

Town of Newington, NH
Board of Selectmen Meeting Minutes
Thursday March 7th, 2024

Present: Chair Bob Blonigen, Selectman Brandon Arsenault, Selectman Chris Wayss, Building Inspector Jeremy Boston, Resident Bob Byrnes, Town Administrator Martha Roy and Eleanor Boy, Recorder.

B. Blonigen called the meeting to order at 5:30pm.

Minutes Approval: B. Arsenault moved to approve the minutes of February 20, 2024. C. Wayss seconded the motion. All were in favor.

Manifest Approval: B. Arsenault moved to approve the manifests for \$26,400.37 dated 2/22/2024 and \$201,732.88 dated 2/29/24. C. Wayss seconded the motion. All were in favor.

Facility Use Requests:

B. Arsenault moved to approve the following facility use request:
Cheryl and Bob Spinney-Funeral Reception-Saturday March 23rd-TH

C. Wayss seconded the motion. All were in favor.

B. Arsenault moved to approve the following facility use request:
Kim Jacques-Birthday Party-Saturday March 30th-OTH

C. Wayss seconded the motion. All were in favor.

B. Arsenault moved to approve the following facility use request:
NH Buildings Officials Association (Jeremy Boston)-Meeting-Wednesday April 10th-TH

C. Wayss seconded the motion. All were in favor.

The Selectmen decided to table approval of the following request until the additionally insured reads "The Town of Newington" instead of "Newington School Ballfield"

Portsmouth Little League-Practice-School Ball Field-3/31-7/1/24, Weekdays after school and weekends

B. Arsenault moved to approve the following facility use request:
NHSCOA (Jeremy Boston)- Training-Thursday May 23rd-TH

C. Wayss seconded the motion. All were in favor.

B. Arsenault moved to approve the following facility use request:
Newington Police Department- Training-4/22-4/24-TH

C. Wayss seconded the motion. All were in favor.

Bob Byrnes-Zoning Concerns:

B. Byrnes said that he is looking for guidance on an issue with a couple of properties along Nimble Hill Road that are storing equipment outside and visible to neighbors. The zoning ordinance says that home businesses must store their equipment so that it is

not visible to the neighbors. B. Brynes said that it has been going on for several months and nothing definitive has been done yet. B. Blonigen said that the Board is aware of this situation and they are going to address it. B. Arsenault said that it is an unfortunate situation that B. Brynes is in and it needs to be addressed. B. Blonigen said that they will get back to B. Brynes to let him know the progress and updates on this situation.

C. Wayss asked J. Boston to get a quote on adding a camera to the other half of the Town Hall Auditorium so that three meetings could go on at the same time and all three could be recorded.

Air National Guard 157th Air Refueling Wing, Tech Sgt. Yvonne Bartoszak-Commendation:

B. Arsenault said that the Selectmen heard about one of the Air National Guardsman who sprang into action when she saw an elderly man walking along Shattuck Way in the early morning hours and potentially saving this person's life. This is a wonderful item to hear for guardsmen and what that means for the State and for Newington to have the Guard involved within the community and always looking out. B. Arsenault said that the Town has a proclamation they would like to present to Tech. Sergeant Yvonne Bartoszak.

B. Arsenault read the proclamation:

**TOWN OF NEWINGTON, NEW HAMPSHIRE
PROCLAMATION**

WHEREAS Tech. Sergeant Yvonne Bartoszak enlisted in the Air National Guard 157th Logistics Readiness Squadron Unit in 2013 and has served ever since; and

WHEREAS Tech. Sergeant Yvonne Bartoszak began her logistics career as a vehicle operator, completed a 6-month deployment to Djibouti, and currently serves as a crucial member of the Distribution Section. This finds her responsible for the constant flow of both cargo and people to and from Pease Air National Guard Base; and

WHEREAS Tech. Sergeant Yvonne Bartoszak's focus, detail-oriented mindset, and selfless work ethic, make her an indispensable member of the NH Air National Guard logistics family; and

WHEREAS Tech. Sergeant Yvonne Bartoszak noticed an elderly gentleman walking down Shattuck Way by the river, in the dark, early one morning. The temperature was below freezing. She contacted the Police Department and a tow truck driver to get the man assistance.

