

STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

H. Boone Porter, III, and Margaret C. Porter

v.

Town of Sandwich, Benjamin Shambaugh, Wendy Huff, and Arthur Kerr

Docket No. 212-2014-CV-180

ORDER ON PENDING MOTIONS

The plaintiffs, H. Boone Porter, III, and Margaret C. Porter (collectively the “Porters”), brought this action against the defendants, the Town of Sandwich (the “Town”), Benjamin Shambaugh (“Shambaugh”), Wendy Huff (“Huff”), and Arthur Kerr (“Kerr”) (collectively the “defendants”), asserting various violations of the Right-to-Know Law. See RSA chapter 91-A (2013 & Supp. 2015). After a bench trial, the court issued an order (the “August 2015 order”) granting the Porters’ petition in part, and denying it in part.¹ (Court index #29.) Among other remedies, the court awarded reasonable attorney’s fees and costs to the Porters under RSA 91-A:8 (2013). (Id. at 42–45.) The Porters subsequently moved the court for approval of their request for attorney’s fees and costs. (Court index #41–42.) The defendants objected and the Porters replied and supplemented their motion. (Court index #46, 51–52.) The defendants then filed an appeal with the New Hampshire Supreme Court. (See court index #48.) The Supreme Court dismissed this appeal. (Court index #49.)

After a hearing on February 2, 2016, the court issued an order, dated March 22, 2016 (the “March 2016 order”). (Court index #54.) In the March 2016 order, the court

¹ The factual and procedural background of the case is further detailed in the court’s prior orders. (Court index #29, 43, 54.)

conducted a severability analysis and found that the claims on which the Porters prevailed are analytically severable from the claims on which they did not.² (Id. at 5–6.) In light of that finding, the court concluded that it could not make a determination on the reasonableness of the Porters’ requested fees on the record before it. (Id. at 6–7.) It deferred ruling on the issue, and ordered the Porters to submit a revised itemized statement of fees, excising the fees attributable to the claims upon which they did not prevail from their request. (Id. at 7.) It further ordered the defendants to respond to the Porters’ itemization. (Id.)

As requested, the Porters submitted a revised itemized statement of fees, along with accompanying affidavits from counsel. (Court index #57.) They also moved the court to reconsider the March 2016 order. (Court index #55.) The defendants object to the motion to reconsider. (Court index #58.) The defendants did not file a separate response to the Porters’ revised itemized statement of fees as requested. However, in their objection to the Porters’ motion to reconsider, they reassert the arguments made in their initial objection to the Porters’ request for attorney’s fees and costs. (Id. ¶ 14 n.1.)

The parties have not requested an additional hearing on the motion for attorney’s fees or a hearing on the motion to reconsider. The court finds that a hearing would not assist it in determining the pending issues. Super. Ct. Civ. R. 13(b). Accordingly, the court “act[s] on the motion[s] on the basis of the pleadings and record before it.” Id. After considering the parties’ arguments, the factual circumstances of the case, and the applicable law, the court takes up each motion in turn.

² Although they prevailed on the majority of their claims, the Porters did not prevail upon their claims that the Town violated the Right-to-Know Law by failing to produce: (1) documents withheld as privileged; and (2) selectmen emails. (August 2015 order at 22–37.)

I. Motion to Reconsider

The court first addresses the defendants' motion for reconsideration. Motions to reconsider must "state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the [m]otion as the movant desires to present" See Super. Ct. Civ. R. 12(e). The Porters argue that the court misapprehended points of law and fact by: (1) determining that the common law severability rule applies to statutory grants of attorney's fees under RSA 91-A:8; and (2) finding that the claims on which the Porters prevailed are analytically severable from the claims on which they did not. (Pls.' Mot. Reconsider ¶ 1.) The defendants disagree. (Defs.' Obj. Pls.' Mot. Reconsider ¶¶ 4, 12–14.) After considering the parties' arguments, and upon review of the March 2016 order and the pleadings and record leading to that order, the court finds that it neither overlooked, nor misapprehended, any point of law or fact. See Super. Ct. Civ. R. 12(e).

