

April 27, 2016

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95 St. Paul Street
Burlington, VT 05401

Re: Vermont Gas Easement Condemnation

Dear Bud:

You have asked if the Town of Hinesburg (“Town”) must comply with the provisions of 24 V.S.A. Sections 1061 and 4506 in connection with acquisition of a pipeline right-of-way by Vermont Gas through Town-owned parkland, Geprags Community Park. Vermont Gas has commenced condemnation proceedings before the Vermont Public Service Board (“PSB”) to acquire the right-of-way it desires.

It is our opinion that the above-mentioned statutory provisions are inapplicable to the proposed acquisition. Both statutory provisions contemplate situations in which a town is involved in a voluntary transaction with the town, acting through its selectboard, being able to negotiate whether to make the conveyance and, if so, on what terms. In such cases, the voters have final decision-making authority and may exercise that authority by disapproving any conveyance proposed by the selectboard. For this reason, a principal consideration for the selectboard in negotiating any voluntary conveyance is whether it will be supported by the voters.

In the present situation, the issue of whether the conveyance will occur and, if so, on what terms, is before a quasi-judicial body, the PSB, with possible review by the Vermont Supreme Court. In this setting, if the PSB is required to enter a ruling following a contested hearing, it will base its decision on applicable legal standards which do not directly involve consideration of voter sentiment. Most importantly, even if Town voters were to disapprove a conveyance ordered by the PSB, such vote would not supersede or invalidate the PSB decision.

The selectboard, acting under its general authority to supervise the affairs of the Town (See 24 V.S.A. Section 872), is authorized to negotiate conveyance terms and conditions with Vermont Gas in an effort to present a proposed agreement to the PSB and avoid a contested hearing. Issues appropriately considered by the selectboard in these negotiations include the cost of participating in a contested hearing and the likely outcome. The selectboard may certainly consider public sentiment concerning any proposed settlement. However, it ultimately bears responsibility for charting the path that it concludes is in the best interests of the Town. If the selectboard and Vermont Gas enter into an agreement which is then approved by the PSB, the approved

agreement will have the same legal effect as an order issued following a contested hearing.

There is additional basis for concluding that the Geprags property is not subject to 24 V.S.A. Section 4506. This section provides:

Land, rights, or other property acquired by a municipality under this chapter shall not be sold or diverted to uses other than conservation or recreation except after approval by an affirmative vote of the voters of the town at the annual meeting.

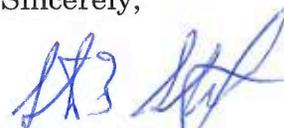
It is my understanding that the Geprags property was "bequeathed" to the Town of Hinesburg in 1991 subject to the condition that it be used solely for "educational and recreational" purposes. I further understand that the "Town" accepted this bequest but I do not have specific information indicating how or what authority was relied on by the Town to accomplish the acceptance.

Under 24 V.S.A. Section 4505 (6) a municipality may "receive gifts of land or other property for the purposes of this chapter [Chapter 118], by consent of the legislative body or by the affirmative vote of the municipality". None of the sections in Chapter 118 contain a specific "purpose" statement. However, sections in the chapter mention natural resources, conservation, environmental evaluations and similar matters. Section 4506 quoted above specifically refers to conservation and recreation uses. Reading the terms conservation and recreation together, along with other terms in chapter 118, the term "recreation" is reasonably understood to encompass outdoor recreation activities not involving construction of significant improvements.

A bequest of land for "educational and recreational" purposes is commonly understood to allow use of property to construct a school building and related improvements such as outdoor playgrounds or sports fields. Importantly, these terms do not in their ordinary meaning contemplate protection/preservation of the natural resource characteristics of a parcel of land or maintenance of the property in an unimproved natural state. Where such is intended, covenants typically restrict or prohibit the construction of buildings and other structures. For this reason, it cannot be said that the Town accepted the bequest of the Geprags property for the purposes of Chapter 118. Absent additional clarification about the intent of the Geprags bequest and its acceptance by the Town, it is our opinion that the property is not subject to Section 4506.

Please let me know if you need further clarification concerning this opinion.

Sincerely,



Steven F. Stitzel