

RESOLUTION

AMENDMENT TO R-20-083 "AUTHORIZING THE ACQUISITION OF PROPERTY AT 36 BUCKMEADOW ROAD, TAX MAP C, LOT 762, FOR A PURCHASE PRICE OF \$370,000"

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

WHEREAS, the Board of Aldermen passed R-20-083 "Authorizing the acquisition of property at 36 Buckmeadow Road, Tax Map C, Lot 762, for a purchase price of \$370,000", on November 12, 2020; and

WHEREAS, as the purchase and sale agreement approved by R-20-083 requires amendment, the Board of Aldermen would like to amend resolution R-20-083 to approve the amended purchase and sale.

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to purchase the property located at 36 Buckmeadow Road (Tax Map C, Lot 762) for three hundred seventy thousand dollars (\$370,000) pursuant to the attached Purchase and Sale Agreement. The attached agreement is "red-lined" to illustrate the changes from the agreement approved by R-20-83, however the version of the document to be signed will not be "red-lined."

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents related to the Purchase and Sale Agreement.

Funds for the purchase will come from Fund #5800 "School Capital Projects Fund", Project "New Middle School", Account #81600 "Land".

LEGISLATIVE YEAR 2021

RESOLUTION: R-21-117

PURPOSE: Amendment to R-20-083 “Authorizing the acquisition of property at 36 Buckmeadow Road, Tax Map C, Lot 762 for a purchase price of \$370,000”

SPONSOR(S): Alderman Richard A. Dowd

COMMITTEE ASSIGNMENT: Planning and Economic Development Committee


FISCAL NOTE: The fiscal impact of this legislation is the same as R-20-083 and includes the cost of acquiring the property (\$370,000).

ANALYSIS

This resolution authorizes the city to acquire the property at 36 Buckmeadow Road for the sum of \$370,000 on the terms and conditions of the attached purchase and sale agreement, which has been amended from the previous approved version mainly to obviate the need for a subsequent purchase and sale, and authorizes the Mayor to sign all needed documents to effectuate this transaction. Funds for the purchase will come from Fund #5800 “School Capital Projects Fund”, Project “New Middle School”, Account #81600 “Land”.

The Planning Board recommended passage of R-20-083 and as this amendment does not change the parcel to be acquired by the City, further Planning Board recommendation pursuant to Charter §77 is not required.

Approved as to form: Office of Corporation Counsel

By:  _____

Date: 2/3/2021

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into on this _____ day of _____, 2020, by and between **Rachel M. Tebbetts and James L. Tebbetts**, having a mailing address of 37 Indian Rock Road, Nashua, New Hampshire 03063, **Joyce St. Pierre and Richard L. St. Pierre** having a mailing address of 2559 E. Elmwood Street, Mesa, Arizona 85213 and **Cynthia Landry widow of Roger G. Landry** (date of death being November 26, 2017, recorded in the Hillsborough County Registry of Deeds at Book 9047 Page 0525), having a mailing address of 38 Buckmeadow Road, Nashua, New Hampshire 03062 (collectively hereinafter referred to as "Seller") and **The City of Nashua**, a municipal corporation, having an address of 229 Main Street, Nashua, New Hampshire 03060, (hereinafter referred to as the "Buyer").

1. PURCHASE AND SALE. Seller agrees to sell and convey, and Buyer agrees to buy, on the terms and conditions hereinafter set forth, a parcel of land with the buildings and improvements thereon, located in Nashua, Hillsborough County, New Hampshire, known as or described as Lot C-762 of the City of Nashua Tax Maps, having an address of 36 Buckmeadow Road, Nashua, New Hampshire, being the property described in a deed recorded in the Hillsborough County Registry of Deeds, Book 6283, Page 737 (the "Premises").
2. PURCHASE PRICE. Subject to any adjustments and prorations hereinafter described, Buyer agrees to pay for the Premises the sum of Three Hundred Seventy Thousand and 00/100 Dollars (\$370,000.00) (the "Purchase Price"). The Purchase Price shall be payable as immediately available wired funds at time of closing.
3. TITLE. Seller shall convey the Premises to the Buyer at the Closing in fee simple with good, insurable, and marketable title by Warranty Deed, free and clear of all liens and encumbrances. Buyer may, at its sole cost and expense, cause the title to the Premises to be examined prior to closing. If upon examination of the title, Buyer or its representative finds that the title to the Premises is not in accordance with the first sentence of this paragraph, then Buyer may terminate this agreement upon written notice to Seller, and Buyer's deposit, if any, shall be refunded.
4. CLOSING. The closing shall occur on _____, 2020, or at such other place as the parties may mutually agree.
5. INSPECTION AND DUE DILIGENCE PERIOD. Intentionally omitted.
6. POSSESSION OF THE PREMISES. The Premises shall be delivered to the Buyer at the time of the closing free of all tenants, personal property, and encumbrances.
7. FINANCING. This Agreement is not contingent upon the Buyer obtaining financing.
8. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer that the following are true as of the date of this Agreement and will be true as of the Closing:

- (a) The Premises are not the subject of any existing cease and desist orders, enforcement actions, or any federal, state or local code enforcement violations.
- (b) There are no unrecorded outstanding pending or threatened liens, claims, rights of first refusal, licenses, or encumbrances against or affecting the Premises, which have not been disclosed to Buyer in this Agreement.
- (c) There are no outstanding claims, losses or demands against Seller by any person, entity, or governmental unit respecting Seller's ownership, use, or occupancy of the Premises, which have not been disclosed to Buyer in this Agreement.
- (d) Seller has no knowledge of any boundary disputes or encroachments affecting the Premises.
- (e) There are no leases of any portion of the Premises.
- (f) Seller has no knowledge of any pending or threatened litigation that may adversely affect the transfer of the Premises hereunder or materially affect the value of the Premises.
- (g) Neither the whole nor any portion of the Premises has been condemned, requisitioned, or otherwise taken by any public authority and no notice of any such condemnation, requisition or taking has been received by the Seller and no such condemnation, requisition or taking is threatened.
- (h) Seller has not knowingly released into the environment or discharged, placed or disposed of any hazardous materials, substances, or waste or knowingly caused the same to be released into the environment or discharged, placed or disposed of at, on, or under the Premises. Notwithstanding the foregoing, the Seller cannot represent to Buyer that there are no hazardous waste issues as a result of the current activities of other unit owners. To the best of Seller's knowledge, the Premises complies in all material respects with all applicable federal and state environmental laws and regulations. Seller has not received any written notice from any governmental authority or any written complaint from any third party with respect to its alleged non-compliance with, or potential liability under, any environmental laws and regulations.
- (i) There are no rights of first refusal or options to purchase associated with the Premises.
- (j) Seller has authority to enter into this Agreement and will provide necessary authority documents at the Closing.

These representations shall survive the Closing.

Other than the representations contained above and the warranty of the proposed Warranty Deed, Seller makes no representation or warranty as to fitness, merchantability, condition or use of the Premises for any particular purpose as the Premises is sold "AS-IS".

9. DEFAULT AND REMEDIES. In the event that Buyer defaults in the performance of its obligations hereunder, Seller shall be entitled to retain the Deposit, if any, as reasonable liquidated damages.

10. CONDITIONS SUBSEQUENT TO CLOSING. The parties hereby agree and acknowledge that Buyer is purchasing the Premises from Seller to construct a roadway to access a new school. The parties further agree that Buyer does not need nor want the entire Premises for the proposed roadway, but as a result of the design and layout of the new roadway, the Premises shall be subdivided into three (3) distinct parcels: (1) the roadway, (2) portion north of the roadway; and (3) portion south of the roadway. ~~As consideration of Seller to close, at or before Closing, Buyer shall execute a Purchase and Sale Agreement with Seller for all land located northerly of the proposed new road layout from Buyer back to Seller for consolidation with Seller's existing property Subsequent to the design and construction of the roadway, Buyer and Seller agree that each will fully cooperate and take all necessary and advisable actions to adjust the lot line between Seller's land at 34 Buckmeadow Road, Parcel ID 0000C-00350, Map/Lot C-350 ("34 Buckmeadow") and the Premises to include in 34 Buckmeadow the portion of land north of the roadway which the City, in its sole discretion, has determined is surplus subject to Buyer's reserved rights of easement over that property for slopes, drainage and establishment of drainage ponds, with notice of said agreement to be recorded in the Hillsborough County Registry of Deeds, said notice to be in substantially same form as attached hereto as Exhibit A and convey pursuant thereto.~~ Buyer shall also convey a single point driveway access to the new road to Seller for the property to be reconveyed to Seller after Closing, location to be determined by Buyer. The transfer of all land located northerly of the proposed new road layout from Buyer shall occur following approval of a plan creating the new roadway and reflecting the consolidation of the remaining portions of the Premises with the abutting properties no later than six (6) months after the substantial completion of construction of the proposed roadway.