Accordingly, the Porters' motion to reconsider is DENIED.

II. Motion for Attorney's Fees and Taxation of Costs

Having denied the Porters' motion to reconsider the March 2016 order, the court next addresses the Porters' motion for attorney's fees and costs. The Porters now seek to recover \$201,334.00 in attorney's fees, \$13,726.21 in costs, and prejudgment interest pursuant to RSA 524:1-b (2007).³ (Pls.' Statement Fees Resp. Court's March 2016 Ord.

³ The Porters first requested \$186,916.50 in attorney's fees and \$9,853.92 in costs. (Pls.' Mot. Attorney's Fees, Prayer B.) They then supplemented this request to include an additional \$16,374.00 in fees and \$66.04 in costs. (Pls.' Reply Defs.' Obj. Mot. Attorney's Fees ¶ 2.) They also conceded that certain objected-to fees unrelated to the instant action had been improperly included in their request. (Id. ¶ 15; see also Hr'g Audio, Feb. 2, 2016, at 1:31:36–1:31:54.) At the direction of the court, the Porters have reduced their request by \$12,781.00 in fees and \$6.60 in costs; this reduction represents the total of the amount they assert is attributable to the claims upon which they did not prevail and the amount they previously agreed had been improperly included in their earlier request. They have also revised their request to include an additional \$11,344.50 in fees and \$3,805.85 in costs, representing amounts recently incurred.

¶ 8; see Parent Aff., Exs. B at 23, D at 1–2, E at 5–6, F at 2, G, April 6, 2016 (“Third Parent Aff.”.)

In support of this request, the Porters have submitted, among other things, various affidavits of counsel and itemized statements of fees and costs. (Parent Aff., Exs. A–B, Oct. 7, 2015 (“First Parent Aff.”); Hampe Aff., Oct. 7, 2015 (“First Hampe Aff.”); Parent Aff., Exs. A–B, Jan. 27, 2016 (“Second Parent Aff.”); Third Parent Aff., Exs. A–G; Hampe Aff., Apr. 6, 2016 (“Second Hampe Aff.”).) They have also submitted the affidavit of Attorney Philip Waystack opining as to the reasonableness of the fees and costs charged to the Porters. (Waystack Aff. ¶ 8, Jan. 28, 2016.) They thereafter made an offer of proof that: (1) Attorney Waystack would testify that the fees and costs requested were reasonable; and (2) they had paid all charges billed to them for legal services, which their attorneys had done on a monthly basis.⁴

The defendants object, arguing, among other things,⁵ that the amounts requested are unreasonable. They now assert that the amount sought for attorney’s fees is unreasonable because: (1) the Porters’ attorneys’ rates are “well above” the customary fees in the area; and (2) the Porters’ attorneys devoted an excessive amount of time to the litigation.⁶ (Defs.’ Obj. Pls.’ Mot. Fees ¶¶ 4–10.) They further maintain that the amount sought for costs is unreasonable because it includes certain costs which are not recoverable, and that RSA 524:1-b does not provide for interest on awards of attorney’s

⁴ Although the requisite persons were present in the courtroom when the Porters made this offer of proof at the February 2, 2016 hearing, the Town chose not to cross-examine Attorney Waystack or the Porters.

⁵ The defendants initially also asserted that the Porters had improperly refused to produce the bills sent to them by their attorney’s law firm. (See Defs.’ Obj. Pls.’ Mot. Fees n.2.) However, they abandoned this argument at the hearing, conceding that the bills need not be produced.

⁶ The Town also argued that the Porters did not prevail on all claims for which they were seeking to recover fees. However, the court already considered this argument and found in the Town’s favor on the issue in the March 2016 order. It now considers the Porters revised request in light of that order.

fees and costs. (Id. ¶¶ 11–13.) In support of these claims, the Town submitted the results of an Economics of Law Practice Survey from 2014. (Id., Ex. 1.)

The court will consider the reasonableness of the requested attorney’s fees and costs in turn. It will, thereafter, consider the issue of interest. In so doing, the court will address the parties’ arguments where relevant.

A. Fees

The Porters seek to recover \$201,334.00 in attorney’s fees.

