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August 8, 2011

Joyce George
Vice President, Mills Point Association,
and on behalf of leaseholders of Mills Point,
Colchester Point, Sand Dunes and Coates Island
40 Summit Circle
Shelburne, VT 05482

RECEIVED
AUG 09 2011
TOWN MANAGER'S OFFICE

Re: Real Property Assessment of Camp Properties on Leased Land

Dear Ms. George:

I write to you in my capacity as the Town of Colchester's attorney on this issue. You have requested a response from the Town relative to your concerns about the Town's real property reappraisal. I have reviewed the three-page document you presented at the July 12, 2011 Selectboard meeting and your six-page July 26, 2011 letter entitled "Select Board Meeting," and I write to provide some responses.

I cannot respond to each and every issue you raise in your correspondence. However, there are a few points that I would like to focus on; in particular, your points concerning the taxability of camps on leased land and on fair market value of those camps.

I expect you are aware that once a reappraisal occurs, and property owners are informed of their new property values, each and every affected property owner has the right to file a grievance with the Listers. A taxpayer has the right to appeal the Listers' decision to the Board of Civil Authority (BCA). From the BCA, the taxpayer may appeal to either the Superior Court or to the State Appraiser. I understand you have grieved your assessment to the Listers and you have appealed from there to the BCA. Those are the appropriate forums to raise your issues, in particular, issues regarding valuation of your property.

Taxability of Camps on Leased Land

I have conferred with the Town, and the Town is confident in the value of the service it has received from Vision Appraisal Services. In working with Vision, the Town has followed Vermont law governing appraisal of real property. In particular, the Town has operated pursuant to 32 V.S.A. Chapters 121, 123, 124, 124, 127, 129 and 131. The Town does not adhere to any "Uniform Tax Code" which you mention in your letters, because doing so would violate Vermont law. To my knowledge, the Uniform Tax Code is not a body of law, but rather a phrase used in relation to federal income tax law. It has no bearing on real property appraisal. You have also referenced 32 V.S.A. Chapters 135 and 233 in your



documents. Chapter 135 is the Chapter governing Education Tax Funding in Vermont. It does not address the appraisal of real property; nor does Chapter 233, the sales tax chapter.

You stated in Paragraph No. 7 of your July 26, 2011 letter that "The Town of Colchester is in violation of the Vermont Statutes," because the applicable statute "only allows assessment of 'buildings' on leased land and nothing else." 32 V.S.A. § 3608 provides that "Buildings on leased land or on land not owned by the owner of the buildings shall be set in the list as real estate." You also reference 32 V.S.A. § 3651, which states that "Taxable real estate shall be set in the list to the last owner or possessor thereof on April 1 in each year in the town, village, school and fire district where it is situated." Section 3608 is essentially a definition statute, which causes buildings on leased land to be treated as real estate and not as personalty. This is precisely how the Town is valuing camp properties on leased land.

Fair Market Value

Section 3608 enables assessment of the building as real property, but it does not address what constitutes "fair market value (FMV)" of that building. For FMV, we look to its definition in Vermont law: "The estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value." 32 V.S.A. § 3481.

In 2003, the Town of Colchester faced the same argument you raise today: that the Town could not tax a camp owner for the value of a lease. After examining the Town's appraisal methodologies for a camp on East Lakeshore Drive, the Chittenden Superior Court held otherwise, finding that, for buildings on leased land, the lease is an intrinsic component of the building's value. The Court examined the Town's methodology, which was to: 1) examine arm's length transactions for two years prior to the appraisal date; 2) determine the value of improvements to the property; and 3) subtract the value of improvements from the selling price to determine the value of the leasehold interest. The Court stated, "The court finds this valuation based on acceptable valuation methods recognized by our courts to be the fair market value of the Lesage cottage as of April 1, 2003." *Peter Lesage and Stephanie Lesage v. Town of Colchester*, No. S1417-03 CnC (Norton, J., February 17, 2005). The Court's holding further stated:

"[Taxpayers] must pay tax on the full value of the buildings because they have full use of them.... By constructing buildings on land in which they hold only a short-term interest, [taxpayers] have created a situation where much of the building value contingently resides with

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the owner of the land [...] Until such time as the owners of the land take action to terminate [taxpayers'] use of the land, all of the building value is assessable to the owners of the buildings."

Lesage at 6.

Valuation of a Camp on Leased Land

The crux of the issue is that the lease is a component of the value of the building itself. It is not "personal property." A camp on leased land with water access will fetch more on the open market than would a landlocked camp. This value is an amenity to the camp owner, which the Town has the right and statutory obligation to assess within the value of the building itself.

Moreover, your hypothetical that you would sell your property to a buyer but not convey the lease rights to the buyer is not credible. The only buyer who would purchase a camp on leased land is one who would also take assignment of the existing lease. Accordingly, the lease is an integral component of the value of the building itself – no one would purchase the camp without obtaining the right to access and use the camp.

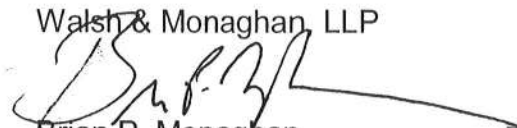
Equity in Appraisals

Paragraph No. 5 of your July 26, 2011 letter refers to "equity." It is precisely because the Town's goal is to make real property appraisals as equitable as possible that it is assessing the land value of camps. If it were to do otherwise, camp owners would escape payment of taxes on the value of the land embodied in their leases. This has been the historical practice; the Town has changed it so owners of camps on leased land are assessed in essentially the same manner as those who own property in fee simple. This creates a more equitable situation between the various classes of taxpayers in Town.

The Town's position is that it has been valuing camps on leased land, and all other property in Town, in conformance with Vermont law. The Town is fully prepared to defend its position as necessary.

Sincerely,

Walsh & Monaghan, LLP



Brian P. Monaghan

cc: Town of Colchester