THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

SUPREME COURT

DONALD AND BONNIE TOY
-v-
CITY OF ROCHESTER & MICHAEL G. AND STACEY PHILBROOK

SUPREME COURT CASE NO.: 2018-0172

DONALD AND BONNIE TOY'S MEMORANDUM OF LAW IN LIEU OF BRIEF

FACTUAL BACKGROUND

In August 2015, the City of Rochester (the "City") issued a Notice of Sale and Conditions of Sale regarding 422 Old Dover Road (the "Property") that it had acquired by tax deed. The Notice of Sale and Conditions of Sale provided various instructions regarding the form of bids and procedure for sale. Appellant's Appendix 001-004 (Hereinafter, "App."). The Notice of Sale specifically stated that each bidder must indicate on their bid form their intended use of the Property. App. 001. The Notice of Sale also stated that the City "reserves the right to reject any and all bids and waive any minor or nonmaterial informalities, if deemed to be in the best interest of the City." App. 001. The Conditions of Sale gave preference to abutters by providing them with the right of first refusal at the highest bid price, with the highest bidding abutter receiving the option first and the junior bidding abutters next in the order of the bids, highest to lowest. App. 002.

On August 12, 2015, Plaintiffs Donald and Bonnie Toy (the "Plaintiffs"), owners of Addison Estates, a manufactured housing park located at 414 Old Dover Road, submitted the highest bid on the Property in the amount of $45,500. App. 005-007. In their bid package, they indicated that they intended to annex the Property to the abutting

418 Old Dover Road, a 75 foot strip of land separating Addison Estates from the Property, which they had under contract and acquired on August 14, 2015. App. 005.

The City received four other bids which included the bidders intended use of the Property (App. 008):

1. $36,200 from Darlene Severance, a non-abutter, who intended to rehabilitate the structures on the Property.

2. $35,800 from John Weeden, an abutter, who intended to absorb the Property into an adjacent lot.

3. $31,500 from Donald Lesperance, a non-abutter, who intended to build a single family residence on the Property.

4. $31,000 from Michael and Stacey Philbrook (the "Philbrooks"), abutters who reside at 424 Old Dover Road, who intended to add the Property to their land.

The Philbrooks ultimately purchased the property for $36,500 on October 13, 2015 after the City solicited the Philbrooks to increase their bid from their original bid of $31,000. (Exhibit A).

After learning of the sale of the property to the Philbrooks, the Plaintiffs filed a complaint in the Strafford Superior Court against the City of Rochester and the Philbrooks on November 2, 2015. App. 016-020. The complaint sought a declaratory judgment that the sale had failed to conform to the conditions of the Notice of Sale and that the Plaintiffs had been unfairly treated. It also contained a breach of contract claim for money damages which was dismissed by the court on January 14, 2016. The complaint asked for rulings that the Plaintiffs are lawfully entitled to the right of first refusal on the property, that the City breached the conditions of sale, and that the court order that the property be deeded to Plaintiffs. At the bench trial held on July 13 and 14, 2017 the issue was whether the manner in which the City conducted the sale complied with the Notice of Sale and was fair to the Plaintiff.

The trial court (Howard, J.) issued the final order on the merits on December 14, 2017. The court found that the City violated the Conditions of Sale when it failed to

award the property to the Plaintiffs as the highest bidding abutter, and improperly amended the Conditions of Sale when it imposed a restrictive covenant preventing mobile home park development or expansion as a condition of the sale to the Plaintiffs. App. 091-107. The court ordered the City to acquire title from the Philbrooks and convey the property to the Plaintiffs upon payment to the City of their bid amount. App. 104-107. The court also included an award of attorney's fees and costs, giving the Plaintiffs 30 days to file their statements for fees and costs along with affidavits.

On December 21, 2017 Defendant filed a motion to reconsider the order on the merits which was denied on January 12, 2018. App. 114. The Plaintiffs filed the required affidavits and invoices for attorneys fees and costs on January 12, 2018. App. 115-131. Defendants filed their notice of appeal prematurely on January 22, 2018. The superior court issued its order on attorney fees on January 29, 2018 despite Defendants' notice of appeal. The court reasoned that the issue of attorney fees was a collateral matter that the court could decide while the appeal was pending. On February 6, 2018 the Defendants filed their objection to Plaintiffs' affidavit for attorney fees and costs, motion for reconsideration and to vacate order on Attorney fees and costs. On February 9 this Court issued an order advising that the trial court's decision does not appear to be a final decision on the merits "due to the outstanding attorneys fees referenced in the final order." The Court ordered the City to file a memorandum addressing whether the appeal should be dismissed as an improper interlocutory appeal. The City instead, on February 22, 2018, sent correspondence requesting to withdraw the appeal without prejudice, which the Court granted on February 27, 2018. App. 135-148. The superior court issued its decision denying Defendants' motion to reconsider and to vacate the order on attorney fees on March 22, 2018. Defendants filed their second notice of appeal on March 30, 2018. App. 154.