As an initial matter, a number of the entries listed in the Porters itemized statements of fees appear to relate to the defendants’ appeal to the New Hampshire Supreme Court and/or the Porters’ contemplated cross-appeal.⁷ However, the August 2015 order did not award attorney’s fees relating to any future appeals. (See August 2015 order at 43 (finding “that this action was ‘necessary in order to enforce compliance with the provisions’ of the Right-to-Know Law” (emphasis added)).) Such an award is outside the scope of this court’s authority. See LaMontagne Builders, Inc. v. Brooks, 154 N.H. 252, 259 (2006); Sup. Ct. R. 23. For these reasons, in assessing the reasonableness of the Porters’ request, the court does not consider the entries that appear to relate to the defendants’ appeal to the New Hampshire Supreme Court and/or the Porters’ contemplated cross-appeal. Thus, the court considers the Porters’ request only to the extent it seeks the \$196,507.00 in attorney’s fees unrelated to an appeal. (See Third Parent Aff., Ex. E; Diagram 1.)

In determining whether an award of attorney’s fees is reasonable, the court will consider, in its discretion: “the amount involved, the nature, novelty, and difficulty of

⁷ The court specifically lists these entries in Diagram 1, which appears as an appendix to this order. The parties may raise objections to the court’s assessment of whether these entries relate to the appeal in a motion to reconsider. See N.H. Super. Ct. Civ. R. 12(e).

the litigation, the attorney's standing and the skill employed, the time devoted, the customary fees in the area, the extent to which the attorney prevailed, and the benefit thereby bestowed on his clients." Town of Barrington v. Townsend, 164 N.H. 241, 250 (2012) (quoting Funtown USA, Inc. v. Town of Conway, 129 N.H. 352, 356 (1987)); see also Rabbia v. Rocha, 162 N.H. 734, 740 (2011) (noting that, on appeal, the Court "give[s] substantial deference to a trial court's decision on attorney's fees, and will not overturn it absent an unsustainable exercise of discretion." (quotation omitted)).

Considering these factors, the court finds that the remaining fees requested are reasonable. This litigation was both factually and legally complex; it required the parties and the court to apply multiple legal principles to a complicated factual and procedural history, and all matters were ardently contested. Although the Porters did not seek a large sum of monetary damages, the amount and type of relief sought was significant. They sought not only attorney's fees and costs under the statute, but also invalidation of multiple Board of Selectmen and Zoning Board decisions, production of many types of documents, an order for remedial training, an order for injunctive relief, and an order for civil penalties. (August 2015 Ord. at 39.) The court also does not question Attorney Parent's and Attorney Hampe's standing and skill in this litigation; their representation of the Porters was well beyond competent. Their skill is evidenced by the pleadings filed in the case, by their arguments made orally before the court, by their performance at trial, and by the extent to which the Porters prevailed in the action.⁸ Additionally,

⁸ The Porters asserted four classes of violations of the Right-to-Know Law. (August 2015 Ord. at 18–39 (addressing the following types of asserted violations: (1) various e-mails circulated to the ZBA; (2) two draft decisions circulated to the ZBA; (3) the Town's withholding of certain documents; and (4) the Board of Selectmen's non-public discussion).) The Porters prevailed on all four of these claims, with only minimal exception. (See id. at 22–37 (analyzing five sub-classes of documents alleged to have been improperly withheld, and finding that the Town's withholding of three such sub-classes of documents was improper).)

although the Porters did not prevail as to each of the asserted violations of the Right-to-Know Law, their present request is tailored to seek only fees and costs relating to their successful claims.⁹ (Third Parent Aff. ¶¶ 3, 5; Second Hampe Aff. ¶¶ 3, 5.)

