Reserve Account	FY02 Budget	FY03 Budget	FY04 Budget	FY05 Budget	FY06 Budget	FY07 Budget	FY08 Budget	FY09 Budget	FY10 Budget	FY11 Budget	FY12 Budget	FY13 Budget	FY14 Budget	FY15 Budget	FY16 Budget	FY17 Budget	FY18 Budget
3-767-00	Rec Area Res	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 80,000	\$ 10,000
3-768-00	Playground	\$ -	\$ -	\$ -	\$ 10,000	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,000
3-769-00	Rec/Conserv	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3-771-00	Pool Facility	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ 5,000	\$ 5,000

Source: Angus Jennings, Town Manager, 11/30/17

TO: Services Committee
FROM: Sue Lessard, Town Manager
DATE: June 4, 2015
RE: Enterprise Accounts

The purpose of this memo is to provide information requested by Councilor McAvoy in regard to the Recreation Enterprise Account. He asked for information related to when the Recreation Enterprise Account was established, by whom, and under what authority. Since the Recreation Enterprise account pre-dates me, I reached out to former Town Manager Marie Baker. She indicated that the Enterprise account was established as part of the budget process sometime in the mid 1990's when the Recreation Committee recommended that there be a full-time recreation director for the town.

I went back to Council minutes for the period from 1990 forward and found that the Enterprise Account was first listed as a separate account as part of the 1997 budget. The minutes from that time period do not do it in the form of any type of motion – it just separates the fee-based programming into a different account that would not lapse. I have attached minutes from 1996 and 1997 that discuss recreation expansion and a fund in which income would cover the expenses associated with personnel. I do not have any other documentation and from discussions with the former Manager, I do not think any exists.

When the Skehan Center was acquired as a lease by the Town and turned over to the Recreation department to run – the department was also tasked with covering all of the costs of it through generation of revenue by the facility and coverage of any deficit by funds that are generated through the Recreation enterprise account. At first all were maintained together, but there was a desire on the part of the Council to be able to see what the Skehan Center actually cost to operate and how many actual programs were run from that facility. If there is some other way that the Council wishes this information to be presented, I am happy to set that up so that you have it.

The Council did approximately the same thing in 2013 when, as part of the budget process it separated pool income and all of the pool operational costs except wages/benefits into an enterprise account designed to function in the same way that the Recreation Enterprise account functions.

The main reason for the establishment of these accounts is so that any funds generated solely by one activity – recreation, or the pool – over above the costs of operating the programs - can be carried forward for use in replacement of capital items (tennis court improvements, major repair at the Skehan Center, etc. on the Recreation side and major pool repairs, on the pool side.

I have attached a sheet that shows the total budgets for the pool, recreation, the Skehan Center, and Rec Enterprise along with their funding sources. I hope that this is helpful.

TO: Hampden Town Council
FROM: Sue Lessard, Town Manager
DATE: May 14, 2015
RE: Skehan Center and Recreation Enterprise Budgets

I have included the two enterprise budgets for Recreation with this packet since the Recreation Department operating budget is on the agenda for review on Monday, May 18th. These two budgets are NOT part of the operating budget. They are fee supported and the remaining balances do not lapse at year end the way that the operating budget does. No property tax dollars are used to support these two budgets. The net positive balance between the two accounts is available for use to replace playground equipment, repair the tennis courts, purchase major equipment, or do needed major repairs to the Skehan Center.

Review of these budgets provides a clearer picture of what is offered through the Hampden Recreation department that is funded from fees.



New Budget Method for Lura Hoyt Pool Income and Expenses

During this year's budget review, the Hampden Town Council made the decision to change the manner in which the funding of the Lura Hoyt Pool was done, in order to make it more consistent with the manner of funding of other Town Recreation activities. Property taxation was raised to cover the cost of salaries and benefits for the people who work at the pool. All other expenses for the pool are to be covered by revenue generated by the use of the pool. These expenses include heating, electricity, supplies, maintenance, training, and equipment. Funds received from pool fees will be maintained in an enterprise account which allows them to remain dedicated to expenses generated by the pool from year to year. The Pool staff and Board of Trustees also work on outside projects and fundraisers to help cover the cost of operational and long term pool needs. Non-pool recreation is treated this same way, in that personnel expenses for the Director and Assistant Director are paid for through property taxation, but the cost of operation of all the programs and other personnel that work on those programs that are run by the department are paid for through program fees. ■

Hampden Garden Club to Sponsor Craft Fair

The Hampden Garden Club will hold its second annual craft fair from 10 a.m. to 2 p.m., October 27 at Harmony Hall, 24 Kennebec Road.

Fourteen talented artisans from this area will offer a wide variety of unique, handcrafted items. This is an ideal opportunity to do some early Christmas shopping for that very special one-of-a-kind gift. In addition, Garden Club members will be selling their famous homemade pies, usually only available at the spring plant and pie sale. Visitors to the Craft Fair will also have the opportunity to see the results of the club's recent restoration work on historic Harmony

Hall. The latest of these renovations was the replacement of the front porch and entry steps and the addition of a handicapped access ramp.

Also club members want to thank the residents of Hampden for donating their used plant pots at the plant pot box located at the Hampden transfer station. Thus far, 750 plant pots have been collected. These pots will be filled with plants to be sold next Spring at the club's Perennial Plant & Pie Sale on May 18, 2013. All proceeds from the sale will be used to continue the restoration of Harmony Hall. Thanks to everyone for your support of the Hampden Garden Club! ■

Current Account Status

4-a

G 1-199-01 GENERAL FUND / REC CLEARING

-224,665.43 = Beg Bal 0.00 = YTD Net -224,665.43 = Balance
 0.00 = Adjust 0.00 = YTD Enc

Per	Jrnl	Check	Date	Vendor-----	Description-----	RCB / Type	Debits	Credits
Totals-							0.00	0.00

Monthly Summary

Month	--Regular Entries--		--Balance Entries--	
	Debits	Credits	Debits	Credits
Totals	0.00	0.00	0.00	0.00

Current Account Status

G 3-767-00 RESERVE ACCT / REC AREA RES

-69,921.40 = Beg Bal
0.00 = Adjust

2,231.64 = YTD Net
0.00 = YTD Enc

-67,689.76 = Balance

Per	Jrnl	Check	Date	Vendor-----	Description-----	RCB / Type		Debits	Credits
08	0080	1880	08/02/17	00517 U.S. POSTAL	POSTAGE FOR POOL SITE	R	AP	62.23	0.00
08	0102	1882	08/09/17	00539 WOODARD & CU	POOL/MUN BLDG SITE ASSESS	R	AP	2,041.00	0.00
08	0102	1881	08/09/17	00517 U.S. POSTAL	RECREATION FIELD MAILING	R	AP	584.66	0.00
08	0121	1884	08/16/17	00448 SNOWMAN, INC	POOL SITE LETTERS-GREEN	R	AP	568.50	0.00
09	0239	1891	09/20/17	00539 WOODARD & CU	SCHEMATIC PLAN	R	AP	4,682.75	0.00
10	0255	1894	10/11/17	00539 WOODARD & CU	MUN BUILD/POOL SITE PLAN	R	AP	4,292.50	0.00
11	0384		11/13/17		11/13/2017 C/R	R	CR	0.00	10,000.00
Totals-								12,231.64	10,000.00

Monthly Summary

Month	--Regular Entries--		--Balance Entries--	
	Debits	Credits	Debits	Credits
August	3,256.39	0.00	0.00	0.00
September	4,682.75	0.00	0.00	0.00
October	4,292.50	0.00	0.00	0.00
November	0.00	10,000.00	0.00	0.00
Totals	12,231.64	10,000.00	0.00	0.00

Current Account Status

4-b

G 1-111-05 GENERAL FUND / POOLCLEARING

-58,452.92 = Beg Bal
0.00 = Adjust

0.00 = YTD Net
0.00 = YTD Enc

-58,452.92 = Balance

Per	Jrnl	Check	Date	Vendor-----	Description-----	RCB / Type	Debits	Credits
Totals-							0.00	0.00

Monthly Summary

Month	--Regular Entries--		--Balance Entries--	
	Debits	Credits	Debits	Credits
Totals	0.00	0.00	0.00	0.00

Current Account Status

G 3-771-00 RESERVE ACCT / POOL FACILTY

-52,034.09 = Beg Bal
0.00 = Adjust

4,880.00 = YTD Net
0.00 = YTD Enc

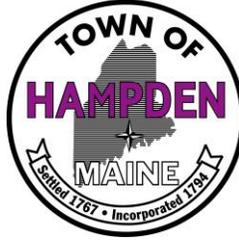
-47,154.09 = Balance

Per	Jrnl	Check	Date	Vendor-----	Description-----	RCB / Type	Debits	Credits
09	0232		09/19/17		09/19/2017 C/R	R CR	0.00	5,000.00
09	0239	1890	09/20/17	00000 R & M PAINTI	INTERIOR REPAIR/REPAINT	R AP	10,180.00	0.00
10	0310	1899	10/18/17	00481 TOWN OF HAMP	REIMB EXP A/C-LEE BLDRS	R AP	5,200.00	0.00
10	0310	1898	10/18/17	00481 TOWN OF HAMP	REIMB EXP ACCT-BLUECOLLAR	R AP	2,800.00	0.00
10	0310	1896	10/18/17	01122 EATON PAVING	SIDEWWALKS/CURBING/PAVING	R AP	8,675.00	0.00
10	0310	1895	10/18/17	00981 BLUE COLLAR	PAINTING BATHROOMS	R AP	1,605.00	0.00
10	0308		10/18/17		10/18/2017 C/R	R CR	0.00	18,580.00
Totals-							28,460.00	23,580.00

Monthly Summary

Month	--Regular Entries--		--Balance Entries--	
	Debits	Credits	Debits	Credits
September	10,180.00	5,000.00	0.00	0.00
October	18,280.00	18,580.00	0.00	0.00
Totals	28,460.00	23,580.00	0.00	0.00

Town of Hampden
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
Email:
townmanager@hampdenmaine.gov

TO: Finance Committee and Town Council
FROM: Angus Jennings, Town Manager
DATE: November 29, 2017
RE: Request for authorization of expenditures from Personnel Reserve

This is a follow-up to my previous memo of April 26, which was taken up by the Finance Committee and Council at your May 1 meetings.

A Town employee received a medical diagnosis last spring that required some amount of time away from work for testing and treatment, and which will continue some additional time off. Time off has been provided, and will continue to be provided, in accordance with the Family and Medical Leave Act.

On May 1, the Council authorized funding from the Personnel Reserve fund to cover the cost of a temporary part-time worker in order to ensure staff coverage of key functions of this position during the remainder of FY17.

This memo is a request for Council authorization of an additional \$2,592.00 from the Personnel Reserve in order to offset the costs of this part-time coverage for FY18. This amount will cover hourly wages and required FICA/Medicare contribution for 144 hours during this period. Depending on the FMLA employee's status, an additional authorization may be requested in the future.

The current account balance in the Personnel Reserve is approximately \$35,621 which includes the \$25,000 added to this account as budgeted in FY18. The requested allocation will ensure continuity of operations while preventing the department's wage expense account from being overspent in FY18.

Current Account Status

G 3-733-00 RESERVE ACCT / WAGE STUDY

-10,621.20 = Beg Bal
0.00 = Adjust

-25,000.00 = YTD Net
0.00 = YTD Enc

-35,621.20 = Balance

Per	Jrnl	Check	Date	Vendor-----	Description-----	RCB / Type		Debits	Credits
09	0247		09/25/17		09/25/2017 C/R	R	CR	0.00	25,000.00
Totals-								0.00	25,000.00

Monthly Summary

Month	--Regular Entries--		--Balance Entries--	
	Debits	Credits	Debits	Credits
September	0.00	25,000.00	0.00	0.00
Totals	0.00	25,000.00	0.00	0.00



TOWN OF HAMPDEN
DEPARTMENT OF PUBLIC WORKS

106 WESTERN AVE.
HAMPDEN, ME 04444

TEL 862-3337

FAX 862-5067

November 29, 2017

To: Angus Jennings
From: Sean Currier
Subject: Municipal Building Reserve Fund Request

The Public Works Department is requesting approval to use Municipal Building Reserve funds (**03-702-00**) in the amount of \$198.00 to pay for the repair of the hot water heater at the Town Office. **Penobscot Temperature Controls** performed the repair in November which was an unexpected and unbudgeted expense as with the following requests.

We are also requesting Municipal Building Reserve funds (**03-702-00**) in the amount of \$323.04 for a repair / service call performed by **Penobscot Temperature Controls** to rectify the temperature in the Council Chambers. The air dryer for the pneumatic lines is not properly functioning and is in need of replacement. It was temporarily repaired to get the temperature to a reasonable level.

