

# Drummond Woodssum

William L. Plouffe

(207) 772-1941

wplouffe@dwmlaw.com

(207) 772-3627 Fax  
(800) 727-1941

84 Marginal Way, Suite 600  
Portland, ME 04101-2480

Admitted in ME only  
www.dwmlaw.com

December 31, 2009

*VIA Electronic Mail and U.S. Mail*

Mr. Brian Hodges  
Director of Tax Incentive Programs  
Department of Economic and Community Development  
59 State House Station  
Augusta, ME 04333-0059

RE: Town of Rockport; TIF Districts

Dear Mr. Hodges:

I understand that you have received two written communications from Robert Nichols of Rockport, dated December 21, 2009, challenging the validity of the voters' overwhelming approval of two Tax Increment Financing (TIF) Districts in Rockport, i.e., Rockport Commercial Street Municipal Development District and Rockport Downtown Tax Increment Financing District. In essence, Mr. Nichols is requesting DECD to delay approval of or to reject the Development Programs associated with these TIF Districts. You have asked the Town to respond to certain of the allegations made by Mr. Nichols. Town Manager Robert Peabody has requested that I do that on behalf of the Town.

Thank you for providing the Town with copies of these communications. Mr. Nichols neither provided copies nor informed the Town that he was taking this action. The issues raised by Mr. Nichols are, however, not new. Mr. Nichols, who serves on the Town Budget Committee, has been involved in the Town's efforts to enact these TIF Districts for months. He first contended that the TIF District proposals required review and comment by the Budget Committee. The Select Board, acting on my advice, did not agree with him. (This is discussed further below.) He attended a public informational session and a public hearing on the TIF Districts but said very little. After the November 3<sup>rd</sup> referendum vote to approve the TIF Districts, he raised numerous issues concerning alleged defects in the enactment process. Mr. Peabody had numerous communications with Mr. Nichols in an attempt to address his allegations. Apparently dissatisfied with the Town's responses, Mr. Nichols is raising many of the same issues with DECD. Each of your questions is addressed below.

1. Did the Town Clerk receive requests from the public to review the relevant TIF District Documents? If so, were those persons directed to the Planning Office?

Catherine D. Alexander\*  
Daniel Amory\*  
Paul L. Apple  
David J. Backer\*  
S. Campbell Badger\*  
Melissa L. Cillyer\*  
Jerrold A. Conner\*  
Jessica M. Emmons\*  
Peter C. Feliny\*  
Jonathan M. Goodman\*  
Sara S. Hellstier\*  
Eric R. Herlan\*  
Melissa A. Hevey\*<sup>†</sup>  
Michael E. Higl\*  
John S. Kennisk\*  
Edward J. Kellerer\*  
Jeanne M. Kincaid\*<sup>†</sup>  
Benjamin E. Marcus\*  
Brienne M. Martin\*  
Robert P. Nadeau\*  
Dana J. Nathanson\*  
Mark A. Pajot\*  
Jeffrey T. Perrigano\*  
William L. Plouffe\*  
Aaron M. Pratt\*  
Harry R. Pringle\*  
Daniel J. Rose\*<sup>†</sup>  
Gregory W. Sample\*  
James C. Schwelienbach\*<sup>†</sup>  
David S. Sherman, Jr.\*  
Richard A. Shroy\*  
Kathryn Smith, Jr.\*  
Bruce W. Smith\*  
Richard A. Spencer\*  
Christopher G. Stevenson\*  
E. William Stockmeyer\*  
Amy K. Taha\*<sup>†</sup>  
Joanna B. Tourangeau\*<sup>†</sup>  
Matthew H. Upton\*  
Amy J. Veenier\*  
Gary D. Vogel\*  
Ronald N. Ward\*  
Bryan D. Whiting\*  
Gerald M. Zelnir\*

#### Consultants

Aim S. Chapman  
Policy & Labor Relations  
Roger P. Kelley  
Labor Relations &  
Conflict Management  
Christopher P. O'Neill  
Governmental Affairs  
Michael J. Opata Ph.D.  
Special Education

#### Of Counsel

Joseph L. DeLafield III\*  
Robert L. Gigs\*  
Donald A. Kopf\*  
Hugh G. E. MacMahon\*  
Harold E. Woodssum, Jr.\*