The Porters' attorneys' rates do not alter this result. Attorney Parent is Chair of the Litigation Department at McLane Middleton, P.A. ("McLane"), and has twenty years of litigation experience. (First Parent Aff. ¶ 5.) Attorney Hampe is a member of the Litigation Department at McLane, and has eighteen years of litigation experience. (Hampe Aff. ¶ 5.) Attorney Parent charged hourly rates of \$355 in 2014, \$370 in 2015, and \$395 in 2016, while Attorney Hampe charged hourly rates of \$295 in 2014, \$300 in 2015, and \$315 in 2016. (See First Parent Aff., Ex. A at 1–3, 6; Third Parent Aff. ¶ 7.) Although these rates are comparatively higher than the rates charged by defense counsel, (cf. Defs.' Obj. Pls.' Mot. Fees ¶ 4, n.4 (noting that Attorneys Mitchell and Spector-Morgan charge hourly rates of \$195 and \$180, respectively)), this does not necessarily render them unreasonable.

To the contrary, their rates are consistent with customary fees in the area, especially in light of their respective levels of experience, and considering the size and reputation of the McLane firm. (See id., Ex. 1 at 2 (placing Attorney Hampe's 2014 rate at 95th percentile of associates with 8+ years of experience; placing Attorney Parent's 2014 rate at approximately 75th percentile of partners with 8+ years of experience;

⁹ The defendants did not respond to the Porters' revised itemized statement of fees as the court requested, but instead reasserted the arguments made in their initial objection. (Defs.' Obj. Pls.' Mot. Reconsider ¶ 14 n.1.) Additionally, the revised itemized statement of fees excised all entries that the defendants previously objected to on this basis, with one exception. (Compare Defs.' Obj. Pls.' Mot. Fees ¶ 7a, with Third Parent Aff., Ex. A.) Thus, with the one exception, it appears as though the defendants agree that the proper items have been excised from the Porters' itemized statement of fees. As to the item objected to but not excised—an entry, dated March 5, 2015, for "Review [of] case law to refute objections to exhibits based on the exceptions to the rule against hearsay[.]" (Third Parent Aff., Ex. A at 14)—this entry does not appear to relate to the claims on which the Porters did not prevail. Indeed, it is unclear how the Porters could seek to admit documents that were never produced to them. The remaining entries in the revised itemized statement of fees appear to relate to the Porters' successful claims.

indicating that rates tend to increase based upon firm size); see also Waystack Aff. ¶¶ 9, 11 (“Lawyers of this quality and position may reasonably charge higher rates than other attorneys.”; “It is my belief that the hourly rates charged to the [Porters] by the McLane Middleton law firm are within reason based on the quality and position of the attorneys performing this work, and the customary fees for such work in the area.”).)

The amount of time the Porters’ attorneys spent litigating the Porters’ claims, likewise, does not render the requested fee unreasonable. The defendants’ argue that: (1) the total number of hours spent on the litigation was high; and (2) Attorney Hampe misused her time by performing work better suited for non-lawyer staff, and by preparing for and attending depositions and hearings at which she did not participate. However, based on the court’s substantial and prolonged involvement in this case, and its review of the Porters’ itemized attorney’s fees submissions, the court finds that the amount of time the Porters’ attorneys devoted to their claims was reasonable. See Townsend, 164 N.H. at 250–51 (upholding trial court’s award of attorney’s fees based on attorney’s estimate of time spent and court’s “involvement in the ongoing proceedings”).

Although the total time spent on the litigation—approximately 622 hours, (Third Parent Aff., Ex. B at 23, E at 1–5, F at 1–2; Diagram 1)—was high, a variety of factors contributed to this number. As discussed above, this was a complex litigation involving multiple legal principles and a complicated factual and procedural history; it culminated in a two-day bench trial where many exhibits were submitted. (See Tr. Audio, March 6, 2015; Tr. Audio, Apr. 14, 2015; Pls.’ Exs. 1–17, 19–23, 25–26, 28–32, 34–41, 43–46, 48–51, 53–59; Defs.’ Ex. A.) The Porters’ high degree of involvement in the case also contributed to the increase in hours, as it required Attorneys Parent and Hampe to devote more time to client consultations than is typical. (See, e.g., First Parent Aff., Ex.