The third request is in the amount of \$243.00 for a weekend service call to **Penobscot Temperature Controls**. Apparently the heat in the entire building stopped functioning and Public Safety called PTC. After they were on site, they figured out that the computer controlling the system stopped communicating with the control module and simply needed to be rebooted. PTC thought that the interruption had been synonymous with the recent power outage fluctuations.

The fourth request for Municipal Building Reserve funds (**03-702-00**) are in the amount of \$78.00 for a repair / service call performed by **Penobscot Temperature Controls** to rectify the temperature in the Council Chambers again. The air dryer for the pneumatic lines malfunctioned again.

The last request is in the amount of up to \$1,700.00 for **Penobscot Temperature Controls** to repair/replace the pneumatic air system dryer. This is original building equipment that dries the air system that runs the zone valves controlled from the control module. The equipment is breaking down internally and routinely gets plugged which will result in more frequent service calls.

The total request for reserve funds from the Municipal Reserve account are in the amount of \$2,542.04

Thank you for your consideration.

A handwritten signature in blue ink, appearing to read "Sean Currier".

Sean Currier

Penobscot Temperature Controls, Inc.
54 Nadine's Way
Hampden, ME 04444 US
(207) 945-9350
pentemp@myfairpoint.net



RECEIVED
NOV 20 2017

BY:.....

INVOICE 5634

DATE 11/16/2017 TERMS NET 30 Days

DUE DATE 12/16/2017

ORDERED BY
Same

LOCATION
Town Office

ITEM	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Labor - Dana	Hot water heater is smoking, fire dept. shut it down. Had to clean boiler fire sides. Heater start up and test out. Had to restart the three others boilers. All due to the storm.	3:00	60.00	180.00
Truck charge		1	18.00	18.00

TOTAL DUE

\$198.00

Acct. No. 3-702-00

DEPARTMENT HEAD SIGNATURE

DATE

Thank-you for your business!!!!

Penobscot Temperature Controls, Inc.
54 Nadine's Way
Hampden, ME 04444 US
(207) 945-9350
pentemp@myfairpoint.net



RECEIVED
NOV 20 2017

INVOICE 5635

BILL TO
Town of Hampden
106 Western Avenue
Hampden, ME 04444

BY:.....

DATE 11/16/2017 TERMS NET 30 Days

DUE DATE 12/16/2017

ORDERED BY
Rosemary

LOCATION
Town Office

ITEM	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Labor - Dana	11.2-17; Council Chambers very warm. Tested. Found control air pressure was low and that lead to overheating problems. Found air dryer clogged up. Freed up for now and control air pressure is back to normal. Will price new air dryer. Checked outside A/C condenser and found it's fans were running when they should not be. Had to replace two fan control relays. Cycled equipment and check out.	4:30	60.00	270.00
Truck charge		1	18.00	18.00
Fan Relay 24 Volt		2	17.52	35.04

TOTAL DUE

\$323.04

Acct. No. 3-702-00

DEPARTMENT HEAD SIGNATURE

DATE _____

Thank-you for your business!!!!

Penobscot Temperature Controls, Inc.
54 Nadine's Way
Hampden, ME 04444 US
(207) 945-9350
pentemp@myfairpoint.net



BILL TO
Town of Hampden
106 Western Avenue
Hampden, ME 04444

INVOICE 5663

DATE 11/29/2017 TERMS NET 30 Days

DUE DATE 12/29/2017

ORDERED BY
Dan, Fire Dept

LOCATION
Town Office

ITEM	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Labor - Dana	11-18-17; Saturday service call. Fire Dept. called, said building is cold. Found all heat was off. Found DDC system shut down. Was able to log onto system. Tested and reset controllers. System start up and heat is back on.	2:30	90.00	225.00
Truck charge		1	18.00	18.00

TOTAL DUE \$243.00

Thank-you for your business!!!!

Penobscot Temperature Controls, Inc.
54 Nadine's Way
Hampden, ME 04444 US
(207) 945-9350
pentemp@myfairpoint.net



BILL TO
Town of Hampden
106 Western Avenue
Hampden, ME 04444

INVOICE 5664

DATE 11/29/2017 TERMS NET 30 Days

DUE DATE 12/29/2017

ORDERED BY
Shawn

LOCATION
Town Office, Boiler room

ITEM	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Labor - Dana	11-29-17; Building warm. Low pneumatic air supply due to air dryer plugged up again. Talked with Shawn and will send over estimate for air dryer system replacement.	1:00	60.00	60.00
Truck charge		1	18.00	18.00

TOTAL DUE \$78.00

Thank-you for your business!!!!

Penobscot Temperature Controls, Inc.
 54 Nadine's Way
 Hampden, ME 04444
 (207) 945-9350
 pentemp@myfairpoint.net



ADDRESS

Town of Hampden
 106 Western Avenue
 Hampden, ME 04444

ESTIMATE 1129

DATE 11/02/2017

ORDERED BY

Shawn

LOCATION

Town Office / Boiler Room

QTY	ITEM	DESCRIPTION	UNIT PRICE	AMOUNT
		Building pneumatic air dryer for building controls is falling.		
1	Materials	Air dryer, 10 CFM # 3YA49 / HPR510	893.20	893.20
1	Shipping		50.00	50.00
1	Copper Fittings	Air lines, Flex, Fittings	100.00	100.00
2	Truck charge		18.00	36.00
7	Labor	Install new air dryer. Pipe connections. New unit start up. Disposal of old unit.	60.00	420.00
1	Materials	3/8" Pneumatic Air Filter	66.32	66.32
1	Materials	Air Tank Auto Drain	69.99	69.99

TOTAL \$1,635.51

Accepted By

Accepted Date

Thank-you for your business!!!!

Current Account Status

G 3-702-00 RESERVE ACCT / MUNIC BLD

-24,762.89 = Beg Bal
0.00 = Adjust

-6,835.12 = YTD Net
0.00 = YTD Enc

-31,598.01 = Balance

Per	Jrnl	Check	Date	Vendor-----	Description-----	RCB / Type	Debits	Credits
08	0174		08/31/17		08/31/2017 C/R	R CR	0.00	14,000.00
10	0255	1893	10/11/17	00194 HAMPDEN ELEC	FLOOR BOXES TO REG AREA	R AP	380.00	0.00
10	0255	1893	10/11/17	00194 HAMPDEN ELEC	FLOOR BOXES TO REG AREA	R AP	522.88	0.00
11	0353	1902	11/08/17	00194 HAMPDEN ELEC	WALL PACK LIGHTING	R AP	3,298.00	0.00
11	0353	1901	11/08/17	00392 P D Q DOOR C	AUTOMATIC OPENER	R AP	2,964.00	0.00
Totals-							7,164.88	14,000.00

Monthly Summary

Month	--Regular Entries--		--Balance Entries--	
	Debits	Credits	Debits	Credits
August	0.00	14,000.00	0.00	0.00
October	902.88	0.00	0.00	0.00
November	6,262.00	0.00	0.00	0.00
Totals	7,164.88	14,000.00	0.00	0.00



TOWN OF HAMPDEN
DEPARTMENT OF PUBLIC WORKS

106 WESTERN AVE.
HAMPDEN, ME 04444

TEL 862-3337

FAX 862-5067

November 30, 2017

To: Angus Jennings
From: Sean Currier
Subject: Municipal Building Reserve Fund Request

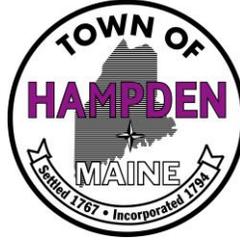
The Public Works Department is requesting approval to use Municipal Building Reserve funds (**03-702-00**) in the amount of \$1,300.00 to pay for the repair of the leaking Town Office roof. The existing flat portion of the roof surrounding the skylight was degraded and ripped rubber roofing. The repair was necessary due to the leaking roof damaging the interior building gypsum ceiling. Silicone roofing was applied by **Gates Construction**. This repair was unbudgeted and unexpected hence the reserve request.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Sean Currier".

Sean Currier

Town of Hampden
106 Western Avenue
Hampden, Maine 04444



Phone: (207) 862-3034
Fax: (207) 862-5067
Email:
townmanager@hampdenmaine.gov

TO: Finance Committee
FROM: Angus Jennings, Town Manager
DATE: November 30, 2017
RE: Proposed February 2018 Referendum re RSU-22 Turf Field Replacement

Earlier today I attended a meeting, along with representatives from other RSU-22 towns, regarding the proposed replacement of the turf field at Hampden Academy.

The current field is 14 years old, and is past its estimated useful life of 8-10 years. Safety concerns have arisen due to gradual loss of infill due to use and weather, compaction of the infill that remains, and breakdown of synthetic fibers resulting in less resiliency. RSU-22 will hold a public forum to discuss this initiative on Monday, December 4 at 6:30 PM in the Hampden Academy Performing Arts Center.

The estimated project budget of \$935,000 would include replacement of the turf field (but not the drainage, which is in place and functioning well), and new LED lighting. RSU-22 proposes to seek voter authorization to borrow up to \$750,000 and expects to pay \$110,000 out of their field reserve, with the balance to be made up by private donations including field sponsorships.

In order to meet the timeline to borrow through the Maine Municipal Bond Bank, RSU-22 proposes to hold a referendum in February 2018. The anticipated timeline is enclosed, and the Town Clerk will work with RSU-22 to ensure that all required steps can be timely followed. I have also enclosed an illustrative amortization schedule; obviously, specific borrowing terms would not be known for some time.

This item is included as an informational update to the Committee. RSU-22 representatives would be pleased to respond to any questions or concerns you may have, and have offered to appear at a future meeting or meetings if so requested.

Maine Municipal Bond Bank Referendum Timeline for ___ May Bond Bank Funding ___

- This week: wording for our ballot question
- Week of December 11th: Drummond Woodsum prepares referendum documents
- December 14th: Last date to order ballots to be printed
- Wednesday January 3rd: BOD sign the warrant to declare the referendum to be held the week of February 5th
- Thursday January 4th: delivery of warrants, a specimen ballot, ballots and absentee ballots to town offices (30 days prior)
- Thursday January 4th: delivery of Notice of Public Hearing
- Wednesday January 17th: Public Hearing at Hampden Academy (at least 7 days prior)
- Tuesday February 6th: Referendum Day Election
- Wednesday February 7th: results returned and board certifies the referendum
- Wednesday February 14th: application deadline to Maine Municipal Bond Bank with anticipated project amount needed
- Wednesday February 14th-Wednesday March 14th: seek bids to solidify the amount we are bonding
- Wednesday March 14th: final date for an adjustment to bond amount based on final bidding process
- May: Municipal Bond Bank distribution of funds

**Town of Hampden
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NOV 30 2017

**Office of the
Town Manager**

Maine Municipal Bond Bank
Estimate of Borrowing
 Prepared via www.mmbb.com on:
November 29, 2017

Date	Principal	Rate	Interest	Total Payment	FY Total
11/1/2018			\$8,700.00	\$8,700.00	
05/1/2019			\$8,700.00	\$8,700.00	\$17,400.00
11/1/2019	\$75,000.00	1.8000%	\$8,700.00	\$83,700.00	
05/1/2020			\$8,025.00	\$8,025.00	\$91,725.00
11/1/2020	\$75,000.00	1.9000%	\$8,025.00	\$83,025.00	
05/1/2021			\$7,312.50	\$7,312.50	\$90,337.50
11/1/2021	\$75,000.00	2.0000%	\$7,312.50	\$82,312.50	
05/1/2022			\$6,562.50	\$6,562.50	\$88,875.00
11/1/2022	\$75,000.00	2.1000%	\$6,562.50	\$81,562.50	
05/1/2023			\$5,775.00	\$5,775.00	\$87,337.50
11/1/2023	\$75,000.00	2.2000%	\$5,775.00	\$80,775.00	
05/1/2024			\$4,950.00	\$4,950.00	\$85,725.00
11/1/2024	\$75,000.00	2.3000%	\$4,950.00	\$79,950.00	
05/1/2025			\$4,087.50	\$4,087.50	\$84,037.50
11/1/2025	\$75,000.00	2.4000%	\$4,087.50	\$79,087.50	
05/1/2026			\$3,187.50	\$3,187.50	\$82,275.00
11/1/2026	\$75,000.00	2.7000%	\$3,187.50	\$78,187.50	
05/1/2027			\$2,175.00	\$2,175.00	\$80,362.50
11/1/2027	\$75,000.00	2.8000%	\$2,175.00	\$77,175.00	
05/1/2028			\$1,125.00	\$1,125.00	\$78,300.00
11/1/2028	\$75,000.00	3.0000%	\$1,125.00	\$76,125.00	\$76,125.00
TOTALS	\$750,000.00		\$112,500.00	\$862,500.00	

This report is an estimate only. Actual borrowing costs may vary.