\* Admitted in Maine  
† Admitted in New Hampshire

 MIERITAS

December 31, 2009

Page Two

Like most Maine town halls, Rockport's has a public area with a counter to which members of the public go for service. Behind the counter are desks in an open area where the Town's administrative staff work. The Town Clerk, who oversees the staff, has a small office at the rear of the open area. There is a "back desk" near the public area that is used for absentee voting. The Town Clerk, Linda Greenlaw, has informed me that copies of the relevant TIF documents provided to her by Town personnel working on the TIF projects were placed on the back desk and/or the front counter. Further, with the Town Clerk's knowledge, copies of the relevant TIF related documents were also placed in the Planning Office, which is located in the Town Hall. The Town Clerk and her staff provided a copy of the documentation to members of the public who came to the Town Hall counter and asked to review the TIF documents or referred them to the Planning Office.

It is Ms. Greenlaw's recollection that not more than 12 people came into the Town Hall and asked to review the TIF documents before the November 3<sup>rd</sup> referendum. She also recalls that before the documents were available at the back desk people were directed to the Planning Office, where they were available. She believes that Mr. Nichols came in to Town Hall during that time and that he was directed to the Planning Office.

2. Were tax shifts explained during public hearing?

At a September 14<sup>th</sup> public hearing, Director of Planning and Community Development Thomas Ford alluded to the tax shift aspects of the Districts. The meeting was televised. Mr. Ford stated:

If the voters pass the TIF, there will be a sliding scale of benefits from \$1,000,000 to \$2,000,000. Those captured taxes will be sheltered by the Town and not exposed to State purposes. . . . There is some negative information out there about TIF's that they can have a negative impact on the rest of the taxpayers, but our sheet shows that there has been no gain or loss to taxpayers from the Route 1 TIF per figures as of May 2007, and we anticipate maintaining that same track record as we move forward.

See the Minutes of that hearing attached as Exhibit A, at pp. 3-4. Neither Mr. Nichols nor anyone else asked Mr. Ford for more information on this.

Additionally, The Town held two informational sessions on the TIF District proposals, one on September 8<sup>th</sup> and a second on October 26<sup>th</sup>. The second session was attended by about 25 people, including Mr. Nichols, and was televised. At the second session, the proposals were explained by Chris Shrum, a consultant for the Town, Thomas Ford, Judith Mathian, the Assessor, and Mr. Peabody. No Minutes were kept of the session. However, Mr. Shrum recalls responding to a question from Select Board member Robert Duke about tax shift. In his response, Mr. Shrum explained the principles of the tax shift concept and, specifically, that the captured assessed value would be sheltered from state revenue sharing and formula funding based on assessed value, county tax and school formulas. Mr. Shrum also spoke to the relatively small impacts on the Town of Rockport, given its estimated ratio of \$15 million in captured assessed value to \$1 billion in assessed value.

December 31, 2009

Page Three

3. With respect to the Commercial Street TIF, was the error in section (iv) of the ballot question explained at the public hearing?

The error was explained by Mr. Peabody at the public hearing on September 14<sup>th</sup>. See Exhibit A, at p. 2.

In connection with this issue, I attach as Exhibit B e-mails from Mr. Nichols and me addressing the consequences of this scrivener's error. I would add that there is nothing in the TIF statute requiring voter approval before the Town's staff forwards documents to DECD. While forwarding the documents to DECD is obviously important and necessary under the Statute, it is essentially a ministerial task.

4. How does the Town Charter address the role of the Budget Committee in the TIF approval process?

The role of the Budget Committee is found in Article VI, Sections 3, 4 and 5 of the Town Charter. These Sections are attached as Exhibit C. You will see that the Budget Committee's role is limited to making recommendations to the Select Board and the voters concerning Warrant articles with appropriations and approval of the Town Budget at the Annual Town Meeting (held in June). As noted above, the claims made by Mr. Nichols that the Budget Committee reviews and recommends articles dealing with TIF districts was rejected by the Select Board. My review of that issue for Mr. Peabody is contained in an e-mail attached as Exhibit D. Nowhere in the Charter or in State statute will you find a role for the Budget Committee in the approval of TIF Districts.

I trust that this is responsive to your questions.

Very truly yours,



William L. Plouffe  
WLP/ap

Cc: Robert A. Peabody, Jr.

Enclosures