A at 7 (“Lengthy conference call with the Porters”), at 9 (“Lengthy conference call with clients”); see also Waystack Aff. ¶ 15(b) (opining that a heightened level of client involvement “can reasonably lead to higher legal fees . . .”).) Further, due in part to the factual complexities of the case, and in part to the Town’s reluctance or unexplained failure to produce certain documents, discovery was a particularly onerous task for the Porters’ attorneys. (See, e.g., August 2015 Ord. at 23–24 (defendants conceding that they should have disclosed Board of Selectmen meeting notes and certain redline notations); see also Waystack Aff. ¶ 15(d) (Defendants resistance to discovery request contributed to increased time and, therefore, increased fees).)

Likewise, the court cannot conclude that Attorney Hampe misused her time. Although it is arguable that a legal secretary could perform some of the tasks identified by the defendants, this does not necessitate a finding that it would only be reasonable for a legal secretary to do so. Moreover, considering the complexity and compressed nature of this case, it was not unreasonable for more than one attorney to work together to complete a given task—whether it was to prepare for, attend, and/or participate in an important deposition or hearing, to contribute to significant pleadings and memoranda, or to discuss relevant issues with their clients.

For these reasons, the court finds that the Porters are entitled to \$196,507.00 in attorney’s fees. (See Third Parent Aff., Exs. B, E–F.)

B. Costs

“As a general rule, costs are allowable only when authorized by statute or court rule.” Grenier v. Barclay Square Commercial Condo. Owners’ Ass’n, 150 N.H. 111, 118 (2003) (quotation omitted); see Super. Ct. Civ. R. 45 (“Costs shall be allowed as of course to the prevailing party as provided by these rules . . .”). Here, the court awarded

costs to the Porters pursuant to RSA 91-A:8, I, which authorizes the award of reasonable costs in certain cases brought under the Right-to-Know Law. (August 2015 order at 42–45.) Although RSA 91-A:8, I, does not specify what types of costs are reasonable, Superior Court Civil Rule 45(b) is instructive. This rule, captioned “Allowable Costs,” provides:

The following costs shall be allowed to the prevailing party: Fees of the court, fees for service of process, witness fees, expense of view, cost of transcripts, and such other costs as may be provided by law. The court, in its discretion, may allow the stenographic cost of an original transcript of a deposition, plus one copy, including the cost of videotaping, and may allow other costs including, but not limited to, actual costs of expert witnesses, if the costs were reasonably necessary to the litigation.

As noted above, the Porters seek to recover \$13,726.21 in costs. (Pls.’ Statement Fees Resp. Court’s March 2016 Ord. ¶ 8.) The defendants challenge only some of the requested costs. Specifically, the defendants argue that the following types of requested costs are not recoverable: (1) subpoena witness fees; (2) fees for service of process; (3) costs of obtaining an audio record of trial testimony; and (4) copying, mileage, and postage fees. The Porters disagree, asserting that these fees are either expressly allowed, or were reasonably necessary to the litigation.

The court finds that the Porters’ request for costs is reasonable in some respects, but unreasonable in others. Specifically, the court agrees with the defendants that the cost of obtaining an audio record of trial testimony, and the cost of photocopies, attorney mileage, and postage fees are unreasonable. See 5 G. J. MacDonald, Wiebusch on New Hampshire Civil Practice and Procedure § 50.02, at 50-3 (2014) (“Attorneys fees and the expenses that go with an attorney’s representation (for example, printing of briefs) cannot be recovered as ‘costs’ at the end of a case.”); cf. Cutter v. Town of Farmington, 126 N.H. 836, 844 (1985) (holding legal research costs not recoverable).

However, the court agrees with the Porters that the remaining contested categories of costs—specifically, the subpoena witness fees and fees for service of process—are allowable; such costs were expressly permitted or were otherwise reasonably necessary to the litigation. See Super. Ct. Civ. R. 45(b) (allowing recovery for “fees for service of process” and providing that “[t]he court, in its discretion, . . . may allow other costs including, but not limited to, actual costs of expert witnesses, if the costs were reasonably necessary to the litigation”).

