

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

DISTRICT DIVISION  
8<sup>TH</sup> CIRCUIT COURT - KEENE

STATE OF NEW HAMPSHIRE

vs.

IAN FREEMAN

Docket No. 449-2013-CR-00206

**MOTION FOR RECONSIDERATION**

NOW COMES, the City of Keene (“City”), by and through its counsel, Thomas P. Mullins, Esq., and submits this Motion for Reconsideration, and in support thereof states as follows:

1. This matter is before the Court on a Complaint and Summons filed by the City against Ian Freeman a/k/a Ian Bernard (“Defendant”) for failure to comply with a City Ordinance involving fire protection standards.

2. Prior to hearing, Defendant filed numerous motions including a Motion to Dismiss/Strike based on the “Right of Revolution” and a Motion for Hearing on Administrative Inspection Warrant.

3. Defendant had also previously filed a Motion to Suppress Administrative Warrant to which the City filed a timely Objection. The Motion to Suppress was denied by Order of the Court dated March 11, 2013 (“March 11 Order”). See the Order attached hereto. In the Order, the Court held that “Defendant does not raise suppression issues, but may raise these allegations as part of his defense.” No Motion to Reconsider was filed by Defendant in connection with the March 11 Order.

4. The City also filed timely objections to both the Motion to Dismiss/Strike and the Motion for Hearing on Administrative Inspection Warrant.

5. A hearing on the still pending motions was held on May 29, 2013. With respect to the Motion for Hearing on Administrative Inspection Warrant, the City understood based on the March 11 Order that the Court would consider the assertions in connection with Defendant's defense of the Summons.

6. After hearing, the Court issued an Order dated June 5, 2013 ("June 5 Order") denying Defendant's Motion to Dismiss/Strike, denying Defendant's Motion for Hearing on Administrative Inspection Warrant with respect to the zoning inspection, and granting in part Defendant's Motion For Hearing On Administrative Inspection Warrant with respect to the fire code inspection. The relief granted by the Court was to suppress the Administrative Inspection Warrant as it applied to the Fire Department inspection. The City now seeks reconsideration of the June 5 Order as it pertains to the Motion For Hearing on Administrative Inspection Warrant with respect to the suppression of the fire code inspection.

7. The partial Suppression of the Administrative Inspection Warrant was in error. Based on the Court's March 11 Order, Defendant's Motion to Suppress was denied, and any further challenge to the Administrative Search Warrant was to be made as part of Defendant's defense to the Summons at a hearing on the merits. The possible relief to be granted by the Court was a Defendant's verdict on the Summons after hearing, and not a suppression of the Administrative Inspection Warrant with respect to the alleged fire code violations. Accordingly, based on the March 11 Order, it was an

error of law for the Court to suppress the Administrative Inspection Warrant with respect to the fire code inspection.

8. Further, despite the March 11 Order, to the extent that the partial suppression of the Administrative Inspection Warrant was based upon RSA 153:14, II (a), the suppression was erroneous as a matter of law. RSA 153:14, II (a) states in pertinent part that “[t]he state fire marshal, the state fire marshal’s authorized officers, or the fire chief upon complaint or whenever the state fire marshal, such authorized officers, or fire chief shall deem it necessary, may inspect all buildings, *excluding single family dwellings and multi-unit dwellings containing 2 units*, and premises within their jurisdiction and, if consent for such inspection is denied or unobtainable, may obtain an administrative inspection warrant under RSA 595-B.” (emphasis added).

9. RSA 153:14, II (a) excludes the State Fire Marshall from inspecting single family and two family dwellings, **being used as such**. It does not prohibit the inspection of any other buildings or dwellings. The right to inspect is also not predicated on whether or not there is a separate zoning ordinance violation, and is a separate and distinct administrative process.

10. The New Hampshire Supreme Court has held that an owner has no vested right guaranteeing the continuation of the previous use of a building for purposes of fire code classification. See Fischer v. New Hampshire Building Code Review Board, 154 N.H. 585 at 588 (2006). (In Fischer, the subject properties were long classified as duplexes, but after a fire the City of Dover Fire Department reclassified the buildings as “lodging or rooming houses,” which classification required application of different fire protection standards.)

