

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0460

State of New Hampshire

v.

Shane M. Beattie, et al.

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
COOS COUNTY SUPERIOR COURT

**BRIEF FOR THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF
TRANSPORTATION

By and through its Attorney,

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COUNTERSTATEMENT OF ISSUES PRESENTED

I. Did the trial court correctly conclude that RSA 498-A, the Eminent Domain Procedure Act, is procedural in nature, that DOT's authority to condemn property is enabled by RSA 230:14, and that RSA 230:19 sets forth the applicable legal standard in an appeal of the Commission's findings relating to necessity, public use, and net public benefit?

II. The trial court concluded that the State provided notice of the public hearing on the proposed project to the Beatties in order to apprise the Beatties of the pendency of the project, their potential interest in it, and to afford them an opportunity to present their objections. Did the trial court correctly conclude that the State's notice procedure comported with due process?

COUNTERSTATEMENT OF THE FACTS¹

On November 20, 2013, the Governor and Executive Council of the State of New Hampshire appointed a three-person Commission (the “Commission”) to hold a hearing to determine whether there was occasion for the laying out or alteration of New Hampshire Route 2 / Bridge Street (the “Project”) in the Town of Lancaster. AI² 50 ¶ 2. The Project called for the replacement of an existing bridge spanning the Connecticut River from Lancaster, New Hampshire to Guildhall, Vermont, and for the laying out or alteration of Route 2 / Bridge Street in Lancaster. *See* AI 61.

In order to create or reconstruct a public highway, known as a “layout” of the highway, there must be a determination that the “occasion” for the highway exists. RSA 230:8, RSA 230:13, RSA 230:14, RSA 231:8. In the case of a highway layout proposed by DOT, the Commission may, after a public hearing, determine that there is occasion for a state highway if it finds that the highway is necessary, will be for the public’s use, and will produce a net public benefit. *See* AI 6-7.

By letter dated February 12, 2014, the New Hampshire Department of Transportation (“DOT”) provided the Appellants, Shane M. Beattie and

¹ Due to the procedural posture of the case, the facts set forth herein are taken from the State’s declaration of taking, the Beatties’ preliminary objection, and exhibits submitted with the parties’ pleadings.

²AI ____ refers to Volume I Appellants’ Appendix and page number;

AII ____ refers to Volume II Appellants’ Appendix and page number;

AIII ____ refers to Volume III Appellants’ Appendix and page number;

AB ____ refers to Appellants’ Brief and page number.

SA ____ refers to the addendum to the State’s brief and page number.

Trina R. Beattie, with notice of a public hearing on the Project that would be held on March 25, 2014 (the letter and enclosed notice of the hearing referred to collectively as the “Notice”). AI 3; SA 37–40. The Notice informed the Beatties that they were receiving the Notice “since the proposed project will either require property acquisition from you or your property is in close proximity to the project.” *Id.* The Notice also invited the Beatties attendance as “the hearing provides an opportunity for all interested parties to comment on the proposed project.” *Id.* The Notice did not, however, set forth the applicable legal standards governing the Beatties’ statutory right to appeal from the findings of the Commission. *See id.* Consistent with the Notice, the Commission held a public hearing on March 25, 2014. AI 4-47. The Beatties did not attend the public hearing. AI 97-98.

In a report dated April 7, 2014, the Commission made a finding of occasion for the Project. AI 47. Based on the Commission’s finding of occasion, the State identified the Beatties as condemnees affected by the Project by virtue of a deed recorded at the Coos County Registry of Deeds on September 21, 2006 at Book 1189, Page 424. AI 51 ¶ 3. The State specifically identified a tract of land owned by the Beatties, adjacent to New Hampshire Route 2 / Bridge Street, for taking in fee simple. AI 51-52 ¶ 4. Accordingly, on September 5, 2018, the State filed with the Board of Tax and Land Appeals (the “BTLA”) a declaration of taking in fee simple of a 0.93 acre tract of the Beatties’ land, as well as a slope easement and a temporary construction easement over the Beatties’ land. AI 50-53.

On or about November 27, 2018, the Beatties filed with the BTLA a preliminary objection to the declaration of taking. AI 55-59. In their

preliminary objection, the Beatties specifically challenged the necessity and net-public benefit of the taking, and requested that the preliminary objection be transferred to superior court pursuant to RSA 498-A:9-b, I. *Id.* On or about December 4, 2018, the BTLA transferred the preliminary objection to Coos County Superior Court, and stayed the condemnation proceeding. SA 41-42. DOT moved to dismiss the Beatties' preliminary objection, arguing that the Beatties failed to state a claim under RSA 498-A:9-a, I(c) because they did not allege that the Commission's finding of necessity was either fraudulent or grossly mistaken as required by RSA 230:19. AI 60-81. The trial court held a hearing on the motion to dismiss on June 5, 2019. AB 35.

On July 16, 2019, the trial court issued its order dismissing the Beatties' preliminary objections with prejudice. AB 35-43. The trial court held that, as the Beatties clearly indicated they did not allege that the Commission's findings were based on fraud or gross mistake, which they failed to state a claim upon which relief may be granted. AB 40-41. Further, the trial court found that the Notice to the Beatties comported with due process. AB 42-43.

This appeal followed.

SUMMARY OF THE ARGUMENT

The trial court correctly concluded that RSA 498-A, the Eminent Domain Procedure Act, governs the procedures to be followed to effectuate condemnation of property, but that any appeal brought under RSA 498-A:9-a, I(c) (relating to necessity, public use, and net public benefit) must be determined in accordance with RSA 230:19, which states that “there shall be no appeal from [the Commission’s] findings on the matter of occasion for the laying out of the highway . . . in the absence of fraud or gross mistake.” RSA chapter 230 governs DOT’s ability to lay out highways within the state and grants DOT the authority to acquire any property rights that are reasonably necessary for the construction, reconstruction, or alteration of such highways. When DOT is unable to acquire such property by agreement, it is authorized by RSA 230:14 to do so by eminent domain in accordance with RSA 498-A. Therefore, a challenge to DOT’s authority to condemn a property is governed by RSA 230:14 and RSA 230:19.

