



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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NEWINGTON, CONNECTICUT 06131-7546



Office of the
Commissioner

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October 5, 2016

The Honorable Bruce Flax
Mayor
Town of Groton
45 Fort Hill Road
Groton, CT 06340

The Honorable Marian Galbraith
Mayor
City of Groton
295 Meridian Street
Groton, CT 06340

Dear Mayors Flax and Galbraith:

Subject: FY 2016 Budgetary Resolution

The following summarizes the results of the three person panel (Panel) formed to resolve a budgetary dispute between the City of Groton and Town of Groton for the 2016 Fiscal Year. This Panel was convened pursuant to Special Act No. 362 (1933) of the Connecticut General Assembly, as amended in 1963 and 1977. The Special act provides:

“A committee of three (3) councilors shall be appointed annually to confer with the Town Council of the Town of Groton to determine the amount of money shall be necessary and proper for the making or repairing of the streets and highways of said Town within the limits of the City during the current fiscal year of the City . . . The sum determined shall be paid by the Town into the treasury of the City, and the Town shall not be liable to make or repair any street or highway within the limits of the City.” In the event of a disagreement concerning the amount “necessary and proper for the making or repairing of the streets and highways,” the Special Act and Charter provide that “the amount shall be determined by a committee of three (3) composed as follows: one (1) appointed by the [State DOT Commissioner] or his/her deputy, one (1) appointed by the Groton Town Council, and one (1) appointed by the Mayor with the approval of Council of the City of Groton.”

The Panel reviewed summary budget materials submitted by both parties and then met on several days (May 3rd; May 17th, and May 26th, 2016) to hear arguments on the disputed issues. In particular, the dispute involved a City budget reduction from \$1.92 million to \$1.09 million by the Town. The Panel discussed the matter further on June 22nd, 2016. A final discussion was conducted on August 18, 2016.

The key finding is the City’s Fiscal Year 2016 budget for Streets and Highways, as submitted to the Town, is approved, provided that Town will not be liable to pay more than the final amount, as certified by the City’s Chief Financial Officer, that was actually expended by the City in accordance with the submitted budget. (At this time, it appears that the City may

have underspent its proposed budget, and the Town should not be liable to pay any amount not actually expended.) Consistent with the previous Panel, this Panel takes no position on the Town's stated position that current legislation limits reimbursement to the maintenance of the city street from curb to curb and excludes roadside and sidewalk areas. This position was reserved by the Town, but not made an issue in this proceeding.

The Panel commends the City and Town for seeking additional information and perspective – i.e. the itemized budget and Rockefeller Institute (Hattery) Study. Both provide useful information. The itemized budget contains very detailed actual and budget line items. The “Hattery” report raises a broad question about the reasons for the differences in cost structure among the various municipalities reviewed, that of the City of Groton, in particular. However, the consensus of the Panel is that the “Hattery” report was essentially a benchmarking report which the author agreed was not intended to provide approach or methodology to justify a reduction to the City's budget.

The goal of a simple formula certainly is worth trying to achieve; however it must be validated against the actual cost structure and outputs (maintenance activities) that it would purport to measure. Testimony and information presented indicated the differences between the two cost structures merit further examination.

Only anecdotal evidence was offered to explain the difference between the City and Town cost structures. There was discussion about heavy traffic from local employers, and old and idiosyncratic roadway features. The City did provide a budget itemized according to the Town's budget codes. However, no excessive expenditures were obvious. Only anecdotal evidence was offered to support the Town's reduction. There was discussion about added effort related to the use of sand for anti-icing, excessive mowing sweeping, litter removal and leaf blowing.

However, there was no specific correlation of personnel or services to the Town's recommended budgetary reduction. Furthermore, the Town conceded that it did not consider the City maintenance effort to be wasteful or inefficient.

Therefore, the majority of the Panel concludes that the expenses budgeted are “the amount of money ... necessary and proper for the making and repairing of the streets and highways of the Town” that are located in the City of Groton.

