



1 answered appropriately. He commented that [in his opinion] these are safe answers and we have  
2 to move forward as a Committee.

3  
4 Mrs. Couture read the question initially asked by the Board of Selectmen:

5  
6 *If a capital item is purchased on a non-appropriated contract and the subsequent year the*  
7 *proposed budget passes, followed by a few years later the town operates on a default budget*  
8 *(while the item's debt is still being paid off) does that require the town consider the item no*  
9 *longer has an appropriation and the lease terminated?*

10  
11 She indicated that Mr. Pascucci's concern was what happens if the budget fails [not passes].

12  
13 Mr. Pascucci commented that when he read the Board of Selectmen's question, he interpreted it  
14 as saying the budget failed for the last two years, but realized that was not the way the question  
15 was composed. He indicated what failed was the new lease in the new budget and the Board of  
16 Selectmen was stating what occurred previously. Mr. Pascucci noted that he understands that  
17 once the police department is funded the town must continue to fund it. He stated that he does  
18 not believe the town went about the lease the right way. He commented that the lease clearly  
19 failed when the budget failed. He noted that several people have commented to him that they  
20 would rather not pursue the issue because the remedy is more harmful. Mr. Pascucci indicated  
21 that the remedy is to purchase the cruisers, which is more expensive, but we do need cruisers.

22  
23 Mr. Spencer noted a point of order that the discussion is digressing.

24  
25 Mr. Pascucci commented that the questions asked about the lease were not asked the way they  
26 were meant.

27 Mrs. Couture indicated that attached to the response from the NHMA was the case of Sullivan v  
28 Hampton Board of Selectmen in which it was concluded that the governing body has the  
29 authority to transfer funds between purposes in order to continue to provide ongoing public  
30 services. She further indicated that the legal case attached states that if the voters fail to adopt  
31 the proposed operating budget then it means that the default budget is approved and the  
32 Selectmen can choose to how implement the default budget.

33 Mr. Pascucci commented that the cruisers should not have been included in the default budget  
34 because it was a new lease. He indicated if that is the case, any decision of this Committee has  
35 no meaning. He encouraged committee members to do their own research and asked that the  
36 Committee move forward in the right way.

37  
38 Mrs. Couture commented that Mr. Pascucci asked the question he wanted to ask and received a  
39 response from a neutral body. Mr. Pascucci commented that the Board of Selectmen did not ask  
40 the question as he did.

41  
42 Mr. Byron commented that the Board of Selectmen took an action that our attorneys said was  
43 legal. He indicated that when the action was challenged, he composed questions and sent them  
44 to the attorney and shared them with the Budget Committee. He noted that the Budget

1 Committee challenged the questions and the response from the NHMA. Mr. Byron commented  
2 that a Budget Committee member then crafted the questions and received the same response. He  
3 indicated that it is time to move forward and decide how the cruisers will be funded. Mr. Byron  
4 commented that the Board of Selectmen wants to work with the Budget Committee. He noted  
5 that we all have responsibility in this and we must work together and move forward.  
6

7 • **Budget Committee Workshop**

8 Mrs. Couture indicated that she research information regarding workshops for the Budget  
9 Committee. She noted that an individual workshop (onsite) is \$475 regardless of how many  
10 people attend.  
11

12 Mr. Cutter asked why this topic was on the agenda. Mrs. Couture explained that there have been  
13 questions regarding authority and roles of the Budget Committee. She agreed to research the  
14 training options and report on those options.  
15

16 Mrs. Couture indicated that the NHMA offers a workshop each September for municipal budget  
17 training that is \$75 per person. She noted that she attended the workshop in the past and found  
18 that there were no topics covered specific to budget committee members. She commented that  
19 she inquired specifically about workshops for budget committee members. The response stated  
20 they have a presentation entitled “Legal Pitfalls to Avoid in the Budget Process” and are  
21 soliciting questions for that presentation. She indicated that she contacted Mr. Hoch regarding  
22 registration for the workshop and he prefers members register through his office. Mrs. Couture  
23 indicated the presentation is scheduled for September 18.  
24

25 **MOTION:** by Mr. Cutter

26 *Move to go forward with the NHMA individual workshop*

27 **SECOND:** by Mr. Pascucci  
28

29 Mrs. Couture indicated that the advantage of an onsite workshop is that other boards or  
30 committees can be invited.  
31

32 Mrs. Couture indicated that the presenters of the workshop are Steven Buckley, Cordell Johnson  
33 and Gordon Graham. Mr. Byron commented that he has worked with Mr. Buckley as former  
34 town counsel and was concerned with the information he would provide.  
35

36 *Mr. Cutter withdrew his motion. Mr. Pascucci withdrew his second.*  
37

38 **MOTION:** by Mr. Cutter

39 *Move for the Chair to research who will provide the onsite training and allow the Chair to  
40 decide, upon sufficient response, to book that session*

41 **SECOND:** Mr. Pascucci

42 **VOTE: 5-0-2, with Mr. Spencer and Mr. Byron abstaining**

43 **The motion passed.**  
44

45 **7. NEW BUSINESS**  
46

1           • **SCHOOL BUSINESS**

2  
3           • **General Updates**

4 Mr. Bourque reported that the School Board held a brief public session last evening. He reported  
5 that at the July 9 meeting the School Board agreed to remove Ms. Douglas as the Budget  
6 Committee representative to the LSB Planning/Building Advisory Committee. He indicated that  
7 the School Board approved the 2013-2014 Tuition Rates. Mr. Bourque updated the Budget  
8 Committee on the FY14 Unassigned Fund Balance of \$726,746, excluding special education,  
9 self-funded programs and unanticipated revenue, with an adjusted underspend of \$231,630. He  
10 indicated that the largest contributing factor to the ending fund balance was unanticipated  
11 revenues.