The Beatties filed a preliminary objection to DOT’s declaration of taking, challenging whether there is occasion for the Project, by specifically contesting the necessity and net public benefit of the taking. The Beatties concede, however, that they do not allege that the Commission engaged in fraud or gross mistake in determining the occasion for the Project. The trial court properly dismissed the Beatties’ preliminary objection, finding that they failed to state a claim upon which relief could be granted under RSA 498-A:9-a, I(c).

The trial court correctly concluded that the State’s February 12, 2014 Notice to the Beatties comported with due process because it was

reasonably calculated to apprise the Beatties, as interested parties, (1) of the pendency of the project, (2) of their potential interest in the project, and (3) afforded them an opportunity to present any objections at a public hearing.

The trial court's decisions should be affirmed.

ARGUMENT

I. THE TRIAL COURT PROPERLY DISMISSED THE APPELLANTS' PRELIMINARY OBJECTION FOR FAILURE TO STATE A CLAIM UNDER RSA 498-A:9-A, I(C).

A. Standard of Review

In reviewing a motion to dismiss for failure to state a claim, the standard of review is whether the allegations in the plaintiffs' pleading are reasonably susceptible of a construction that would permit recovery. *Clark v. N.H. Dep't of Emp't Sec.*, 171 N.H. 639, 645 (2019). The Court's threshold inquiry tests the allegations in the plaintiffs' pleading against the applicable law, and if the allegations pleaded do not constitute a basis for legal relief, uphold the trial court's grant of the motion to dismiss. *Id.* In conducting this inquiry, the Court "may also consider documents attached to the plaintiffs' pleadings, documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint." *Boyle v. Dwyer*, 172 N.H. 548, 553 (2019). Accordingly, the trial court considered the allegations asserted in the declaration of taking, AI 50-54, and the preliminary objection, AI 55-59, in its review of the motion to dismiss. AB 38.

In matters of statutory interpretation, this Court is the final arbiter of the intent of the legislature as expressed in the words of the statutes considered as a whole. *Conduent State and Local Solutions, Inc. v. N.H. Dep't of Transp.*, 171 N.H. 414, 419 (2018). The Court will first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. *Id.*, at 419-420. The Court will

interpret 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.*, at 420. The Court will construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. *Id.* Moreover, the Court will not consider words and phrases in isolation, but rather within the context of the statute as a whole, which enables the 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.* Absent an ambiguity, the Court will not look beyond the language of the statute to discern legislative intent. *Id.* Finally, in reviewing issues posing a question of constitutional law, the Court shall conduct a *de novo* review. *Appeal of Mullen*, 169 N.H. 392, 397 (2016). This Court is the final arbiter of the due process requirements of the State Constitution. *In re Kilton*, 156 N.H. 632, 637 (2007).

B. RSA 498-A, the Eminent Domain Procedure Act, governs the procedure for condemning property, whereas the Department's enabling authority to condemn is set forth in RSA 230:14.

The process for laying out a State highway has two distinct steps. *Kingston Place, LLC v. N.H. Dep't of Transp.*, 167 N.H. 694, 696 (2015). Each step is governed by a distinct set of statutes. The first step in the process occurs when the State exercises its statutory authority to lay out the highway pursuant to RSA chapter 230. *See id.* The second step of the process allows the State to acquire the property necessary to accommodate the lay out through eminent domain. *Id.*

RSA chapter 498-A is New Hampshire’s Eminent Domain Procedure Act, and it governs the procedures by which a condemnation of property for public use may occur. The Supreme Court has previously found that RSA 498-A “is a comprehensive eminent domain *procedure* act” and “not a comprehensive eminent domain enabling statute.” *City of Keene v. Armento*, 139 N.H. 228, 231 (1994) (emphasis in original). As such, courts must look to statutes other than RSA 498-A to find the enabling authority for all takings, as well as “the proper procedures in situations where RSA chapter 498-A does not exclusively control procedure, particularly where additional procedures are necessary to establish the power to condemn or preserve the condemnee’s right to challenge necessity.” *Id.*

DOT’s enabling authority to lay out or alter highways within the state is found in RSA chapter 230. Pursuant to DOT’s duty to construct and maintain highways, *see* RSA 230:1–7-a, the Commissioner of DOT may propose to lay out or alter a highway within the state. RSA 230:14.³ Then, the Commission of three persons appointed by the Governor may, after conducting a public hearing pursuant to RSA 230:19, determine whether there is occasion for the proposed layout or alteration. *Id.* The term “occasion . . . describes the situations in which the public interest requires acceptance of roads.” *Jackson v. Ray*, 126 N.H. 759, 762 (1985). The

³ RSA 230:14 allows for layout by Commission. RSA 230:13 similarly allows for layout by Governor and Council. The two statutes are otherwise identical, have been similarly amended over the years, and establish the same procedures by which a highway may be laid out by DOT, either on the authority of the Governor and Council, or on the authority of the Commission, as appointed by the Governor and Council. For purposes of this brief, where the occasion for the Project was found by the Commission pursuant to RSA 230:14, references will be made to 230:14 only.

Commission's determination that there is occasion for the proposed highway means that the Commission has decided that the proposed highway is necessary, is for a public use, and will result in a net public benefit. *See* RSA 230:14; *cf. Rodgers Dev. Co. v. Town of Tilton*, 147 N.H. 57, 59 (2001) (in the occasion analysis for municipal roadways, the public interest in the layout is balanced against the rights of affected landowners and the burdens imposed by the layout upon the municipality).

Accordingly, an appeal from a condemnee challenging the Commission's decision on the basis of necessity, public use, and net public benefit "shall be determined in accordance with RSA 230:19." RSA 230:14. The Commission's determination on occasion is the first step of the two-step process to lay out a state highway. *Kingston Place, LLC*, 167 N.H. at 696.

Once the Commission has determined that the occasion for the highway exists, the second step commences and DOT is granted the authority to acquire whatever land or property is "reasonably necessary" to effectuate the approved project. RSA 230:14, I. Any such land or property that cannot be acquired by agreement with the owner "may be acquired in accordance with RSA 498-A," the Eminent Domain Procedure Act. *Id.* Prior to the creation of a unified Eminent Domain Procedure Act, the process for assessing a property owner's damages resulting from a condemnation by DOT was located within RSA chapter 230, at sections :21 through :32. Most of these statutes were formally repealed in 1983, and RSA 230:14 was similarly altered to reflect the establishment of RSA chapter 498-A as the unified procedure for condemning property and assessing damages. AII 61-85.