SUMMARY OF ARGUMENTS

I. PETITION FOR DECLARATORY JUDGMENT WAS AN APPROPRIATE ACTION BASED ON THE FACTS OF THIS CASE.

II. THE TRIAL COURT PROPERLY RULED THAT PLAINTIFFS' COMPLAINT PROVIDED SUFFICIENT NOTICE TO THE DEFENDANTS OF THE BASIS OF PLAINTIFFS' CLAIM.

III. THE TRIAL COURT HAD AUTHORITY TO ISSUE THE RELIEF GRANTED.

IV. THE TRIAL COURT PROPERLY GRANTED PLALINTIFFS' REQUEST FOR ATTORNEYS FEES AND COSTS.

ARGUMENT

I. PETITION FOR DECLARATORY JUDGMENT WAS AN APPROPRIATE ACTION BASED ON THE FACTS OF THIS CASE.

RSA 491:22 provides:

> Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive. The existence of an adequate remedy at law or in equity shall not preclude any person from obtaining such declaratory relief.

The City's conduct in the sealed bid sale and the Philbrook's deed are of the character appropriate for declaratory judgment. The City in its Notice of Sale and Conditions of Sale promised to sell the property to the highest bidding abutter. It was otherwise obligated in the conduct of the sale to treat all bidders equally and fairly. *See, Perry v. West,* 110 N.H. 351, 355 (1970); *Rich v. Patten,* ____ N.H. ____, 2006 WL 8418239 (2006); *Irwin Marine, Inc. v. Blizzard, Inc.,* 126 N.H. 271, 275 (1985); *and Marbucco Corp. v City of Manchester,* 137 N.H. 629, 633 (1993). The City never notified Plaintiffs that they were the highest bidding abutters, but instead attempted to impose a restrictive

covenant on Plaintiffs' deed. The City also selectively solicited the Philbrooks to increase their bid, and sold the property to them for an amount less than Plaintiff's bid and without imposing any restrictive covenant on their deed. The City further gave the Philbrooks a warranty deed in violation of the Notice of Sale.

This Court has previously explained that declaratory judgment is proper where the effect of the actions involved...

> ...is simply to make a controversy over a legal or equitable right or title justiciable at an earlier stage of the controversy than that which gave rise to a cause of action at common law, or to enable the normal defendant to institute the proceedings. It makes no difference whether the claim be in positive or negative form, or whether it involves issues of fact. If the controversy be one that would be justiciable under the law, provided either party had violated the right claimed by the other, it is justiciable under the act as soon as the essential facts arise. Claim of legal or equitable right on the one hand and its denial on behalf of an adverse interest constitute a cause for proceeding for a declaratory judgment.

Faulkner v. Keene, 85 NH 147, 155 (1931). Plaintiffs clearly had a present adverse claim against the City and the Philbrooks arising from the denial of his rights as the highest bidding abutter. The City advertised the property as available for sale to the highest bidding abutter with no representations as to its title or usability. The property was not sold to the highest bidding abutter. The evidence admitted at trial showed abundantly that the City failed to treat the Plaintiffs fairly and equally and conducted the sale in a capricious and arbitrary manner. Toy was the highest bidding abutter, and denial of his rights created an issue for which declaratory judgment was an appropriate mode of relief.

Additionally, this Court has held that declaratory judgment is an appropriate means of determining title to a fee interest in real estate. *West v. Chase,* 92 NH 104 (1942) and *Young v. Bridges,* 86 NH 135 (1933). This is essentially what the trial court's order accomplished in the present case.

II. THE TRIAL COURT PROPERLY RULED THAT PLAINTIFFS' COMPLAINT PROVIDED SUFFICIENT NOTICE TO THE DEFENDANTS OF THE BASIS OF PLAINTIFFS' CLAIM.