**Town of Hampden
RECEIVED**

NOV 30 2017

**Office of the
Town Manager**



Link-22

RSU 22 • Hampden • Newburgh • Winterport • Frankfort

24 Main Road North, Hampden, ME 04443

Fall 2017

RSU 22 developing plans to replace artificial turf at Hampden Academy

The 14-year-old multi-purpose field at Hampden Academy, otherwise known as “the turf,” is in need of replacement. While the typical lifespan of athletic turf is 8 to 10 years, Hampden Academy’s athletic turf has surpassed this expectancy due to the maintenance regimen that the surface has received over the years. Reasons for the needed replacement include visible wear patterns, degradation of fibers, and the diminishing returns on safety due to the wear on the field.

For the last several years, the turf has been noted as a future facilities improvement project and has been identified as one of the capital improvements in the RSU #22 Strategic Plan (Goal 2.5). In preparation for this needed replacement, RSU #22 established a Field Maintenance Reserve account in 2009, which has been acted upon yearly at the district budget meeting. The fund

was established to provide for financing some of the improvements to, planning for, and replacement of the turf field. The Field Maintenance Reserve account has been funded with an annual approximate share of \$10,000 (50% of the gate receipts collected at athletic events). The field reserve account has amassed a balance of \$100,334 since 2009. Additional financing for the athletic turf will be sought through an athletic venue sponsorship and signage campaign and the public referendum process.

The multipurpose field serves four high school sports each year—field hockey, football, soccer, and softball. In addition, middle school football is played on the turf, along with many youth programs for both football and soccer. Physical education classes routinely utilize the turf, as do

(Please turn to page 2)

Community Public Forum on Dec. 4

By Rick Lyons, Superintendent of Schools, RSU 22

One of our goals for the coming year is to make it easier and more convenient for us to talk with each other.

With that in mind, Regan Nickels, the assistant superintendent, and I are planning a series of "Community Public Forums," starting early next month.

We would like to invite community members to join us on Monday, December 4, at 6:30 p.m. at Hampden Academy for coffee, light refreshments, and a hour and a half of conversation with the superintendent and assistant superintendent.

We would like to reach out to the community, talk about our strategic plan, share what we're working on in terms of goals for the current year and the coming year—and also invite the community to ask questions and express your opinions.

One subject that is likely to come up is our plan to replace the turf field at Hampden Academy—why it needs to be done, how much it is likely to cost, and what the alternatives are. Another subject is what RSU 22 is doing about proficiency-based education, and how we are responding to

the current requirement that students who graduate in 2020 and beyond have a proficiency-based diploma.

Our goal is to have these community conversations once a quarter, so that we can keep you informed about what we're doing and what's happening in the world of education, and so you can ask questions and tell us your concerns.

So please join us at 6:30 p.m. on December 4, and look for a second Community Public Forum to be scheduled early in March.

RSU 22 developing plans to replace artificial turf at Hampden Academy

(Continued from page 1)
elementary schools for such events as field days and cross-country skiing. Hampden Academy's turf has long been a destination field for high school championship play. The Maine Principals Association and various leagues request the field for end-of-season games, due to its playing surface, atmosphere, seating, and central location within the state. Since 2011, RSU #22 has hosted 44 state or regional playoff games for soccer and field hockey on the turf. However, in recent talks, the MPA sports com-

mittees have expressed concern that the turf may no longer meet their expectations for high caliber athletic contests due to its age and wear.

The benefits of turf in the northern Maine climate are many. The surface is ready for play earlier than most grass fields, and the drainage is excellent, allowing for play when many fields encounter rain-out conditions that require waiting periods. Safety on the surface is improved in wet conditions, compared to grass fields. Maintenance costs are lower on athletic turf fields, a savings that can

offset some of the installation costs.

RSU #22's Athletic Committee is recommending replacement of the Hampden Academy athletic turf as early as 2018. Preliminary quotes for turf replacement include a range of up to \$850,000 depending on the selection of turf fiber, shock absorbent padding and field attributes. A discussion of replacement lighting for the field is also underway, considering that LED lighting conversion is a cost-efficient measure, and the lighting on the turf is encountering needs for updating, adjust-

ment, and maintenance. Estimates for lighting replacement are currently being investigated.

The recommended turf replacement will be one of the topics discussed at the upcoming Community Public Forum on Monday evening, December 4, which will be hosted by Superintendent Richard Lyons, Assistant Superintendent Regan Nickels, and various Board and Subcommittee members. Information about the need for turf replacement, the referendum process, and the timeline and budget will be discussed.

FARRELL, ROSENBLATT & RUSSELL

ATTORNEYS AT LAW
 61 MAIN STREET
 P.O. BOX 738
 BANGOR, MAINE 04402-0738

ANGELA M. FARRELL
 NATHANIEL M. ROSENBLATT
 JON A. HADDOW
 GREGORY P. DORR
 ROGER L. HUBER
 ERIK T. CROCKER
 KATE J. GROSSMAN

November 30, 2017

THOMAS A. RUSSELL (Retired)

TELEPHONE (207) 990-3814
 TELECOPIER (207) 941-0239
 e-mail: info@frrlegal.com

Angus G. Jennings, Town Manager
 Town of Hampden
 106 Western Avenue
 Hampden, Maine 04444

Kelly J. Karter, CMA
 Town of Hampden
 106 Western Avenue
 Hampden, Maine 04444

Re: Acadia Hospital Corp. v. Town of Hampden – Update

Dear Angus and Kelly:

As you know, the Board of Assessment Review reconvened on October 24, 2017 for proceedings in accordance with the Superior Court's order to remand.

At that hearing, both Attorney Stockdell and I agreed that the Court's order gave the Board significant latitude as to how to proceed. My suggestion, on behalf of the Town, was that the Board simply go back to the deliberation phase and issue a new decision that more clearly articulated their original decision and supporting reasons. I provided a draft Findings and Decision for the Board's consideration.

The Board heard some argument from Attorney Stockdell on behalf of Acadia, as well, but ultimately voted to accept the Town's draft, which they signed as their new decision, on the same 2-1 vote as the original decision.

On November 14, 2017, Acadia again appealed the Board's decision, and made a motion to consolidate the original and new appeals. As you and I discussed, I entered an appearance on behalf of the Town and accepted service. I also did not oppose the motion to consolidate, and requested a status conference with the Judge. On November 22, 2017, Justice Anderson held a status conference by telephone. As a result of that conference, the Court ordered that 1) Acadia's new appeal would be taken as an amended complaint in the original appeal and 2) that there would be an abbreviated briefing schedule for this phase of the litigation. That schedule gives Acadia 20 days from its receipt of the transcript (which Acadia had made from the audio

Angus G. Jennings
Kelly J. Karter
November 30, 2017
Page 2 of 2

recording of the hearing) to file a new brief. The Town will then have 15 days to file its brief, and Acadia 7 days to file any reply. A copy of the court's order is enclosed. I understand that Acadia received the transcript on November 25, so their brief will be due December 15.

Since the Board's October 24, 2017 decision only added support for its original—and thus, the Town's—position, I do not anticipate that this second round of briefs will require a tremendous amount of time. The issues and arguments should be almost identical to those in the first round of briefs. Acadia has the opportunity to supplement the record with the transcript and the new decision. Attorney Stockdell has indicated he may seek to include some other correspondence, though since it was not presented to the Board ought not to be part of the record. In that case, we could either move to strike, or simply address in our brief. I cannot predict whether the Court will want oral arguments.

Additionally, based on our discussions, I have informed Attorney Stockdell that the 2017 service charge is indeed, due on the date indicated on the invoice. Acadia has the option of seeking a stay under Maine Rule of Civil Procedure 80B if it is important to them that they not have to pay until the appeal is decided.

As always, please let me know if you have any questions.

Very truly yours,

FARRELL, ROSENBLATT & RUSSELL

A handwritten signature in black ink, appearing to read 'Kate J. Grossman', written over the printed name.

Kate J. Grossman

Enclosure

CIVIL CASE HEARING FORM

Docket No. ^{AP} 17-014

Date: 11/22/17

Recorded: no

Name: Acadia v Town of Hampden

Pl. Present Attorney Stockell

Def. Present Attorney Grossman

} By phone.

Other parties: _____ Attorney _____

_____ Attorney _____

Hearing on (Pl.) (Def.) (Complaint) (Motion) for _____

(Judgment) (Order) (Other Action) _____

The Court perceives the ~~new~~ new complaint filed in this case as an amended complaint. The defendant is not required to answer.

Once the transcript of any parties proceedings has been prepared, the plaintiff will have 20 days to file a new brief, defendant's is due 15 days thereafter, and there will be 7 days for a reply.

W.A.

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO AP 17-014

ACADIA HOSPITAL CORP.,

Plaintiff,

v.

ORDER

TOWN OF HAMPDEN,

Defendant,

and

ACADIA HEALTHCARE, INC.

Party-in-Interest

In this 80B appeal, Acadia Hospital appeals from a ruling of the Town of Hampden Board of Assessment Review upholding the Town's assessment of a service charge imposed upon Acadia.

Acadia owns certain tax-exempt property in Hampden, Maine which it leases to an unrelated third party, Sweetser. According to the lease that has been made a part of the record, Sweetser is to use the premises as a mental health residential treatment facility. A town ordinance establishes an annual service charge to be levied against all residential property that is otherwise exempt from state or municipal taxation and is used to provide rental income. The service charge does not apply to student housing however.

The record on appeal is sparse. Although the parties discuss certain relevant facts in their briefs, the record does not contain many of the facts upon which they base their arguments. From the lease, which is part of the record, the Court can conclude that the premises were used as a residential treatment facility, but little more. From that proposition, the Court can also infer that the clients spend the night there, but no

additional detail is present in the record. Although it is the plaintiff's responsibility to provide the Court with an adequate record for review, M.R. Civ. P 80B(e), the municipality must assure that a sufficient record is created to permit judicial review. *Sanborn v. Town of Elliot*, 425 A.2d 629, 630-3 (Me. 1981). It is not clear to the Court whether a record of testimony at the hearing before the Board exists, or whether the plaintiff, or perhaps both parties, decided that it was not necessary to include testimony in the record on appeal.

In its Decision of May 4, 2017, the Board stated: "The issue presented in this appeal is whether the property in question, being owned by Acadia Hospital Corp., and leased to Sweetser which provides housing for its students/clients who are transported daily to the Sweetser school in Belfast qualifies for exemption from the Town of Hampden Service Charge Ordinance." Although the parties seem to interpret this as a finding that what is described as an issue is actually a fact, it isn't particularly clear to the Court because the issue of whether the property's use satisfied the exception was then ignored in the remainder of the Decision. The only analysis contained in the Decision is the conclusion that the property is subject to the service charge because "although it is a residential property owned by a tax exempt organization it is used to provide rental income to that organization." This states the obvious and in no way addresses the issue that the Board described as being presented. Did the Board ignore the student housing exception or did it decide the issue without providing any analysis whatsoever? Although the Court is aware of the principle that if the appealing party does not request additional findings the reviewing court should infer that the tribunal found all facts necessary to support its decision, the sparse record and inadequate Decision in this appeal form an inadequate basis for appellate review.

As a result, the Board's Order is vacated and the matter is remanded for further proceedings, which could include the creation or preparation of a suitable record and a Decision that includes a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, in conformity with M.R.S. 30-A § 2691(3)(E).

Dated: August 17, 2017



WILLIAM ANDERSON
JUSTICE, SUPERIOR COURT

**ORDER/JUDGMENT ENTERED IN THE
COURT DOCKET ON: 9-7-17**

¹ The parties can also proceed by submitting stipulations pursuant to M.R. Civ. P. 80B(e)(2).

TOWN OF HAMPDEN
BOARD OF ASSESSMENT REVIEW

PUBLIC HEARING

IN RE: Acadia Hospital Corporation
Appeal of Service Charge Ordinance

October 24, 2017

MEMBERS OF THE BOARD:

Lowell Theodore Sherwood, Chair
Aimee Smith, Board Member
Avery Caldwell, Board Member
Kelly Karter, Assessor Town of Hampden

A P P E A R A N C E S

For the Town of Hampden:

KATE GROSSMAN, Esq.

For Acadia Hospital Corporation:

ARRIAN STOCKDELL, Esq.

TRANSCRIPT OF PROCEEDINGS

* * * * *

1
2
3 MS. GROSSMAN: Arrian is welcome to chime
4 in with his take on things, but I think that
5 you can open it. You can go back to square
6 one and open it up for additional -- you can
7 leave what's already on the record there and
8 open it up for additional evidence, and we're
9 prepared for that.