The statutory scheme clearly establishes the legislature's intent that the decision to lay out a highway and the acquisition of the property necessary for that purpose are two separate and distinct steps, addressed by two separate and distinct set of statutes. *Kingston Place, LLC*, 167 N.H. at 696. This Court previously explained:

The legislature's reason for enacting RSA ch. 498-A was to provide a complete and exclusive procedure to govern all condemnations of property for public purposes. It has nothing whatever to do with *whether* a piece of land *should* be taken. That is a threshold question and it must be settled at a Governor and Council hearing before the provisions of RSA ch. 498-A may be given effect.

Gazzola v. Clements, 120 N.H. 25, 31 (1980) (quotations omitted) (emphasis in original). In *Gazzola*, this Court determined that RSA chapter 498-A had no substantive impact upon the delegation, in state taking cases, of the finding of necessity and the applicable standards in the first step of the laying out process. *Id.*, at 29-31; *see also Kingston Place LLC*, 167 N.H. at 696-697.

By contrast, DOT's authority to condemn property resides in RSA 230:14. The grant is conditioned on a determination of necessity by the Commission. *See Armento*, 139 N.H. at 231. The Beatties' reference to the enactment of the procedural provisions of RSA 498-A:9-b, AB 18, bears no relationship to the law underlying the substantive findings of necessity, public use, and net public benefit by the Commission. The statute simply provides a procedural mechanism for transferring to the superior court resolution of such questions in those instances when judicial review is

appropriate. It was adopted to eliminate confusion regarding jurisdiction between the BTLA and the superior court. AIII 122, 154-191.

The Beatties' argument relies heavily on an interpretation of the legislative history of RSA chapter 498-A. AB 16–20. DOT contends that neither the language of RSA chapter 498-A nor that of RSA chapter 230 is ambiguous and therefore the Court need not consider the legislative history of these statutes. *See Premium Research Serv. v. N.H. Dep't of Labor*, 162 N.H. 741, 743 (2011) (“When interpreting a statute, . . . we first look to the plain meaning of the words used and will consider legislative history only if the statutory language is ambiguous.”) In the event there is any ambiguity, however, the Beatties' argument is not supported by the legislative history of either set of statutes.

The Beatties argue that the 1971 creation of RSA chapter 498-A as the eminent domain procedure act, and the 1995 amendments to RSA chapter 498-A, invalidate and repeal RSA 230:19, which was codified (as RSA 188, part 4, ¶ 10) in 1945, and which existed prior to that as common law. AB 21; AII 7-14; *Waisman v. Bd. of Mayor & Aldermen of City of Manchester*, 96 N.H. 50, 55 (1949). (“This provision, unlike other provisions of the statute pertinent here, is first found in the Laws of 1945. Its appearance however heralds no change in the law of this jurisdiction. It merely enacts into statute law what was previously established as the common law.”) In making their argument, the Beatties fail to acknowledge how both RSA chapter 230 and RSA chapter 498-A have been amended over the years so that they can be read together. Reading the statutes as a whole, in order to give effect to all of their provisions, reveals the

legislature's clear intent that the statutes interact and coordinate to govern the condemnation process where DOT is the condemnor.

When faced with two different sets of statutes that cover similar topics, courts “construe them so that they will lead to reasonable results and effectuate the legislative purpose of the statutes.” *Wolfgram v. N.H. Dep’t of Safety*, 169 N.H. 32, 37 (2016). “Where reasonably possible, statutes should be construed so that they . . . do not contradict each other.” *State v. Patterson*, 145 N.H. 462, 465 (2000). From the outset, the legislature stated that the provisions of RSA chapter 498-A “[were] not intended to enlarge or diminish the power of condemnation given by law to any condemnor and [were] not intended to enlarge or diminish the rights given by law to any condemnee to challenge the necessity, public uses, and net-public benefit for any condemnation.” RSA 498-A:1; AIII 8. Of note, the second half of the above phrase, pertaining to condemnees, was added in 1973. AIII 87; *See also Armento*, 139 N.H. at 231–2. The legislature has clearly indicated that RSA 498-A does not change the rights given by law to a condemnee to contest a taking, nor the authority given by law to the condemnor to take property. The statute expressly contemplates that those rights exist outside of RSA chapter 498-A, and that RSA chapter 498-A was not enacted in order to change those rights. As concerns takings by DOT necessary to lay out or alter state highways, the rights of condemnees and the authority of condemnors were present in RSA chapter 233 in 1971. (Later recodified as RSA chapter 230, with no substantive changes, in 1981. AII 17-58.) Those rights and authorities were not altered by the creation of RSA chapter 498-A, and they were not inconsistent with RSA chapter 498-A such that they were intended to be repealed by RSA 498-A:29.

Prior to the creation of the Eminent Domain Procedure Act in 1971, RSA chapter 230 enabled both DOT's authority to lay out and construct highways, and to assess and award damages for the condemnation necessary to effectuate those highways. As discussed above, most of the sections of RSA chapter 230 which enabled the process for awarding an owner with condemnation damages were formally repealed in 1983. AII 66. At the same time, RSA 230:14 was amended to remove the sentence allowing the Commission to "assess the damages sustained by each owner or land or property taken, and tender payment of sums awarded," and replaced it with: "Any such land or property which cannot be acquired by agreement with the owner or owners thereof may be acquired in accordance with RSA 498-A." AII 66. This bill was captioned as "an act eliminating eminent domain sections of the highway laws that conflict with RSA 498-A and amending RSA 498-A, the eminent domain procedures act." AII 64. Notably the legislature acting with the express intent of eliminating eminent domain sections of RSA chapter 230, which conflicted with the eminent domain procedures act, did not alter or repeal RSA 230:19.

The Beatties specifically contend that the amendment of RSA 498-A in 1995 had the effect of granting exclusive authority over condemnations, including the review of necessity, in the BTLA. AB 17-18. The Beatties argue that RSA 498-A's exclusive authority over condemnation proceedings subsumes and effectively repeals the authority of the enabling statutes found in RSA chapter 230. AB 18. The Beatties' reading of these statutes, that RSA 498-A:9-a and RSA 498-A:9-b exclusively control preliminary objections, leads to an absurd result rendering RSA 230:14 and RSA 498-A:19, as much as those statutes govern appeals from the

Commission's findings, "virtual nullit[ies]." *See Appeal of Wilson*, 161 N.H. 659, 664 (2011); *Wolfgram*, 169 N.H. at 36. The reality is more nuanced.