WHEREAS Tech. Sergeant Yvonne Bartoszak's quick reaction this elderly man was rescued and returned to his family safely.

NOW COME Selectmen Robert Blonigen, Brandon Arsenault and Christian Wayss to proclaim our appreciation for her selfless act and countless hours of service to our nation.

Given under our hands and seal this 7th day of March 2024 from the Newington Board of Selectmen.

B. Blonigen thanked all the guardsmen for coming out. The Selectmen have been working hard the last couple of years for a closer relationship with the Guard and this is one example.

Non-Public Sealed Minutes:

The Board decided to table review of these minutes until the next meeting.

2015 Ford Explorer Status:

B. Blonigen said that this 2015 Ford Explorer was turned in by the Police Department. The Board of Selectmen are in charge of liquidating it. The Board put the car out for bid and received one bid. The Board rejected the bid. The Board then received another bid from a town resident for \$1,000. **B. Arsenault moved to accept the bid from Craig Daigle for \$1,000. C. Wayss seconded the motion. All were in favor.**

Community Power Informational Session:

B. Blonigen said that the Board had looked at Community Power as an option before and found that the current rate that the Town is getting is lower than the Community Power rate and then decided to stay with the current supplier. If the Town did decide to go with Community Power, it would mean that every resident would automatically be switched to Community Power and would have to change their power back to their preferred supplier if they didn't want Community Power.

B. Arsenault thought that electric supplier rates should be looked at every year to make sure the Town is getting the best rate. C. Wayss would like this to be looked at before budget season and has heard that Community Power is now offering better rates and many communities have decided to switch. C. Wayss thought an informational

meeting with Community Power would be a good idea and they could answer residents' questions. B. Arsenault asked M. Roy to contact Community Power and schedule a meeting for October.

C. Wayss mentioned that he has been hearing complaints from residents that Comcast/Xfinity's infrastructure in Newington can't support the speeds that are needed. Comcast needs to update their lines in Newington. B. Arsenault suggested that M. Roy call the area manager to let them know that Newington is unhappy with their infrastructure. The Town Hall has consistency problems with its internet, which effects the streaming of meetings. J. Boston is currently looking at Consolidated Communications as an option for the internet. B. Blonigen suggested that the Town write a letter to Comcast about the issues in Newington and put them on notice. C. Wayss will draft a letter for the Selectmen to review.

Skiff Docking Fees:

B. Blonigen said that it is important to make the dock repairs before the upcoming season. C. Wayss said that a skiff fee could offset the cost of the maintenance and repair of the dock. The skiff fee would be similar to residents paying to participate in recreation activities. This would be a fee to participate in using the dock. Skiffs on the dock have to be registered and have a sticker before they can be in the water. Requiring the skiffs to be registered will ensure that all the skiffs on the dock belong to Newington residents.

B. Blonigen suggested having the resident's name and phone number on the sticker. B. Arsenault suggested a \$100 fee to register your skiff. B. Blonigen would like to keep track of the fee money in order to see how much of maintenance and repair costs are offset. C. Wayss said that it would be like the Fox Point house, it does cost the Town money, but the costs are offset by the rent that is collected.

B. Arsenault moved to start an annual \$100 fee for docking a skiff at the Newington dock. All skiffs need to be registered with the Town or they will be removed. C. Wayss seconded the motion. All were in favor.

The Board asked M. Roy to put up a sign on the dock explaining the new policy and the to let residents know that it is a first come, first serve basis.

Social Media Accounts-Jeremy Boston:

J. Boston suggested that the Town start having a Facebook page similar to what the Fire and Police Departments have now. This page could be used to send out updates, road closures etc. B. Blonigen thought that it would be a good communication tool, but questioned who would administer the page. J. Boston said that he could administer it and the page would just be a "likes" page. C. Wayss liked the idea and the suggestion of it being just a "likes" page. B. Arsenault thought the page would be more bulletins

than social, but if the page brings attention to Newington than he wouldn't support the idea.

