



*In all the world there is only one Essex Junction*

David A. Crawford  
Village Manager  
[dave@essexjunction.org](mailto:dave@essexjunction.org)

Village Manager's Office  
2 Lincoln Street  
Essex Junction, VT 05452  
[www.essexjunction.org](http://www.essexjunction.org)

Office: (802) 878-6944  
Fax : (802) 878-6946  
Cell : (802) 881-9599

## **MEMORANDUM**

**TO:** Essex Junction Trustees  
**FROM :** David A. Crawford, Village Manager  
**DATE :** February 8, 2011  
**SUBJECT:** Recreation Issues - Clarification Comments

This Memorandum is prepared at the request of Village Board President Deb Billado. It provides the Manager's understanding of the position of the majority of the Board of Trustees (BOT). Board members are requested to transmit to the Manager any corrections they feel should be made. There are four primary topics of discussion. They are:

1. A HISTORICAL VIEW OF THE SERVICE AGREEMENT WITH THE PC
2. WHAT ARE THE LEGAL ISSUES?
3. WHY IS THE BOT SO CONCERNED WITH THE ADMINISTRATIVE OVERSIGHT ISSUE?
4. THE COSTS OF THE ADMINISRTATIVE OVERSIGHT SERVICES

### **A summary statement of where the BOT is in the decision making process is:**

The BOT continues to ask the PC to join with them in the search for a new service agreement that addresses the oversight, public access, and administrative service cost issues. The BOT has NOT at this point in time decided the best solution to address these issues.

#### **The BOT feels:**

- That the current Agreement with the PC to provide administrative oversight the EJP Department should be changed to provide easier access for concerned citizens to be heard in the decision making process.
- The method of determining the CCSU service charges should be revised.
- The BOT has indicated that if a new or continuing agreement has not been negotiated by March 8<sup>th</sup> then on March 22<sup>nd</sup> the BOT needs to decide what to do. The two options are transfer the oversight back to the Village government or to the Town of Essex (if they interested in having an oversight agreement.)

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#### **➤ Manager's Note:**

It is interesting to note that I was asked at my employment interview three years ago about my experience in Recreation supervision as a Municipal Manager. I indicated that I had managed several communities that had recreation departments which the Manager was responsible to supervise.

My personal position is that the decision on how resolve the recreation governmental and administrative oversight issue is one that the BOT should decide. My role is to assist the Village of Essex Junction Trustees in obtaining factual information and to encourage a negotiated solution in what has become a very emotional issue.

There are three prime alternates under discussion; any one of them is fine with me.

# **RECREATION ISSUES - CLARIFICATION COMMENTS**

## **A HISTORICAL VIEW OF THE SERVICE AGREEMENT WITH THE PC**

### **IT STARTED WITH A BOT VOTE AND AS A “HANDSHAKE AGREEMENT.”**

**1970** - The Recreation Department, in agreement between the Prudential Committee and the Village of Essex Junction Board of Trustees, is transferred under agreement as set forth in the Essex Junction Board of Trustees Minutes on October 5, 1970 to the Prudential Committee for its operation, management, and administration. There is some initial discussion/controversy over the costs, with the Prudential Committee requesting \$40,000 for operating the Recreation Department, but this is resolved and the transfer occurs.

**1990's** – 1999 during Mr. Charles Safford's tenure as Village Manager there is debate over the issuance of a bond to construct a pool on site of the Recreation facility grounds. The Village Board of Trustees (George A. Dunbar, President) considers trying to transfer control of Recreation Department back to the Village but withdraws their request to the Prudential Committee to study the issue after encountering resistance in the community.

### **FIRST WRITTEN AGREEMENT**

**2000 -2008** - On February 12, 2001 the PC and Village entered into an agreement for administration of the Parks and Recreation Programs, which expired on June 30, 2005. This was extended to March of 2006 when it was subsequently extended again through June 30, 2010. This agreement was the only known written agreement between the parties for such operation, maintenance, and administration of the Parks and Recreation Programs to that date. Of note are the Village/Town merger vote dates: November, 2006 and January, 2007 School districts' "Unified Union" vote date: October, 2007

- ❖ This agreement clarified the Essex Junction Reaction and Parks status in the event of either a municipal or school merger (*Neither occurred and EJRP remains governed by the Essex Junction School District – Prudential Committee*).
- ❖ Since 1971, the PC has operated & administered EJRP.