RSA chapter 498-A was amended in 1995 in response to the *Armento* decision. AIII 122, 154-191. Where previously the BTLA had assumed it had the power to review necessity as well as assess damages, AIII 156, in *Armento*, this Court ruled that, in an eminent domain proceeding, in which the power to condemn is granted by the enabling statute and conditioned on a determination of necessity by the condemning authority, "[t]he only issue for the board of tax and land appeals to determine is the appropriate amount of just compensation." *Armento*, 139 N.H. at 232. Thereafter, any condemnee objecting to the necessity of a condemnation would be required to bring an action in superior court on that basis, in addition to any challenges to the sufficiency of the deposit, the condemnor's procedure, or the assessment of damages for the condemnation, which would remain with the BTLA, and could eventually be appealed to the superior court. AIII 156-157. As the BTLA noted in its letter in support of the 1995 amendment, such disjointed actions were administratively difficult to coordinate, and "[t]his proposed amendment would allow coordination of eminent-domain proceedings and would keep the process as simple as possible without adversely affecting the citizens' rights." AIII 154. However, the amendment, while acknowledging that review of necessity, public purpose, and net public benefit must be included as a part of "a complete and exclusive procedure to govern all condemnations," RSA 498-A:1, I, formally codifies the requirement that such review, while raised in a preliminary objection filed with the BTLA,

must be transferred to the superior court for adjudication. AIII 181-182. The amendment does not “enlarge or diminish the rights given by law to any condemnee to challenge the necessity, public uses, and net-public benefit for any condemnation,” RSA 498-A:1, I, but rather merely creates the procedure by which such challenges are reviewed and transferred amongst the different forums, according to their jurisdiction. The legal standard for the review of necessity, found in RSA chapter 230, remains unchanged by the 1995 amendment to RSA chapter 498-A.

In 1998, RSA 230:14 was again amended to add a phrase immediately after the sentence referring eminent domain matters to RSA 498-A: “and all issues that are appealed relating to necessity, public purpose, and net public benefit shall be determined in accordance with RSA 230:19.” AII 87. This change explicitly acknowledges that the legislature specifically intended, even after the creation and subsequent amendment of RSA chapter 498-A, that RSA 230:19 govern any challenges to necessity, public purpose, and net public benefit.

In accordance with this statutory scheme, in preparing for the Project which is the subject of this appeal, the Commission held a public hearing on March 25, 2014, after which the Commission determined that the occasion existed for the Project, pursuant to RSA 230:14. AI 47. The Commissioner of DOT subsequently determined that the Beatties’ property was necessary to effectuate the project. RSA 230:14 authorized DOT to acquire any such property, and, if necessary, to initiate eminent domain proceedings in accordance with RSA 498-A. Thereafter DOT filed the Declaration of Taking with the BTLA, AI 50-54, which has jurisdiction to assess damages for the condemned property pursuant to RSA 498-A:3. When the Beatties

challenged the necessity and net public benefit of the Project, AI 55-59, the BTLA appropriately transferred the matter to the superior court, pursuant to RSA 498-A:9-b. SA 41-42.

C. An appeal from the Commission’s findings on occasion relating to necessity, public use, or net public benefit must be determined in accordance with RSA 230:19.

RSA 230:19 provides that the Commission “may admit or reject any evidence offered [at the public hearing for a proposed highway] and there shall be no appeal from their findings on the matter of occasion for the laying out of the highway or alteration thereof in the absence of fraud or gross mistake.” As such, in order to successfully state a claim under RSA 498-A:9-a, I(c), the Beatties must allege that the Commission’s decision finding occasion for the Project as proposed was fraudulent or the result of a gross mistake. *See State v. Greene*, No. 2004-0185, 2004 WL 7318752, at *1 (N.H. Dec. 1, 2004) (“In the absence of fraud or gross mistake, the special committee’s findings on the laying out of the highway are not subject to appeal”); *see also State v. Korean Methodist Church of New Hampshire*, 157 N.H. 254, 257 (2008) (Where the condemnee failed to allege fraud or gross mistake, the trial court’s decision not to hold an evidentiary hearing on the preliminary objection was not an unsustainable exercise of discretion.) In the absence of such an allegation, any appeal from the findings of the Commission is barred by RSA 230:19. Similarly, a superior court’s decision that there is an occasion to lay out a Class IV or V municipal highway pursuant to the authority delegated in RSA 231:8, “will not be disturb[ed . . .] in the absence of gross mistake or fraud.” *Rodgers*,

147 N.H. at 60; *Wolfeboro Neck Prop. Owners Ass’n v. Town of Wolfeboro*, 146 N.H. 449, 452 (2001); *Rockhouse Mountain Prop. Owners Ass’n v. Town of Conway*, 133 N.H. 130, 134 (1990); *Papademas v. State*, 108 N.H. 456, 458 (1968); see also *Wilton-Lyndeboro Co-op. School Dist. v. Gregg*, 111 N.H. 60, 62 (1971) (the delegated power to determine the necessity of a taking is “subject to review only in the case of fraud, bad faith, or abuse of discretion.”) The legislature has delegated the power to determine occasion for state highways to the Commission, and through RSA 230:19 has established an appropriately high standard for review of this determination. This high standard is necessary because anything less would unnecessarily weaken the public input process and introduce unpredictability into a process that relies on certainty.

DOT is responsible for transportation functions in the State pursuant to RSA 21-L:1, and in particular has been afforded the unique duty to construct and maintain highways within the State pursuant to RSA 230:1–7-a. RSA 230:14 and RSA 230:19 establish a process by which the Commission conducts a public hearing to seek input on proposed projects from those members of the public who are interested or would be impacted by such projects. The process is in place to take testimony and evidence from the public, allows for full and open public debate of the project and provides the fact finders with the ability to make a clear and reasoned decision on whether a project is necessary, would constitute a public use, and would produce a net public benefit.