The complaint asked the court for a declaratory ruling that the sealed bid sale conducted on the property was invalid because it failed to comply with the Conditions of Sale noted in the Notice of Sale and was unfair to the Plaintiffs. The complaint alleged that:[1]

> (A) The Notice of Sale provided that the property would be sold to the highest bidding abutter. Plaintiff Donald Toy ("Toy") was an abutter and also made the highest bid on the property[2]. He was not awarded the property.
>
> (B) The Notice of Sale also provided that if you are informed that you are the successful bidder "you will have fifteen (15) days in which to pay the bid amount." Toy was never informed that he was the high bidder on the property or the highest bidding abutter.
>
> (C) Toy was never informed that his bid had been rejected or the reason for such rejection.
>
> (D) Toy was never informed why his bid was not "deemed to be in the best interest of the City".
>
> (E) The property was sold to an abutter at a price less than Toys.

The allegations set forth satisfied the requirement that "Pleadings ought to be simple, concise and indicate the theory on which the Plaintiff is proceeding so that the opposing party can adequately defend." *Morency v. Plourde,* 96 NH 344, 345 (1950). As noted in *Marbucco Corp. v. City of Manchester,* 137 NH 629, 632 (1993) "Where competitive bidding provisions are in force "strict compliance with the municipal scheme is required; otherwise the contract award is void." Citing (*Gerard Construction Co. v. City of Manchester,* 120 NH 391, 396 (1980).

---

[1] The complaint also included a breach of contract claim which was dismissed by the court on January 14, 2015. App. 29-31.

[2] It granted the highest bidding abutter a right of first refusal at the highest price. Donald Toy was the abutter and also made the highest bid.

The Complaint also clearly set forth (and the trial court found) that the Defendants' handling of the bidding process "failed to treat all bidders fairly and equally." *Irwin Marine, Inc. v. Blizzard, Inc.*, 126 NH 271, 275 (1985). As alleged, the gravamen of the City's conduct was the failure to treat the Plaintiff and other bidders fairly and equally. Evidence at the trial that the City: (a) intended to impose a restrictive covenant if Toy purchased the property but imposed no such covenant in the deed to Philbrook; (b) offered to convey the property by quitclaim deed but in fact conveyed to Philbrook by warranty deed; and, (c) allowed the Philbrooks to amend and increase their bid without notice to other bidders merely and convincingly demonstrated the unfairness of the bidding and sale procedure. Neither the evidence nor the facts proved were in and of themselves "causes of action not alleged in the complaint" as claimed by the City. They simply proved the theory that Plaintiffs asserted in their complaint, of which the City was given more than adequate notice.

III. THE TRIAL COURT HAD AUTHORITY TO ISSUE THE RELIEF GRANTED.

The City asserts that *Irwin Marine, Inc. v. Blizzard, Inc.*, 126 NH 271 (1984) stands for the proposition that the appropriate relief for an unfair tax sale is to void the sale and require an entirely new sealed bid sale. The assertion is false. The relief in *Irwin* was limited in this way, because Irwin was never given an opportunity to bid when the property was offered for sale a second time and was not the high bidder. The instant case is entirely different because Don Toy was the highest bidding abutter, and the City privately favored the lowest bidder.

Under these circumstances, it was entirely within the court's equitable powers under RSA 491:22 and RSA 498:1 to effectively award Plaintiffs the property. The order of the trial court is authorized by the expansive language of the statutes and by prior language of this Court which has stated that "The propriety of affording equitable relief rests in the sound discretion of the trial court to be exercised according to the circumstance and exigencies of the case." *Livingston v. 18 Mile Point Drive, LTD*, 158

NH 619, 624 (2009) (citation omitted). Neither statute imposes a limitation prohibiting the court from correcting a patently unfair sale of property by awarding it to the highest bidder who was otherwise qualified. The miscreant City should not benefit by an order voiding the sale and forcing the highest bidding abutter to repeat the process. Moreover, nothing would be accomplished by voiding the sale except alleviation of the obvious conflict which the City's attorneys have in representing both the City and the purchasers, the Philbrooks.