With regard to the property southerly of the roadway Buyer covenants that for a period of twenty (20) years Cynthia Landry shall hereby receive an exclusive right of first refusal to purchase said property in the event that Buyer elects to sell or transfer said property. This covenant shall run with the land, be binding on heirs and assigns and be included in the deed of transfer. For the same twenty (20) year period the City shall not permit any construction or development within or of this area, including but not limited to, a park or recreational area of any kind.

Buyer further commits that the contemplated new road will be named "DiAntonio Drive."

The provisions of this section shall survive the Closing.

11. BROKERAGE. Seller and Buyer represent and warrant to each other that neither has dealt with any real estate broker, agent or salesperson in connection with this transaction. Each party agrees to defend, indemnify, and hold the other harmless from any claims, costs,

judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through the indemnified party. The indemnities set forth in this Section shall survive closing.

12. PERSONAL PROPERTY INCLUDED. N/A. Land only.

13. ADJUSTMENTS, PRORATIONS AND CLOSING COSTS.

- (a) Real Estate taxes, assessments, special assessments, rents, water bills, sewer, utilities and condominium association fees, shall be prorated as of the Closing, and the Selling price shall be adjusted accordingly.
- (b) All recording fees for the deed of conveyance will be paid by the Buyer. Recording fees for any necessary discharges will be paid by the Seller from the closing proceeds.
- (c) Seller and Buyer shall pay their own attorney's fees.

14. CONDEMNATION. In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement or bona fide threat of the commencement of any such proceedings, prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing. If Buyer does not so terminate this Agreement, the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking, and, at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds to be paid or to become payable after Closing by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

15. GENERAL PROVISIONS.

- (a) Entire Agreement. All representations, statements, and agreements heretofore made between the parties are merged in this Agreement, which alone fully and completely expresses their respective obligations, and this Agreement is entered into by each party after opportunity for investigation, neither party relying on any statement or representation not embodied in this Agreement made by the other or on its behalf.
- (b) Modification. This Agreement cannot be changed, amended, or modified in any way except by an instrument in writing, executed by the party or parties to be charged with the change, amendment, or modification.
- (c) Notices and Requests. Any notice, request, instruction, or other document given or required to be given hereunder shall be in writing, and shall be deemed given when hand-delivered or deposited in the mail by registered or certified mail, postage pre-paid, to the parties at the following address, or as at such other addresses as the parties by like manner shall notify each other from time to time:

TO SELLER: Rachel M. and James L. Tebbetts
37 Indian Rock Road
Nashua, New Hampshire 03063

Joyce and Richard L. St. Pierre
2559 E. Elmwood Street
Mesa, Arizona 85213

Cynthia Landry
38 Buckmeadow Road
Nashua, New Hampshire 03062

TO BUYER: City of Nashua

Attn: Steven Bolton, Esquire
229 Main Street
Nashua, NH 03060

- (d) Binding Effect. This Agreement shall be binding upon and for the benefit of the parties hereto and their respective legal representatives, successors, heirs, and assigns.
- (e) Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement or the application of such term or provision to any other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- (f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

16. STATUTORY NOTIFICATIONS. Pursuant to Section 477:4-a of the New Hampshire Revised Statutes Annotated, the SELLER provides the following notifications to the BUYER.

- (a) RADON GAS. Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.
- (b) ARSENIC. Arsenic is a common groundwater contaminant in New Hampshire that occurs at unhealthy levels in well water in many areas of the state. Tests are available to determine whether arsenic is present at unsafe levels, and equipment is available to remove it from water. The Buyer is encouraged to consult the New Hampshire Department of Environmental Services private well testing

recommendations (www.des.nh.gov) to ensure a safe water supply if the subject property is served by a private well.