Once DOT’s proposal has been presented and the Commission has had the opportunity to seek public input, the Commission determines whether there is occasion for the proposed highway. In this role, the

Commission, having been appointed by the Governor and council, essentially acts as a check on DOT's authority to construct highways and protects the public from the expense of unnecessary highway projects and the loss of individual property rights by ensuring that such projects have proper justification. Once the Commission makes a determination that there is occasion for a project, DOT acts in reliance on that determination to begin the highway project, a process which includes taking necessary property and constructing the highway. The laying out of a state highway in this manner is undertaken for the economic well-being and physical safety of the citizens of New Hampshire. *See* RSA 21-L:1. DOT's ability to lay out such highways would be severely curtailed if every person affected by a project could challenge the occasion at any stage in the project. Such projects must be viewed as an overall plan, and decisions cannot be made solely based on the impacts to a single parcel "judged in isolation." *Appeal of Cheney*, 130 N.H. 589, 597 (1988) "Rather the question is whether the taking of the plaintiff's property can be viewed as one element of a coherent plan of property acquisition that is justifiable as a whole." *Id.* The Commission determines whether there is occasion for the laying out of a proposed highway by assessing the project as a whole, and the heightened standard of review ensures that the decision, once made, cannot be challenged by an aggrieved landowner, in the absence of fraud or gross mistake. Unless a condemnee can meet this standard, the Commission's decision on occasion must be left undisturbed pursuant to RSA 230:19.

To accept the Beatties' argument that RSA 498-A:29 effectively repealed RSA 230:19 would eradicate the requirement that an appeal from the findings of the Commission must be based on an allegation of fraud or

gross mistake. The effect of this repeal would “enlarge . . . the rights given by law to any condemnee to challenge the necessity, public uses, and net-public benefit for any condemnation,” which is contrary to the express intent of the Eminent Domain Procedure Act, by RSA 498-A:1.

By finding an occasion for the bridge replacement, the Commission determined both that the Project to replace the bridge was necessary, and that DOT’s proposed method for doing so, by replacing the existing bridge with a new one immediately adjacent to the north, was also necessary.

Where the Commission, duly appointed by the Governor and Executive Council, made findings for the necessity and public purpose for the Project, these findings must be treated as *prima facie* reasonable with regard to the issue of public necessity. *Wilton-Lyndeboro*, 111 N.H. at 62. The State has met its burden to show a reasonable necessity for the Project. Accordingly, where the Commission found, by report dated April 7, 2014, that there was an occasion for the replacement of the US 2 bridge, there can be no overturning of that decision unless the Beatties establish the existence of fraud or gross mistake in the Commission’s decision making process. RSA 230:19. Because the Beatties conceded that they did not allege fraud or gross mistake, the superior court properly dismissed their preliminary objection.

D. No equal protection argument was raised before the trial court, and therefore is waived.

To the extent the Beatties attempt to make an equal protection argument in support of a position that the statutory procedures for the layout of a class IV or V highway by a municipality pursuant to RSA chapter 231 should be

applied to the layout of a State highway, AB 24-25, such argument was not raised before the superior court and therefore has not been preserved for review by the Supreme Court. It is well settled that issues must be raised at the earliest possible time so that a trial court may have a full opportunity to come to sound conclusions and correct claimed errors. *See SNCR Corp. v. Greene*, 152 N.H. 223, 224 (2005) (constitutional claims not preserved where not argued below). Where issues are not raised at the trial court level, they are not preserved for appeal and are thus waived.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE NOTICE TO THE BEATTIES COMPORTED WITH DUE PROCESS

A. The Notice provided to the Beatties of the March 25, 2014 public hearing satisfied the requirements of due process.

The Beatties argue that DOT's Notice of the March 25, 2014 public hearing failed to sufficiently apprise the Beatties of the effect of the hearing, and therefore violated the Beatties' rights to due process. AB 27-30. The Beatties do not specify whether they assert a violation of state or federal due process. Because the due process requirements of the State Constitution are at least as protective as the United States Constitution, DOT will address the Beatties' claims under the State Constitution only. *See In re Tracy M.*, 137 N.H. 119, 122 (1993).

There is no dispute that DOT's condemnation of the Beatties' property implicates a legally protected interest such that procedural safeguards against wrongful deprivation are necessary. *See Appeal of Town of Bethlehem*, 154 N.H. 314, 328 (2006). It is clear that "[p]arties whose rights are affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Kilton*, 156 N.H. at 638 (quotation omitted). "The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending hearing." *Id.* (quotation omitted). "Due process, however, does not require perfect notice, but only notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 638-39 (quotation omitted). The Courts' inquiry must focus on whether

notice was fair and reasonable under the particular facts and circumstances of each case. *Id.* at 639.

The Beatties argue that the Notice failed to comply with the notice requirements found in RSA 498-A:4, I. AB 27-30. Their reliance on these requirements is misplaced. RSA 498-A is not triggered until the Commission has determined that the occasion for a project exists, and the DOT is authorized to acquire property under the second step of the laying out process. RSA 498-A:4, I clearly states that its requirements are directed at providing disclosure to condemnees upon DOT's initiating a condemnation action. These requirements are not imposed upon the Commission in the first step of the laying out process, when providing notice of public hearing conducted to assess the occasion of a particular project. The Commission's hearing and its notice obligations are governed by RSA 230:17–19. Based on the record, the trial court correctly determined that the notice to the Beatties was adequate. AB 42-43.

The Beatties do not contest receipt of the Notice. AB 11, 27; AI 3, 97-98. Nor can they credibly contest that the Notice provided them with ample notice of the Project and hearing, and opportunity to be heard. The Notice consisted of a letter addressed to the Beatties and the Notice of Hearing provided together. SA 37-40. The letter explains that “since the proposed project will either require property acquisition from you or your property is in close proximity to the project,” the Beatties are receiving the Notice. The letter further states that “[t]he hearing provides an opportunity for all interested parties to comment on the proposed project.” SA 37. The Notice of Hearing states that “[t]he Commission in accordance with RSA 230:14 ... ha[s] set a public hearing to discuss proposed replacement of the

US 2 bridge (Rogers Rangers Bridge) between the Towns of Lancaster, New Hampshire and Guildhall, Vermont.” SA 38. The Notice states that the hearing will be conducted “to determine whether there is the occasion for the laying out of this project,” and that “[i]nterested landowners . . . are welcome and will be given the opportunity to express their comments relative to the location.” *Id.* Though DOT provided the Beatties robust notice, they chose not to attend the meeting and, by extension, to waive their right to be heard. AI 97-98.