The City seems to be arguing that there is something wrong with the trial court ordering the City to purchase the property back from the Philbrooks and convey it to the Toys upon payment of the bid price. It argues that equity will best be served if the sale is voided and the property is again offered for bid. This argument fails to consider the matters previously discussed regarding the City's mishandling of the sale and the blatant unfairness of the proceedings including: 1) the proposed restrictive covenant in the deed to Toys and the absence thereof in the Philbrook deed; 2) the issuance of a warranty deed to Philbrook when a quitclaim deed was offered in the Notice of Sale; 3) the reopening of the bid to Philbrooks to allow an increase in their offer; 4) the failure to notify Toy that he was the highest bidding abutter; and, 5) the failure to sell the property to him. The losers in this case were the Toys who had to bring suit to establish the rights offered them as highest bidding abutters and the taxpayers who received a lesser amount for the property. Additionally, the City violated the public interest in providing prospective bidders an equal opportunity to bid, and weakened public confidence in the local government. *Irwin Marine, Inc. v. Blizzard, Inc.* 126 N.H. 271, 274 (1985).

The City cites *Torromeo v. Freemont,* 148 NH 640, 644 (2002) for the proposition that "Judicial, quasi judicial, legislative or quasi – legislative acts of a Town ordinarily do not subject it to claims for damages." The case is inapposite to the present case. The tax sale procedure adopted by the City is none of the above and is set forth with specificity in the statutes. In any event the trial court did not award damages against the City, it merely ordered to be done what should have been done had the City adhered to the oft repeated maxim that "In every agreement there is an implied covenant that the parties will act in

good faith and fairly with one another." *Livingston v. 18 Mile Point Drive, LTD,* 158 NH 619, 624 (2009). The trial court properly found that the City's conduct of the sale fell far short of the mark in that regard. The relief granted under the circumstances is entirely consistent with *Irwin Marine v. Blizzard.*

IV. THE TRIAL COURT PROPERLY GRANTED PLAINTIFFS' REQUEST FOR ATTORNEYS FEES AND COSTS.

As this Court recently stated:

> We review the trial court's award of attorney's fees under an unsustainable exercise of discretion standard, giving deference to the trial court's decision. [citation omitted] To be reversible on appeal, the discretion must have been exercised for reasons clearly untenable or to an extent clearly unreasonable to the prejudice of the objecting party. If there is some support in the record for the trial court's determination, we will uphold it. *Lamontagne Builders, Inc. v. Brooks,* 150 NH 270, 275 (2003). An award of attorney's fees must be grounded upon statutory authorization, a court rule, an agreement between the parties, or an established exception to the rule that each party is responsible for paying his or her own counsel fees. *Id.* at 276, 837 A.2d 301. An exception to this rule includes situations where litigation is instituted or unnecessarily prolonged through a party's oppressive, vexatious, arbitrary, capricious, or bath faith conduct. *Id.* Another exception exists where a party must litigate against an opponent whose position is patently unreasonable. *Id.* (quotation omitted).]

Lamontagne Builders, Inc. v. Brooks, 154 NH 252, 259 (2006). A third exception is when a litigant's action confers a "substantial benefit" upon the general public. *N.H. Motor Transport Assoc. v. State,* 150 N.H. 762, 770 (2004); *Silva v. Botsch,* 121 N.H. 1041, 1043 (1981); *Irwin Marine, Inc. v. Blizzard, Inc.* 126 N.H. 271, 276-77 (1985); *Bedard v. Alexandria,* 159.N.H. 740, 744-46 (2010).

The trial court conducted the proper analysis in considering Plaintiffs' motion for attorney fees and costs. The court noted that the Plaintiffs had a clear right to the conveyance of title as the successful bidder and that the "litigation against the City conferred a substantial benefit to the Toys and the citizens and taxpayers of Rochester." The court then analyzed the conduct of the City which made the award of attorneys fee even more warranted, including sale of the property to the lowest bidder, allowing the

lowest bidder to increase his bid, failing to sell to the highest bidding abutter, and conveying the property by warranty deed rather than a quitclaim deed as advertised in the Notice of Sale. The court noted that the taxpayers lost $9,300 in the sale of the property to the Philbrooks. App. 106. The court also noted that the conveyance to Philbrook by warranty deed rather than a quitclaim deed as advertised exposed the City to potential claims by heirs of the former owner. App. 106. The conduct of the City in this case was even more egregious than the conduct of the city in *Irwin Marine, Inc. v. Blizzard, Inc.*, 126 N.H. 271, 276-77 (1985) The trial court implicitly found "bad faith" in the City's handling of the sale and its treatment of Plaintiffs' bid. *Harkeem v. Adams,* 117 N 687 (1977).