### **CURRENT AGREEMENT**

**March, 2010** – An Agreement Extension over management of the Recreation Department between the Essex Junction School District and the Village, good through June 30, 2011, is signed by both parties.

- The Agreement states: The Village owns three parks; The Prudential Committee operates, maintains, and administers Parks and Recreation programs;
- EJRP will be turned over to the Village if the schools unify without a municipal merger or a new municipality is created.
- ❖ PC's agreed during the agreement extension discussions to look at costs as there was not good information of how they were determined.
- ❖ The EJRP Baseball Field Conversion was planned by EJRP in 2009-2010
- ❖ Concerned citizens make plea to PC to halt project, and the project is halted by the EJRP on June 14, 2010.

### **AGREEMENT RENEWAL DISCUSSIONS**

**August, 2010** – At a Trustees meeting Ms. Linda Waite-Simpson, Chairperson of the Prudential Committee: Suggested impending renewal of the contractual agreement between the Village and the Essex Junction School District for administrative oversight of the Recreation Department. Prudential Committee cites time constraints as an impediment to meeting. In an August 11 letter from BOT to PC noting requested to meet to discuss a renewal. The Prudential Committee meets on August 23 and composes a list of questions that are remanded to the school administration for data collection.

**September, 2010** – Letter from Ms. Linda Waite-Simpson dated September 2 notes receipt of August 11 letter and a receipt of a petition signed by approximately 335 residents that requests the Prudential

## **RECREATION ISSUES - CLARIFICATION COMMENTS**

Committee meet with the Trustees Board 'as soon as possible to arrange for the transfer of Governance. Prudential Committee asks that the discussion be deferred until a joint meeting can be arranged for February, with Public forums scheduled for March.

September 10, 2010 – Village Attorney Dave Barra issues a legal opinion on the state of the Recreation Department, its ownership and transfer, and the ownership of the land and buildings it runs and operates. He states that: "the Village has contracted with the PC to run its Recreation Department. The Trustees retain the right and authority to oversee and change its operation."

Letter Submitted by Dave Crawford dated September 22; notes that The Village has requested Village Attorney Dave Barra prepare the answers to several questions and that a timeline is proposed, suggesting a joint committee is formed to prepare said timeline/info for the public. The letter was received September 25 by the Prudential Committee. Ms. Linda Waite-Simpson notes that the Prudential Committee will meet on October 18 and the issue of the disposition of the recreation department governance agreement.

**October, 2010** – Prudential Committee met week of October 19 to discuss Village Attorney Dave Barra's legal opinion and agrees with the following: Village owns the land that the Recreation and Parks Department owns the improvements, facilities and equipment built/stationed on the land; that the debt belongs to the school district; a reasonable timeline is in the best interest of residents; an immediate extension of the current agreement would facilitate the governance process. They expect to receive answers to remanded questions on November 8 board meeting from CCSU administration. The Prudential committee invites Trustees to join them during their budget sessions in late January – February.

**November, 2010** - On November 8 the Executive Director of Operations/publicly answers PC's questions related to governance and administration at school board meeting; the questions include those posed by the Trustees.

On November 9 the RAC (Recreation Advisory Council) Survey ends. The public survey was open Sept. 14 – Nov. 9, 2010. 199 Village residents responded. 85% report they are satisfied w/ EJRP staff and programs. 72% feel EJRP should remain under Prudential Committee governance. 13% feel transferring EJRP to Village would serve the community well.

On November 12 BOT sends letter reiterating the Trustees Board's request for a joint meeting/committee as soon as possible, and the need for agreement with the Village Attorney's legal opinion. Ms. Linda Waite-Simpson replies on November 29, and stresses that this issue be put to the public via a public forum on January 12, 2011; the public forum would present a non-binding vote on the issue as well. The CCSU produces a list of answers for the PC on the Recreation issue inclusive of questions posed by the Trustees Board.

