

**TOWN OF WOLFEBORO  
BUDGET COMMITTEE  
September 29, 2014  
Minutes**

**Members Present:** John MacDonald, Chairman, Dave Senecal, Selectmen's Representative, Robert Moholland, Matt Krause, John Burt, Bob Tougher, Members.

**Members Absent:** Frank Giebutowski, Steve Johnson, Brian Black, Harold Parker, Members (all excused).

**Staff Present:** Dave Owen, Town Manager, Lee Ann Keathley, Secretary.

*Chairman MacDonald opened the meeting at 6:02 PM at the Wolfeboro Inn Ballroom.*

**I. Consideration of Minutes  
July 17, 2014**

**It was moved by John Burt and seconded by Bob Tougher to approve the July 17, 2014 Wolfeboro Budget Committee minutes as submitted. All members voted in favor. The motion passed.**

**II. CIP Committee Report**

Bob Tougher reviewed the 2015 project requests, see attached. He stated the CIP Committee is meeting on 10/1/14 to finalize warrant article recommendations. He expressed concern regarding the Abenaki Ski Lodge project; noting \$120,000 of the \$350,000 has been raised and issues related to the elevator are not defined. Bob Tougher recommended the Committee tour the Wastewater Treatment Facility and Water Treatment Plant. Referencing the Library project, he stated the Library Trustees are now proposing an expansion to the front and rear of the building and the creation of 81 parking spaces. He stated the CIP request is for \$5 million with a \$1 million contingency.

John Burt asked if any work has been done on the sidewalk from Treadwell Lane to the high school that was planned for 2014.

Dave Owen stated it is to be done this fall and if it is not completed in 2014 than it may have to be done in 2015.

**III. Discussion Items**

**A. Police Department Presentation**

Stu Chase stated the Police Commission approved the proposed 2015 budget; noting the discretionary lines are down in each of the budgets and the increase in the Animal Control budget is due to a 2% COLA. He stated 2015 is the first year of impact of the COPS grant and full year salary therefore, there is an increase of \$39,000 in the salary line and noted a decrease in the communications salary line due to a senior employee that left. He stated the vehicle lease ends in 2015 therefore; three of the oldest vehicles will be replaced in 2016. He stated he is considering the Ford Explorer; noting the Ford Taurus is too small. He stated he and Captain Rondeau negotiated new Memorandums of Understanding (MOU) which included three paid

holidays (July 4<sup>th</sup>, Thanksgiving and First Night) and negotiations regarding rank and file are ongoing.

John MacDonald requested clarification regarding the MOU.

Dave Owen stated such is an agreement between the elected Police Commission, the Chief and Captain.

Stu Chase stated his vehicle has 141,216 miles and could be a consideration for the canine vehicle.

John MacDonald stated the Restorative Justice Program is requesting the Town for funding and questioned the relationship between the agency and the Police Department.

Stu Chase stated the judge assigns juveniles to the program.

Linda Murray stated the Restorative Justice Program previously received money from the county however, no longer provides funding.

Dean Rondeau stated he believes the department has a minimal relationship and doesn't see a lot of impact to the Police Department.

John Burt questioned the number of vehicles the department has.

Stu Chase replied nine and one abandoned vehicle (Toyota Celica). Referencing the canine program, he stated the department is in the process of soliciting the reinstitution of the program and has requested a placeholder of \$286 for costs associated with one certification and emergency medication. He stated he expects the solicitations to end in approximately two weeks and is researching reputable breeders, kennels and canine handlers. He stated Mike Strauch has been selected as the canine handler. He stated the budget related to the program is down \$10,000 because the care and maintenance of the dog will take place during the last hour of the officer's shift rather than during the hour following the shift. He stated the department has received gifts from local veterinarians.

John MacDonald questioned the breed being researched.

Stu Chase replied a lab retriever.

Bob Tougher stated a canine program is a long term commitment and asked how the department would handle an increase workload in relation to having a canine officer.

Stu Chase stated he doesn't envision hiring another officer in the near future and doesn't foresee an impact to the department.