The City claims that the trial court failed to apply the criteria established in *Funtown U.S.A., Inc. v. Town of Conway*, 129 NH 352, 356 (1987) The Defendant is totally wrong. The court described in detail the benefit conferred on the taxpayers of Rochester, the City's failing to conform to its own ordinance and sale procedures, the favoritism shown to Philbrooks, and the invoices submitted by Plaintiff's counsel which the trial court found to be reasonable. The Court "carefully examined the affidavits and itemized billing records" as evidenced by the adjustment made to invoices submitted by Attorney Whittum. Implicit in the trial courts findings were the appropriate considerations of the nature, novelty, and difficulty of the proceeding, the standing and skill of the attorneys, the time and customary fees, the extent to which they prevailed and the benefits conferred. The enumerated items are "guiding factors" in evaluating attorneys fees and mandatory analysis in not required. There was no "unsustainable exercise of discretion" by the trial court in its award of attorney fees. *Lamontage Buildings, Inc. v. Brooks,* 154 NH 252, 259 (2006).

A. *The Defendants had ample opportunity to contest the award of attorney fees.*

The Defendants claim that somehow their rights were slighted or overlooked or that they were deprived of some opportunity to negate or respond to Plaintiffs' claim for

attorney fees and costs. The claim rings hollow as the Defendants had from December 14, 2017 to March 8, 2018 to file any objections, affidavits or other pleadings to refute Plaintiffs' claim. As shown above, on December 22 Defendants did file a motion for reconsideration. On January 12, 2018 Plaintiffs counsel filed invoices and affidavits in support of their request for attorney fees. On January 12, 2018 the court denied Defendants' motion for reconsideration. On January 23, 2018 the court approved Plaintiffs' request for attorney fees noting "the City has taken no position on the reasonableness of the fees requested" and awarding fees and expenses of $11,485.39 (Whittum) and $20,531.02 (Potvin). On February 6, 2018, the City by motion for reconsideration and to vacate the court's order on attorney fees, did in fact request a hearing to be held on the reasonableness of Plaintiffs' request for attorney fees, "no less than 180 days from the date of [its] motion." App. 187.

The City made a conscious decision to file an appeal before the Plaintiffs submitted affidavits in support of their claim for fees and costs. The tactic failed and the City had an opportunity to object but chose instead to request a delay of not less than 180 days to respond, a request which made no sense and would further delay resolution of the case. The City cites no authority to support its request for delay and no explanation of tis failure to specify its objections, if any, to the affidavits and invoices. The trial court was not required to grant the City a hearing on its motion for reconsideration at all, let alone at the conclusion of six months.

B. Defendants' argument that the trial court lacked jurisdiction to award attorney fees is without merit.

The City's argument that the trial court lacked jurisdiction to award attorney fees is not supported on the record. The City filed its first notice of appeal prematurely. This Court issued an order on February 9, 2017 advising that the trial court's decision does not appear to be a final decision on the merits "due to the outstanding attorneys fees referenced in the final order." The Court ordered the City to file a memorandum addressing whether the appeal should be dismissed as an improper

interlocutory appeal. The City instead, on February 22, 2018, sent correspondence requesting to withdraw the appeal without prejudice, which the Court granted on February 27, 2018. App. 135-148. It was not until the superior court issued its decision denying Defendants' motion to reconsider and to vacate the order on attorney fees one month later that the final decision on the merits was ripe for appeal. The City filed the instant notice of appeal on March 30, 2018. The trial court's decision was thus entered when no appeal was pending.

On the record evidence, it is irrelevant whether the issue of attorney fees was the primary issue or a collateral issue. The issue was decided prior to the final decision on the merits after the first notice of appeal was withdrawn and while no appeal was pending. The fact of the matter is that Defendants' counsel wrongly assumed or miscalculated that an initial premature appeal would divest the court of jurisdiction and would prevent any action by the trial court on Plaintiffs' request for attorney fees and costs after the City withdrew the appeal. The jurisdictional question concerning the issue of attorney fees was effectively mooted by the City's withdrawal of its first notice of appeal.

CONCLUSION

The court reasonably found that the complaint based on the City's mishandling of the sale stated a cause of action for which declaratory judgment was the appropriate relief and properly awarded attorneys fees. The trial court's order of November 30, 2017 on the merits and order on attorneys fees of January 23, 2018 should both be AFFIRMED.