12  
13 Mr. Cutter asked if there were any year end encumbrances. Mr. Bourque indicated there were no  
14 encumbrances, but some FY15 budget items were purchased ahead.

15  
16 Mr. Spencer asked what will be applied against the tax rate. Mr. Bourque indicated \$726,746  
17 will be applied to the tax rate.

18  
19 Mrs. Couture asked about contributing factors to the revenues. Mr. Bourque indicated that the  
20 health insurance premium refund and Medicaid were major contributors.

21  
22           • **FY2015 Budget**

23 There were no reports regarding the FY15 Budget.

24  
25           • **Bus Contract**

26 Mr. Spencer believes the first page of the summary of the contract costs contains an error in the  
27 late bus calculations. He indicated that the late bus costs were calculated with an 18% increase,  
28 which should be 15%.

29  
30 Mr. Byron asked if the district has implemented their change in health insurance that was in the  
31 teachers' contract. Mr. Bourque indicated that the district has implemented the change in health  
32 insurance.

33  
34 Mr. Byron commented that the town benefitted from delaying the change to a new health  
35 insurance to ensure that they receive the next refund from LGC. He noted that Mr. Hoch has  
36 additional details.

37  
38           • **TOWN BUSINESS**

39  
40           • **General Updates**

41 Mr. Byron reported that everything is running well and the budget lines are in alignment. He  
42 noted that the town has collected approximately \$906,500 in revenue to date. He indicated there  
43 are several large items anticipated during the year. Mr. Byron reported that the MS-4 will be  
44 completed sometime in September and be sent to the state for the tax rate calculation.

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- **Weekly vs Monthly Expense Reports**

Mr. Cutter requested that the Town Administrator distribute a monthly expense report as opposed to weekly. He indicated that the weekly method makes it difficult for him to reconcile expenses.

Mr. Byron indicated that the town systems are based on weekly reports; however, a monthly report can be generated if necessary. He noted if you compare monthly data to weekly data you will end up with incongruous amounts. Mr. Byron indicated that Mr. Cutter also requested the reports be generated in Excel. He explained that the module the town uses generates reports in pdf format. He noted that there is a module that generates reports in Excel, but it would require that the office staff is trained on using the module.

Mr. Cutter commented that the Town Administrator provided a report in Excel in the past, but that was not continued. Mr. Byron indicated that Mr. Hoch is the only person that runs that module in the office.

Mr. Cutter commented his intention is to subtract work by generating monthly reports. Mr. Byron indicated it will not subtract work as weekly reports will still be generated as that is what the system is based on.

Mr. Spencer asked why Mr. Cutter needs a monthly report. Mr. Cutter commented that he helps with analysis of data and averaging expenses.

Mr. Spencer commented that at some point you have to consider how deeply you will analyze the budget. He believes that will result in getting into too much detail and questioning the town.

Mr. Byron read the response from Mr. Hoch regarding Mr. Cutter's request. The following are statements from Mr. Hoch's response:

Expenditure reports are run weekly and used regularly by department heads to monitor their budgets. It is also a part of our internal controls program, providing additional oversight for expenses posted to individual departments. Since we run checks on a weekly basis, this reporting is a timely snapshot of current conditions. If there is a preference for monthly reporting, we can either send the weekly/YTD report to a wider mailing list on the first week of the month; or with some additional work, we can general a special report for the previous month and send it only to a specialized mailing list. In terms of additional formats, the system does offer reporting in formats other than pdf. Our default format for sharing documents publicly is pdf since it is a controlled format not easily edited. Staff will need to be trained in how to find reports generated in Excel in the accounting software since they do not use this section routinely. Overall, weekly reporting is integrated into the routine workflow. Any change will generate additional work that duplicates an item already produced.

Mr. Cutter asked if the Town Administrator backdates expenses. Mr. Byron indicated he will get the answer for Mr. Cutter. He commented that the State may specify the schedule in which

1 reports are run. Mr. Byron noted a monthly report can be generated in pdf format with a specific  
2 mailing list.

3 Mrs. Couture asked Budget Committee for consensus on a monthly report compared to a weekly  
4 report.

5

6 *Budget Committee consensus: to receive monthly expense reports.*

7

8 • **Lease Purchases**

9 Mrs. Couture indicated there are two requests regarding this topic:

10 • Mr. Spencer requested that the entire Committee be present when the lease purchase  
11 is discussed

12 • Mr. Byron requested input on funding the purchase of the cruisers.