It was a consensus of the Board to start a Town Facebook page and have J. Boston administer it.

Lamprey Regional Coop-Solid Waste Disposal Update:

B. Blonigen said that Newington used to have our waste disposed in Somersworth, so now Newington is part of the Lamprey Regional Coop that is responsible of that landfill closure. Many Towns in the Seacoast are part of this Coop. Newington's fee for this coop was \$3,000 in 2023 and will be around \$2,000 in 2024. B. Blonigen said that most of the fees are used to test and monitor the water that comes off the landfill. B. Blonigen said that he attended the last meeting with Paul Deschaine, who is the Chair of the Board of Directors of the Lamprey Regional Coop. The Coop will post their budget for this year soon and B. Blonigen said that he will be voting in favor of the budget.

Rand Decision-Education Funding/State Education Tax Update:

B. Blonigen said that it is important to start the conversation about this and have an information campaign about what this decision means for Newington. B. Blonigen believes that Newington is prepared. Newington is part of the Coalition 2.0 and we are actively fighting this decision, but there are certain things by State law, like the \$760,000 that Newington has to pay to the State, that Newington has no say in. Newington will send the \$760,000 to the State and it will be kept in escrow for the next three years and when the court makes the decision about this tax, Newington could get it back, but in the meantime, next year Newington will have to send in another \$760,000. By the time the court hears this case, Newington might get back all the money it has sent to the State. B. Arsenault said that he didn't think many people, at a high level, support this decision. The court ruled what the amount should be, which is out of their authority. B. Blonigen said that it seems that Concord is not giving this issue a lot of attention. C. Wayss said that the Coalition is arguing, since the Rand decision was made, to try and get an injunction so that towns don't have to pay this tax to the State to be held in escrow until a decision is made because this would put dozens of communities in a crisis and facing a million-dollar deficit in 60 days. Newington is actively engaged in the battle to stop it and get the injunction to be heard. So far, it has been denied multiple times and denied a rehearing of it, but the Coalition continues to fight.

For more information on the Rand Decision, please see the attached documents at the end of these minutes.

B. Arsenault asked M. Roy to ask Paul Deschaine to write up a paragraph about the status of this situation and what it means to Newington.

Portsmouth Waterline Valve Replacement Project Update-80,000 lb. Weight Limit Waiver:

B. Blonigen said that the Selectmen have put a lot of time and energy into this project. There will be construction down on Fox Point. The City of Portsmouth has an easement there where the water line goes through. Portsmouth will be doing prep work in that easement which will include cutting down trees and bringing equipment in to get to the valves. They will be using timber mats. Newington has control over some of the construction.

B. Arsenault said that Portsmouth has put up a sign on Fox Point with a QR code on it so people could get information about the project. Portsmouth has a 40-foot-wide permanent easement on Fox Point. Newington has not authorized Portsmouth to do anything outside of their easement area, including anything to do with Phase 2 except for parking of workers' vehicles.

B. Blonigen said that the Board will never sign an agreement that says "in perpetuity" from Portsmouth. Each Board of Selectmen can make their own decision when a future project is proposed.

B. Arsenault said that Portsmouth has proposed keeping the timber mats in their easement until Phase 2 begins, which is unacceptable. The mats need to be removed after Phase 1 is complete. Also, if Portsmouth decides to keep the timber mats in their easement until Phase 2 begins, they can look somewhere else for a laydown area.

J. Boston said that parking for the workers could be across from the docks in the parking lot and field area.

M. Roy said the deadline for finishing Phase 1 is June 2, 2024.

B. Arsenault said that Phase 2 has not even gone out to bid yet, so it could be a while before it starts and Fox Point can't look like a mud pit between the two projects, plus Phase 2 can only be done in the winter. Newington doesn't even have an agreement with Portsmouth for Phase 2.

B. Arsenault said that he thought Newington has been fair with Portsmouth when dealing with this project, but it never ends up being "business as usual" there has always been a little surprise they add in.