10 The Town's position is you could -- you
11 could go back and say our deliberations -- the
12 record was sufficient, our deliberations were
13 sufficient, and we really just didn't get it
14 across sufficiently for the Court in our
15 written decision. And so we will go back to
16 that and write something new that is supported
17 by what's been done. You can also go back to
18 your deliberations and discuss the record that
19 has been created up to this point and create a
20 new order based on that, or you can reopen it
21 up.

22 Like I said, the Town's position is that
23 the record is sufficient and there were maybe
24 just some ways that the dots could have been
25 connected to make the written findings and

1 conclusions sufficient for the Court to
2 review. So I prepared a proposed findings and
3 conclusions (inaudible) or quasi judicial body
4 such as yourselves saying this what we think
5 is supported by the record. This is how we
6 would articulate it. And you can take from
7 that what you will.

8 So that's our position, but if the Board
9 feels that you'd like to open it up and add to
10 the record because you'd like to see more, we
11 are happy to go that route as well.

12 CHAIR SHERWOOD: Mr. Stockdell.

13 MR. STOCKDELL: Well, the first thing I
14 want to do is I want to make sure that the
15 recording is -- are we recording right now?

16 MS. KARTER: We are recording right now.

17 MR. STOCKDELL: Okay. Because that was
18 part of the problem in the past.

19 CHAIR SHERWOOD: Well, if -- I didn't
20 realize we were on the record. If we're on
21 the record, then we've got to start off.

22 MS. SMITH: Yep. Mine's on, and, Avery,
23 you can turn it on.

24 CHAIR SHERWOOD: If I can interrupt --

25 MR. STOCKDELL: Please, if you want to

1 open the record.

2 CHAIR SHERWOOD: I do. This is a meeting
3 of the Hampden Board of Assessment Review.
4 The time is 3:30 p.m., October 24th, 2017. My
5 name is Ted Sherwood, and I'll be chairing
6 this hearing. The other board members are
7 Aimee Smith and Avery Caldwell.

8 We are here to address a matter, an
9 appeal by Acadia Hospital Corporation of a
10 service charge imposed on a property at
11 25 Mayo Road in Hampden. This is a rehearing
12 of the matter as remanded by Justice William
13 Anderson by order dated August 12, 2017.

14 Acadia Hospital is represented by
15 Attorney Arrian Stockdell, and the Town of
16 Hampden is represented by Kate Grossman.

17 Now we're doing some housekeeping items
18 in terms of how we are about to proceed.

19 Mr. Stockdell.

20 MR. STOCKDELL: Thank you. Well, just
21 before you formally opened the record, there
22 were some -- Ms. Grossman made some comments
23 that I just don't have any problem with those
24 being incorporated in to the formal record. I
25 think that probably goes without saying, but I

1 just want to say that I don't have any problem
2 with that. So we don't have to rehash it.

3 From our perspective, we do agree that
4 what is open to the Board to decide to do
5 today and in general at this juncture is quite
6 permissive. It's open. There -- the -- the
7 demonstrative -- the language used in the
8 remand order was the Court may -- and the
9 actions the Court may take, that this board
10 may take may include certain things that the
11 Court suggested. But what I really want to
12 point the Board's attention to is the statute
13 that Justice Anderson cited, which is
14 Title 30-A, Section 2691, which requires --
15 which states that all decisions of the Board
16 must become a part of the record and must
17 include a statement of findings and
18 conclusions as well as the reasons or basis
19 for the findings and conclusions upon all the
20 materials, issues of fact, law, or discretion
21 presented in the appropriate order, relief, or
22 denial of relief.

23 And it is therefor possible that Justice
24 Anderson was looking for more complete facts
25 in the record, which were not supplied because

1 we didn't have a recording of the proceedings.
2 That's one possibility, and it's also possible
3 that he could not ascertain what exactly the
4 reasons or basis for the findings and
5 conclusions were or perhaps what the findings
6 and conclusions themselves actually were.

7 So with that in mind, I think the Board
8 does have the discretion to kind of proceed to
9 revise its decision and just submit a revised
10 order that addresses those requirements of the
11 statute in more detail. And that's certainly
12 appropriate. Of course, Justice Anderson
13 might still find that he has no way to
14 determine whether or not those findings are
15 supported by the record if we don't have a
16 recording of what happened. We could also
17 reopen the record. We could also have a
18 discussion about what occurred and kind of
19 reengineer what the record was in that way to
20 save some time, because I think the factual
21 issues are pretty narrow.

22 CHAIR SHERWOOD: I -- looking forward to
23 this, I assumed it was going to be a de novo
24 hearing remanded back to us from the Court.
25 I'm hearing from you two that that doesn't

1 necessarily need to be the case, that you're
2 not here to change our opinion or decision.
3 You're here to ask that we spell out in more
4 detail, each of us, the basis for our vote.

5 MR. STOCKDELL: Well, that's -- those
6 are -- those are separate issues. What we're
7 asking for is different from what you may do.
8 I would, of course, ask that the decision be
9 changed, because there is nothing to say that
10 you can't reverse your decision. You can
11 absolutely do that at that point, and that's
12 what we'd prefer. I am realistic that you may
13 not do that, but you could.

14 So that's what I'm asking for is a
15 reversal of the decision, but what you may do
16 is reopen the evidentiary record if you so
17 choose. That's not what I was prepared for,
18 because the statute does say that we're
19 supposed to avoid repetitious evidence. And
20 since we've already heard the exact same
21 evidence, it would be repetitious.

22 MR. CALDWELL: I have a question. I'm
23 not a lawyer. Okay. And I'm a newbie on this
24 panel.

25 What is missing in the statement of

1 findings in what was submitted to the Court?
2 I mean, I don't see a section in what was
3 submitted, because you're the plaintiff, so
4 you --

5 MS. GROSSMAN: If I may, and if Attorney
6 Stockdell has no objection, I will give the
7 Board this proposed findings and decision.
8 And I know there wasn't an attorney
9 representing the Town when you heard this the
10 first time. So this is something you might
11 see. So you can take this, and this can be
12 your guide, keeping in mind this is the Town's
13 position.

14 MR. CALDWELL: Can I ask you why this
15 wasn't submitted to the Court?

16 MS. GROSSMAN: Well, because the Court
17 was hearing an appeal, so the briefs that the
18 Court saw were -- we didn't have the
19 opportunity to do this. This would be a
20 product of the Board.

21 MR. CALDWELL: Is it normally submitted
22 earlier in the process? Like, when the judge
23 was reviewing it, he would have a --

24 MS. GROSSMAN: No, not the judge, because
25 this is -- this is what in a perfect world,

1 from my standpoint, an appellate board such as
2 yourself would produce, something where the
3 findings and the conclusions --

4 *Sherwood* ~~MR. CALDWELL:~~ We as a committee would
5 create it?

6 MS. GROSSMAN: Correct. So this --
7 now -- so if the Board chooses to adopt this
8 or something like this, then it becomes part
9 of the record, and it is something for the
10 Court to review. We didn't have the
11 opportunity to create this for the -- for the
12 Court because at that time, the Court had the
13 jurisdiction; and he needed to send it back to
14 you to make something like this.

15 *Sherwood* ~~MR. CALDWELL:~~ This is in lieu of what Ed
16 prepared for me to sign as a (inaudible)
17 decision from the Board?

18 MS. GROSSMAN: Yes. Yes. This would be
19 our proposed version of that.

20 *Sherwood* ~~MR. CALDWELL:~~ As opposed to what Ed did,
21 that two pages?

22 MS. GROSSMAN: Yes.

23 *Sherwood* ~~MR. CALDWELL:~~ And it's your contention
24 that if the Court had this the first time
25 around as opposed to that decision, Mr.

1 Stockdell's appeal could go forth?

2 MS. GROSSMAN: It's my con -- it's the
3 Town's contention that if the Board had signed
4 this the first time around, then the Court's
5 decision would have been that the appeal was
6 denied and that your decision would have
7 stood.

8 *Sherwood* ~~MR. CALDWELL~~: But back a bit. Rather
9 than second guess whether it would have been
10 denied or not, it would have gone forth with a
11 decision from Judge -- Justice Anderson?

12 MS. GROSSMAN: Yes. It would have given
13 Justice Anderson enough to review.

14 *Sherwood* ~~MR. CALDWELL~~: He would have what he
15 needed to go yes or no?

16 MS. GROSSMAN: Exactly.

17 MR. CALDWELL: Mr. Stockdell, have you
18 seen a copy of this?

19 MR. STOCKDELL: I have one here. I
20 haven't had a chance to review it yet. If I
21 had -- if I had prevailed, I would have -- I
22 would have likely submitted something similar
23 in the last hearing, but I didn't submit one
24 because I was -- because I didn't know what
25 the reasons and the basis for the decision

1 really were. So I was waiting to see those.
2 And perhaps this is -- this might be a good
3 way to have a discussion at this point. There
4 is nothing in the remand order that prevents
5 the Board from accepting this and adopting
6 this as the decision. That's absolutely the
7 case, that you can proceed to adopt this,
8 proceed to do everything that Ms. Grossman has
9 suggested. That's absolutely appropriate from
10 my view. The problems here are that, you
11 know, we're slicing things very thin on
12 factual conclusions. And there is a
13 difference between a factual conclusion and a
14 legal conclusion, and some of those issues
15 have basically taken over all of the appeal.
16 So I guess I would just suggest that the Board
17 is very careful about separating out those
18 issues.

19 CHAIR SHERWOOD: Would my colleagues like
20 to go off record for a few minutes and read
21 this?

22 MS. SMITH: I would. Yeah, I need to
23 read it.

24 CHAIR SHERWOOD: Either that, or we
25 could -- okay.

1 MS. SMITH: Can I ask Arrian one
2 question?

3 MR. STOCKDELL: Sure.

4 MS. SMITH: Do you have a new lease?
5 Your lease is expired.

6 MR. STOCKDELL: We do.

7 MS. SMITH: Okay.

8 MR. STOCKDELL: We do.

9 MS. SMITH: Because the lease that we got
10 a copy of to look at expired September 30th.

11 MS. KARTER: I have it.

12 MR. STOCKDELL: Oh, I have it right here.
13 I have the new one. There's also -- you know,
14 I have proof of a current certificate and the
15 new lease. I don't have any objection to
16 those going in to the record. To the extent
17 the language is important to the Board, the
18 language is --

19 MS. SMITH: Is it any different than the
20 prior --

21 MR. STOCKDELL: It is. It's more
22 favorable to our argument now, but the
23 underlying arrangement hasn't changed. I
24 never thought that the language of the lease
25 had much bearing on this issue precisely

1 because even if it wasn't student housing, we
2 could have just said it was, and then, you
3 know, we could have faked it. And that's not
4 what the point is. So I don't think what we
5 memorialize in the lease is really the
6 determinative factor. It's what the use
7 really is. And I think there was evidence,
8 sufficient evidence about the use itself.

9 But that said, the lease -- the previous
10 lease was already in the record, and this one
11 doesn't make anything -- if anything, it
12 memorializes some reference to student
13 housing. So I don't have any objection to you
14 considering that.

15 CHAIR SHERWOOD: So before we go off
16 record, just to be sure that I understand you,
17 you don't intend to present any witnesses or
18 evidence that would cause us to change our
19 decision. So it seems to me we are best
20 spending our time to review this to make the
21 decision palatable to Justice Anderson. Am
22 I --

23 MR. STOCKDELL: You -- it's not -- you
24 should -- you should act as though there had
25 never been an appeal. You should act as

1 though it's the first instance of the decision
2 and make the decision the same way. You
3 already made your decision. This is just a
4 writing that explains what the decision is.
5 It shouldn't -- you know, if you -- if you
6 want to change your decision, you can do that,
7 but, you know --

8 CHAIR SHERWOOD: But there's no
9 evidence --

10 MR. STOCKDELL: I don't have any evidence
11 that is different than what I presented the
12 first time around. So if you -- because
13 nothing is -- nothing substantive has changed,
14 and I believe this is mostly kind of an
15 interpretive situation.

16 CHAIR SHERWOOD: Should we go off the
17 record?

18 MR. CALDWELL: Well, I'm just thinking
19 that there is a three-page document. I just
20 spent a couple hours today reviewing my
21 other -- the other stuff I had, part of which
22 I just got today that was the defendant's
23 document that we submitted to the Court.

24 I haven't changed my opinion. If you
25 will remember, I was in the minority. And I

1 went through it again and again, and I think
2 I've seen things before that I didn't -- I've
3 seen this time that I hadn't seen before, and
4 my argument would be even stronger and more
5 adamant in being in opposition of the Panel's
6 decision.

7 So I would like to look at what you've
8 got written here, but I must confess that I
9 think we're going to do a better job reviewing
10 it after we've read it over and then perhaps
11 met at another hour and discussed it amongst
12 ourselves and then reconvened here to continue
13 the hearing.

14 CHAIR SHERWOOD: Well, we can't discuss
15 it amongst ourselves. It has to be -- any
16 deliberation has to be in public.