13

14 Mr. Byron indicated that the bottom line is the town needs to purchase police cruisers. He noted  
15 it is an ongoing function that occurs each year. He commented it has to be either included in the  
16 budget as a budgeted item or as a warrant article. Mr. Byron explained that if the cruisers are  
17 presented on the warrant, there is a risk of town safety because of the no means no law. He  
18 commented that some will say you have to trust the voters, which could result in having no  
19 cruisers to respond to emergencies in town. He recommended purchasing the cruisers or a lease  
20 purchase, which is the less expensive method as it distributes the cost over time to make it more  
21 affordable for the town.

22

23 Mr. Spencer expressed concern with the leases themselves. He commented that he was  
24 concerned with legal interpretation that the Board of Selectmen can enter into a lease purchase  
25 once the [default] budget is approved. Mr. Spencer indicated that any new lease should be on the  
26 warrant. He does not believe the voters will not approve the warrant article and feels that the  
27 attorney's response makes a mockery of the voters' responsibility.

28

29 Mr. Byron believes that the Board of Selectmen and the Budget Committee should not  
30 jeopardize security and safety. He commented that he has seen people vote down articles with  
31 zero cost because they did not understand them. He indicated that we as a group owe the citizens  
32 protection that must be funded. Mr. Byron commented he does not have issue with including a  
33 purchase or a lease in the budget.

34

35 Mr. Spencer commented that a lease is supposed to be approved by the voters and including it in  
36 the operating budget is a mockery.

37

38 Mrs. Douglas commented that if a purchase is included in the proposed budget and the budget  
39 fails, you cannot make the purchase. Mr. Byron indicated that the attorney stated if that budget  
40 fails the Board of Selectmen can transfer money to fund the purchase. He noted if it is an article  
41 and the article fails, we cannot. Referring to Mr. Spencer's statement regarding making a  
42 mockery of the voters' responsibility, Mr. Byron indicated that two legal opinion state the Board  
43 of Selectmen are within their rights to transfer money in an approved budget. He does not  
44 believe that is making mockery.

45

1 Mrs. Couture commented that there is a lease every year for cruisers that renews every three  
2 years. She noted that is not a new lease. She indicated if the town wanted to lease computers,  
3 that would be a new lease.

4  
5 Mr. Spencer commented that is authorizing a new lease and the law states a new lease must be  
6 approved by 50% of the voters. He indicated if it is included in the budget it is not approved  
7 appropriately. Mr. Spencer noted that cruiser replacements were not always included in the  
8 budget, but were placed on warrant articles and approved in the past.

9  
10 Mr. Byron clarified that for a long period of time the town had a staggering system of including  
11 cruiser replacements in the budget. He noted they are a consumable item and the town is  
12 required to provide those services.

13  
14 Mrs. Couture asked Committee members if this is something they can support.

15  
16 Mr. Spencer commented he would prefer the Board of Selectmen including the purchase of  
17 cruiser replacements in the budget. He indicated that he would not support a lease purchase.

18  
19 Mrs. Douglas commented that a lease purchase commits future voters to spending without  
20 approving that spending.

21  
22 Mr. Pascucci believes that cruiser replacements should be included in the budget as a purchase  
23 and that lease purchases should be placed on the warrant. He commented with future spending  
24 you are committing someone who moves into town in the future to higher taxes. Mr. Pascucci  
25 indicated that two more cruisers are needed.

26  
27 Mr. Byron noted that one vehicle costs \$32,000 plus \$10,000 for additional outfitting.

28  
29 Mr. Pascucci stated he would support including the purchase of replacement cruisers in the  
30 budget.

31  
32 Mr. Cutter asked if there are any other benefits to the lease (i.e. warranty) or any other protection  
33 to the town in the lease. Mr. Byron commented that the warranty is the same whether lease or  
34 purchase. He added that he is not aware of further protection to the town in a lease.

35  
36 Mr. Cutter stated he would support purchasing the cruiser replacements.

37  
38 Mrs. Douglas stated she would support purchasing the cruiser replacements as she believes we  
39 cannot commit people to future spending.

40  
41 Mr. Pascucci commented that if we include the purchase of replacement vehicles in the budget  
42 and we get the default budget, we can still purchase the cruisers.

43  
44 Mrs. Couture confirmed that she has heard that the Budget Committee supports the purchase of  
45 replacement cruisers in the budget.

46

1 **MOTION:** by Mr. Spencer

2 *Move that the Budget Committee will not include any new leases with a non-appropriation*  
3 *clause in its recommended operating budget. While it is up to the governing body to decide, it*  
4 *is the expectation that any such new leases will be put forward to the legislative body as a*  
5 *separate warrant article so that it will be clear to that body what they are approving.*

6 **SECOND:** by Mrs. Douglas

7

8 Mr. Byron commented with this motion if the town needs to lease a new backhoe (for example)  
9 we would be unable to do so, as would the School Board.

10

11 Mr. Spencer indicated that the motion is addressing our responsibility as we prepare the  
12 operating budget and does not restrict the School Board or Board of Selectmen from doing what  
13 is necessary within their budgets.

14

15 Mrs. Couture asked for clarification as she indicated that if June 1 the town needs a new skid  
16 steer they would enter a lease because they cannot afford the purchase. She asked what would  
17 happen when March arrives.