The purpose of the March 25, 2014 public hearing was for members of the Commission to consider DOT’s proposal, to make personal examination of the proposed location of the Project, and to hear all interested parties who chose to attend the meeting, pursuant to RSA 230:19. SA 38-39. Notice of the public hearing was made pursuant to RSA 230:17, which provides that “the [C]ommission . . . at least 14 days previous to a public hearing as provided in RSA 230:19, shall cause notice in writing of the time and place of hearing appointed by them, together with a description of the proposed location, to be given to each owner of land or other property over which such highway may pass.” The Beatties concede that the Notice and method of service satisfied RSA 230:17 and 230:18, and that the hearing was conducted pursuant to RSA 230:14. AB 11-12. The trial court found that the Notice “comported with due process because it notified the Beatties of the proposed project, it informed them of their potential interest in the project, and it invited public comment at the March 25, 2014 public hearing.” AB 42. By stating that the project would either require the acquisition of property from the Beatties, or would be in close proximity to their property, the Notice expressly alerted the Beatties that

their property interests might be adversely affected by the project. As such, the Notice was not only reasonably calculated to apprise the Beatties, as interested parties, of the pendency of the project, and that it afforded them an opportunity to present any objections they might have, but it actually achieved that aim. *See Kilton*, 156 N.H. at 638–639. There exists no basis in law for the Court to invalidate the Commission’s findings because the Beatties, having been properly notified, failed to understand the consequences of the March 25, 2014 hearing.

B. The Beatties did not raise the issue of the BTLA’s Order of Notice before the trial court, and the argument is therefore waived.

To the extent the Beatties contest the adequacy of the BTLA’s Order of Notice, AB 30-32, such argument was not raised before the superior court and therefore has not been preserved for review by the Supreme Court. Where issues are not raised at the trial court level, they are not preserved for appeal and are thus waived. *See SNCR Corp. v. Greene*, 152 N.H. 223, 224 (2005).

CONCLUSION

The Beatties appeal the dismissal of their preliminary objection, which challenged the necessity and the net public benefit of DOT's taking of their property. AI 55-57. However, the Beatties concede that their objection did not allege that the Commission's finding of occasion was the result of fraud or gross mistake, as is required by RSA 230:19. AB 37, 41. Rather, the Beatties argue that RSA 498-A exclusively controls all aspects of any condemnation, including any challenge to the necessity of the taking, and that "[e]xclusive control of procedure means that courts cannot look to an enabling statute (such as RSA 230:19) to resolve any procedural questions that arise." AB 14-15. From that argument, the Beatties contend that they are entitled to *de novo* review by the superior court of their objections to the taking, and are not required to allege that the Commission's decision on occasion was the result of fraud or gross mistake. AB 22-25.

The superior court properly rejected this argument, ruling that, "although RSA Chapter 498-A governs the procedures to be followed, the controlling legal standard [for appeals from the commission's findings] is found in the applicable enabling statute, RSA 230:14." AB 40. RSA 230:14, and by extension RSA 230:19, proscribe any appeal from the Commission's findings on the matter of occasion for the Project "in the absence of fraud or gross mistake." RSA 230:19. Having failed to allege that the Commission engaged in fraud or gross mistake in determining that the occasion for the Project existed, the Beatties' objection must fail. For

the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

Should the Court determine that oral argument is necessary, Assistant Attorney General Allison Greenstein will appear on behalf of the New Hampshire Department of Transportation.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF
TRANSPORTATION

By its attorneys,

GORDON J. MACDONALD
Attorney General

January 24, 2020

/s/ Allison B. Greenstein
Allison B. Greenstein
N.H. Bar No. 265365
Assistant Attorney General
Transportation & Construction Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3675
allison.greenstein@doj.nh.gov

CERTIFICATE OF COMPLIANCE

I, Allison B. Greenstein, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 6,774 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

January 24, 2020

/s/ Allison B. Greenstein
Allison B. Greenstein

CERTIFICATE OF SERVICE

I, Allison B. Greenstein, hereby certify that a copy of the State's brief shall be served on Jonathan S. Frizzell, Esquire and Sandra L. Cabrera, Esquire, counsel for Shane M. Beattie and Trina R. Beattie, through the New Hampshire Supreme Court's electronic filing system.

January 24, 2020

/s/ Allison B. Greenstein
Allison B. Greenstein

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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

February 12, 2014

SHANE M BEATTIE
 PO BOX 434
 LANCASTER NH 03584

Re: PUBLIC HEARING
 Lancaster-Guildhall, VT, 16155 Parcel Number 01

Dear SHANE M BEATTIE:

The project referenced above, replacement of the US 2 (Rogers Rangers) bridge, as proposed might affect your property. The enclosed notice of a Public Hearing is being sent to you since the proposed project will either require property acquisition from you or your property is in close proximity to the project.

The Public Hearing has been scheduled for 7:00 P.M. Tuesday, March 25, 2014 at the North Country Resource Center, Route 3 North, New Hampshire. The hearing provides an opportunity for all interested parties to comment on the proposed project. If you have questions, or would like to schedule an appointment to see the plans, please contact Robert Landry, Project Manager at (603) 271-2731.

Written statements can be submitted within ten (10) days of the Public Hearing. Any material you wish to have considered should be sent to Mr. William Cass, Director of Project Development, NHDOT, PO Box 483, Concord, N.H. 03302-0483. Anything submitted within the ten (10) day comment period will be included in the transcript of the hearing.

Any individuals needing assistance or auxiliary communication equipment due to sensory impairment or other disability, should contact Charles Schmidt, Bureau of Right-of-Way, NHDOT, PO Box 483, Concord, N.H. 03302-0483 - TDD access: Relay N.H. 1-800-735-2964. Notification of the need for assistance must be made no later than 7 days before the hearing. This project will be administered according to the requirements of Title VI of the Civil Rights Act of 1964 and related statutes to ensure nondiscrimination.

Sincerely,

Charles R. Schmidt, P.E.
 Administrator

CRS/cbs
 Encl.
 Bureau of Right-of-Way
 J. O. Morton Building - Room 100
 Telephone: (603) 271-3222 Fax: (603) 271-6915

INVITATION

38

- NOTICE OF HEARING -

LANCASTER, NH-GUILDHALL, VT, A-001(159), 16155

NOTICE OF
PUBLIC HEARING

The Commission in accordance with RSA 230:14 and the Surface Transportation and Uniform Relocation Assistance Act of 1987, have set a public hearing to discuss proposed replacement of the US 2 bridge (Rogers Rangers bridge) between the Towns of Lancaster, New Hampshire and Guildhall, Vermont.

