****

Town of Hoopsville

40 Trey Street

Hoopsville, ME 04333

207.333.1234

**MEMORANDUM**

TO: Hoopsville Board of Selectmen

FROM: Hoopsville GA Administrator

RE: Overview of Poverty Abatement Application Process

DATE: April 23, 2019

On Thursday, May 9, 2019 at 6:00 p.m., a meeting of the Board of Selectmen is scheduled. One of the items on the agenda is a poverty abatement application.

By statute, poverty tax abatement applications and supporting materials are confidential. The hearing before the Board of Selectmen must be conducted in executive session. For that reason, Town staff will not be providing you with information on the pending poverty abatement application until the start of the meeting, and they will be collecting those materials at the end of the meeting.

**Overview of the Procedures**

Section 841(2) of Title 36 requires that “[h]earings and proceedings held pursuant to [§ 841(2)] shall be in executive session.” Therefore, the Board of Selectmen should make a motion at a properly noticed public meeting “to enter into executive session to deliberate over an abatement request (Case # 2019-\_\_\_) pursuant to 36 M.R.S.A. § 841(2).” The motion must be approved by a 3/5 vote and must be recorded. Any deliberation regarding the application should occur in executive session. The applicant has the right to be present throughout the entire executive session. A notice of the executive session has been sent to the applicant. If the applicant is present, s/he should not interfere with the deliberations but may be asked to respond to questions. The Board of Selectmen cannot make a decision in executive session; the purpose of the executive session is for deliberation only.

After coming out of executive session, the Board of Selectmen should make a motion such as “I move to [grant]/[deny] an abatement in the amount of $ \_\_\_\_\_\_\_ in taxes pursuant to Title 36 M.R.S.A. § 841(2) for Case # 2019-\_\_\_.” The Board of Selectmen’s ultimate decision is a matter of public record, but since poverty abatements are confidential, the recipient’s name, property address or account number is not included in the public record (as opposed to a record of a traditional property tax abatement application, which is a public record).

Regardless of the outcome, the Board of Selectmen must issue a written decision to grant the abatement, deny the abatement or partially grant the abatement. The written decision must include the specific reasons for the decision and must inform the applicant of his or her right to appeal to the [local Board of Assessment Review/County Commissioners] within 60 days of notice of the Board of Selectmen’s decision.

**Overview of the Applicable Law**

The applicant has the burden of proof – to prove that s/he is “unable to contribute to the public charges.” *Joyce v. Town of Lyman*, 565 A.2d 90 (Me. 1989); *Gilmore v. City of Belfast*, 580 A.2d 698 (Me. 1990).

The Board of Selectmen needs to apply the applicable State statute, 36 M.R.S.A. § 841(2), to the application to determine whether, “by reason of hardship or poverty, [the applicant] is in [the municipal officers’] judgment unable to contribute to the public charges.” The applicable State statute, 36 M.R.S.A. § 841(2), does not provide much guidance other than the following (emphasis added): “The municipal officers or the State Tax Assessor for the unorganized territory, within 3 years from commitment, may, on their own knowledge or on written application therefor, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges.”

There is no statutory formula for determining poverty (or hardship) so the Board of Selectmen has some latitude regarding such determinations, but the test most generally used and accepted by municipalities is whether a person’s reasonable expenses outweigh that person’s income (as determined on the basis of a General Assistance-like financial assessment). A useful starting point is the U.S. DHHS Poverty Guidelines in order to determine whether the applicant meets the federal definition of poverty. Another helpful evaluation tool is the modified General Assistance (GA) financial analysis: compare an applicant’s (or household’s) income against the applicant’s (or household’s) actual need to obtain an accurate reading of the applicant’s economic situation. Note than an applicant’s current GA eligibility does not automatically render him/her eligible or ineligible for a poverty tax abatement for a prior tax year.

The purpose of the poverty abatement statute is “to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay” (*Macaro v. Town of Windham*, 468 A.2d 604 (Me. 1983)). Thus, while an applicant may possess a valuable asset such as a house, that applicant still may have no ability to pay property taxes, so that a municipality may not rely on the mere existence of the asset to deny a poverty abatement. The municipality instead must look to an applicant’s realistic financial capacity to pay his or her taxes.

Note too that an applicant’s current financial situation is only partially at issue; the applicant’s economic situation at all times since the taxes were due is central to the analysis. An applicant is only eligible for a poverty tax abatement for the tax year(s) in question and for the period subsequent to the application if the applicant shows no capacity to pay the taxes during that time. Thus, if an applicant was indigent at the time of application but not so during the tax year in question, the applicant would not be eligible. Further, if an applicant was indigent during the tax year in question but then at time of the poverty abatement application became able to pay the taxes due, that applicant also would be ineligible. In *Gilmore v. City of Belfast*, 580 A.2d 698 (Me. 1990), the Maine Supreme Court indicated that the poverty abatement statute does not mandate that the determination of poverty be made only at the time of the hearings before the municipal officers. Rather, the municipal officers “may take into account all of the facts and circumstances relevant to the taxpayer’s alleged inability to pay.”