18

19 Mr. Spencer indicated that would be the second year of the lease.

20

21 Mr. Pascucci commented if there is a true need and (for example) a loader breaks down, the town  
22 can enter into a 5 year lease mid-year. He indicated what should happen is that it comes to the  
23 Budget Committee and we recommend it be placed on a warrant article. He commented that the  
24 Board of Selectmen want to work with the Budget Committee and we want to work with them.

25

26 Mr. Byron commented that sometimes we have to enter a lease purchase and cannot afford the  
27 down payment, which has to be moved to the following year. Mr. Spencer indicated that would  
28 be fine.

29

30 Mrs. Couture commented that this motion does not restrict anyone and does not help the  
31 Committee.

32

33 Mr. Cutter suggested that the Budget Committee can restrict the motion to reflect that the Board  
34 of Selectmen include the purchase of replacement cruisers in the operating budget.

35

36 Mr. Spencer clarified that as a Budget Committee we have to move the operating budget  
37 forward. He indicated that we will not include any new leases in the budget we bring forward.  
38 He noted it does not restrict the Board of Selectmen once the budget goes forward, but states that  
39 the lease should be approved as is appropriate.

40

41 Mrs. Douglas asked if the Board of Selectmen would have to shift money around in the default  
42 budget if the operating budget fails.

43

44 Mrs. Couture indicated that if the Board of Selectmen bring the proposed budget to the Budget  
45 Committee and intend to enter into a lease January 1, this motion says the lease must be placed

1 on a warrant article. She commented that we can approve the motion, but believes we would  
2 never see that scenario.

3  
4 Mr. Pascucci commented that it would dissuade them from bringing the lease to us on a warrant  
5 article.

6  
7 Mr. Byron commented if we want to purchase a large piece of equipment and have it last until  
8 the end of year, he is comfortable with bringing a warrant article forward, but there are times we  
9 do not have that opportunity. He indicated if something critical breaks down we have to be able  
10 to take action.

11  
12 Mr. Spencer commented if they break within the budget cycle you replace them within that  
13 cycle. He indicated this motion does not address that kind of lease; it addresses when we are  
14 preparing a new budget.

15  
16 *Mr. Spencer withdrew the motion. Mrs. Douglas withdrew the second.*

17  
18 **MOTION:** by Mr. Cutter

19 *Move to recommend the Board of Selectmen include the purchase of replacement cruiser in*  
20 *this year's budget*

21 **SECOND:** by Mrs. Douglas

22  
23 Mrs. Douglas commented this will be the same situation as the School Board computer lab issue.  
24 She indicated we included the lab in the budget and now there is a new position for a technology  
25 teacher. She commented that we drive up the budget by including the purchase in the budget.

26 Mrs. Douglas noted it should be taken out of the operating budget so it becomes a more  
27 competitive number and the purchase should be placed on the warrant.

28  
29 Mr. Cutter commented it is their decision to make. Mr. Byron commented that an easy way to  
30 decrease that expense in the budget is a lease purchase.

31  
32 Mr. Spencer commented that the Board of Selectmen should make that decision. He indicated  
33 that he prefers the lease purchase be placed on the warrant.

34  
35 Mrs. Couture indicated that the Board of Selectmen asked for direction from the Budget  
36 Committee.

37  
38 **VOTE: 3-4-0, with Mr. Byron, Mr. Bourque, Mrs. Douglas and Mr. Spencer voting in the**  
39 **negative**

40 **The motion failed.**

41  
42 **• Review of Expenditures**

43 Mr. Spencer asked about overtime in the police department account. Mr. Byron indicated that  
44 the department was down a sergeant. He indicated a new sergeant was sworn in at the last Board  
45 of Selectmen meeting.

46

1 Mr. Cutter commented that he sent a list of questions to the Board of Selectmen regarding  
2 expenses. He indicated he had a subsequent question regarding the salt account. Mr. Cutter  
3 recalled that approximately \$73,000 was spent on salt and the response to his question was that  
4 the account was overspent because of a significant winter. He asked how it could be overspent if  
5 the funds were allocated after the winter.

6  
7 Mr. Byron indicated the town starts spending January 1 and in that timeframe the account was  
8 overspent.

9  
10 Mr. Cutter commented that there are potholes that need to be filled in town. Mr. Byron  
11 suggested that citizens take pictures of the potholes and report the location to the town.

### 12 13 **8. MEMBER INPUT/NEW BUSINESS**

14 Mr. Byron commented that under state law if a committee member misses four consecutive  
15 meetings that person is no longer a Budget Committee member. Mrs. Couture indicated that  
16 every member that has missed a meeting has noted the issue and been excused.

17  
18 Mr. Cutter asked about the budget review process. Mrs. Couture indicated at this time there are  
19 four meetings scheduled for town budget review and six for school budget review.

20  
21 Mr. Pascucci commented that he has heard the economy is on the rebound on television;  
22 however, there is no appetite for spending, except for necessary things if justified. He indicated  
23 that the mentality in most homes is “do we really need this”. He asked Committee members to  
24 think past this room while deliberating, to question everything, to make sure items are justified,  
25 to talk to some neighbors and townspeople, and to look broader because what we have been  
26 doing has not been working.