The meeting will be held at the North Country Resource Center, Route 3 North, Lancaster, New Hampshire on March 25, 2014 at 7:00 P.M.

THE NORTH COUNTRY RESOURCE CENTER WILL BE OPEN ONE-HALF (1/2) HOUR PRIOR TO THE TIME OF THE HEARING FOR THE INSPECTION OF PLANS BY ANY INTERESTED PERSONS.

On November 20, 2013, the Governor and Executive Council appointed: Barbara Ashley, Paul Ingersoll and William Remick as the Commission to conduct the hearing to determine whether there is the occasion for the laying out of this project.

We, the Commission, hereby give written Notice to said Petitioners and the owners of land over which said highway may pass, and to all others interested by posting a like copy in at least two (2) public places in the Town of Lancaster, NH and leaving a like copy with the Town Clerk and Tax Collector of the Town of Lancaster, NH at least fourteen (14) days before the said day of hearing.

Relocation assistance will be furnished to each owner or tenant whose improvements or property will be acquired for this project based on their eligibility.

Interested landowners, local officials and highway users are welcome and will be given the opportunity to express their comments relative to the location. The testimony will be recorded.

This project will impact wetlands and floodplains and have an effect on historic resources. This project is tentatively scheduled for advertising for bid in October 2019.

Maps, plans, the environmental studies and other pertinent information developed by the Department, along with written views received as a result of the coordination with other agencies, is available at the Department of Transportation at the John O. Morton Building, 7 Hazen Drive, Concord, New Hampshire for inspection and copying. It is suggested you call Robert Landry, Project Manager, at (603) 271-2731 in advance for an appointment.

Written statements and other exhibits may be submitted to the Chairman of the Commission, c/o William J. Cass, Director of Project Development, NH Department of Transportation, P.O. Box 483, Concord, NH 03302-0483 up to ten (10) days after the date of the hearing for inclusion in the official record.

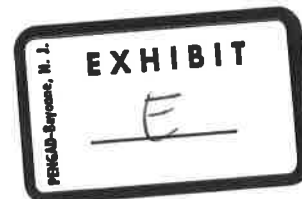
A Finding of Necessity meeting has been scheduled for Monday, April 7, 2014, 11:00 AM in Room 112/113, John O. Morton Building, 7 Hazen Drive, Concord, New Hampshire. This meeting is a public proceeding under RSA Chapter 91-A. The intent of this meeting is not to continue taking testimony as was done at the Public Hearing, but instead the meeting serves as a decision-making forum for the Hearing Commission. The public may observe the proceedings.

Any individuals needing assistance or auxiliary communication equipment due to sensory impairment or other disability, should contact Charles R. Schmidt, P.E., Administrator of the Bureau of Right-of-Way, NHDOT, P.O. Box 483, Concord, NH 03302-0483 - TDD access: Relay NH 1-800-735-2964. Notification of the need for assistance must be made no later than 7 days before the hearing. This project will be administered according to the requirements of Title VI of the Civil Rights Act of 1964 and related statutes to ensure nondiscrimination.

/s/ Christopher D. Clement, Sr.
Christopher D. Clement, Sr.
Commissioner
NH Department of Transportation

Dated at Concord, NH this
27th Day of January A.D., 2014

PUBLIC NOTICE



INVITATION

NOTICE OF PUBLIC HEARING

- PETITION -

To Her Excellency, the Governor, and the Honorable Executive Council:

In accordance with RSA 230:14, I, Christopher D. Clement, Sr., Commissioner of the New Hampshire Department of Transportation, propose to replace the US 2 (Bridge Street) bridge connecting the Towns of Lancaster, NH and Guildhall, VT at the location given below:

Lancaster-Guildhall, VT, A001(159), 16155

This project will replace the bridge carrying US 2 (Bridge Street) over the Connecticut River, also known as the Rogers' Rangers Bridge (NH Bridge #111/129 and #42 on NH's 2013 Bridge Priority List) that connects the towns of Lancaster, NH and Guildhall, VT. The new bridge will be built immediately adjacent to the upstream (north) side of the existing bridge. The proposed improvements will also include the reconstruction of US 2 extending 1400' east and 600' west of the bridge. At the conclusion of the construction the existing US 2 bridge will be removed. This project will impact historic resources.

Therefore, in accordance with RSA 230:14, I, Christopher D. Clement, Sr., Commissioner of the New Hampshire Department of Transportation, propose the replacement of the US 2 bridge connecting the Towns of Lancaster, New Hampshire and Guildhall, Vermont.

/s/Christopher D. Clement, Sr.
Christopher D. Clement, Sr.
Commissioner

Dated at Concord, NH this
1st Day of November, A.D., 2013

PUBLIC NOTICE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
SHANE M BEATTIE
PO BOX 434
LANCASTER, NH 03584

16155 LANCASTER, NH - GUILDHALL, VT

2. Article Number 70062150000082320684 #01
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature X <i>Shane Beattie</i>		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name) <i>Shane Beattie</i>	C. Date of Delivery <i>FEB 25 2014</i>	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No		
FEB 25 2014 RECEIVED		

3. Service Type	
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

Domestic Return Receipt

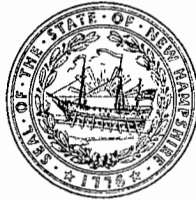
102595-02-M-1540

State of New Hampshire

Board of Tax and Land Appeals

Michele E. LeBrun, Chair
 Albert F. Shamash, Esq., Member
 Theresa M. Walker, Member

 Anne M. Stelmach, Clerk



Governor Hugh J. Gallen
 State Office Park
 Johnson Hall
 107 Pleasant Street
 Concord, New Hampshire
 03301-3834

December 4, 2018

David P. Carlson, Clerk
 Coos County Superior Court
 301 Coos County Courthouse
 55 School Street
 Lancaster, NH 03584

Re: State of New Hampshire v. Shane M. Beattie, et al.
 BTLA's Docket No.: 29104-18ED

Dear Clerk Carlson:

The board of Tax and Land Appeals ("board") received a November 27, 2018 Preliminary Objection from Attorney Jonathan S. Frizzell, counsel for the condemnees, Shane and Trina Beattie, pursuant to RSA 498-A:9. The law provides that a condemnee may file a preliminary objection concerning necessity, public purpose or net-public benefit of the taking. Pursuant to RSA 498-A:9, when such an objection is filed the board must transfer it to the superior court of the county in which the property is located.