John Burt verified there would be no additional cost in 2015 for the canine operation and asked if there would be additional costs thereafter.

Stu Chase replied no.

John Burt asked how many exercises the previous dog participated in.

Stu Chase stated he would forward that information to the Committee.

**B. 2014-2015 Budget Review Meeting Schedule**

John MacDonald requested the meeting for December 11, 2014 be rescheduled.

**C. Current Status of 2014 Budget & Expenditure Reports**

Dave Owen stated litigation with Wright-Pierce Engineers has been settled; noting the Town is receiving \$7.5 million. He stated the Town over expended the legal line in the Sewer Fund substantially and distributed the Budget Appropriation Report for the Sewer Fund. He requested the Committee sign a letter to the Commissioner of the DRA requesting the over expenditure of the 2014 budget in the amount of \$650,000. He distributed the letter to the DRA, a copy of RSA 32:11 and an email from Town Counsel, Mark Puffer

Linda Murray stated the money received from the lawsuit would be applied to the expenses.

Dave Owen stated the settlement proceeds would pay for the over expenditure.

John Burt stated he spoke to the law office and was informed the Town owes a balance of \$300,000. He stated the approximate cost of litigation was \$2 million.

Bob Tougher verified the Committee is being requested to transfer the funds from the settlement to pay the over expenditure.

John MacDonald asked why the Budget Committee was not made aware of the issue prior to this evening.

Dave Owen stated he just learned of it on Friday, September 26th.

John MacDonald stated the Committee shouldn't address the issue until the members who are not present have the opportunity to review it. He stated if it was placed on the BOS agenda then it should have been placed on the Budget Committee agenda. He stated the BOS were aware prior to 9/26/14; noting the Town received the email from Attorney Puffer on September 18<sup>th</sup>. He stated someone could have contacted either himself or Staff to place the matter on the agenda; noting that if it's important enough for the BOS to address as an agenda item then it is important enough for the Budget Committee to be given the same notice.

John Burt stated he is not comfortable with the total cost.

Dave Owen stated the Town continues to incur legal expenses due to ongoing communication.

Bob Tougher stated he agrees with Mr. MacDonald however, the Committee has to address the issue despite the fact the meeting is lightly attended by its members. He stated the members should be attending the meetings.

John Burt stated he agrees with Mr. Tougher.

John MacDonald stated he is not against signing the letter rather, he is against the way it is being handled. He stated it should have been an agenda item.

John Burt agreed with Mr. MacDonald.

**It was moved by John Burt and seconded by Bob Tougher to approve the letter to the Department of Revenue Administration requesting approval to over expend the 2014 Budget, specifically the Wastewater Treatment Plant Legal line item, in the amount of \$650,000.**

*Discussion of the motion:*

Bob Moholland asked how much would be left over.

Linda Murray replied \$5,500,000.

Bob Moholland asked what that money would go towards.

Linda Murray stated the Town will hold the money while options to rid the effluent are reviewed. She stated NHDES approved Dave Ford's approach to take the time to develop a solution.

John Burt stated the Town should recover Dave Ford's cost to attend the court hearings.

Sarah Silk stated she and Linda Murray would get up at 4AM and return home at 9 PM almost daily to travel to the hearings. She stated the Town pays him to do that job and part of that job is to defend the lawsuit.

John Burt stated he wants to capture the additional cost.

Linda Murray stated the money that pays Mr. Ford comes out of the administration of the Sewer Fund.

John Burt stated the money came out of the general checking account.

Linda Murray replied no, it should have been paid out of the Sewer Fund.

Bob Moholland stated the taxpayers are currently paying on a bond for the current effluent disposal system and asked if the Town will be asking the taxpayers for more money to correct the issue.

Linda Murray stated the Town could pay off the bond and ask for additional money.

John MacDonald asked if the BOS have requested the DRA to over expend the 2014 budget.

Dave Owen replied no.

Referencing Mark Puffer's email and RSA 32:11, John MacDonald stated the application to the DRA may be made prior to obtaining the Budget Committee's authority. Therefore, he stated the Town can apply now without the Committee's signature to allow time for the remaining members to review the information. He stated there is no urgency for the Committee's signatures this evening since the signatures are not required prior to the application process. He requested a copy of the application.