27  
28 Mr. Cutter commented that he believes the Committee has done an adequate job over the last  
29 couple of years. He indicated that we have made deep reductions. Mr. Cutter was concerned  
30 that Mr. Pascucci was eluding that the Committee has done a poor job. He challenged Mr.  
31 Pascucci’s observance because he believes a fair review process has occurred over the last two  
32 years. He indicated that the voters have spoken and we have heard them. Mr. Cutter commented  
33 that we may have to work a bit harder.

34  
35 Mr. Pascucci clarified that his comments were not meant to be personal. He indicated that we  
36 performed our duty and the voters said no to the budgets. He commented that the Committee  
37 should go deeper this year.

38  
39 Mr. Bourque suggested that it may be a matter of educating the voters as opposed to deeper cuts.

40  
41 Mrs. Douglas commented that when you consider the large under spends in the school and town  
42 budgets, the numbers prove we could have been more aggressive. Mr. Cutter commented that  
43 revenues were higher than expected.

44  
45 Mrs. Couture commented we have discussed a new way to prepare the budget. She indicated we  
46 need to do a good job educating the voters and helping them to understand.

1  
2 Mr. Pascucci commented that items should be placed on warrants because we have to educate the  
3 voters.

4  
5 Mr. Bourque responded to Mrs. Douglas' statement regarding the large under spends. He  
6 commented that the district under spend was just over \$200,000 and that the amount of the  
7 revenues was not expected. Mrs. Douglas commented that looking at it as a voter, there was  
8 room for reduction in the budget.

9  
10 Mr. Cutter commented that there was commentary from the School Board that we are crippling  
11 the budget when we recommend reductions. Mr. Pascucci commented that the Committee  
12 doesn't carry as much weight and selling the budget needs to be with people in the ballot box.

13  
14 Mr. Byron commented the Budget Committee is the originator and the author of the budget.  
15 Your job is to modify what we bring forward and to bring your budget to the voters. He  
16 indicated that if the Committee wants to made an ad hoc reduction, your job is to make it fit.  
17 That is not our job.

## 18 19 **9. PUBLIC INPUT**

20 There was no public input.

### 21 22 • **Upcoming meetings**

23  
24 The next meeting of the Budget Committee is scheduled on September 25, 2014.

25  
26 **MOTION:** by Mr. Cutter

27 ***Move to adjourn.***

28 **SECOND:** Mr. Spencer

29 **VOTE: 7-0-0**

30 **The motion carried unanimously.**

31  
32 There being no further business, the meeting adjourned at 8:52 p.m.

33  
34 **Minutes by:** *Michele E. Flynn (Recording Secretary)*

35  
36 **Date approved:** **September 25, 2014**

## J. Hoch's Response on expenditure reports

Fr: Frank Byron

Michelle,

Below is the response that I read at the meeting tonight from Jason Hoch concerning the formatting and generation of expenditure reports.

"We run expenditure reports weekly and these are used regularly by department heads to monitor their budgets. It is also a part of our internal controls program, providing additional oversight for expenses posted to individual departments. Since we run checks on a weekly basis, this reporting is a timely snapshot of current conditions.

If there is a preference for monthly reporting, we can either send the weekly/YTD report to a wider mailing list on the first week of the month (this is the simplest, since we are already generating the report for staff & BOS). With some additional work, we can generate a special report for the previous month and send it only to a specialized mailing list. The additional work is not significant, but it is adding a new task. Monthly reports will likely be less informative given the timing of some payments, reconciliation, etc. You may recall some confusion last year around reading monthly reports prior to monthly reconciliation (which is usually complete by the 15th of the month).

Lastly, in terms of additional formats, the system does offer reporting in forms other than pdf. Our default format for sharing documents publicly is pdf since it is a controlled format not easily edited. A function does exist for exporting budget reports in excel format. However, it is in a different reporting section of the software. If necessary, specialized reports can be generated. I will need to train the staff in how to find these reports in the accounting software since it is in a section they do not routinely use.

Overall, weekly reporting is integrated into the routine workflow. Any change will generate additional work that duplicates an item already produced."

*Regards,*

*Frank*

**Frank Byron**

**Litchfield Board of Selectmen**

**(603) 889-7424**

Fwd: Litchfield: question from Budget Committee member, Town of Litchfield

Fr: Cindy Couture

FYI - Quick response!

----- Forwarded message -----

From: **Jason Hoch** <[jhoch@litchfieldnh.gov](mailto:jhoch@litchfieldnh.gov)>

Date: Fri, Jun 27, 2014 at 10:35 AM

Subject: Fwd: Litchfield: question from Budget Committee member, Town of Litchfield

To: Cindy Couture <[ccouture@litchfieldnh.gov](mailto:ccouture@litchfieldnh.gov)>

In case this didn't come to you under separate cover.