C. Wayss said that Fox Point is an important part of Town and the Board of Selectmen will continue to fight Portsmouth until they agree to the terms the Board has laid out.

B. Arsenault moved to sign the 80,000 lb weight limit roadway waiver for the import and export of the excavator for the Fox Point Phase 1 valve replacement project granted that Newington's ten prerequisites are met, to include the 10th, which is that at the completion of Phase 1 all timber mats are removed and all equipment be removed upon completion of the project and remediation process of the area will begin upon completion. C. Wayss seconded the motion. All were in favor.

The ten prerequisites are;

1. Operation hours 7am-5pm M-F
2. Only access to site: Shattuck Way to Nimble Hill Road to Fox Point Road
3. Work will only take place within the existing easement
4. Soil removed from site will be stored behind and to the right side of the Old Stone School
5. Timber mat and truck transport will not exceed allowable weight limits
6. Vehicle parking is allowed in the lot opposite the docks and the adjacent lawn if needed March 7-May 30
7. Vehicle parking is allowed to the right of the easement on approach, in the field next to the wooded area, in an area not to exceed 100' long by 10' wide as depicted on the attached plan.
8. The only trees to be cut on the project site are those flagged with pink flags and the wooded area behind the rental house
9. Abutters along Fox Point Road and at the corner of Little Bay and Fox Point Road will be update regularly regarding the project.
10. At the completion of Phase 1 all timber mats are removed and all equipment be removed upon completion of the project and remediation process of the area will begin upon completion.

C. Wayss asked what would be done if Portsmouth damages Fox Point Road. M. Roy said that Newington has a video of the condition of Fox Point Road before the project starts. B. Arsenault said that the waiver is to drive on the road, not a waiver of responsibility for road damage.

Portsmouth Chamber-Elected Officials Reception-3/11/24-4:30pm 110 Grill

Portsmouth:

M. Roy said that she just wanted to let the Board know about this event, but there is no obligation to attend.

March 12, 2024-Election Day-Selectmen Pro Tem Appointments:

B. Blonigen and C. Wayss will be in the Town Hall all day and Sylvia Bly and Jeremy Boston will share the Pro Tem duties for B. Arsenault.

B. Blonigen said that he was originally told that he couldn't be in the Town Hall on election day, but he has since found out that he can be present under NHRSA 658:24.

M. Roy read NHRSA 658:24;

658:24 Disqualification of Certain Persons-Any person, other than a moderator, clerk, selectman, inspector of election, or supervisor of the checklist, whose name appears on a ballot for an elective position, other than a position of an election official, shall be disqualified from performing duties as an election official in that election. A moderator, clerk, selectman, inspector of election, or supervisor of the checklist whose name appears on a ballot for a elective position, other than the position of an election official, shall be disqualified from the handling of marked ballots and the counting of votes pursuant to RSA 659:58.

Earth Day-April 22, 2024:

B. Arsenaault proposed to have a community day to pick up trash in Newington in celebration of Earth Day. The Air National Guard could be part of the day, the Highway Department could provide a truck and the Police Department could provide a detail. B. Blonigen and C. Wayss liked the idea. B. Arsenaault will start working with the National Guard to set it up.

C. Wayss said that the median on Woodbury Ave between the lights by Walmart and the PDA circle looks terrible. The State should be taking care of it. M. Roy said that the Board had sent a letter to the State a couple of years ago to complain about this issue and was told that they had no people to do the work. B. Blonigen suggested that they write another letter to the State DOT Commissioner about this issue.

The Selectmen will soon be meeting with the Newington School Board to discuss the formula for the school funding.

Mike and Jane Mazeau will be at the next Selectmen's meeting to discuss the burial ground on their property and to get everyone on the same page. B. Blonigen asked M. Roy to invite Cemetery Trustees Chair Alan Wilson to the meeting and to look up the RSA about this issue.

Public Comment:

B. Blonigen said that he received an anonymous letter that said that this person was concerned about the Town using taxpayers' money to purchase alcohol for events, like the senior dinner etc. C. Wayss agreed that this subject is a worth a discussion and will be looked into.