**December, 2010** – A letter from Dave Crawford to Ms. Linda Waite-Simpson dated December 10, emphasizes the desire of the Trustees for a joint meeting between the Trustees and the Recreation Department. Following, it was stated that February 8, 2011 was the target date for an extension agreement and that March 8, 2011 is the Board of Trustees 'decision date' if there is no extension agreement. Additionally, a new Essex Junction Recreation and Parks Agreement extension proposal is formulated, though in January this proposal is found to be not acceptable by the Prudential Committee, which favors a 'negotiated method' for determining how to handle the situation.

On December 13 the RAC states: "As a result of information gathered from the community, the financial facts, and the success of our recreation department over the last forty years, it is clear that EJRP governance by the school district best meets the needs of our community. The Recreation Advisory Council recommends that the current agreement between the Prudential Committee and Board of Trustees be renewed in its same form for a minimum of one year."

**January, 2011** – In a letter from Dave Crawford to Ms. Linda Waite-Simpson dated January 10, Dave states that the Village Trustees are working on a list of questions for the Prudential Committee and reemphasizes their desire for a joint meeting of the boards.

## **RECREATION ISSUES - CLARIFICATION COMMENTS**

January 10 - Clavette Consulting issues a Recreation and Parks Management Report to the Village Trustees; it contains an analysis of other towns and their management of their Recreation Departments.

Also on January 10 - A petition is submitted to the prudential Committee and the Board of Trustees, signed by 800+ residents requesting that boards “honor the history of success of the Essex Junction Recreation and Parks Department and preserve the current governance structure under the Essex Junction School District.”

January 12 - A Leadership Group (negotiating) Session is held (Linda, Mike, Deb and Dave) it is agreed that there are differences of opinion style and culture between the two boards. Mike indicated that the PC discussed the BOT proposed Extension Agreement & that it was rejected in its entirety.

January 18 - Attorney Alan D. Overton concurs with Village Attorney Dave Barra's issued legal opinion.

At the January 18 - Board of Trustees meeting a 'Recreation Administrative Oversight Issue Clarification Statement' is adopted; the clarification statement emphasizes the need for a negotiated agreement between the Prudential Committee and the Village Board of Trustees. The Trustees vote to move forward on January 31, 2011 by asking the PC to vote that they concur with the Village Attorney's issued legal opinion *or* to file a petition in Vermont Court for a declaratory Judgment on the issue by January 31.

January 20 - In a letter from BOT to the Essex Board of Selectmen; the Village Manager inquires if the Town would be interested in discussing having an agreement for administrative oversight of the Essex Junction Recreation program. This may be a viable alternative to having the Village Manager and run the program. The Essex Town's has experience in managing their own recreation program serving 19,000 people.

On January 28 - Mr. Deweese responds to Village Manager Dave Crawford's e-mail stating that “The PC will be prepared to provide the Trustees with the specifics of the school district's position on the subject of Recreation Governance, but cannot meet the BOT's immediate deadline of January 31. The PC extends an invitation to you and the Board of Trustees to the PC's Thursday, February 3, 2011 meeting.”

### **Additional Notes extracted from the Prudential Committee February 3<sup>rd</sup> PowerPoint Presentation:**

“All Village parks will be operated, maintained, and administered under the direct control and supervision of the Essex Junction Prudential Committee.” *Section 301 of Current Essex Junction Municipal Code.* [NOTE: The Municipal Code is adopted & amended by vote of the BOT.]

**February 2011** - A draft Summons by the State of Vermont Superior Court, Chittenden Unit is composed and filed by Attorney Dave Barra. . The Village of Essex Junction Board of Trustees has continuously held that they've asked for negotiations to settle the dispute with the Prudential Committee.

**June/July, 2011** - July 1, 2011 is set as the end date of the current, existing Recreation Agreement. If no extension or new agreement is reached the Village of Essex Junction assumes the management and operations of the Recreation Department on that day. If there is no lease of the property by the BOT to the PC then would technically be trespassing.