-----  
Jason Hoch  
Town Administrator  
Town of Litchfield  
2 Liberty Way  
Litchfield, NH 03052  
[603.424.4046 x1250](tel:603.424.4046)

----- Forwarded message -----

From: **legalinquiries** [REDACTED]

Date: Fri, Jun 27, 2014 at 10:30 AM

Subject: Litchfield: question from Budget Committee member, Town of Litchfield

To: "[cpascucci@litchfieldnh.gov](mailto:cpascucci@litchfieldnh.gov)" <[cpascucci@litchfieldnh.gov](mailto:cpascucci@litchfieldnh.gov)>

Cc: "[jhoch@litchfieldnh.gov](mailto:jhoch@litchfieldnh.gov)" <[jhoch@litchfieldnh.gov](mailto:jhoch@litchfieldnh.gov)>

Dear Mr. Pascucci,

I write in response to the following inquiry, and attach a 2006 decision from the NH Supreme Court in the matter of Sullivan v. Town of Hampton Board of Selectmen, which answers your inquiry. As the court makes clear, when you are dealing with management of the default budget, there is no focus on individual lines in a budget. The governing body has the authority to transfer funds between purposes in order to continue to provide ongoing public services. In your situation, the last approved operating budget certainly contained funding for the public purpose of providing police services. These vehicles are part of that ongoing public service, and the protection for the voters is that the governing body must continue to manage all public services within the bottom line of the noticed default budget.

Sincerely,

Paul Sanderson  
Staff Attorney  
NH Municipal Association  
25 Triangle Park Drive  
Concord NH 03301

[REDACTED]  
[REDACTED]

This transmission from the NH Municipal Association contains privileged and confidential information. It is intended for use by the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents is prohibited. [REDACTED]

[REDACTED]  
[REDACTED] Thank  
you.

To: New Hampshire Municipal Association  
From Chris Pascucci  
Elected member of the Litchfield Budget Committee  
RE: question/legal opinion request  
6/27/14

Question #1;

If a capital item is "purchased" on a non-appropriation contract and the subsequent year the proposed budget passes, followed by a few years later the town operates on a default budget (while the item's debt is still being paid off) does that require the town consider the item no longer has an appropriation and the lease terminated?

Question #2

Same as question # 1 except changing the word "passes" to "fails".

If a capital item is "purchased" on a non-appropriation contract and the subsequent year the proposed budget fails, followed by a few years later the town operates on a default budget (while the item's debt is still being paid off) does that require the town consider the item no longer has an appropriation and the lease terminated?

The following (for context) is the specific issue that prompted these questions:

The proposed budget that was on the ballot for the March 2013 Town of Litchfield election, included a new lease for new police cruisers. They were vetted thru the budget committee, left in the proposed budget, and remained in the proposed budget after the town deliberative session. On voting day of March 2013, the legislative body rejected the proposed budget, leaving the Town of Litchfield to operate with the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget.....as defined under RSA 40:13

Shortly after the March 2013 election, (after the legislative body rejected the proposed budget which included a new lease for new police cruisers), the Board of Selectmen entered into a 3 year lease, with a non-appropriation clause, for two new police cruisers, as clearly allowed by law.

Fast forward to budget season in the Fall of 2013, as well as the town deliberative in Winter of 2014. The two police cruisers the BOS leased after the March 2013 election, were indeed included in the new proposed budget which would be on the ballot in March of 2014. On election day March 2014, the legislative body, for the second year in a row, rejected the proposed budget. That proposed budget which included the two police cruisers was the first time that new lease for the two new police cruisers were put in front of the voters for approval. The voters said "no" to that proposed budget.

What is the status of those two police cruisers purchased with a non-appropriation clause after the March 2013 election, and after a failed proposed budget on election day of 2014?

As an elected member of the Budget Committee of a member town, according to your charter, I am allowed to ask questions of your organization. Further, the Litchfield Budget Committee's meeting of 6/26, the members voted unanimously approving and allowing me to ask this question of the NHMA. As referenced in Mr Hoch's e-mail to you dated 6/3/14, please do provide the legal opinion to this question to the identified recipients; Mrs Couture, Chairman of the Litchfield Budget Committee, Mr Brunelle, Chairman of the Litchfield Board of Selectmen, and Mr Hoch, Town Administrator, Town of Litchfield.

Respectfully,  
Chris Pascucci  
Member, Litchfield Budget Committee  
[cpascucci@litchfieldnh.gov](mailto:cpascucci@litchfieldnh.gov)

**From:** Chris Pascucci [<mailto:cpascucci@litchfieldnh.gov>]

**Sent:** Friday, June 27, 2014 12:52 AM

**To:** legalinquiries

**Cc:** Cindy Couture; John Brunelle; Jason Hoch

**Subject:** question from Budget Committee member, Town of Litchfield

Legal Counsel,

Attached is a question for your review and response please,

Thank you

Chris Pascucci

Member, Litchfield Budget Committee

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**153 N.H. 690 (N.H. 2006)**

**917 A.2d 188**

**William H. SULLIVAN and another.**

**v.**

**TOWN OF HAMPTON BOARD OF SELECTMEN.**

**No. 2005-464.**

**Supreme Court of New Hampshire.**

**June 27, 2006**

Argued: May 11, 2006

**[917 A.2d 189]** Cook & Molan, P.A., of Concord (Richard E. Molan on the brief, and John S. Krupski orally), for the plaintiffs.