Respectfully submitted
DONALD TOY & BONNIE TOY
By their attorney
DONALD F. WHITTUM LAW OFFICE PLLC

Date: November 29, 2018

By: 

Donald F. Whittum, Esquire, Bar No.2736
donaldwhittum@gmail.com
89 Charles Street, P.O. Box 876
Rochester, NH 03866-1776
(603) 335-3800

CERTIFICATION PURSUANT TO SUPREME COURT RULE 16(10)

I hereby certify that on November 29, 2018, I sent the foregoing Memorandum of Law in Lieu of Brief by mailing two copies thereof by first class mail, postage prepaid, to:

Andrea Mitrushi, Esq.
City of Rochester
19 Wakefield Street
Rochester, NH 03867
Counsel for the Rochester City Council

Donald F. Whittum, Esq., Bar No. 2736

EXHIBIT A.

Doc # 0013894 Oct 16, 2015 8:53 AM
Book 4331 Page 0814 Page 1 of 2
Register of Deeds, Strafford County

RETURN TO:
Michael G. Philbrook
424 Old Dover Road
Rochester, NH 03867

This conveyance is exempt from the NH Real Estate Transfer Tax pursuant to RSA 78-B:2 I. This transfer is also exempt from the LCHIP surcharge pursuant to RSA 478:17-g II (a).

STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE ADMINISTRATION
REAL ESTATE TRANSFER TAX
***** Thousand 2 Hundred 72 Dollars
DATE 10/16/2015 ST834897 AMOUNT $ *****272.00
VOID IF ALTERED

PLAINTIFF'S EXHIBIT 10

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that **THE CITY OF ROCHESTER**, a New Hampshire municipal corporation with a place of business at 31 Wakefield Street, Rochester, New Hampshire, for valuable consideration, does hereby grant to **Michael G. Philbrook and Stacey A. Philbrook**, a married couple of 424 Old Dover, Rochester, New Hampshire, with warranty covenants, the following described premises, as joint owners with the rights of survivorship:

A certain tract of parcel of land shown as lot 1 on a plan entitled "Subdivision of Land for Eugene Richardson Tax Map 256, Lot 54 Old Dover Road and Whitehouse Road, in Rochester N.H." dated November 30, 2000, and recorded as Plan 61-80 in the Strafford County Registry of Deeds, said lot being bounded and described as follows:

Beginning at the Southwest corner of what was formerly or presently know as Weeden's land, at an iron pin to be set in the ground, thence running north 37 degrees, 42' 41" West one hundred fifty seven (157.00) feet, more or less, to an iron pin to be set in the ground, thence turning and running North 50 degrees 07' 31" East four hundred eighty (480.00) feet, more or less, to an iron pin to be set in the ground, thence turning and running South 37 degrees, 29' 19" East one hundred fifty seven (157.00) feet, more or less, to an iron pin to be set in the ground, thence turning and running South 45 degrees, 07' 31" West seventy five and 07/100 (75.07) feet, more or less, to a hickory tree with wire, thence running South 49 degrees, 36' 16" West two hundred seventy three and 91/100 (273.91) feet, more or less, to an iron pin to be set in the ground, thence running South 54 degrees 04' 07" West one hundred thirty one and 02/100 (131.02) feet, more or less, to the point of the beginning.

Said parcel of land being further described as the parcel of land reserved by Eugene Richardson by the deed of Eugene Richardson to John W. Weeden, dated April 26, 2001, recorded at Book 2301, Page 696, Strafford County Registry of Deeds.

Meaning and intending to convey the parcel of land conveyed by Doreen Jones, Tax Collector, by deed to the City of Rochester, dated May 5, 2015, recorded at Book 4292, Page 608, Strafford County Registry of Deeds.

In witness whereof, I have hereunto set my hand the 13th day of October, 2015.

CITY OF ROCHESTER

By: _____
Daniel Fitzpatrick, City Manager

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

On this 13th day of October, 2015, before me personally appeared the above named Daniel Fitzpatrick, City Manager of Rochester, New Hampshire, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged the same to be his free act and deed for the purposes contained therein on behalf of the limited liability company.

Notary Public / ~~Justice of the Peace~~
My Commission Expires: 3/26/2019

NOTARY PUBLIC
TERESA A. WOLKE
HAMPSHIRE
MY COMMISSION EXPIRES MARCH 26, 2019