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Village of Essex Junction

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February 22, 2011

HAND DELIVERED
Deborah Billado, President - Board of Trustees
David A. Crawford, Village Manager
c/o Village of Essex Junction
2 Lincoln Street
Essex Junction, VT 05452

Re: Governance of Essex Junction Recreational Parks and Programs

Dear Deb and David:

This office has been requested to review the legal opinions prepared for the Village by its Counsel, The Law Offices of David A. Barra, PLC, concerning the legal relationship between the Village and the Prudential Committee (PC) of the Essex Junction Incorporated School District concerning responsibility for the operation of the Essex Junction Recreational Program (EJRP). For the reasons set forth herein, it is our opinion that the views expressed by Village Counsel are correct and well reasoned.

In carrying out this assignment, this firm did not undertake an independent analysis of the pertinent facts affecting this matter. Instead, we rely upon the facts as set forth by Counsel, the Village Manager and the President of the Village Trustees. The facts we deem critical to our legal analysis are set forth herein.

Both entities are legally authorized to carry out recreational programs. The Village's authority is derived from Title 31 VSA Ch. 5 and from the Village's Charter, codified as 24 VSA Ch. 221-1.03. The PC's authority is derived from 16 VSA Ch. 11-3.1(19).

Additionally, Vermont law allows a municipality to conduct its recreational program itself or to delegate this responsibility in various ways, including delegation to a school board (31 VSA Ch. 203).

In 1970, the Village Trustees did delegate responsibility to run the Village's recreation program to the PC. This arrangement appears to have been accomplished by motions passed by

both bodies, but no actual written agreement was executed between them. The arrangement has continued until the present. However, starting in 2001, there has been a written agreement between the parties. This agreement was scheduled to expire in 2005, but has been extended to 2006, then to 2010 and the final executed extension will now expire on June 30, 2011.

On the basis of the delegation referenced above, the PC hired recreational management and staff. It also approached its voters to approve the recreational component of its annual budget. It has used PC funds for capital improvements and has also entered into longer term debt arrangements for capital improvements. It has erected buildings on the park properties.

No conveyance of the Village's park lands has been made by the Trustees to the PC. Instead, title has continuously remained in the name of the Village.

In 2010 and 2011, the Trustees have requested a renegotiation of the terms of the agreement with the PC. However, no successor agreement has yet been negotiated.

The position of the parties can be fairly simply stated it seems. The Trustees believe they delegated administrative responsibility in 1970, but not perpetually. The PC asserts that the delegation given and accepted in 1970, together with the financial investments made thereafter by the PC, have vested the PC with an administrative right which cannot be unilaterally cancelled by the Trustees. The PC also points to the Village ordinances, which state in Section 301 that "all Village parks will be operated, maintained, and administered under the direct control and supervision of the Essex Junction Prudential Committee."

From our perspective, the critical elements supporting the correctness of the opinions issued by David Barra, Esq. as Village Attorney are the continuing ownership of the Village's park lands and the existence of the agreements between the parties from 2001 forward. It is very logical to assume that having retained ownership of the park lands, the Trustees would remain interested and involved in the oversight of their care and maintenance. As a matter fact, it would be anomalous for the Trustees to have such ownership but be entirely neglectful of any responsibility for such facilities. And while it is certainly permissible for the Trustees to have done as they did in delegating responsibility for recreational programs on property for which they are both owners and responsible, it would also appear that they would be neglectful of their responsibilities if they did not preserve a sufficient degree of control so as to ensure that the stewardship of these facilities was in the best interest of the community.

The notion that it was the intention of the parties that there be an absolute abdication of control by the Trustees in favor of the PC is also belied by the fact that from 2000 forward the parties have executed agreements which contain expiration dates. This mutual approach suggests a common understanding that the delegation of responsibility was not indeed intended to be perpetual, but subject instead to periodic review and possible adjustment as demanded by public interest.