Mark S. Gearreald, of Hampton, on the brief and orally, for the defendant.

C. Christine Fillmore, of Concord, by brief, for the New Hampshire Local Government Center, as amicus curiae.

HICKS, J.

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The plaintiffs, William H. Sullivan, Edward Buck and Thomas Gillick, are three taxpayers (taxpayers) who appeal the order of the Superior Court (*McHugh*, J.) granting defendant Town of Hampton Board of Selectmen's (selectmen) motion to dismiss for failure to state a claim upon which relief may be granted. We affirm.

The record supports the following facts. The Town of Hampton is a Senate Bill 2 (SB 2) jurisdiction, meaning that it has adopted the official balloting procedures for the town meeting form of government in RSA 40:13 (Supp. 2005). RSA 40:13 prescribes balloting procedures on all warrant issues put to voters, including annual town budgets. An SB 2 town budget committee develops an "operating budget" that the selectmen submit to voters for approval. When submitted to voters, the ballot reflects only a single bottom line sum of the entire "operating budget." If adopted by voters, that "operating budget" represents **[917 A.2d 190]** the town's annual appropriated line item expenditures.

The legislature amended RSA 40:13 in 2004 to provide for a "default budget" if voters fail to adopt the proposed "operating budget." The "default budget" is calculated as the prior year's budget, adjusted up or down by other obligations and reduced by one-time expenditures. If voters fail to adopt the proposed "operating budget," they are either deemed to have approved the "default budget," or the governing body may choose to have a special town meeting to plan and submit a "revised operating budget" to voters.

The 2004 amendment to RSA 40:13 also included new procedures for public disclosure of the line item appropriations within a "default budget," presumably to enhance the transparency of the "default budget" calculation. At the first budget meeting, prior to presenting the budget committee's "operating budget" for approval, the selectmen must disclose on a special form the "default budget" amount and how it was calculated.

RSA 32:10, I (Supp. 2005) gives the selectmen discretionary authority to transfer funds within a previously adopted budget as unplanned needs arise. The issue presented for review is whether RSA 40:13, as amended in 2004, limits the selectmen's authority pursuant to RSA 32:10 to transfer line item appropriations within a "default budget."

In March 2005, the Town of Hampton presented its municipal "operating budget" of \$26,392,546 to its voters alongside the "default budget" of \$23,552,795. The voters failed to adopt the "operating budget," and the selectmen chose to implement the "default budget."

The selectmen then solicited proposals from each town department for a 15% reduction in their individual budgets to offset the approximate 15% (\$2.8 million) shortfall in the town's anticipated operating budget. The selectmen subsequently held four weekly public meetings during which they altered appropriations for the 2005 budget year. This resulted in a 2005 budget that did not exceed the bottom line default budget total in the previously disclosed "default budget," but deviated from the prior year's individual appropriations in twenty-nine of the thirty-four line items.

The taxpayers filed a petition for injunctive relief, writ of mandamus and other relief on April 22, 2005, in the superior court. The selectmen moved to dismiss. A temporary hearing was held by offers of proof on May 5, 2005. The superior court granted the selectmen's motion to dismiss.

On appeal, the taxpayers argue that the trial court erred in finding that RSA 32:10 provides the town selectmen "unfettered" discretionary authority to change line item appropriations within the "default budget." Further, the taxpayers argue that even if the selectmen did properly exercise their discretionary authority to make line item changes within the budget, the selectmen failed to follow the prescribed statutory procedures for implementing the budget because the altered budget constituted a "revised operating budget" within the meaning of RSA 40:13, X, requiring notice to and approval by voters. Both are questions of first impression.

We first address whether to dismiss this case as moot. The taxpayers challenge the implementation of Hampton's 2005 budget. The underlying dispute is substantially moot because Hampton is now well into the 2006 budgetary year. The doctrine of mootness is designed to avoid deciding issues that "have become academic or dead." *Petition of Brooks*, 140 N.H. 813, 816, 678 A.2d 140 (1996). However, the question of mootness is not subject to rigid rules, but is regarded as [917 A.2d 191] one of convenience and discretion. *Herron v. Northwood*, 111 N.H. 324, 327, 282 A.2d 661 (1971). A decision upon the merits may be justified where there is a pressing public interest involved, or future litigation may be avoided. *Id.* We find sufficient public interest in the

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outcome of this controversy to justify an exception to the doctrine of mootness. *Id.*

Because the interpretation of a statute is a question of law, we review the trial court's ruling *de novo*. *Starr v. Governor*, 151 N.H. 608, 610, 864 A.2d 348 (2004). When interpreting a statute, we consider the language of the statute itself, and if possible, construe the language according to its plain and ordinary meaning. *Id.*

The taxpayers do not argue that the selectmen lacked the statutory authority to make adjustments to a "default budget." Rather, they argue that the selectmen improperly exercised this

authority by immediately adjusting the "default budget" in response to the voters' failure to adopt the "operating budget." In support of their position, they point to language in RSA 32:10, I, that states:

If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to that appropriation an unexpended balance remaining in some other appropriation.