A fundamental problem posed by the Special Act and the relationship of the parties is the difficulty in framing a finding that incentivizes the parties to identify jointly the root cause of their differences and to agree upon a solution.

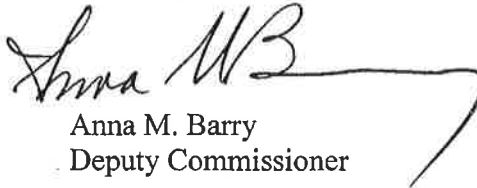
So, despite some of the analysis offered, the City and Town must do more work in order to determine whether a valid process can be developed. Parties must determine the root cause of the difference between the City and Town costs. This would include an analysis of their respective standards of maintenance, as well as their respective cost structures.

The Panel further recommends that the City and Town apply the resources (time and dollars) that might be spent on future litigation to the process of determining the actual itemized expenses and actual maintenance effort or standard that cannot be justified under the Special Act. The Panel recommends that the City and Town jointly engage the appropriate maintenance and budgetary expertise to develop a comparative analysis of the City and Town budgets to determine the differences as to cost structures and standards and levels of effort.

The Department of Transportation would be inclined in the future to make demonstration of a good faith effort to initiate and execute such an analysis a condition precedent for any future hearings or meetings for arbitration under the Special Act. The outcome of this proceeding was determined by the absence of any quantifiable basis on which to reduce the City budget. However, failure to engage in an effort to provide usable information could change the inferences that support the finding.

I wish to acknowledge and thank the other panelists Mr. Mark E. Lancor, P.E and Attorney Dean Antipas, P.E. for their services on behalf of their respective parties.

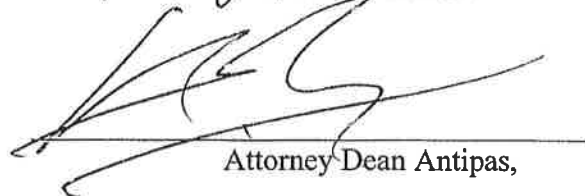
Sincerely,


Anna M. Barry
Deputy Commissioner

Affirmative Vote


Mr. Mark E. Lancor, P.E

Negative Vote


Attorney Dean Antipas,

cc: John P. Casey, Esq.
Edward B. O'Connell
Mark R. Oefinger, Groton Town Manager
Pamela Sucato, DOT Legislative Office

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CONSTANTINE G. ANTIPAS, P.E.

164 PAYER LANE
MYSTIC, CONNECTICUT 06355

August 18, 2016

The Honorable Bruce Flax
Mayor, Town of Groton
45 Fort Hill Road
Groton, Connecticut 06340

The Honorable Marian Galbraith
Mayor, City of Groton
201 Meridian Street
Groton, Connecticut 06340

Re: FYE 2016 City of Groton Highway Request & Appropriation

Dear Mayors Flax and Galbraith:

I respectfully dissent from the Panel majority's conclusion.

I. Introduction

The City's FYE 2016 Highway Budget totaled \$2,039,472, of which \$1,922,986 was requested of the Town under the Special Act. The Town appropriated \$1,092,694. The City disagreed with this appropriation and brought its claim before this Panel that the requested amount was "necessary and proper" for that fiscal year. In my opinion, it was not.

II. Standard for Determination

The Panel must first consider its approach to determining the "necessary and proper" amount. According to the Special Act, three City Councilors are to annually "confer" with the Town Council "to determine the amount of money which shall be necessary and proper for the making or repairing of the [Town's] streets and highways" within the City. "In the event of disagreement, the amount shall be determined by a committee of three" The Special Act thus contemplates the possibility that the City and the Town will each have their own opinion as to what is "necessary and proper", opinions which they may or may not reconcile on their own.