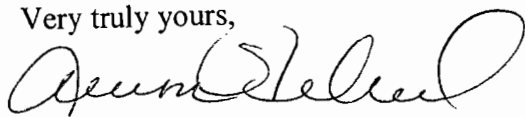
Therefore, enclosed for transfer is Shane and Trina Beattie's RSA 498-A:9 Preliminary Objection. Also enclosed is an attested copy of the September 5, 2018 Declaration of Taking and the September 7, 2018 Order of Notice.

The board has stayed all action on this condemnation proceeding until the court renders its decision. Please send a copy of your decision to this board once it is final and non-appealable for further action by the board.

David P. Carlson, Clerk
December 4, 2018
Page 2

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Anne Stelmach".

Anne M. Stelmach, Clerk

AMS:me

cc: Jonathan S. Frizzell, Esq.
Allison Greenstein, Esq.
Dawn C. Shatney, Passumpsic Savings Bank

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Coos Superior Court
55 School St., Suite 301
Lancaster NH 03584

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

**SUMMONS IN A CIVIL ACTION
PRELIMINARY OBJECTION TO DECLARATION OF TAKING
PURSUANT TO RSA 498-A**



Case Name: **State of New Hampshire v Shane M. Beattie, et al**
Case Number: **214-2018-CV-00142**

Date Filed: December 06, 2018

A preliminary objection pursuant to RSA 489-A:9 has been filed in this Court by Shane M. Beattie and Trina R. Beattie. A copy of the preliminary objection is attached.

The Court ORDERS that ON OR BEFORE:

January 25, 2019	Shane M. Beattie; Trina R. Beattie shall have this Summons and the attached Preliminary Objection served upon State of New Hampshire; Passumpsic Savings Bank by certified mail, return receipt requested.
February 15, 2019	Shane M. Beattie; Trina R. Beattie shall electronically file an affidavit of service with this Court. Failure to do so may result in this action being discontinued without further notice.
30 days after Defendant is served	State of New Hampshire; Passumpsic Savings Bank must electronically file an Appearance and Answer or other responsive pleading form with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent electronically to the party/parties listed below.

Notice to State of New Hampshire; Passumpsic Savings Bank: If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:

State of New Hampshire
Jonathan S. Frizzell, ESQ

7 Hazen Drive Concord NH 03301
Waystack Frizzell Trial Lawyers 251 Main Street PO Box 137
Colebrook NH 03576

Passumpsic Savings Bank

Dawn C Shatney Assistant Treasurer Loan Operations Manager
497 Railroad Street St Johnsbury VT 05819

BY ORDER OF THE COURT

December 11, 2018

David P. Carlson
Clerk of Court

(463)

Instructions for filing the Return of Service:

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: www.courts.state.nh.us, select the Electronic Services icon and then select the option for a self-represented party.

1. Select "I am filing into an existing case". Enter 214-2018-CV-00142 and click Next.
2. When you find the case, click on the link follow the instructions on the screen. On the "What would you like to file?" screen, select "File Other Document" and choose "Return of Service".
3. Scan the Return of Service packet and follow the instructions in the electronic filing program to upload the Return of Service to complete your filing.
4. If the sheriff was unable to serve the paperwork, you can request new paperwork by filing a Request for Documents. On the "What would you like to file?" screen, select "File Other Document" and choose "Request for Reissued Summons" from the menu and upload the Request for Documents form.

FAILURE TO FILE THESE DOCUMENTS MAY RESULT IN YOUR CASE BEING DISMISSED.

December 11, 2018

Date

David P. Carlson

Clerk of Court

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.

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Coos Superior Court
55 School St., Suite 301
Lancaster NH 03584

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE TO INTERESTED PARTIES

Case Name: **State of New Hampshire v Shane M. Beattie, et al**
Case Number: **214-2018-CV-00142**

You have been served with a Summons which serves as notice that this legal action has been filed against you in the **Coos Superior Court**. Review the Summons to see the basis for this claim.

Each party served with the Summons is required to electronically file an Appearance and Answer 30 days after service. You may register and respond on any private or public computer. For your convenience, there is also a computer available in the courthouse lobby.

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: www.courts.state.nh.us, select the Electronic Services icon and then select the option for a self-represented party.

1. Complete the registration/log in process. Click Register and follow the prompts.
2. After you register, click Start Now. Select **Coos Superior Court** as the location.
3. Select "I am filing into an existing case". Enter **214-2018-CV-00142** and click Next.
4. When you find the case, click on the link and follow the instructions on the screen. On the "What would you like to file?" screen, select "File a Response to Civil Complaint". Follow the instructions to complete your filing.
5. Review your Response before submitting it to the court.

IMPORTANT: After receiving your response and other filings the court will send notifications and court orders electronically to the email address you provide.

A person who is filing or defending against a Civil Action will want to be familiar with the Rules of the Superior Court, which are available on the court's website: www.courts.state.nh.us.

Once you have registered and responded to the summons, you can access documents electronically filed 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.

If you have questions regarding this process, please contact the court at 1-855-212-1234.

THE STATE OF NEW HAMPSHIRE

COOS, SS.

SUPERIOR COURT
No. 214-2018-CV-142

State of New Hampshire

vs.

Shane M. Beattie, Trina R. Beattie and Passumpsic Savings Bank

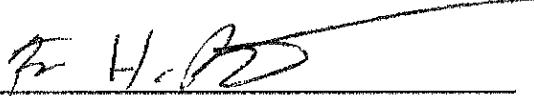
ORDER

A preliminary objection to the Declaration of Taking filed with the New Hampshire Board of Tax and Land Appeals has been transferred to the Coos County Superior Court. Shane M. Beattie and Trina R. Beattie, as the moving parties, shall be responsible for serving a copy of the Summons and Preliminary Objection on all the other interested parties in this matter by certified mail, return receipt requested.

SO ORDERED.

Dated:

12/10/18



Peter H. Bornstein,
Presiding Justice