Dave Senecal stated there is a motion on the floor and moved to question.

It was moved by John Burt and seconded by Bob Tougher to approve the letter to the Department of Revenue Administration requesting approval to over expend the 2014 Budget, specifically the Wastewater Treatment Plant Legal line item, in the amount of \$650,000. Bob Tougher, John Burt, Bob Moholland, Matt Krause voted in favor. John MacDonald opposed. The motion passed.

Dave Owen stated he would revise the letter to the DRA to reflect John Burt's name.

**D. Forward information requests to the Town Manager for the upcoming Budget Review Meeting Schedule**

Bob Tougher requested the Chamber of Commerce's financial report.

Linda Murray stated she doesn't know if they will provide the information but, that it is reasonable to ask for it.

**IV. Town Manager Report**

Dave Owen distributed the 2015 Budget Overview Budgeting and Town Meeting Schedule and Wolfeboro Employee Listing outlining salary and benefits received by full time employees; noting the health insurance buy backs are not included in the document. Referencing the latter and his name on the list, he stated the column ICMA refers to a deferred compensation plan because he is not enrolled in the State's retirement system. Regarding the Town Hall construction, he stated the scaffolding and masonry work was authorized prior to authorizing the full project because the architect didn't have the full set of plans and specifications. He stated the Town is pursuing a "guaranteed not to exceed price" for the project.

**V. Informational Items**

Staff distributed the following informational items; Capital Projects Update Report, dated 9/26/14, and NHDOT letter to the BOS re: Wolfeboro Highway Block Grant Aid.

**VI. Other Business**

John Burt expressed concern regarding the size and number of vehicles in departments and reviewed the Public Works Department vehicle inventory. He stated he feels the staffing at the solid waste facility is excessive and favors the previous system when a split position between the facility and the highway department existed. He stated that he also believes that if money is going to be spent to gain efficiencies then the Town should see the rewards of such. He stated that when the Budget Committee requests information, the Committee needs to be specific with those requests; noting the Committee accepts general statements made by staff.

Bob Tougher stated 3 citizens present at the CIP Committee meeting begged the Committee for \$800,000 to repair Town roads. He stated the Department of Public Works staff is doing many jobs instead of contracting out the work; noting a number can't be put on that. He stated Mr. Burt's comments are factual however, the Town has employees that are doing a great job and staff is producing the work.

John Burt stated the Town is close to becoming a construction company and that is not the objective of staff.

John MacDonald requested the BOS provide information explaining the hydrant fee.

**VII. Public Comment**

None.

**It was moved by John Burt and seconded by Bob Moholland to adjourn the September 29, 2014 Budget Committee meeting. All members voted in favor.**

There being no further business before the Committee, the meeting adjourned at 7:30 PM.

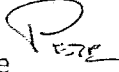
Respectfully Submitted,

*Lee Ann Keathley*

Lee Ann Keathley

Date: September 26, 2014

To: David W. Owen  
Town Manager

From: Peter Chamberlin   
Director Of Finance

Re: Request To Commissioner Of DRA To Over-expend 2014 Budget

As you are aware, legal fees in the Wastewater Treatment Plant – Legal line item will be over-budget by approximately \$ 650,000. The approved budget for that line item in the Sewer Enterprise Fund is \$ 500,000. As of this date we have spent \$ 829,765.44. My best estimate of the additional legal fees and other costs due to be paid in the near future is approximately \$ 320,000. The 2014 budget for that line item was developed last year based upon estimates provided to the town by our attorneys, Hinckley, Allen & Snyder of Boston. It was expected at the time that the trial would take approximately two weeks. The trial began in mid-April and actually went on for three weeks. A huge amount of additional fees were incurred for expert witness fees, document duplication and other related trial costs.

On May 9<sup>th</sup> the verdict was handed down in favor of the Town. Wright-Pierce, Inc. was found guilty on five separate counts and the jury awarded the Town \$ 6,795,000 in compensatory damages which the judge increased to \$ 7,698,532. One of the counts related to the case involved violations of the NH Consumer Protection Act which provided for significant additional penalties which were eventually awarded by the US District Court plus attorneys fees.