The taxpayers further argue that no evidence was presented that records were kept, as required by RSA 32:10, I(b), which would allow "any citizen requesting such records pursuant to RSA 91-A:4 . . . [to] ascertain the purposes of appropriations to which, and from which, amounts have been transferred." RSA 32:10, I(b).

Finally, the taxpayers urge that the 2004 amendment to RSA 40:13 requiring prior disclosure of the default budget calculation is meaningless if the selectmen have "unfettered" authority to alter the individual line items immediately after the "default budget" is implemented.

The selectmen respond by arguing that the failure to adopt the "operating budget" was a change in circumstances sufficient to merit changing the default appropriated amounts. They argue that transferring appropriations within an adopted default budget is permissible as long as they do "not exceed the total amount appropriated at the town or district meeting" as required in RSA 32:10, I(a) or transfer appropriations for a purpose that was not originally reflected on the default budget disclosure form.

Discretionary transfer authority ensures that selectmen have the requisite flexibility to address unplanned needs by redirecting appropriated funds. This authority is expressly set forth in the language of RSA 32:10, I. We recognized this authority in *McDonnell v. Derry*, 116 N.H. 3, 7, 350 A.2d 620 (1976), and rejected the voters' attempt to lock the selectmen into

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an appropriated amount for individual line items. We held that the town voters may not restrict the exercise of the selectmen's transfer authority by conditioning it upon the requirements of "good cause" and approval by the budget committee. *Id.*

RSA 40:13 was amended in 2004 to both define the "default budget" and to require that selectmen disclose the calculation of the individual line item appropriations comprising the "default budget" before voting on the proposed "operating budget." RSA 40:13, IX-XI (Supp. 2005). We find nothing in the language or structure of amended RSA 40:13, however, that restricts the discretionary authority of selectmen to transfer appropriations within **[917 A.2d 192]** an adopted default budget. See RSA 40:13. The selectmen may underspend in one category to free up budget funds to overspend in another provided they act within the limitations of RSA 32:10, I.

We agree with the selectmen that the failure to pass the "operating budget" was a sufficient change in circumstances within the meaning of RSA 32:10, I, to justify the use of transfer authority. Holding otherwise would force the selectmen to sit idly by awaiting the onset of a foreseeable budget crisis instead of acting to prevent it. We find the taxpayers' argument that there was no "unexpended balance remaining in some other appropriation" within the meaning of RSA 32:10, I, without merit because the remaining funds in each default budget line item were "unexpended" when the transfers were made.

We reject the taxpayers' argument that no evidence was presented at trial of records which would allow "any citizen requesting such records pursuant to RSA 91-A:4 . . . [to] ascertain the purposes of appropriations to which, and from which, amounts have been transferred." RSA 32:10, I(b). As the selectmen pointed out at the trial court's motion hearing, the transfers were made over the course of four weekly televised meetings that were open to the public. Minutes of these meetings and recorded television broadcasts remain accessible to the public.

The taxpayers next argue that even if the selectmen had the statutory authority to make such discretionary changes to the "default budget," the extent to which changes were made converted it into a "revised operating budget" and triggered the necessary procedural steps to implement such a budget. See RSA 40:13, XVI.

We disagree. Although RSA 40:13 does not define a "revised operating budget," it does provide a definition for a "default budget." RSA 40:13, IX(b). The statutory language is plain and unambiguous. *Johnson v. City of Laconia*, 141 N.H. 379, 380, 684 A.2d 500 (1996). RSA 40:13, IX(b) defines the

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"default budget" as an "amount" and prescribes how to calculate that "amount." When put to voters, the warrant article will reflect the "default budget" as only a dollar "amount." RSA 40:13, XI(c). Thus, the selectmen needed only to stay within the original budgeted "amount" for the resulting budget to fall within the meaning of "default budget." See RSA 40:13, IX(b). Had the selectmen increased the bottom line of the "default budget," we might be inclined to agree that such a "revised operating budget" was the result. However, merely transferring appropriations among budget categories that had already been appropriated funds without increasing the bottom line did not trigger the procedural requirements that apply to a "revised operating budget."

The taxpayers alternatively ask that we remand this matter for fact-finding on two issues: (1) whether the selectmen properly exercised their RSA 32:10, I, transfer authority; and (2) whether the selectmen's actions created a "revised operating budget."

We deny this request for three reasons. First, we note that this request is raised for the first time on appeal as the taxpayers never requested an evidentiary hearing on these matters. It is well established that we will not consider issues raised on appeal that were not presented in the trial court. *Daboul v. Town of Hampton*, 124 N.H. 307, 309, 471 A.2d 1148 (1983). Second, a challenge to the exercise of transfer authority is inappropriate because RSA 32:10, I(b) expressly denies citizens the "authority to dispute or challenge the discretion of the governing body in making such transfers." RSA 32:10,

**[917 A.2d 193]** I(b). Finally, whether the transfers created a "revised operating budget" is a matter of statutory interpretation for this court, and we are "the final arbiter of the intent of the legislature as expressed in the words of a statute." *McDonald v. Town of Effingham Zoning Bd. of Adjustment*, 152 N.H. 171, 174, 872 A.2d 1018 (2005).  
*Affirmed.*

BRODERICK, C.J., and DALIANIS, DUGGAN and GALWAY, JJ., concurred.