# **RECREATION ISSUES - CLARIFICATION COMMENTS**

## **WHAT ARE THE LEGAL ISSUES?**

- PC / CCSU have not raised the “ownership of programs” issue until recently.
  - The PC has refused numerous requests by BOT to share their thoughts, asked several times for their comments on the VEJ legal opinions. The PC has refused to meet have joint Board mtgs (or a working subcommittee of Board members) to discuss the different views. The PC has refused to allow the lawyers to meet to discuss them.
  - The PC raised the issue that it may end in court action in public statements (Linda Waite-Simpson at 1/11 BOT mtg).
  - The Declaratory Judgment process is the way to settle this legal question.
- The BOT offered to have a joint request for the court to rule & give their time line for the process.
- Since PC has given no indication that they wanted to discuss joint action.
  - The VEJ has moved forward as directed by the BOT vote on 1/18.
  - If the PC wants to joint in the Petition to the court to rule they still can. The Petition can be amended.
  - The Petition can be withdrawn if there is a negotiated agreement with the PC.
- ✓ **If the issue has not been ruled on by the July 1, 2011, there needs to be an “Extension Agreement” to clarify the status. The BOT sent a proposed one to the PC on December 10, 2010. The BOT was informed that it was rejected by the PC at the 1/12 “Leadership” discussion.**
- ✓ **Since the VEJ owns the land, there must at least be a lease in place on July 1, 2011 or the PC is trespassing raising very serious insurance issues.**
- **The BOT continues to ask the PC to join with them in the search for a new service agreement that addresses the oversight, public access, and service cost issues.**
- **The BOT has NOT decided the best solution to address these issues.**

## **RECREATION ISSUES - CLARIFICATION COMMENTS**

### **WHY IS THE BOT SO CONCERNED WITH THE ADMINISTRATIVE OVERSIGHT ISSUE?**

- It's their fiduciary responsibility to do so by Village Charter, State law & over \_\_\_ years of having written agreements.
- About 2½ years the PC unilaterally disbanded the Ad Hoc Rec Comm. reporting to directly to the PC which BOT had a representative. The BOT expressed the concern that the communication link was broken PC no response other than that was their decision. (Recently Mike indicated the new method better fits with the way the School District handles there business. The size of the school organization requires an administrative review process prior to PC involvement.) [This action demonstrates the PC attitude toward the way they view public involvement in the decision making process.]
- Issues of concern that have come to BOT do not have an agreed on method of being handled.
- The most recent citizen concerns on the ball field shows the exclusion of the public in access to the PC. BOT tried to help answer citizen concerns but had no way of sitting down & discussing it with the PC.
- The PCs normal comment to citizen concerns at Board mtgs is "we'll get back to you" then they many times don't.  
[BOT listens to citizens then responds in a timely manner. It is a different style & organization culture. The size of the 2 government organizations is a major factor in this.]
- It is about citizen access to the elected decision makers. What is the best way to set up the governance oversight to be the most responsive?
- The real question is: What governance model provides Village citizens the most possibility to be heard when important decisions are being made?

➤ **In summary, the BOT feels that current Agreement with the PC to provide oversight must be changed to provide easier access for concerned citizens to be heard in the decision making process, or the BOT should transfer the oversight back to the Village government or to the Town of Essex.**

## **RECREATION ISSUES - CLARIFICATION COMMENTS**

### **THE COSTS OF THE ADMINISRTATIVE OVERSIGHT SERVICES**

- CCSU charges for services formula based on state a approved system for school districts. It does not speak to the service agreement model. The service agreement model that is what should be used for the EJRP to determine fair changes for services actually provided.
  - The result seems to be that the EJRP is being charged for services they don't need by the CCSU.
  - The BOT is not involved in the service agreement cost. They should be in order to fulfill their fiduciary responsibility to of the legal oversight of the ERRP Dept as defined in the Village charter and other State laws.
  - The BOT asked that the PC examine that service fee structure when the current agreement was negotiated in November of 2009. The PC verbally agreed to look at this issue.
  - The FY12 proposed EJRP budget presented on 1/27 does reflect some changes & reduces the service charge by about \$10,000.
  - But the FY12 Proposed Budget does not change the under laying formula.
  - The method of determining the service cost to the EJRP Dept is continues to be flawed causing the Recreation Dept to be overcharged.
  - The PC holds that if the CCSU does not provide services the EJ School District will continue to be charged the same amount of dollars even though less service is required. One wonders if an EJ school was closed if the District would be charge the same amount. Less time spent should result in less cost to Village taxpayers.
- ❖ **The cost concern of the BOT (whose responsibility is to provide the ultimate oversight of EJRP Dept) is these charges. The concern is NOT of operating costs of running the high quality of recreation programs that the taxpayers have annually voted to support.**