The Special Act does not explicitly define the key phrase "necessary and proper". It is also silent on the issue of the burden of proof, conferring on neither the City's request for \$1,922,986 nor the Town's \$1,092,694 appropriation a presumption as the amount "necessary and proper". In my

opinion, therefore, the Panel is free to place the burden of proof in accordance with well-recognized legal maxims. Since the City is the claimant in this matter, and since counsel for the City, in fact, adopted the burden for the City in his opening remarks to the Panel, the starting point for the Panel's determination must be whether the City has proven that its \$1,922,986 request was an amount "necessary and proper".

The Panel majority, however, appears to have presumed that the \$1,922,986 the City requested for its FYE 2016 Highway Budget was "necessary and proper" and then determined that the Town presented insufficient evidence to rebut that presumption in arriving at its conclusion. In my opinion, there is no authority, whether under the Special Act or otherwise, for placing such a special burden on the Town, and this initial misstep colors the Panel majority's eventual conclusion.

III. Factual Issues for Determination

Theoretically, given the Special Act's broad language, the Panel can arrive at any value as "necessary and proper". The practical task before it, however, is to place that value somewhere between the \$1,092,694 Town appropriation and the \$1,922,986 City request.

The City has argued that its road system cannot be usefully compared with that of any other municipality as a way of detecting and determining the cost of relative inefficiencies or any additional services. The City made the corollary argument, through Mayor Galbraith's testimony, that even if the City's highway maintenance costs could be shown to be higher, there were many factors that drove those costs up. The City, however, presented no convincing evidence that the features of roads in the City do not also exist in other areas of the Town or in other municipalities. This is not a novel opinion. Exhibit B in the City's own December 14, 2015 submission to the Panel, states:

We find no special characteristics of the traffic borne by the City's streets or of the streets themselves which have a significant marginal impact on the Highway Department's costs vis-a-vis comparable municipalities included in this report [New London, Chelsea, Mass., Everett, Mass., Bayonne, N.J., and Linden, N.J.].

MMA Consulting Group, Inc., *City and Town of Groton, Connecticut Street and Highway Budgeting: Findings and Recommendations* (April 1994), Executive Summary, para. 8.

The City's fallback argument that its highway expenditures are "necessary and proper", made primarily through the testimony of Mayor Galbraith, Ron Yuhas, and Timothy Umrysz, as well as Exhibits 4 and 5, ultimately rests on its own, self-referential evaluation. This is insufficient to

meet the standard imposed by the Special Act, namely, that what is “necessary and proper”, and not what the City *deems* “necessary and proper”, is to be appropriated. There is further evidence that the City’s requested amount is greater than what is “necessary and proper”.

The City has never claimed that its highway department provides the same level of service that the Town does elsewhere. In fact, the evidence amply shows both additional costs for the same services and additional services, *e.g.*, use of a less durable paint, resulting in more frequent annual or bi-annual line striping, the use of sand instead of a salt in the winter, resulting in the need for more street and catch basin cleaning, more frequent street cleaning in general, excessive mowing, litter removal, and manual clearing of sidewalks. Further, not only is there no question that the existence of a distinct City highway department results in additional administrative overhead, the City has not provided any evidence to show how this additional cost adds value to the road maintenance itself.

The evidence thus weighs in favor of an amount less than the \$1,922,986 City request. The next question for the Panel would be how much less.

The underlying concept of the Special Act is that the Town is relieved of the liability of having to maintain its roads within City limits as long as it appropriates what is “necessary and proper” for that maintenance. The City Highway Budget, however, includes all of the City’s administrative cost for a standalone department. The fact that the City is legally entitled to maintain such a department is insufficient justification for adding a premium to what is “necessary and proper”.