- (c) **LEAD PAINT.** Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

By virtue of the execution of this agreement, BUYER hereby acknowledges receipt of the foregoing Notification Regarding Radon Gas, Arsenic, and Lead Paint.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLERS:

Witness

Rachel M. Tebbetts

Witness

James L. Tebbetts

Witness

Joyce B. St. Pierre

Witness

Richard L. St. Pierre

Witness

Cynthia Landry

BUYER:

CITY OF NASHUA

Witness

By: _____
James W. Donchess, Mayor

EXHIBIT A

NOTICE OF PURCHASE AND SALE AGREEMENT

~~Notice of a Purchase and Sale Agreement as to certain property in Nashua, County of Hillsborough, State of New Hampshire, is hereby given as follows:~~

~~(1) (a) Name and Address of Seller:~~

~~_____

_____~~
~~City of Nashua
Attn: Steven Bolton, Esquire
229 Main Street
Nashua, NH 03060~~

~~(b) Name and Address of Buyer:~~

~~_____

_____~~
~~Rachel M. and James L. Tebbetts
37 Indian Rock Road
Nashua, New Hampshire 03063~~

~~_____

_____~~
~~Joyce and Richard L. St. Pierre
2559 E. Elmwood Street
Mesa, Arizona 85213~~

~~_____

_____~~
~~Cynthia Landry
38 Buckmeadow Road
Nashua, New Hampshire 03062~~

~~(2) Date of Execution of Purchase and Sale Agreement:~~

~~(3) Description of Demised Premises:~~

~~A portion of the premises being all land located northerly of the proposed road on a certain lot located in Nashua, County of Hillsborough, New Hampshire, known as or described as Lot C-762 of the City of Nashua Tax Maps, having an address of 36 Buckmeadow Drive, Nashua, New Hampshire, being the property described in a deed recorded in the Hillsborough County Registry of Deeds, Book _____, Page _____.~~

~~(4) Date of Expiration of Purchase and Sale Agreement:~~

[Signatures to follow]

WITNESS our hands this _____ of _____, 2020.

SELLER:

CITY OF NASHUA

By: _____

Witness _____ James W. Donchess, Mayor

BUYERS:

Witness _____ Rachel M. Tebbetts

Witness _____ James L. Tebbetts

Witness _____ Joyce B. St. Pierre

Witness _____ Richard L. St. Pierre

Witness _____ Cynthia Landry

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the _____ day of _____, 2020, before me, personally appeared _____, the Mayor of the City of Nashua, known to me or satisfactorily proven to be, the person whose name is subscribed to the foregoing instrument, and being duly authorized so to do, made oath that he executed the same as his free act and deed for the purposes therein contained on behalf of the City of Nashua.

Before me,

Justice of the Peace/Notary Public

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

~~On this the _____ day of _____, 2020, before me, personally appeared Rachel M. Tebbetts and James L. Tebbetts, known to me or satisfactorily proven to be, the persons whose names are subscribed to the foregoing instrument, and made oath that they executed the same as their free act and deed for the purposes therein contained.~~

~~Before me,~~

Justice of the Peace/Notary Public

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

~~On this the _____ day of _____, 2020, before me, personally appeared Cynthia Landry, known to me or satisfactorily proven to be, the persons whose names are subscribed to the foregoing instrument, and made oath that they executed the same as their free act and deed for the purposes therein contained.~~

~~Before me,~~

Justice of the Peace/Notary Public

STATE OF ARIZONA
COUNTY OF _____

~~On this the _____ day of _____, 2020, before me, personally appeared Joyee St. Pierre and Richard L. St. Pierre, known to me or satisfactorily proven to be, the persons whose names are subscribed to the foregoing instrument, and made oath that they executed the same as their free act and deed for the purposes therein contained.~~

~~Before me,~~

Justice of the Peace/Notary Public

RESOLUTION **AMENDED**
R-21-117

Amendment to R-20-083
“Authorizing the acquisition of
property at 36 Buckmeadow
Road, Tax Map C, Lot 762 for a
purchase price of \$370,000”

IN THE BOARD OF ALDERMEN

1ST READING February 9, 2021

Referred to: _____

2nd Reading February 9, 2021

3rd Reading _____

4th Reading _____

Other Action _____

Passed February 9, 2021

Indefinitely Postponed _____

Defeated _____

Attest: _____
City Clerk

Lori Wilshire

President

Approved _____
Mayor's Signature

Date

Endorsed by

_____ **DOWD**
_____ **KLEE**
_____ **HARRIOTT-**
_____ **GATHRIGHT**
_____ **CLEMONS**
_____ **LAWS**
_____ **WILSHIRE**

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President