

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

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SUMMONS
COMPLAINT FOR SPECIAL TOWN MEETING
RSA 31:5



Case Name: **In re: Town of Exeter**
Case Number: **218-2023-CV-00705**

Date Complaint Filed: June 01, 2023

A Complaint for a Special Town Meeting of the Town of Exeter, is on file in this office.

It is ORDERED, that the Town of Exeter notify all parties who have an interest in the complaint of the following: **Evidentiary Hearing.**

Date: June 22, 2023

Time: 10:00 AM

Time Allotted: 30 Minutes

10 Route 125

Brentwood, NH 03833

Location: Courtroom 5 - Rockingham Superior

Any interested party may appear at this hearing and show why the Complaint for a Special Town Meeting should not be granted. If you wish to be heard on the complaint you must first electronically register as an Intervenor and file an Appearance with this court on or before June 22, 2023, and send copies to the party/parties listed below.

Once an Appearance has been filed, you can access documents electronically filed through our Case Access Portal by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

Town of Exeter shall publish a copy of this Summons in The Exeter News Letter and two public places (Town Council chambers, Town Clerk's Office, Library or Exeter Police Department). Town of Exeter shall promptly electronically file with this court a Return of Publication on or before June 22, 2023.

Send copies to:

Laura Spector-Morgan, ESQ

Mitchell Municipal Group PA 25 Beacon Street East Laconia
NH 03246

If you will need an interpreter or other accommodations for this hearing, please contact the court immediately.

Please be advised (and/or advise clients, witnesses, and others) that it is a Class B felony to carry a firearm or other deadly weapon as defined in RSA 625.11, V in a courtroom or area used by a court.

(504)

BY ORDER OF THE COURT

June 02, 2023

Jennifer M. Haggart

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, S.S.

SUPERIOR COURT
218-2023-CV-00705

IN RE: TOWN OF EXETER

PETITION FOR SPECIAL TOWN MEETING

NOW COMES the Town of Exeter, a municipal corporation duly organized under the laws of the State of New Hampshire with a mailing address of 10 Front Street, Exeter, New Hampshire 03833, by and through its attorneys, Mitchell Municipal Group, P.A., and in support of this *Petition for Special Town Meeting* ("Petition") states as follows:

1. The Town of Exeter operates a public sewer system. Currently, the town has two sewer siphons running under the Squamscott River from Jady Hill Avenue as part of that system.

2. At the 2020 annual town meeting, the town voters approved the following warrant article:

To see if the Town will vote to raise and appropriate the sum of one million six hundred thousand and zero dollars (\$1,600,000) for the purpose of design, construction, and installation of siphons from Jady Hill to the Main Pump Station and design of improvements to the Webster Ave pump station and force main design as part of the project, and to authorize the Select Board to enter into a loan agreement of up to \$1,600,000 through the New Hampshire Department of Environmental Services Clean Water State Revolving Fund for this purpose. The loan will be repaid as follows: a 10% forgiven by agreement with NHDES, and \$1,440,000 in sewer fees over 10 years. (Estimated Tax Impact: no tax impact, sewer funds plus 10% loan forgiveness).

(3/5 ballot vote required for approval.) Recommended by the Select Board 5-0.

3. Prior to beginning construction, the existing sewer siphons were scoped to prepare for the project. This revealed that those existing siphons are very close to failure. While water is going into the siphons, it does not appear to be coming out. The siphons therefore need to be replaced to avoid sewage spilling into the river. Although the Department of Environmental Services has not yet issued a letter of deficiency, the town believes that if it were not actively working to replace the failing siphons, it would.

4. The project was immediately halted to review options, because the condition of the siphons made the project more extensive, and therefore more expensive, than the town had planned.

5. Given this extra expense, Congressman Pappas was able to secure the town \$600,000 in Congressional Directed funding for the project, the town received State ARPA funds in the amount of \$180,000 and the town has spent \$420,000 in ARPA funds. These funds, along with the previously appropriated funds, were sufficient to cover the increased cost.

6. As part of the project design and review of old and new soil borings on the land near the proposed siphon locations, the consultants originally determined that the conditions would be unobstructed through silty sandy gravels.

7. When drilling on the first of three siphons commenced on December 19, 2022, however, ledge was discovered in the proposed path of the siphon, which resulted in drill refusal.

8. A second route was chosen and drilling was attempted on December 21, 2022. Again, the drill encountered refusal.

9. In February of 2023, a 6.5 inch pilot hole was successfully completed, and the contractor began the first of two remaining passes required to enlarge the hole to accommodate the barrel. Upon attempting the first of those two passes, the drill rod broke and could not be backed out of the hole.

10. After several months of discussions and negotiations, the town, its engineer and its contractor agreed to the following resolution in April of this year:

a. The original plan to drill two 10 inch siphon barrels and one 12 inch siphon barrel is modified so that the two 10 inch barrels are abandoned, while the 12 inch barrel continues to be pursued. This modification results in an increased total project cost of \$5.4 million.

b. A second 12 inch siphon barrel will be drilled in place of the abandoned 10 inch siphons. The cost of this siphon is an additional \$2.3 million.

