

Memorandum to: Joe Colangelo and Renae Marshall
From: Roger Kohn
Re: Trail Easement from Bruce and Judythe Parker
Date: March 11, 2013

Joe and Renae:

You sent me a copy of the Grant of Trail Easement from the Parkers together with an email from Joe Damiata on behalf of the Town's insurance company. I have the following comments.

First, you should know that my partner, David Rath, represents the Vermont Land Trust in connection with the transaction with Bruce and Judythe Parker. I do not know whether this is technically a conflict of interest or not, but if you believe that this represents a conflict of interest and do not want us to work on this matter, please let me know.

I have not reviewed the Grant of Trail Easement in great detail, on the assumption that you were really asking me only about the liability section. I did not see any substantial problems in the review that I did. If you want me to thoroughly review the other provisions of this Agreement, please let me know. I will, however, point out one extremely small issue. On page 4, the last paragraph of the document conveys rights to "the Town of Hinesburg, Vermont, and its successor and assigns, to its own use and behoof forever." More correctly, this should say: "...to **their** own use and behoof forever."

With regard to the liability section of this Easement, I have the following comments.

My primary concern is with the last two sentences of the paragraph at the top of page 3. It makes a great deal of sense for the Town to maintain insurance on the trail. My concern is that if at some time the Town no longer wants to keep this trail in use (which is within its rights in accordance with the document) then it should not have to maintain insurance. It is very hard to be certain what will occur fifty years from now, and this easement goes on forever.

Accordingly, I would change the last two sentences to read:

"Holder, its successors and assigns, shall at all times maintain general liability insurance in commercially reasonable amounts and limits to cover the easement granted hereunder, provided Holder officially permits public access to the Corridor. The Owners and their successors and assigns shall be named as an additional insured on any such insurance policy of Holder."

I have removed the word "commercial" in describing the liability insurance policy, because doing so was suggested by Joe Damiata.

Joe Damiata recommended that the last paragraph of section IV be removed in its entirety. It is up to you whether you want to ask for removal of this paragraph. I am not, myself, concerned about it. We are not guaranteeing that the Owners will receive the full benefits and protection of the statutes, but are only acknowledging that this is the intent of the Owners in donating this to the Town.

Joe Damiata was also concerned about the use of the words "fully reimburse" in the first sentence of the liability section. Again, this is not an issue which particularly concerns me, because this sentence only requires us to fully reimburse the Owners to the limits of our liability insurance. Arguably, this sentence could impose some liability on the Town that we might like, but what is set forth in this sentence does seem fair under the circumstances of the easement. However, if you are going to leave the first sentence of the liability section as it is, you may need to have Joe Damiata or your insurance company agree that this is acceptable, so you can discuss this with Joe further. The issue which is of most concern to me is that the Town agrees to pay the attorney's fees incurred by the Owner in defense of any claim -- this may or may not be covered by your insurance policy, but again it does seem fair for the Town to agree to this.

Please let me know if you want me to review anything further or want any clarification of what is set forth in this memorandum.