

April 12, 2022

Lee S. Smith
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Hon. Jennifer S. Roberts and
Members of the Select Board
Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776

Re: Extension of the Camp Sewataro Contract for Day Camp Operator and Management of Real Property

Dear Members of the Select Board:

You have asked for a legal opinion regarding the ability of the Select Board to extend the Liberty Ledge/Sewataro management agreement without a Town Meeting vote to authorize the Select Board to do so and for an opinion regarding whether the management agreement is, in fact, a lease.

In my opinion, the Contract for Day Camp Operator and Management of Real Property dated as of September 10, 2019, amended as of February 18, 2020 and amended further as of June 9, 2020 (the “Contract”), by and between the Town, acting by and through the Select Board (the “Town”), and Camp Sewataro, LLC (the “Manager”), is exactly that- a contract for an operator of a day camp and for the management of the property.

In Massachusetts, a commercial lease confers upon the tenant “the right of possession of the land, and the exclusive occupation of it for all purposes not prohibited by its terms.” See Jones v. Donnelly, 221 Mass. 213 (1915) citing Lowell v. Strahan, 145 Mass 1 (1887). Where the “dominion, control and possession of the estate [the land] were not given up by the land owner”, the rights of the parties are “derived entirely from the written contract, and are governed thereby.” See Jones.

Where no possessory interest, i.e., the right to occupy or exercise control of the land to the exclusion of others, has been granted, a lease has not been created.

As you know, the Town acquired the Sewataro property in 2019 pursuant to authority under a vote on Article 25 of the May 6, 2019 Town Meeting. In connection therewith, on July 10, 2019, the Town issued a Request for Proposals for “Management of Camp Sewataro” (the “RFP”). The RFP stated that the Town was “seeking proposals for a Contractor to manage day camp programming to be offered at Camp Sewataro....” The RFP further provided that the Contractor “will be responsible for all aspects of camp operations and buildings and grounds” and that the Contractor “must be willing to provide in its proposal public access to the facility during non-camp hours and during camp hours as described in the proposal.” The stated term of the contract in the RFP was “for three

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years beginning in August 2019 [subject to change]” and that the “Town shall have the option at its sole discretion to extend the agreement for two (2) additional five-year terms.”

A response to the RFP was submitted by Scott Brody on behalf of K&E Camp Corporation and after the selection process was complete, Scott Brody was awarded the contract (ultimately entered into by Camp Sewataro, LLC which is owned and controlled by Mr. Brody).

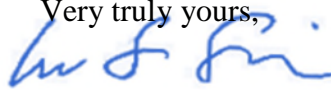
Turning to the Contract itself, Section 1.2 (Control of Property) states, “The Property shall remain under the custody and control of the Town, acting by and through the Board of Selectmen [sic] pursuant to the terms of this Agreement. The Town hereby grants the Manager the right to enter and use the property for purposes relating to the operation of a day camp, the occupation of the Residences for residential purposes, the management and care of the Property, and for all other purposes permitted under this Agreement and to arrange for and permit the use of the Property by third parties all as is more particularly set forth hereinbelow.”

In my opinion, Section 1.2 of the Contract makes clear that the property remains under the custody and control of the Town, no possessory interest has been granted to the Manager, and that only rights to enter and use the property according to the terms of the Contract have been granted to the Manager. Further, the rights retained by the Town, including without limitation, the requirement under the Contract that the property be made available for the use of the Town and its residents, both during and outside of the camp season, mean that there is no exclusive right of possession held by the Manager and no sufficient legal interest in the land has been granted to the Manager to create a lease.

The affirmative vote on Article 25 of the 2019 Annual Town Meeting authorized the Select Board to “execute all documents and instruments, including without limitation, responses to requests for proposals, land development, land disposition or other agreements, deeds, easements upon such terms and conditions as the Board of Selectmen [sic] deems appropriate, and to take all other action necessary to effectuate the vote taken hereunder”.

In my further opinion, the vote on Article 25, the issuance and content of the RFP, and the Contract all provide authority for the Select Board to extend the term of the Contract for an additional five years (and a subsequent five-year extension), and further amend the Contract subject to the mutual agreement of the Select Board and the Manager.

Very truly yours,



Lee S. Smith