C. Wayss said that he was approached by a resident about the possibility that they could be taxed out of their home because of the tax increase this year. C. Wayss said

that the Selectmen worked very hard this year to keep expenses down to minimize the tax increase, but understands the issue.

B. Arsenault moved to adjourn at 7:59pm. C. Wayss seconded the motion. All were in favor.

Respectfully submitted,
Eleanor Boy, Recorder

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

Steven Rand, et al.

v.

The State of New Hampshire

No. 215-2022-CV-00167

ORDER ON PENDING MOTIONS CONCERNING SWEPT CLAIMS

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

Background

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

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

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

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

Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

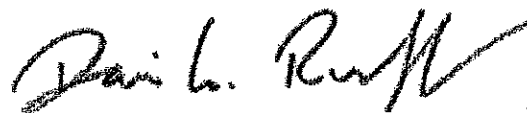
questions. Moreover, given the compelling interests involved, there is no just reason to delay appeal of the SWEPT Order. Accordingly, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92. The Court thus directs that the SWEPT Order is to be treated as a final decision on the merits with respect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

Conclusion

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

SO ORDERED.

Date: February 20, 2024



Hon. David W. Ruoff
Rockingham County Superior Court

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

**TOWN OF NEWINGTON
PRE-COURT DECISION
2023 TAX RATE COMPUTATION**

<u>Description</u>	<u>Appropriation</u>	<u>Valuation</u>	<u>Tax Rate</u>
<u>Municipal</u>			
Net Required Local Tax Effort	\$5,668,889	\$920,487,591	\$6.16
<u>County</u>			
Net Required Local Tax Effort	\$767,131	\$920,487,591	\$0.83
<u>Local Education</u>			
Net Required Local Tax Effort	\$1,225,005	\$920,487,591	\$1.33
State Education Tax	\$1,108,887	\$597,556,391	\$1.86
Total Net Required Education Tax Effort	\$2,333,892		\$3.19
Total Net Required Tax Effort	<u>\$8,769,912</u>		<u>\$10.18</u>

**TOWN OF NEWINGTON
RAND COURT DECISION
ESTIMATED 2023 TAX RATE COMPUTATION**

<u>Description</u>	<u>Appropriation</u>	<u>Valuation</u>	<u>Tax Rate</u>
<u>Municipal</u>			
Net Required Local Tax Effort	\$5,668,889	\$920,487,591	\$6.16
<u>County</u>			
Net Required Local Tax Effort	\$767,131	\$920,487,591	\$0.83
<u>Local Education</u>			
Net Required Local Tax Effort*	\$2,009,920	\$920,487,591	\$2.18
State Education Tax	\$1,108,887	\$597,556,391	\$1.86
Total Net Required Education Tax Effort	\$3,118,807		\$4.04
Total Net Required Tax Effort	<u>\$9,554,827</u>		<u>\$11.03</u>

*Excess SWEPT sent to the State thereby
increasing Local Education Rate

\$784,915

**TOWN OF NEWINGTON
RAND AND CONVAL COURT DECISIONS
ESTIMATED 2023 TAX RATE COMPUTATION**

<u>Description</u>	<u>Appropriation</u>	<u>Valuation</u>	<u>Tax Rate</u>
<u>Municipal</u>			
Net Required Local Tax Effort	\$5,668,889	\$920,487,591	\$6.16
<u>County</u>			
Net Required Local Tax Effort	\$767,131	\$920,487,591	\$0.83
<u>Local Education</u>			
Net Required Local Tax Effort*	\$3,122,268	\$920,487,591	\$3.39
State Education Tax**	\$2,391,265	\$597,556,391	\$4.00
Total Net Required Education Tax Effort	\$5,513,533		\$7.39
Total Net Required Tax Effort	\$11,949,553		\$14.39
*Excess SWEPT sent to the State thereby increasing Local Education Rate	\$1,897,263		
**Increase in SWEPT needed to fund Adequacy at \$7,356 per student	\$1,282,378		
Total Increase in Net Required Tax Effort	\$3,179,641		