11. In the June 5 Order, the Court specifically found that "...there was clearly probable cause to believe that the premises were no longer being used as a single family residence..." If there was sufficient probable cause that the building was no longer being used as single family residence for zoning purposes, then there was sufficient probable cause for the fire department to inspect the building for fire code purposes as it appeared to no longer fall under the exclusion stated in RSA 153:14, II (a).

12. Probable cause for a fire code violation was not and is not dependent on the existence of a zoning violation or the zoning classification of the subject property, as the Court apparently concluded in its June 5 Order. The zoning violation and the fire code violation arise from two separate and distinct regulatory schemes, authorizing statutes, public safety concerns, and City departments. Merely because the Administrative Inspection Warrant issued by the Court was founded on similar facts and circumstances necessary for both regulatory violations does not make one dependent on the other.

13. "If a valid public interest justifies the intrusion contemplated, then there is probable cause for the issuance of the warrant." Davy v. Dover, 111 N.H. 1, 3 (1971)(decided under prior law). There was clearly a "valid public purpose" in determining whether or not a fire code violation existed at the Defendant's property, and that public purpose was sufficient for the issuance of the Administrative Inspection Warrant when there was sufficient probable cause that the use of the property, and its fire code classification, had changed.

14. Accordingly, the Court's conclusion that the use of the property had to be conclusively determined in the first instance by the zoning administrator, before it could

also be subject to inspection by the fire inspector, constitutes an error of law, and would have a profound public policy impact. The Court is essentially stating that the fire department could never inspect a single or two family residence for fire code compliance unless there was some other regulatory violation, even if there is clear evidence that the property is not being used as such. This cannot be what is intended by RSA 153:14, II (a).

15. Finally, notwithstanding the foregoing, even if the Court still concludes that the Administrative Inspection Warrant was initially issued in error, or otherwise subject to suppression, the failure to obtain or to execute such a warrant in accordance with RSA 595-B “shall not be cause for the exclusion of evidence derived from or obtained pursuant to any inspection [...] if the receipt of such evidence is otherwise permitted by law.” RSA 595-B:7. Accordingly, the exclusionary rule does not apply as a remedy for violation, and the City may still proceed to a hearing on the merits with respect to the fire code violations.

16. Based on the foregoing, the City requests that the Court reconsider its decision to vacate the Administrative Inspection Warrant as it applies to the inspection of the subject property by the City’s Fire Prevention Officer, or in the alternative reconsider its decision to suppress evidence gathered by that inspection at a trial on the merits..

WHEREFORE, the City respectfully requests that the Court:

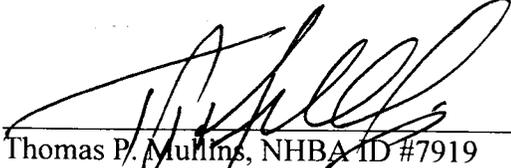
- A. Grant the City’s Motion to Reconsider;
- B. Vacate its decision and reinstate that portion of the Administrative Inspection Warrant with respect to the fire code inspection vacated by the Court;

- C. Admit the evidence collected under said Administrative Inspection Warrant;
- D. Set a trial date based upon the City's Summons and Complaint;
- E. Grant such other relief as the Court deems just and necessary.

Respectfully submitted,

CITY OF KEENE  
By Its Attorney,

Dated: June 14, 2013

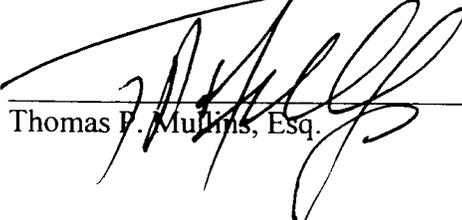


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#### CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2013, I mailed by First Class Mail a true and correct copy of the within Motion for Reconsideration to Ian Freeman, f/k/a Ian Bernard, at 63 Emerald Street, #610, Keene, New Hampshire 03431.



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Thomas P. Mullins, Esq.