17 MR. CALDWELL: Well, then I would say we
18 are at least adjourned so that we have a
19 chance to look this over and compare it with
20 our other notes and --

21 CHAIR SHERWOOD: My suggestion was to go
22 off the record for some time. How much time
23 do you think you're going to need?

24 MR. CALDWELL: I have no idea what's in
25 the document, but I have a feeling that it

1 would be kind of hasty to rush through this
2 after we dragged it on for six months or more.

3 MS. GROSSMAN: Sure. I just want to be
4 very clear. So -- so Arrian said you should
5 go back to as if there was no appeal. The
6 Court hasn't said that that's what you need to
7 do. As I said, it can just be a matter of
8 dotting I's and crossing T's and better
9 conveying what your decision back in April
10 was, making it clearer for the Court; and then
11 the Court can make its decision whether that
12 conclusion is supported by the record. That's
13 really all that's happening. The Court has
14 given you some wide latitude to add to the
15 record if you think it's necessary, but you
16 haven't been instructed by the Court to do
17 even that much.

18 What I have tried to do is simply
19 articulate what I think the Board has already
20 done and helped you to show your work. And so
21 that's what that document is. There shouldn't
22 be any new information in that for you. It
23 should just be a step-by-step explanation of
24 what was presented back in April that you've
25 reviewed and how then you reached the

1 conclusion that you already reached.

2 *Sherwood* ~~MR. CALDWELL~~: I signed ^{it} this one?

3 MS. GROSSMAN: Yes.

4 *Sherwood* ~~MR. CALDWELL~~: The question is
5 (inaudible) signing this one?

6 MS. GROSSMAN: Right.

7 *Sherwood* ~~MR. CALDWELL~~: And both of you think that
8 would be adequate as far as the remand back
9 here is concerned by the Court?

10 MS. GROSSMAN: I certainly do.

11 MR. STOCKDELL: I guess I keep having to
12 qualify it, because the -- both because the
13 remand order is very permissive, as I've said,
14 but also because -- I hate to be so specific,
15 but there's a difference between, you know,
16 the fact that this appeal has happened and
17 what your decision is. You can make any
18 decision you want, and I think you should make
19 the decision that you think is correct for the
20 reasons that you think are correct. I've been
21 very clear by why I think the appeal should --
22 that this appeal assessment board should be in
23 our favor, but I think it's a mistake to kind
24 of look ahead to what Justice Anderson is
25 going to do. You should do what you think is

1 right.

2 MR. CALDWELL: Kelly, I have not received
3 a copy of the decision that Ed Bearor helped
4 prepare. Could I get a copy of that?

5 MS. KARTER: I sent that to everybody,
6 just like the other information that you asked
7 for this morning.

8 CHAIR SHERWOOD: Well, I know what
9 happened with that one I think.

10 MS. KARTER: Everybody got a copy of it.

11 MS. GROSSMAN: Yeah. It's tagged on
12 to -- to this. It's right in the back of
13 that.

14 MR. CALDWELL: Which was this?

15 MS. GROSSMAN: And that was part of the
16 court record.

17 MR. CALDWELL: That's the one you gave me
18 this morning, but I didn't get a copy of the
19 decision.

20 MS. KARTER: It's right in the back.

21 MR. STOCKDELL: I have it right here if
22 you'd like.

23 MR. CALDWELL: I'd like a copy for my own
24 records.

25 MS. GROSSMAN: So Page 8 I think is

1 the --

2 MR. CALDWELL: Can you make a copy of
3 that for me?

4 MS. KARTER: Yes, I can make a copy of
5 that.

6 MR. CALDWELL: I mean, that would be
7 something else I'd like to look over before we
8 continue deliberations if that's the case.

9 CHAIR SHERWOOD: Let's go off the record,
10 give Mr. Caldwell some time. And if it's not
11 enough time, then we'll go from there. That's
12 all I can suggest.

13 (A short break was taken.)

14 CHAIR SHERWOOD: We are back on the
15 record. Members of the Board have reviewed
16 the proposed findings and decisions. Mr.
17 Caldwell has some questions.

18 MR. CALDWELL: Mr. Stockdell, it's my
19 understanding that everyone that resides at
20 the facility in Hampden on the Mayo Road,
21 okay, is a student at the school in Belfast,
22 the Sweetser School. Or am I wrong? There
23 are people that reside there --

24 MR. STOCKDELL: No. That's correct.

25 MR. CALDWELL: They all are students at

1 the school?

2 MR. STOCKDELL: That's correct.

3 MR. CALDWELL: So there is no one else
4 getting residential lodging there that isn't a
5 student?

6 MS. GROSSMAN: I just have to -- I'm
7 sorry. To be clear -- so Attorney Stockdell
8 is not a witness.

9 MR. CALDWELL: Well, he knows the
10 service, correct?

11 MS. GROSSMAN: Well, he can't really
12 speak from his knowledge -- anything from --
13 that he says has to be supported by either a
14 document or some testimony that was already
15 given. And I admit that not having been at
16 the hearing, I don't know.

17 MR. CALDWELL: Well, I don't have all the
18 documents, but just as a matter of fact, if we
19 need to investigate that, my understanding is
20 that everybody that stays there is a student.

21 CHAIR SHERWOOD: If that's your
22 understanding and that's the way you voted,
23 then continue to understand.

24 MR. STOCKDELL: Well, perhaps we could --
25 we could approach it this way. There was

1 testimony about that. My recollection of the
2 testimony was that it supported that
3 conclusion that -- that the testimony of Mr.
4 Mistos was that all of the students went to
5 that -- go to school in Belfast, that none of
6 them do not. That's just kind of how the
7 program works.

8 So I agree with you that I think it is a
9 correct assessment of what the testimony was.
10 And regardless, that is our position. So
11 separating out testimony from evidence, that's
12 certainly is our position.

13 MR. CALDWELL: Well, I think it would
14 shed another light on the whole issue if you
15 had other people that were just staying there
16 for lodging and they had nothing to do with
17 the school.

18 MR. STOCKDELL: Certainly. I mean my
19 recollection of the testimony was actually
20 quite specific that Mr. Mistos said that, you
21 know, there are some people there overnight,
22 but they don't live there and they don't sleep
23 there; but they're, you know, in a supervisory
24 capacity.

25 MR. CALDWELL: Well, that's to be

1 understood. Okay.

2 Kelly, I have a question about the
3 billing. If the Town was to charge a service
4 charge to the facility, who would the bill go
5 to?

6 MS. KARTER: The bill goes to Acadia.
7 They're the owner of the property.

8 MR. CALDWELL: So Acadia Hospital is the
9 owner?

10 MS. KARTER: Owner, correct.

11 MR. CALDWELL: Much is made in this case
12 about who the owner is and what the owner has
13 to do with residential --

14 MS. KARTER: No. No. Acadia has always
15 admitted they're the owner. They're leasing
16 the property.

17 MR. CALDWELL: Through somebody else?

18 MS. KARTER: To Sweetser, correct.

19 MR. CALDWELL: Okay.

20 MS. GROSSMAN: If I could. I think that
21 something that wasn't articulated before and I
22 tried to put it here is there's sort of two
23 bases, as I gleaned from reading the record,
24 for the Board's decision. One, the Town's
25 position is that you don't even need to look

1 at what Sweetser uses the property for because
2 the ordinance applies to the property owner,
3 and the property owner uses it as a rental
4 income-generating property.

5 MR. CALDWELL: But the implication there
6 is that that's the whole justification. And
7 that's the second question I would like to ask
8 Mr. Stockdell.

9 MS. GROSSMAN: Absolutely.

10 CHAIR SHERWOOD: We're talking -- we're
11 talking about a de novo situation here. Is
12 there anything in there that doesn't reflect
13 your decision, Mr. Caldwell?

14 MR. CALDWELL: My decision, as I voted
15 before, is stronger now. And what I'd like
16 you to do, if you want to -- unless we're
17 going to say we're not going to do de novo, I
18 would like you to look at not the statute on
19 the service charge, but look at the statute on
20 the tax exemption qualification.

21 MS. KARTER: But they are exempt.

22 MR. STOCKDELL: But with respect, that is
23 not --

24 MR. CALDWELL: I agree. I agree. But
25 you see, the point is that if you look at what

1 the Legislature has said about the tax
2 exemption classification of the charitable and
3 benevolent institutions, it clarifies a couple
4 of important concepts about what is going on
5 behind the scenes as far as the State is
6 concerned by granting special benefits.
7 Things that relate to where the money is
8 coming from, who's running it is irrelevant as
9 far as the State is concerned. If it's
10 charitable and benevolent, that's okay. It
11 could be Ford Motor Company that is supporting
12 this enterprise. Obviously, Acadia Healthcare
13 is a nonprofit, charitable --

14 MR. STOCKDELL: Only nonprofits involved
15 here.

16 MR. CALDWELL: Yeah, exactly. And the
17 other thing is that there seems to be an
18 effort to differentiate between the kind of
19 students we're talking about. The ordinance
20 makes no distinction in that regard.
21 Section 508 in Chapter 36 makes no distinction
22 whatsoever.

23 And I would read to you Chapter 652 of
24 Title 36 and it reads -- it sheds a light on
25 distinguishing the kinds of people that are

1 getting nonprofit benefits.

2 MS. KARTER: I'm sorry, Avery, but this
3 is a residential treatment facility. You
4 folks have made this decision.

5 MR. CALDWELL: And the residential
6 treatment facility is eligible for these. Let
7 me just read it to you. Okay.

8 MS. KARTER: I know the law.

9 MR. CALDWELL: Let me read it to others
10 then.

11 MS. KARTER: I think we all are aware.

12 MR. CALDWELL: Such an institution may
13 not be deprived of the right of exemption by
14 reason of -- or by reason of limitation in the
15 classes of persons for whose benefit the funds
16 are applied.

17 MS. GROSSMAN: Right. That's tax
18 exemption, and everyone we're talking about
19 here is tax exempted. And that's not an
20 issue. That's not an issue for you to decide.

21 MR. CALDWELL: Well, you tried to create
22 a distinction where I would imply that the
23 intent of the Legislature in creating these
24 laws was not to create distinctions between
25 classes of people and where --

1 MS. GROSSMAN: But not as to the tax
2 exempt --

3 MR. CALDWELL: -- the money is coming
4 from.

5 MS. GROSSMAN: We're not -- we're not
6 arguing that Acadia should not be tax exempt
7 or that Sweetser should not be tax exempt.
8 We're talking about the service charge, which
9 is different. So --

10 MR. CALDWELL: Well, if you are willing
11 to acknowledge that they are tax exempt, then
12 you look at it conceptually and say: Well,
13 what is the intent of the Legislature in
14 granting tax exemption and why have they
15 created this special little loophole here to
16 give those students a benefit? And the answer
17 is they're not saying you can't --

18 MS. GROSSMAN: Well, I think you're
19 saying that because they're tax exempt --

20 MR. CALDWELL: The answer is they're not
21 saying you can't -- you can't say we're not
22 going to provide tax exemption to normal
23 students --

24 CHAIR SHERWOOD: We're carrying on an
25 interesting discussion which can be done at

1 another time. Let me say for the record that
2 the two board members who voted to deny the
3 appeal have reviewed the proposed findings and
4 decisions and are in agreement with the
5 conclusions, and that's how we based our
6 conclusion. And as chairman, I have signed
7 this.

8 Now, Mr. Caldwell is on record as
9 strongly opposing the decision to appeal. I'm
10 sure he's on record objecting to our signing
11 it, but it does reflect the conclusions and
12 opinion and decision of the two that voted to
13 deny the appeal.

14 MS. SMITH: Yes. This is Aimee Smith.
15 I'm very comfortable with Ted signing this on
16 behalf.

17 MS. GROSSMAN: As a matter of procedure,
18 I would ask the Board to make a motion and
19 have a vote just for completeness sake to
20 adopt this.

21 MS. SMITH: I make a motion that we adopt
22 the Town of Hampden Board of Assessment Review
23 proposed findings and decision in re: Acadia
24 Hospital Corporation Appeal of Service Charge
25 Ordinance to be signed by Mr. Sherwood this

1 24th day of October, 2017.

2 CHAIR SHERWOOD: I second it. All in
3 favor? Any opposed?

4 With that, unless there are any
5 questions --

6 MR. CALDWELL: Let me make one concluding
7 comments now that we've passed this over. I
8 am not opposed to the idea of the Town having
9 this service charge. Don't misunderstand me.
10 It seems a very reasonable thing. And I'm
11 guessing when the State Legislature passed
12 this law, it was hard to get housing for
13 students that were coming 50 years over --
14 50 miles over mud roads to get to class. So
15 they needed those places. Times have changed.
16 But that's not my role here. My role is to
17 look at what the law is right now, and if the
18 law isn't appropriate, take it back to the
19 Legislature. That's the way you handle the
20 problem.