For these reasons, the court finds that the Porters are entitled to \$8,083.47 in costs. (See Third Parent Aff., Exs. D, E at 6, G.) The court calculated this amount by subtracting amounts attributable to the audio record of trial testimony, copying, mileage, and postage from the total amount requested by the Porters.¹⁰

C. Interest

Resolving this issue will require the court to engage in statutory interpretation, which is a matter of law. See Trefethen v. Town of Derry, 164 N.H. 754, 755 (2013). The court considers the statute as a whole and ascribes the plain and ordinary meaning to the words used. Id. The court “interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id. (citation omitted). The court “construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Petition of Carrier, 165 N.H. 719, 721 (2013) (citation omitted). Furthermore, the court should “not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Id. (citation omitted). This approach “enables [the

¹⁰ The Porters’ itemized statements of costs contained sufficient information for the court to determine what category of fees each entry was attributable to. (See Third Parent Aff., Exs. D, E at 6, G.)

court] to better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Id. (citation omitted). “If a statute is ambiguous, however, [the court] consider[s] legislative history to aid [its] analysis.” Id. (quotation omitted).

“Ordinarily, upon a verdict for damages and upon motion of a party, interest is to be awarded as part of all judgments.” State v. Exxon Mobil Corp., 168 N.H. 211, 265 (2015), cert. denied sub nom. Exxon Mobil Corp. v. New Hampshire, No. 15-933, 2016 WL 309800 (U.S. May 16, 2016). RSA 524:1-b provides:

In all . . . civil proceedings at law or in equity [other than an action on a debt] in which a verdict is rendered or a finding is made for pecuniary damages to any party, whether for personal injuries, for wrongful death, for consequential damages, for damage to property, business or reputation, for any other type of loss for which damages are recognized, there shall be added . . . to the amount of damages interest thereon from the date of the writ or the filing of the petition to the date of judgment

The Porters argue that this provision entitles them to interest on the attorney’s fees and costs awarded. (Pls.’ Mot. Attorney’s Fees. 9; Pls.’ Reply Defs.’ Obj. Pls.’ Mot. Attorney’s Fees ¶ 18.) The defendants disagree. (Defs.’ Obj. Pls.’ Mot. Attorney’s Fees ¶ 14.) They argue, among other things,¹¹ that an award of attorney’s fees and costs is not a “judgment” within the meaning of the statute. (Id. ¶ 14 n.7.)

The court agrees with the Porters. The plain language of RSA 524:1-b provides that the statute applies in “all . . . civil proceedings at law or in equity” other than an action on a debt. An action brought under RSA chapter 91-A is such a proceeding. The plain language of the statute also mandates that interest be added wherever “a finding is

¹¹ The defendants also argue that the Porters failed to cite legal authority for the award of fees. Contrary to their contention, however, the Porters cite RSA 524:1-b in their motion for attorney’s fees, and in their reply to the defendants’ objection. (Pls.’ Mot. Attorney’s Fees. 9; Pls.’ Reply Defs.’ Obj. Pls.’ Mot. Attorney’s Fees ¶ 18.) Additionally, the defendants initially asserted that the Porters failed to produce evidence that the fees and costs had been billed and paid, but because the Porters made an offer of proof that fees and costs had been billed and paid on a monthly basis, this argument is now moot.

made for pecuniary damages to any party . . . for . . . [a] loss for which damages are recognized[.]” RSA 524:1-b. Because the defendants do not argue otherwise, the court assumes without deciding that the attorney’s fees and costs awarded to the Porters constitute “pecuniary damages to any party . . . for . . . [a] loss for which damages are recognized[.]”¹² Id.; J & M Lumber & Const. Co. v. Smyjunas, 161 N.H. 714, 727 (2011) (assuming without deciding same because the parties did not argue otherwise). This interpretation is consistent with the statute’s purpose “to clarify and simplify the existing law and to make plain that in all cases where the trial court awarded money to the party entitled to be compensated, interest at the legal rate is to be added to the award.” See Exxon Mobil Corp., 168 N.H. at 266.

The defendants’ argument that an award of attorney’s fees and costs is not a “judgment” within the meaning of the statute is misplaced. The plain language of RSA 524:1-b does not limit the application of interest to “judgment[s.]” Rather, the term is used when identifying the time period to which interest is applied. See id. (providing for the application of interest on certain damages “from . . . the filing of the petition to the date of judgment”). The court will not read such a limitation into the statute. See Trefethen, 164 N.H. at 755 (“[The court] will not consider what the legislature might have said or add language that the legislature did not see fit to include.”).