Even in view of the findings of the court, management at Wright-Pierce held that they were not liable for any of the charges nor were they able to pay such a large judgement, thereby forcing the Town to negotiate a settlement. Since that time the Town has been involved in those negotiations, all the while running up additional legal costs. Using the mediation services of Conflict Solutions, Inc, the Town and Wright-Pierce have arrived at a settlement of \$ 7,500,000 which is expected to be paid to the Town sometime between mid-October and mid-November of this year. There was no reasonable way at the beginning of this trial that we could have anticipated the final cost.

Due to the fact that the over-expenditure is so large, I am requesting that the Board of Selectmen apply to the Commissioner of the NH Department of Revenue Administration for authority to over-expend the Town of Wolfeboro's 2014 budget by that amount. Please find attached a copy of the appropriate procedures provided to me by the DRA for that purpose. I

am also enclosing a recent email from Town Counsel regarding his recommendation in the matter. I am proposing that these additional expenses be offset by a portion of the proceeds from this case which were in fact directly related to the Town's legal fees.

Encl. (Misc)



NH Department of Revenue Administration  
Municipal & Property Division  
P.O. Box 487  
Concord, NH 03302-0487  
(603) 230-5090

**Emergency Expenditure and Overexpenditure**  
**RSA 32:11**  
**Procedures & Forms**  
**Towns and Village Districts**

**32:11 Emergency Expenditures and Overexpenditures.** – When an unusual circumstance arises during the year which makes it necessary to expend money in excess of an appropriation which may result in an overexpenditure of the total amount appropriated for all purposes at the meeting or when no appropriation has been made, the selectmen or village district commissioners, upon application to the commissioner of revenue administration or the school board upon application to the commissioner of education, may be given authority to make such expenditure, provided that:

I. Such application shall be made prior to the making of such expenditure. No such authority shall be granted until a majority of the budget committee, if any, has approved the application in writing. If there is no budget committee, the governing body shall hold a public hearing on the request, with notice as provided in RSA 91-A:2.

II. The commissioner of revenue administration or the commissioner of education may accept and approve an application after expenditure if caused by a sudden or unexpected emergency, in which case paragraph I shall not apply.

III. Neither the commissioner of revenue administration nor the commissioner of education shall approve such expenditure unless the governing body designates the source of revenue to be used. Neither commissioner shall have the authority to increase the town or district's tax rate in order to fund such expenditure.

This packet contains: Instructions and separate forms for town and village districts showing RSA 32:11 Emergency Expenditure Revenue Source. Complete the applicable form and submit with your request and any other required documentation. If you need assistance, please call your auditor at 230-5090.

***NOTE: Disaster Funds*** – *If you are waiting for federal funds as a result of a major disaster, you may hold a special meeting pursuant to RSA 31:5-a to appropriate the local matching share.*

## **RSA 32:11 Anticipated Emergency Expenditures and Overexpenditure Procedures for Towns and Village Districts**

### **Documents to Submit to the Department of Revenue Administration**

1. Emergency request letter prior to expenditure signed by a majority of the selectmen and by a majority of the budget committee, if applicable. The letter must indicate the reason for the emergency as well as amounts, purposes, and source(s) of revenue.
2. Signed minutes from the hearing held under RSA 32:11, I. No hearing is required if there is an official budget committee and request is signed by a majority of the budget committee.
3. Revenue Source Form showing revenues used to set the tax rate and the anticipated source of revenue for the emergency expenditure.