21 CHAIR SHERWOOD: Your role here is to
22 tell us whether or not that sets forth what we
23 decided at the last meeting. That's all we're
24 talking about.

25 MR. CALDWELL: And I disagreed with the

1 conclusion before.

2 CHAIR SHERWOOD: I know you disagreed
3 with conclusions, Avery, but those are the
4 conclusions that resulted from that decision,
5 whether you like them or not .

6 MR. CALDWELL: Well --

7 CHAIR SHERWOOD: Is that -- is that the
8 motion that you just had?

9 MS. GROSSMAN: No. I think everything
10 that the Board has done is appropriate now.
11 The vote is 2 to 1, as it was before. That is
12 what I expected. I would ask that, you know,
13 proposed be struck through if you're going to
14 adopt this as the decision; and I think that
15 is appropriate.

16 MR. STOCKDELL: I have one final bit of
17 housekeeping that I'd just like to do as
18 (inaudible). Because we don't have the record
19 from the previous hearing, and things have
20 changed since then, at the conclusion of the
21 previous hearing, my recollection is obviously
22 that, Mr. Caldwell, your opinion was that the
23 property was used for student housing. And my
24 recollection is that, Mr. Sherwood, you made
25 the comment that it's clear that it's used for

1 student housing.

2 Ms. Smith, I didn't really hear anything
3 that I can recollect from you. I assume -- I
4 don't want to assume anything. Would you --
5 do you -- what is -- what was your opinion --
6 what is your opinion about whether or not it's
7 used as student housing?

8 CHAIR SHERWOOD: Are we off the record?
9 We're on the record?

10 MS. KARTER: Yes.

11 MR. STOCKDELL: Was that not being
12 recorded?

13 MS. KARTER: No. It's being recorded.

14 MR. STOCKDELL: Well, can I ask the
15 question again just so we get it on the
16 record?

17 So I believe we're on the record now. I
18 just wanted to address the conclusion of the
19 prior hearing where I believe Mr. Caldwell was
20 pretty clear that you stated that you thought
21 the property at issue was used for student
22 housing. And, Mr. Sherwood, you stated that
23 it was -- my recollection is that you stated
24 that it was clear that the property was used
25 for student housing. And I didn't -- I don't

1 recall anything about what Ms. Smith said.

2 Is that -- first of all, is that
3 recollection correct from your standpoint?
4 Could you clarify that one way or the other?

5 MR. CALDWELL: Correct from my
6 standpoint.

7 CHAIR SHERWOOD: That's not correct from
8 my standpoint. I think my disposition was
9 that the use by the tenant didn't fall to the
10 advantage of the property owner, that that was
11 an income-producing property. So it was
12 irrelevant to me at that point whether or not
13 it was student housing.

14 MR. STOCKDELL: But in terms of the use,
15 do you have an opinion of the character of the
16 use?

17 CHAIR SHERWOOD: If I have to make a
18 decision on student housing as the proposed
19 findings pointed, if we want that one step
20 further, I think that would be too broad a
21 decision to be student housing. You know, my
22 thought is this is a -- this is a residence
23 where young people live and they eat and they
24 sleep and they recreate, and when it's school
25 time, they get on a bus and go to school.

1 That sounds like my house or your house. My
2 kids live there. They eat there. They
3 recreate there. They watch TV there. And
4 when it's time to go to school, they get on a
5 bus and go to school. So is my house student
6 housing? I don't think so. But it really was
7 not a factor for me.

8 The factor was that the use of --
9 whatever the use of the property was, it did
10 not fall to the advantages of the property
11 owner. That's a property leased for a fee for
12 a profit-making situation.

13 MR. STOCKDELL: I have one more question
14 for you, Mr. Sherwood, if I may.

15 Does the number of students -- does the
16 number of children at the property make a
17 difference for you in terms of whether or not
18 it's student housing?

19 CHAIR SHERWOOD: No. I -- no. I don't
20 see a threshold, whether it's -- whether it's
21 a -- we have a number of independent
22 situations in Hampden, as in other area
23 communities, with four to six young people
24 there with house parents. Whether that was
25 16, it wouldn't change my opinion.

1 MS. SMITH: I am -- I am concerned that
2 the owner of the real estate is not -- that
3 the lease -- the lease troubles me as well.
4 And I -- and I don't like the definition of
5 student housing, because we really don't have
6 one. There's -- the ordinance is not helpful
7 in that regard, and it doesn't say that it has
8 to be a real estate owner or the less -- the
9 tenant. It's so vague that I'm troubled by
10 it. And that's -- I think that's actually the
11 comment that I made to Ted or in the meeting
12 that maybe you didn't hear or didn't get on
13 the record is that it just -- it troubled me.
14 I couldn't quite get my mind wrapped around
15 how are we going to figure this out.

16 MR. STOCKDELL: No. I do recall you
17 saying that.

18 MS. SMITH: Yeah.

19 MR. STOCKDELL: I just don't -- I just
20 didn't recall --

21 MS. SMITH: Yeah. And I really am not
22 any clearer today. I am -- I am -- you know,
23 when it is the landowner that is coming before
24 you, it's a completely different situation
25 than a lessor. And then I don't know what --

1 you know, I feel the same way that Ted does, I
2 guess basically.

3 MR. STOCKDELL: So would -- a nonprofit
4 that provides kind of dormitories for a school
5 that does not run the schooling, would that
6 also trouble you?

7 MS. GROSSMAN: Okay. I kind of would ask
8 that we bring this to a close. This sort of
9 post-decisional polling of the Board is not
10 really called for, and the statute
11 (inaudible). I think the record has been
12 made. The decision has been made, and I don't
13 think there's -- this is --

14 CHAIR SHERWOOD: We can't cross-examine
15 you. So we probably -- you probably shouldn't
16 be cross-examining us. You certainly know Mr.
17 Caldwell's position and ours.

18 Anything further?

19 MR. STOCKDELL: No.

20 CHAIR SHERWOOD: I'll use this gavel that
21 somebody put here.

22 MR. STOCKDELL: You certainty should.

23 CHAIR SHERWOOD: The meeting is
 adjourned. Thank you, all.

CERTIFICATE

I, Tammy M. Smith, a Notary Public in and for the State of Maine, hereby certify that the foregoing is a correct transcription of my stenographic notes from an audio CD in the matter of the above-entitled cause.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this 29th day of November, 2017.



Tammy M. Smith
Court Reporter/Notary Public

My Commission Expires
January 12, 2019

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The Cianchette Building
43 Whiting Hill Road
Brewer, Maine 04412
207.973.6517
fax 207.973.7139
www.emhs.org

November 14, 2017

Penny Reckards, Clerk
Penobscot Count Superior Court
78 Exchange Street
Bangor, ME 04401

Re: Acadia Hospital Corp. v. Town of Hampden

Dear Ms. Reckards:

Enclosed please find Acadia Hospital Corp.'s second complaint against the Town of Hampden for filing, along with the appropriate filing fee. Also enclosed is a motion to consolidate this matter with docket number PEN-AP-2017-14, to the extent this is necessary. This matter is a review of government action under M.R.Civ.P. 80B, but I note that my preference, as laid out in the motion, is that this be entered under the AP-2017-14 docket, and that the filing fee be returned to me.

I did contact the clerk's office to see if there was any instruction on how to handle this circumstance, as well as opposing counsel. I feel these filings properly together properly characterize the current posture. Please feel free to contact me if you have questions.

I expect service to be completed shortly, which I will promptly file.

I appreciate your attention to this matter.

Sincerely,

Arrian Stockdell, Esq.
EMHS Legal Department
207-973-6517
astockdell@emhs.org

Enclosure

cc: Edmond Bearor, Esq.
Scott Oxley, (via email)
Town of Hampden Board of Assessment Review
Kate Grossman, Esq.

EMHS MEMBERS

Acadia Hospital
Beacon Health
Blue Hill Memorial Hospital
Charles A. Dean
Memorial Hospital
Eastern Maine Medical Center
EMHS Foundation
Inland Hospital
Maine Coast Memorial Hospital
Mercy Hospital
Rosscare
Sebasticook Valley Health
TAMC
VNA Home Health Hospice

SUMMARY SHEET

M.R. Civ. P. 5(h)

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating or updating the civil docket. (SEE ATTACHED INSTRUCTIONS)

I. County of Filing or District Court Jurisdiction: Penobscot Superior Court

II. CAUSE OF ACTION (Cite the primary civil statutes under which you are filing, if any.)
36 M.R.S. Sec. 843 and Maine Rule of Civil Procedure 80B

III. NATURE OF FILING

Initial Complaint

Third-Party Complaint

Cross-Claim or Counterclaim

If Reinstated or Reopened case, give original Docket Number _____

(If filing a second or subsequent Money Judgment Disclosure, give docket number of first disclosure)

Please see motion to consolidate for further detail

IV. TITLE TO REAL ESTATE IS INVOLVED

V. MOST DEFINITIVE NATURE OF ACTION. (Place an X in one box only) Check the box that most closely describes your case.

<u>GENERAL CIVIL (CV)</u>		
<p>Personal Injury Tort</p> <p><input type="checkbox"/> Property Negligence</p> <p><input type="checkbox"/> Auto Negligence</p> <p><input type="checkbox"/> Medical Malpractice</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Assault/Battery</p> <p><input type="checkbox"/> Domestic Torts</p> <p><input type="checkbox"/> Other Negligence</p> <p><input type="checkbox"/> Other Personal Injury Tort</p> <p>Non-Personal Injury Tort</p> <p><input type="checkbox"/> Libel/Defamation</p> <p><input type="checkbox"/> Auto Negligence</p> <p><input type="checkbox"/> Other Negligence</p> <p><input type="checkbox"/> Other Non-Personal Injury Tort</p>	<p>Contract</p> <p><input type="checkbox"/> Contract</p> <p>Declaratory/Equitable Relief</p> <p><input type="checkbox"/> General Injunctive Relief</p> <p><input type="checkbox"/> Declaratory Judgment</p> <p><input type="checkbox"/> Other Equitable Relief</p> <p>Constitutional/Civil Rights</p> <p><input type="checkbox"/> Constitutional/Civil Rights</p> <p>Statutory Actions</p> <p><input type="checkbox"/> Unfair Trade Practices</p> <p><input type="checkbox"/> Freedom of Access</p> <p><input type="checkbox"/> Other Statutory Actions</p> <p>Miscellaneous Civil</p> <p><input type="checkbox"/> Drug Forfeitures</p>	<p><input type="checkbox"/> Other Forfeitures/Property Libels</p> <p><input type="checkbox"/> Land Use Enforcement (80K)</p> <p><input type="checkbox"/> Administrative Warrant</p> <p><input type="checkbox"/> HIV Testing</p> <p><input type="checkbox"/> Arbitration Awards</p> <p><input type="checkbox"/> Appointment of Receiver</p> <p><input type="checkbox"/> Shareholders' Derivative Actions</p> <p><input type="checkbox"/> Foreign Deposition</p> <p><input type="checkbox"/> Pre-action Discovery</p> <p><input type="checkbox"/> Common Law Habeas Corpus</p> <p><input type="checkbox"/> Prisoner Transfers</p> <p><input type="checkbox"/> Foreign Judgments</p> <p><input type="checkbox"/> Minor Settlements</p> <p><input type="checkbox"/> Other Civil</p>
<p><u>CHILD PROTECTIVE CUSTODY (PC)</u></p> <p><input type="checkbox"/> Non-DHS Protective Custody</p>		
<u>REAL ESTATE (RE)</u>		
<p>Title Actions</p> <p><input type="checkbox"/> Quiet Title</p> <p><input type="checkbox"/> Eminent Domain</p> <p><input type="checkbox"/> Easements</p> <p><input type="checkbox"/> Boundaries</p>	<p>Foreclosure</p> <p><input type="checkbox"/> Foreclosure (ADR exempt)</p> <p><input type="checkbox"/> Foreclosure (Diversion eligible)</p> <p><input type="checkbox"/> Foreclosure - Other</p>	<p>Misc. Real Estate</p> <p><input type="checkbox"/> Equitable Remedies</p> <p><input type="checkbox"/> Mechanics Lien</p> <p><input type="checkbox"/> Partition</p> <p><input type="checkbox"/> Adverse Possession</p> <p><input type="checkbox"/> Nuisance</p> <p><input type="checkbox"/> Abandoned Roads</p> <p><input type="checkbox"/> Trespass</p> <p><input type="checkbox"/> Other Real Estate</p>
<p><u>APPEALS (AP) (To be filed in Superior Court) (ADR exempt)</u></p> <p><input checked="" type="checkbox"/> Governmental Body (80B)</p> <p><input type="checkbox"/> Administrative Agency (80C)</p> <p><input type="checkbox"/> Other Appeals</p>		

VI. M.R. Civ. P. 16B Alternative Dispute Resolution (ADR):

I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because:

It falls within an exemption listed above (i.e., an appeal or an action for non-payment of a note in a secured transaction).