For these reasons, the court awards prejudgment interest on attorney’s fees and costs to the Porters pursuant to RSA 524:1-b.

¹² Even if the court were not to make this assumption, it would likely make such a finding because RSA 98-A:8 specifically identifies attorney’s fees and costs as available remedies under the Right-to-Know Law. See RSA 91-A:8, I; Black’s Law Dictionary 471, 473–74 (10th ed. 2014) (defining “damages” as “[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury” and “pecuniary damages” as “[d]amages that can be estimated and monetarily compensated”).

In sum, the Porters are entitled to \$196,507.00 in attorney's fees and \$8,083.47 in costs. They are awarded prejudgment interest on these amounts. The Porters' motion for attorney's fees and costs is GRANTED to this extent, but is otherwise DENIED.

SO ORDERED.

Dated: 6-23-16



Charles Temple,
Presiding Justice

DIAGRAM 1

Date	Atty.	Description of Services	Hours	Amount
10/7/2015	RH1	Work on finalizing motion to [sic] fees and supporting memorandum, affidavits and charts for filing with the court; Review client comment on potential authority to cite in any appeal	3.30	\$990.00
10/8/2015	RH1	Confirm that copies of invoices are not required for submittal of taxation of costs; Telephone call with clients regarding information from Town related to potential appeal	1.50	\$450.00
11/4/2015	JLP	Communications from Attorney Hilliard regarding appeal counsel and potential for negotiation	0.10	\$37.00
11/5/2015	RH1	Meet with Attorney Parent regarding strategy for hearing and reply; Review rules on deadline for cross appeal; Research impact of later order on amount of fees award on deadline and substance of notice of appeal	1.80	\$540.00
11/9/2015	JLP	Conference call regarding appeal filed by Town and pending matters; Follow up with Attorney Hampe	1.00	\$370.00
11/9/2015	RH1	Prepare for call with clients on outstanding issues relating to potential appeal; Review planning board minutes summarizing of [sic] case status; Work on reply to attorneys' fee objection; Telephone call with clients regarding case strategy; Review client comments on action items	3.50	\$1,050.00
11/10/2015	RH1	Review clients' proposed settlement strategy; Telephone call to court regarding appellate mediation program; Memorandum to Attorney Parent regarding same and regarding the application of Rule 7 to toll deadline for appeal for all parties; Assess opposing counsel's correspondence regarding potential mediation	0.50	\$150.00
11/12/2015	RH1	Assess client comments regarding Defendants' ongoing violations of Right-to-Know law; Assess notice of appeal and potential cross-appeal	0.30	\$90.00
11/15/2015	RH1	Review client comments for call regarding brief	0.20	\$60.00
11/16/2015	JLP	Conference call with clients regarding appeal and trial court's cancelling of hearing; Review letter to New Hampshire Supreme Court	0.60	\$220.00
11/16/2015	RH1	Review client correspondence and prepare outline for conference call with clients; Telephone call to New Hampshire Supreme Court regarding pending issue before trial court; Letter to New Hampshire Supreme Court regarding same; Telephone call to clients regarding call with New Hampshire Supreme Court; Review court order	1.90	\$570.00
11/17/2015	RH1	Respond to correspondence regarding next steps after submitting letter to New Hampshire Supreme Court	0.20	\$60.00
11/29/2015	RH1	Review memorandum from Attorney Parent regarding following up on New Hampshire Supreme Court and on status of appeal; Review correspondence from clients regarding Planning Board minutes	0.20	\$60.00
12/3/2015	RH1	Assess court order; Telephone call to New Hampshire Supreme Court regarding reinstating hearing on attorney's fees; Correspondence to clients regarding same	0.40	\$120.00
12/30/2015	RH1	Telephone call to New Hampshire Supreme Court to determine status of mandate; Correspondence to client regarding same	0.20	\$60.00

Total Amount: \$4,827.00