Timothy Umrysz is the Director of the City’s Public Works Department, which includes the “sub” departments of Highway, Sanitation, Water Pollution Control, Public Buildings, and Parks and Recreation. Of Mr. Umrysz’s salary, 60% of it is allocated to his position as “Highway Foreman” (see City Exs. 4 & 5). The other 40% is split between Sanitation and Public Buildings. The City presented no evidence supporting this allocation as “necessary and proper”, but accepting it for the sake of argument, this proportion of his salary, \$57,126, together with his share of the FICA line item, \$4,370, his presumed 0.60/14 share of the health insurance line item, \$14,511, and his presumed 0.60/14 share of the pension line item, \$3,001, amount to \$79,008 in additional overhead alone. In addition to Mr. Umrysz, there are other administrative costs directly related to maintaining a stand-alone highway department, including the salaries, payroll taxes, and benefits for a highway supervisor, and office support. Altogether, the City Cost Center identified as “Administration”, less the health insurance and pension line items included for all department employees, amounts to \$348,604. Adding back in the 2.07/14 share of the health insurance and pension line items, \$60,419, results in \$409,023 of administrative costs. While not a precise figure, this is a

reasonably close estimate of the cost of maintaining a stand-alone department over and above what is “necessary and proper” for the maintenance of Town roads in the City.

Exhibit B in the City’s December 14, 2015 submission to the Panel, states:

The City of Groton’s Highway Department does not meet contemporary standards of efficiency in its operations. This causes its operating costs to be excessive.

MMA Consulting Group, Inc., *City and Town of Groton, Connecticut Street and Highway Budgeting: Findings and Recommendations* (April 1994), Executive Summary, para. 1. That document further states:

The City’s costs per unit-measure for its Highway services, vis-a-vis comparable municipalities, are extraordinarily high—often double to triple the costs of its comparables [New London (264%), Chelsea, Mass. (289%), Everett, Mass. (145%), Bayonne, N.J. (120%), Linden, N.J. (338%), group average (236%)].

Id., para. 7.

The City has argued that it has achieved many efficiencies since that study and that therefore its conclusions are inapplicable, but it is interesting to note that the results of a more recent inquiry into this issue are strikingly similar. The report of Dr. Michael Hattery, presented as Exhibit C, compares the City’s centerline-mile expenditures with those of municipalities with similar characteristics: Ansonia (229%), Derby (117%), East Haven (182%), New London (498%), Newburyport, Mass. (146%), Newport, R.I. (174%), group average (182%). And, even though the comparison is considered problematic, the City’s expenditures are 186% of the Town’s on a centerline-mile basis.

IV. Conclusion

By three different measures, each of which has acknowledged limitations, the City’s expenditures for highway maintenance runs from 117% to 498% against those of comparable municipalities, but more often than not is at least double comparable costs. Applying that range to the City’s requested FYE 2016 amount of \$1,922,986 yields an appropriation of from \$386,142 (the “New London” level) to \$1,643,578 (the “Derby” level). The Town’s appropriation of \$1,092,694 falls just above the average of those two levels, and Dr. Hattery’s recommendation of \$1,186,177 falls even higher. In my opinion, the latter figure is the maximum “necessary and proper” level of funding. What the Panel majority has termed a “draconian reduction” is nothing more than a step into reality.

Beyond this comparative analysis, the level of funding awarded should not exceed the City's request of \$1,922,986 less the minimum estimated administrative overhead, \$409,023, or \$1,513,963. That additional cost, which adds nothing to the value of the maintenance of Town roads within the City, is a substantial example of an "obvious" "excessive expenditure".

Finally, the City has released a draft General Ledger detailing its FYE 2016 Highway Expenses in which, out of the budgeted amount of \$2,039,472 the City expended \$1,915,715.91, a difference of \$123,756.09. Logically this amount cannot have been "necessary and proper" and must therefore be excluded from the Panel's award if nothing else is.

Based on the Special Act, and given all the evidence presented to this Panel, I find that the City has not met its burden of proving that its FYE 2016 Highway Budget request of \$1,922,986 was "necessary and proper" under the Special Act. I therefore disagree with the majority's finding and respectfully decline to join in their determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'Constantine G. Antipas', written in a cursive style.

Constantine G. Antipas, P.E.