The plaintiff or defendant is incarcerated in a local, state or federal facility.

The parties have participated in a statutory pre-litigation screening process with _____

The parties have participated in a formal ADR process with _____ on _____ (date).

This is an action in which the plaintiff's likely damages will not exceed \$50,000, and the plaintiff requests an exemption from ADR pursuant to M.R. Civ. P. 16C(g).

VII. (a) PLAINTIFFS (Name & Address including county)
or Third-Party, Counterclaim or Cross-Claim Plaintiffs
 The plaintiff is a prisoner in a local, state or federal facility.

Acadia Hospital Corp.
EMHS
43 Whiting Hill Road, Suite 500
Brewer, ME 04412

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number) If all counsel listed do NOT represent all plaintiffs,
specify who the listed attorney(s) represent.

Arrian Stockdell, Esq.
Bar No. 5182
43 Whiting Hill Road, Suite 500
Brewer, ME 04412

VIII. (a) DEFENDANTS (Name & Address including county)
and/or Third-Party, Counterclaim or Cross-Claim Defendants
 The defendant is a prisoner in a local, state or federal facility.

Town of Hampden
106 Western Avenue
Hampden, ME 04444

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)
(If known)

If all counsel listed do NOT represent all defendants,
specify who the listed attorney(s) represents.

Kate Grossman, Esq.
Bar No. 5089
Farrell, Rosenblatt & Russell
61 Main St., Suite 1, PO Box 738
Bangor, ME 04402-0738

IX. (a) PARTIES OF INTEREST (Name & Address including county)

Acadia Healthcare, Inc.
EMHS
43 Whiting Hill Road, Suite 500
Brewer, ME 04412

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)
(If known)

If all counsel listed do NOT represent all parties,
specify who the listed attorney(s) represents.

Arrian Stockdell, Esq.
43 Whiting Hill Road, Suite 500
Brewer, ME 04412

X. RELATED CASE(S) IF ANY Action with same title filed 5/12/17

Assigned Judge/Justice Hon. William Anderson

Docket Number PEN-AP-2017-14

Date: November 14, 2017

Arrian Stockdell, Esq.

Name of Plaintiff or Lead Attorney of Record

Signature of Plaintiff or Attorney

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-2017-14

ACADIA HOSPITAL CORP.)

Plaintiff)

v.)

TOWN OF HAMPDEN,)

Defendant)

MOTION TO CONSOLIDATE

Filed herewith is a complaint of even date which is related to a continuation of this matter. For all intents and purposes that complaint is an appeal of the Town of Hampden's decision in this matter after this Court remanded the matter via the order in this docket dated August 17, 2017.

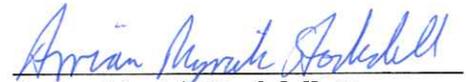
Undersigned counsel cannot find explicit direction within the Maine Rules of Civil Procedure or 36 M.R.S. § 843 regarding the nature of the procedural posture at this juncture. After discussion on this issue, attorney Kate Grossman, counsel for the Town of Hampden, made it clear that the Town's position was that a new complaint must be filed for this matter to continue. Hence, Acadia Hospital Corp. has filed this complaint and left the docket number thereon blank.

Maine Rule of Civil Procedure indirectly suggests that, on a matter such as this where a decision on remand is appealed again to the Superior Court, subsequent proceedings would be part of the same action, on the same docket number. This is because the Court's order dated August 17, 2017 is not a final judgment, which by necessity implies that a subsequent appeal after remand would be entered in the same docket as part of the same action. *M. R. Civ. P. 80B(m)*. Counsel also notes that it seems that creating a new docket entry for what is the same matter at a different temporal stage seems needlessly duplicative.

Therefore, assuming attorney Grossman is correct, and a subsequent complaint is necessary, Plaintiff moves that the Court consolidate the new Complaint with this prior appeal. Plaintiff has included a check for the \$150 filing fee for a new appeal in the event this is required, but Plaintiff also moves the court to waive this filing fee under the circumstances, a filing fee having previously been paid.

In the event no new complaint or separate action is necessary, the motion to consolidate would be moot, although Plaintiff would still in that event ask that the filing fee be returned.

Date: 11/14/17



Arrian Myrick Stockdell, Esq.
Bar No. 5182
Eastern Maine Healthcare Systems
Legal Department
The Cianchette Building
43 Whiting Hill Road
Brewer, ME 04412

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

ACADIA HOSPITAL CORP.)
a Maine non-profit corporation,)
of Bangor, County of)
Penobscot, State of Maine)

Plaintiff

v.

TOWN OF HAMPDEN,)
a municipal town in the)
County of Penobscot,)
State of Maine)

Defendant

and

ACADIA HEALTHCARE, Inc.)
a Maine non-profit corporation,)
of Bangor, County of)
Penobscot, State of Maine)

Party in Interest

COMPLAINT
[M.R. Civ. P. 80B]

Plaintiff Acadia Hospital Corp. alleges:

1. In May of 2017, Plaintiff filed a similar complaint regarding the Town of Hampden Board of Assessment Review's (the "Board") decision dated May 4, 2017, regarding the assessment of a service charge on property located at 25 Mayo Road in Hampden, Maine (the "Property"). That prior complaint will be referred to as the "First Complaint" and this decision will be referred to as the "First Decision."
 2. A copy of the First Decision is attached hereto as Exhibit A.
 3. A copy of the First Complaint is attached hereto and incorporated herein as Exhibit B.
- Plaintiff repeats and realleges the allegations found therein, noting that those allegations referred to the First Decision which was previously challenged.

4. Subsequent to the filing of the First Complaint, this Court assigned the matter to docket number PEN-AP-2017-14.
5. After briefing, this Court issued a decision dated August 17, 2017 in that docket (the “Remand Order”), which remanded the matter to the Board for further proceedings. A copy of the Remand Order is attached hereto as Exhibit C.
6. On October 24, 2017, the Board held a hearing on the matter pursuant to the Remand Order.
7. At this hearing, attorney Kate Grossman, representing the Town of Hampden, presented the Board with a proposed written decision, which the Board adopted by a 2-1 vote (the “Second Decision”). The Second Decision is attached hereto as Exhibit D.
8. The Second Decision, like the First Decision, denied Plaintiff’s appeal of the assessment of the service charge. However, the Second Decision contains new conclusions which were not specified in the First Decision.
9. One of these conclusions attempts to justify the Board’s determination by drawing a distinction between the “use” of the property by the owner of real estate and the “use” of the property by a tenant occupying the property under a lease from the owner. *See* Exhibit D, Conclusions, paragraph 4.
10. This distinction is misplaced: because the Town of Hampden’s Service Charge Ordinance only authorizes the service charge to be assessed on property that is used to provide rental income by the owner, there is no other relevant use than to provide rental income to which an owner could put the property in the context of a Service Charge.
11. Thus, the “use” of the property for purposes of the service charge must be the use to which the tenant puts the property, because if the owner were not using the property for rental income the assessment of the service charge would not be authorized.
12. This justification for the Second Decision is legally incorrect and improper, and thus cannot support the Board’s decision.

13. In the alternative, the Board also attempts to justify the Second Decision by concluding that the term “student housing” should be interpreted to mean “housing that is incidental to and necessitated by a person’s chief occupation.” *See* Exhibit D, Conclusions, paragraph 6.
14. This interpretation is flawed because it invents an additional requirement that the students not have another “chief occupation.” *Id.*
15. It appears that the Town implicitly concluded that the “chief occupation” of the students was to receive mental health treatment, and excluded them from this definition for this reason. *See* Exhibit C, Conclusions, paragraph 7.
16. This second justification for the Second Decision is also legally incorrect and improper, and thus cannot support the Board’s decision.
17. Generally, the Second Decision is incorrect and fails to support the Board’s denial of Plaintiff’s appeal.
18. As a Town located in the County of Penobscot, this Court has personal jurisdiction over the Defendant.
19. As corporations with principle places of business in Bangor, Maine, this Court has jurisdiction over Plaintiff and party-in-interest Acadia Healthcare, Inc.
20. This court has subject matter jurisdiction over this action pursuant to 36 M.R.S. § 843 and Maine Rule of Evidence 80B.

Count I: Review of Government Action [Rule 80B]

21. Plaintiff repeats and realleges paragraphs 1 through 19 hereof as if more fully set forth herein.
22. This action is brought under Maine Rule of Civil Procedure 80B.
23. The fact that the Property is used as student housing compelled the Board to reverse the imposition of the service charge on the Property.

24. Instead, the Board denied the appeal.

25. The Board's decision in this matter was counter to the Ordinance and 36 M.R.S. § 508, and was thus incorrect.

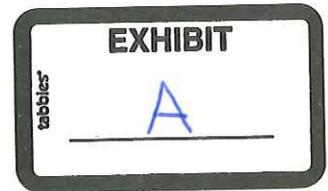
WHEREFORE, with respect to Count I of its Complaint, Plaintiff Acadia Hospital Corp. demands judgment against Defendant, prays this Court reverse the decision of the Board, order that the service charge may not be imposed on the Property, and award plaintiff its attorney fees, costs and such other and further relief as deemed just and proper by the Court.

Acadia Healthcare Corp.
by:

Date: 11/14/17


Arrian Myrick Stockdell, Esq.
Bar No. 5182
Eastern Maine Healthcare Systems
Legal Department
The Cianchette Building
43 Whiting Hill Road
Brewer, ME 04412
Attorney for Plaintiff

**TOWN OF HAMPDEN
BOARD OF ASSESSMENT REVIEW**



Re: Acadia Hospital Corp. Appeal of Service Charge Ordinance v. Assessment

DECISION

On April 20, 2017 the Town of Hampden Board of Assessment Review was convened to hear the appeal of Acadia Hospital Corp., a tax exempt organization and owner of property located at 25 Mayo Road, Hampden, Maine, the property being further identified as Map 6, Lot 29-A.

The Petitioner was represented at the hearing by Arrian Stockdell, Esq. and the Town Assessor, Kelly Karter, CMA was also present.

The issue presented in this appeal is whether the property in question, being owned by Acadia Hospital Corp., and leased to Sweetser which provides housing for its students/clients who are transported daily to the Sweetser School in Belfast qualifies for exemption from the Town of Hampden Service Charge Ordinance.

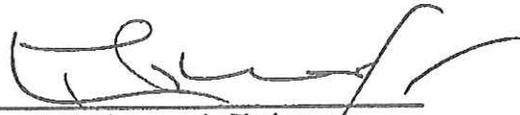
Pursuant to Section 3 of the Town of Hampden Service Charge Ordinance, "The Service Charge shall be levied by the municipal officers against all residential property owned by an organization or institution if the property is otherwise totally exempt from property taxation and is used to provide rental income. The Service Charge shall not apply to student housing or parsonages."

After hearing testimony from Sweetser's Senior Director of Facilities, Jon Mistos, and argument from Acadia Hospital Corp.'s attorney, Arrian Stockdell and the Town's Assessor, Kelly Karter, the Board, after due consideration and deliberation of the issue, concluded that the property located at 25 Mayo Road is subject to the Service Charge Ordinance because although it

is a residential property owned by a tax exempt organization it is used to provide rental income to that organization.

ON MOTION MADE by member, Aimee Smith, seconded by Chair, Ted Sherwood, the Board concluded by a vote of 2-1 with member, Avery Caldwell dissenting, to DENY the appeal.

Dated: MAY 4, 2017



Lowell T. Sherwood, Chair
Board of Assessment Review

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

ACADIA HOSPITAL CORP.)
a Maine non-profit corporation,)
of Bangor, County of)
Penobscot, State of Maine)

Plaintiff

v.

TOWN OF HAMPDEN,)
a municipal town in the)
County of Penobscot,)
State of Maine)

Defendant

and

ACADIA HEALTHCARE, Inc.)
a Maine non-profit corporation,)
of Bangor, County of)
Penobscot, State of Maine)

Party in Interest



COMPLAINT
[M.R.Civ.P. 80B]

Plaintiff Acadia Hospital Corp. alleges:

1. In March of 2016 Plaintiff requested an exemption from real estate taxes on property then owned by plaintiff located at 25 Mayo Road in Hampden, Maine (the "Property").
2. The Town of Hampden ("Defendant" or the "Town") granted Plaintiff's request.
3. The Property is currently exempt from property tax.
4. By notice dated October 20, 2016 (the "Notice") Defendant informed Plaintiff in writing that the Hampden Town Council had approved a service charge assessed against the Property in the amount of \$4,008.60 (the "Service Charge").
5. A true and accurate copy of the Notice is attached as Exhibit A.
6. The Service Charge was assessed in accordance with the Town of Hampden's Service Charge Ordinance approved May 18, 1992 (the "Ordinance").