### **Criteria For Denying or Deferring Request**

1. Request is made after close of the fiscal year, unless emergency under RSA 32:11, II which is when permission is sought after an immediate emergency.
2. Did not follow procedures under RSA 32:11 (see above) or documents are missing.
3. No revenue source or unsatisfactory source [no taxes may be raised; department cannot authorize expenditure from trust or capital reserve fund (CRF) where no other authority has been previously granted by legislative body].
4. "No Means No" issue per RSA 32:10, I (e). This expenditure requires a special meeting under RSA 31:5 or 31:5-a.
5. Expenditure will not exceed bottom line of total voted appropriations (see alternatives #6).
6. Alternatives:
  - Transfers between existing voted appropriations under RSA 32:10, except in a "No Means No" situation or from special warrant article. See RSA 32:10, I, (d) and (e).
  - Too early in fiscal year (FY); wait until final quarter (calculate percent of remaining budget compared to percent of remaining FY).
  - Hold special meeting to appropriate additional funds or appoint agents to expend from an appropriate CRF or expendable trust.
  - Wait until next annual meeting to appropriate for the purpose.
7. No authority to accept grant, if that is revenue source (need approval under RSA 31:95-b).
8. RSA 32:11 approval not necessary; authority to spend already exists. Examples: agents to expend from a CRF or expendable trust have been appointed; bonding authority already approved for that purpose.

### **Criteria For Granting**

1. Satisfactory explanation of unusual circumstance and is a legal purpose for which a town or village district may expend.
2. Request made prior to expenditure (except under RSA 32:11, II).
3. All required documents and signatures are submitted.
4. Documents show amount of request and source of revenue (no taxes may be raised).
5. Does not meet criteria for denying request and there are no other alternatives.

## Peter Chamberlin

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**From:** Puffer, Mark H. <MPuffer@preti.com>  
**Sent:** Thursday, September 18, 2014 2:26 PM  
**To:** Peter Chamberlin (wolffindir@metrocast.net)  
**Cc:** Puffer, Mark H.  
**Subject:** 2014 expenditures  
**Attachments:** RSA 32\_11 Form MS-4E.PDF; Emergency Expenditure and Overexpenditure RSA 32\_11.PDF

Pete:

You have asked for advice in regard to expenditures exceeding the total amount appropriated by the 2014 Town Meeting. You anticipate that you will be receiving the settlement from the Wright-Pierce matter in the amount of \$7.5 million in mid-November; and are inquiring as to the ability to use such funds for expenditures exceeding the total 2014 appropriation by Town Meeting.

As we discussed, the money from the Wright-Pierce settlement is not governed by RSA 31:95-b. The Wright-Pierce moneys are not "unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year." Such "unanticipated money" would be exempt from statutory limits on the expenditure of Town moneys.

As you know, RSA 32:10, I allows for the transfer of appropriations during a fiscal year, thereby allowing the expenditure of more than the amount appropriated for a specific purpose, however RSA 32:10, I (a) provides that "the total amount spent [during the year] shall not exceed the total amount appropriated at the Town or District Meeting." You have asked what the procedure is for spending more than the total appropriated by Town Meeting and whether the Budget Committee needs to be involved. The statute that allows such "overexpenditures" is RSA 32:11. This statute allows "overexpenditures" upon application to the Commissioner of Revenue Administration. RSA 32:11, I provides that the application to the Commissioner "shall be made prior to the making of such expenditure" and that "no such authority shall be granted until a majority of the budget committee, if any, has approved the application in writing." Per RSA 32:11, II, the Budget Committee does not need to be involved where there is "a sudden or unexpected emergency," which is not the case in the situation now facing Wolfeboro.

Thus the Budget Committee must meet to consider the request for the overexpenditures. The application to the Department of Revenue Administration may be made prior to obtaining the Budget Committee's authority, however the authority from the Department cannot be granted until a majority of the Budget Committee has approved the application in writing. ✓

The Department of Revenue Administration's website contains a packet of instructions for emergency and overexpenditures under RSA 32:11. It also includes Form MS-4E entitled "RSA 32:11 Emergency Expenditure Revenue Source Form" on which the municipality indicates the source of the revenue which it desires to expend. (Note that RSA 32:11, III provides that the Revenue Commissioner shall not have authority to increase the Town's tax rate in order to fund such expenditures.) Attached hereto for your convenience are copies of the RSA 32:11 Revenue Administration packet and the RSA 32:11 Revenue Source Form.

Should you have any further questions or concerns, please contact me.

Mark

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