11. These prices are locked in until September 1, 2023, after which they are subject to increase. Given the limited number of companies which perform this kind of work, and the general increase in costs and interest rates, the cost is likely to escalate dramatically.

12. The Select Board approved the use of \$2.1 million from the town's sewer reserve enterprise fund and allocated an additional \$500,000 out of local ARPA funds for the completion of the first 12 inch siphon at its April 17, 2022 meeting; however this results in a balance of \$4,118,845 in the sewer reserve enterprise fund. This presents a problem because in each December, the town must make a bond payment on the wastewater treatment plant in the amount of \$3,459,295, resulting in the sewer reserve

fund falling below a level adequate to meet potential short term operating variances and capital needs.

13. In May, the State of New Hampshire informed the town that the Clean Water State Revolving Fund can make an additional \$5.3 million available for the project. By using some of these funds, the town is able to amend its original \$1.6 million loan to a total of \$5.1 million and retain the original 10 year bond term and 2% interest rate.¹

14. Therefore, an “emergency” exists as that term is used in RSA 31:5, and the town must hold a special town meeting to grant authority to secure the additional funding.

15. In accordance with RSA 31:5, this *Petition* seeks the approval of the Court to hold a special town meeting to have the same authority as an annual town meeting, to allow the voters of the Town of Exeter the opportunity to approve the appropriation and borrowing of these additional funds.

16. Subject to the approval of this Court, the town intends to hold this special town meeting beginning with a deliberative session on Tuesday, July 11, 2023 and voting on Tuesday, August 15, 2023, at which time the voters will vote on the following warrant article:

To see if the Town will vote to raise and appropriate the sum of three million five hundred thousand and zero dollars (\$3,500,000) for the purpose of installation of two 12 inch siphons from Jady Hill to the Main Pump Station, and to authorize the Select Board to enter into a loan agreement of up to \$3,500,000 through the New Hampshire Department of Environmental Services Clean Water State Revolving Fund for this purpose. The loan will be repaid as follows: a 10% forgiven by agreement with NHDES, and

¹It is anticipated that this rate will increase in the coming months.

\$3,150,000 sewer fees over 10 years. (Estimated Tax Impact: no tax impact, sewer funds plus 10% loan forgiveness).

(3/5 ballot vote required for approval.) Recommended by the Select Board 5-0.

17. Under RSA 31:5, I(b) an “emergency” that will justify such a special town meeting is defined as:

. . . a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt, or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

18. The unforeseeable and unavoidable circumstances on which this *Petition* is based constitute an “emergency” as that term is used in RSA 31:5, are:

a. As of the March, 2023 Annual town meeting the Select Board was not aware of the required modifications to the project or the additional costs of those modifications, and therefore, the town was not able to address this issue at that meeting.

b. This issue cannot wait until the town’s 2024 annual meeting, as to do so would result in an increased cost of the project, and increased cost of borrowing from the Clean Water State Revolving Fund, and could potentially result in the failure of the existing siphons.

19. In sum, these circumstances establish that an “emergency” exists that justifies the holding of a special town meeting, in that it is an “unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt, or immediate action, including an immediate expenditure of money.”

20. At its meeting on May 15, 2023, the Exeter Select Board voted to file this *Petition* with the Court, and on May 16, 2023 notices of the vote were posted at the Select Board's office, two other public places and submitted to the local paper for publication.

21. A copy of this *Petition* has also been sent to the Commissioner of the NH Department of Revenue Administration in accordance with RSA 31:5, II.

WHEREFORE, the Town of Exeter respectfully pray that this Honorable Court:

- a. Issue Orders of Notice for posting and publication in accordance with RSA 31:5, IV; and
- b. Schedule a hearing on the *Petition* in the near future, if the Court deems that a hearing is necessary; and
- c. Issue the attached Decree which authorizes the town to hold the requested special town meeting with a deliberative session on July 11, 2023 and voting on August 15, 2023, to act upon the warrant article; and
- d. Grant such other and further relief as it deems just.

Respectfully submitted,

TOWN OF EXETER

By Its Attorneys
MITCHELL MUNICIPAL GROUP, P.A.

Date: June 1, 2023

By: /s/ Laura Spector-Morgan
Laura Spector-Morgan, Bar No. 13790
25 Beacon Street East
Laconia, New Hampshire 03246
(603) 524-3885
laura@mitchellmunigroup.com

CERTIFICATION

I hereby certify that in accordance with RSA 52:4, II a copy of the foregoing Petition including the proposed warrant article has been sent by certified mail to the Commissioner of the Department of Revenue Administration.

Date: June 1, 2023

By: /s/ Laura Spector-Morgan
Laura Spector-Morgan