7. A true and accurate copy of the Ordinance is attached as Exhibit B.
8. The Ordinance is authorized under 36 M.R.S. § 508.
9. By letter and memorandum to the Town dated December 5, 2016, plaintiff timely appealed the imposition of the Service Charge.
10. The Town of Hampden Board of Assessment Review (the "Board") held a hearing on the matter on April 20, 2017.
11. Both the Ordinance and 36 M.R.S. § 508 prohibit the imposition or assessment of a service charge like the Service Charge which is the subject of this action if the property in question is used as student housing.
12. The only evidence presented at the Hearing was that the Property was used as student housing.
13. The Property is used as student housing.
14. The Board determined and made the factual finding that the Property is used as student housing.
15. Nevertheless, the Board denied plaintiff's appeal by a vote of 2-1.
16. The Board subsequently issued a written decision on this matter, a true and accurate copy of which is attached as Exhibit C.
17. Acadia Healthcare, Inc. is a party in interest to this action because Plaintiff transferred title to the Property to Acadia Healthcare, Inc. by Quitclaim Deed with Covenant dated August 16, 2016.
18. As a Town located in the County of Penobscot, this Court has personal jurisdiction over the Defendant.
19. As corporations with principle places of business in Bangor, Maine, this Court has jurisdiction over Plaintiff and party in interest Acadia Healthcare, Inc.
20. This court has subject matter jurisdiction over this action pursuant to 36 M.R.S. § 843 and Maine Rule of Evidence 80B.

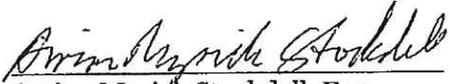
Count I: Review of Government Action [Rule 80B]

21. Plaintiff repeats and realleges paragraphs 1 through 20 hereof as if more fully set forth herein.
22. This action is brought under Maine Rule of Civil Procedure 80B.
23. The fact that the property is used as student housing, and the Board's finding to that effect, compelled the Board to reverse the imposition of the Service Charge on the Property.
24. Instead, the Board denied the appeal on the basis that the Property "is used to provide rental income to [the] organization." *Exhibit C, page 2.*
25. The Board's decision in this matter was counter to the Ordinance and 36 M.R.S. § 508.

WHEREFORE, with respect to Count I of its Complaint, Plaintiff Acadia Hospital Corp. demands judgment against Defendant, prays this Court reverse the decision of the Board, order that the Service Charge may not be imposed on the Property, and award plaintiff its attorney fees, costs and such other and further relief as deemed just and proper by the Court.

Acadia Healthcare Corp.
by:

Date: 5/12/17


Arrian Myrick Stockdell, Esq.
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The Cianchette Building
43 Whiting Hill Road
Brewer, ME 04412
Attorney for Plaintiff

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO AP 17-014

ACADIA HOSPITAL CORP.,

Plaintiff,

v.

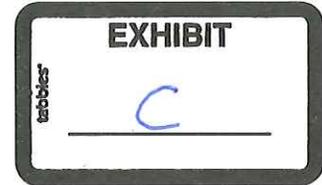
TOWN OF HAMPDEN,

Defendant,
and

ACADIA HEALTHCARE, INC.

Party-in-Interest

ORDER



In this 80B appeal, Acadia Hospital appeals from a ruling of the Town of Hampden Board of Assessment Review upholding the Town's assessment of a service charge imposed upon Acadia.

Acadia owns certain tax-exempt property in Hampden, Maine which it leases to an unrelated third party, Sweetser. According to the lease that has been made a part of the record, Sweetser is to use the premises as a mental health residential treatment facility. A town ordinance establishes an annual service charge to be levied against all residential property that is otherwise exempt from state or municipal taxation and is used to provide rental income. The service charge does not apply to student housing however.

The record on appeal is sparse. Although the parties discuss certain relevant facts in their briefs, the record does not contain many of the facts upon which they base their arguments. From the lease, which is part of the record, the Court can conclude that the premises were used as a residential treatment facility, but little more. From that proposition, the Court can also infer that the clients spend the night there, but no

additional detail is present in the record. Although it is the plaintiff's responsibility to provide the Court with an adequate record for review, M.R. Civ. P 80B(e), the municipality must assure that a sufficient record is created to permit judicial review. *Sanborn v. Town of Elliot*, 425 A.2d 629, 630-3 (Me. 1981). It is not clear to the Court whether a record of testimony at the hearing before the Board exists, or whether the plaintiff, or perhaps both parties, decided that it was not necessary to include testimony in the record on appeal.

In its Decision of May 4, 2017, the Board stated: "The issue presented in this appeal is whether the property in question, being owned by Acadia Hospital Corp., and leased to Sweetser which provides housing for its students/clients who are transported daily to the Sweetser school in Belfast qualifies for exemption from the Town of Hampden Service Charge Ordinance." Although the parties seem to interpret this as a finding that what is described as an issue is actually a fact, it isn't particularly clear to the Court because the issue of whether the property's use satisfied the exception was then ignored in the remainder of the Decision. The only analysis contained in the Decision is the conclusion that the property is subject to the service charge because "although it is a residential property owned by a tax exempt organization it is used to provide rental income to that organization." This states the obvious and in no way addresses the issue that the Board described as being presented. Did the Board ignore the student housing exception or did it decide the issue without providing any analysis whatsoever? Although the Court is aware of the principle that if the appealing party does not request additional findings the reviewing court should infer that the tribunal found all facts necessary to support its decision, the sparse record and inadequate Decision in this appeal form an inadequate basis for appellate review.

As a result, the Board's Order is vacated and the matter is remanded for further proceedings, which could include the creation or preparation¹ of a suitable record and a Decision that includes a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, in conformity with M.R.S. 30-A § 2691(3)(E).

Dated: August 17, 2017



WILLIAM ANDERSON
JUSTICE, SUPERIOR COURT

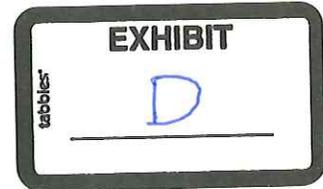
ORDER/JUDGMENT ENTERED IN THE
COURT DOCKET ON: 9-7-17

¹ The parties can also proceed by submitting stipulations pursuant to M.R. Civ. P. 80B(e)(2).

TOWN OF HAMPDEN
BOARD OF ASSESSMENT REVIEW

~~PROPOSED~~ FINDINGS AND DECISION

In re: Acadia Hospital Corp. Appeal of Service Charge Ordinance



Background and Procedural Matters

On October 20, 2016, the Town of Hampden ("the Town") notified Hampden property owner Acadia Hospital Corp. ("Acadia") of a service charge of \$4,008.60 due under the Town's Service Charge Ordinance ("the Ordinance") and 36 M.R.S. Ch. 105.

On December 5, 2016, Acadia appealed the imposition of the service charge to the Town's Board of Assessment Review ("the Board").

The Board convened on April 20, 2017 to hear Acadia's appeal. The following members were present: Lowell T. Sherwood, Aimee Smith, and Avery Caldwell. Acadia was represented by Arrian Stockdell, Esq. Town Assessor, Kelly Karter, CMA, was also present. Both parties were afforded the opportunity to present any and all written or oral evidence that they wished the Board to consider. Both parties were given the opportunity to cross-examine witnesses. By a vote of 2-1, the Board voted to deny Acadia's appeal of the imposition of the service charge.

Acadia then appealed the Board's April 20, 2017 decision to the Superior Court, pursuant to Maine Rule of Civil Procedure 80B. Following briefing, in an order dated August 17, 2017, the Court vacated and remanded the Board's decision "for further proceedings, which could include the creation or preparation of a suitable record and a Decision that includes a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, in conformity with M.R.S. 30-A § 2691(3)(E)."

The Board reconvened on October 24, 2017 for proceedings in accordance with the Court's order.

Record

The following constitute the record on appeal:

1. Town of Hampden Service Charge Ordinance (R. 1)
2. October 20, 2016 memorandum from Angus Jennings to Acadia Hospital Corp re: FY17 Service Charge (R. 2)
3. December 5, 2016 Letter from Arrian Stockdell, Esq. to Town of Hampden (R. 3)
4. December 5, 2016 appeal to Board of Assessment Review (R. 4)
5. October 1, 2015 lease of 25 Mayo Road, Hampden (R. 5)
6. Testimony of Sweetser Senior Director of Facilities Jon Mistos (R. 6)
7. Testimony of Hampden Town Assessor Kelly Karter (R. 7)

Findings of Fact

1. Plaintiff Acadia Hospital Corp. ("Acadia Hospital") owned the property located at 25 Mayo Road in Hampden, Maine ("Property") until August, 2016, at which time it was conveyed to Acadia Healthcare, Inc. ("Acadia Healthcare"). (R. 4).
2. On October 20, 2016, the Town of Hampden notified Acadia Hospital of the assessment of a service charge against the Property for the 2016/2017 fiscal year. (R. 2).
3. The service charge totaled \$4,008.60. (R. 2).
4. Presently, Acadia Hospital leases the Property to Sweetser, a Maine non-profit corporation. (R. 4; R. 5).
5. Sweetser provides "family-centered residential treatment services" for both adults and children. (R. 4).
6. Sweetser is not related in any way to Acadia Hospital, Acadia Healthcare, or any other EMHS-related member entity. The only relationship between Acadia Hospital and Sweetser is purely that of landlord-tenant. (R. 4).
7. The Property is exempt from real estate taxes. (R. 4).
8. The purpose of the Town of Hampden's Service Charge Ordinance ("Service Charge Ordinance") is

to establish an annual service charge to recover the cost of providing municipal services, other than education and general assistance, to owners and/or occupants of certain institutional and organizational real property which is otherwise exempt from state or municipal taxation.

(R. 1).

9. The service charge is levied by the municipal officers "against all residential property owned by an organization or institution if the property is otherwise totally exempt from property taxation and is used to provide rental income." (R. 1).
10. The Ordinance exempts "student housing and parsonages" from the service charge.
11. Acadia Hospital currently leases the Property to Sweetser, an unrelated third-party. (R. 5).
12. The lease specifically provides as follows:

7

The Tenant shall use the [Property] as a mental health residential treatment facility, including uses incidental thereto.

...

The Tenant must remain licensed by the State of Maine as a Residential Child Care Facility during the term of this lease.

(R. 5; Lease, § 7).

13. The term "Residential Child Care Facility" is defined in Maine law, in part, as

[a]ny children's home which provides board and care for one or more children on a regular, twenty-four hour a day residential basis and as further defined in 22 M.R.S.A. § 8101(4).

(10-148 C.M.R. ch. 18, § 2 (1998)).

14. Sweetser uses the Property as a full-time mental health residential treatment facility for minors. (R. 4).

15. Sweetser transports its clients/patients from its mental health residential treatment facility on the Property to its private, special education school, the Sweetser School, in Belfast. (R. 4).

16. Every child being cared for at Sweetser's mental health residential treatment facility on the Property also attends the Sweetser School as part and parcel of their mental health treatment program. (R. 4)

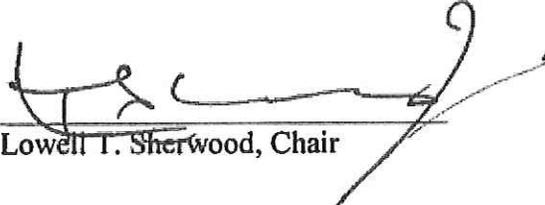
Conclusions

1. The Property is owned by Acadia Hospital, which is an organization or institution. Finding of Fact 1.
2. The Property is otherwise totally exempt from property taxation.
3. The Property is used by Acadia to provide rental income.
4. As the service charge under the Service Charge Ordinance is to be levied against property owners, we conclude that the Ordinance must be applied to the owner of the property, and not to a third-party tenant.
5. Nevertheless, even if the Ordinance were to be applied to the tenants in this case, the "student housing" exception would not apply.

- 7
6. Although "student housing" is not defined under the Ordinance or Maine law, we interpret this to mean housing that is incidental to and necessitated by a person's chief occupation, specifically being a student or a member of the clergy.
 7. It is clear from the Record that the primary function of the Sweetser facility is to provide mental health treatment for children.
 8. That treatment includes an education component and an around-the-clock care component.
 9. Sweetser's patients live at the mental health residential treatment facility located on the Property and attend school as part of their treatment.
 10. Thus, the chief occupation of these children is their participation in mental health treatment. The residential component of their treatment is not incidental to or necessitated by the educational component.

Therefore, the Subject Property is subject to the Service Charge Ordinance, and Acadia Hospital's appeal of the service charge is denied.

Date: 10/24/57



Lowell T. Sherwood, Chair