

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0468, Jerry L. Rich v. Town of Enfield, Donald E. Roberts, Evelyn P. Patten, the court on June 8, 2006, issued the following order:

The appellant, Jerry L. Rich, was an unsuccessful bidder in a public sale of property by the defendant, Town of Enfield (town). Although we have not been provided with a copy of the petition, the parties have filed a stipulation stating that the appellant filed a petition in equity in the superior court seeking to invalidate the sale of property by sealed bid by the town. He appeals the order granting the town's motion for summary judgment, arguing that the trial court erred in finding that both the bid procedures used by the town and its modification of the bid after it was awarded were fair and equitable. We affirm.

In reviewing the trial court's grant of summary judgment, we consider the affidavits and all inferences properly drawn from them, in the light most favorable to the non-moving party. Marikar v. Peerless Ins. Co., 151 N.H. 395, 397 (2004). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper. *Id.* We review the trial court's application of the law to the facts *de novo*. *Id.*

The trial court found that it was undisputed that all bidders were provided with identical bid packages. The trial court also found that the package contained an outdated tax map with a faint line highlighting the perimeter of four lots. The package also contained a copy of a public notice which stated that "[p]ertinent information relating to this property is available for public inspection at the Assessor's Office" An updated tax map showing that the four highlighted lots had been merged into a single lot that was the subject of the bid was available at the Assessor's Office. The petitioner did not inspect any of the records at the Assessor's Office. None of these findings have been appealed; accordingly the issues before us require only that we review the trial court's application of the law to the facts.

The appellant does not cite any town ordinance requiring the sale of town property by competitive bid. Having decided to sell the property through public bid, however, the town was required to treat all bidders fairly and equally. Irwin Marine, Inc. v. Blizzard, Inc., 126 N.H. 271, 275 (1985). Consequently, it was essential that the bidders, so far as possible, be put on terms of perfect equality, so that they could bid on substantially the same proposition, and on the same terms. Marbucco Corp. v. City of Manchester, 137 N.H. 629, 633 (1993). While

we do not endorse the town's failure to provide a formal updated tax map in the bid packages, the record reflects that the map provided contained a highlighted line drawn around the merged lots that the trial court found was "readily discernable," and the proviso that pertinent information relating to the property was available at the Assessor's Office. Because all parties received the same bid package, we find no error in the trial court's ruling.

The appellant also argues that the town's agreement to change the bid conditions to permit demolition of the property under extenuating circumstances and to allow renovation "in the spirit and intent of its historical 18th century origins" represents a substantial and material variation from the conditions set forth in the notice of sale which required that the sale be re-bid. Defendants Roberts and Patten were awarded the bid on July 14, 2003; on August 18, 2003, Roberts appeared before the board of selectmen to discuss the proposed wording of the deed and his plans for the property. In January 2004, the town building inspector observed the property in the midst of renovation and determined that it "was not in a condition where renovation would have been a feasible option." It was not until the successful bidders had begun the renovation that they became aware of the impossibility of renovation.

In every agreement, there exists an implied covenant of good faith and fair dealing; that the defendant was a town did not release it from this obligation. See Seaward Constr. Co. v. City of Rochester, 118 N.H. 128, 129 (1978). When the town became aware of the previously unknown rot in the building, it revised the obligations imposed upon the successful bidders to allow the building to be demolished and reconstructed in the spirit and intent of its origins. Having sold the property and imposed certain conditions upon its use, it was incumbent upon the town to address the impossibility of performing those conditions.

Given the facts of this case, we find no error in the trial court's entry of summary judgment.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**