MSK | MURPHY SULLIVAN KRONK

Via U.S. Mail

May 17, 2016

Carmen Cote, COM
Vermont Superior Court
Chittenden Civil Unit
175 Main Street
PO Box 187
Burlington, VT 05402-0187

Re: Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman v. Town of Underhill, Docket No. 333-4-15 Cncv

Dear Carmen:

Please find enclosed Answer of Defendant Town of Underhill to Plaintiff's Amended Complaint for Declaratory Judgment for filing with the Court, along with a Certificate of Service, in the above-captioned matter.

Thank you.

Sincerely,

Hans G. Huessy, Esq.

Enclosures

cc: Town of Underhill (*via email*)
Elizabeth M. Demas, Esq.

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STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 333-4-15 Cncv

Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman,

Plaintiff,

v.

Town of Underhill, David Arnold, Stanley and Sue Senger, and Carl and Carol Menard,

Defendants.

CERTIFICATE OF SERVICE

I certify that I have today delivered **Defendant Town of Underhill's Response to Plaintiff's Amended Complaint for Declaratory Judgment** to all other parties to this case as follows:

- ☒ By first class mail by depositing it in the U.S. mail;
- ☐ By personal delivery to _____ or his/her counsel;
- ☐ Other. Explain: _____

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

Elizabeth M. Demas, Esq.
Clark Demas & Baker
346 Shelburne Road, Suite 203
PO Box 4484
Burlington, VT 05406-4484.

Dated at Burlington, Vermont this 17th day of May, 2016.

Signature: _____

Print Name: _____Hans G. Huessy, Esq._____

Counsel for: _____Defendant Town of Underhill_____

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STATE OF VERMONT

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Plaintiff,

v.

Town of Underhill, David Arnold, Stanley and Sue Senger, and Carl and Carol Menard,

Defendants.

ANSWER OF DEFENDANT TOWN OF UNDERHILL TO PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

NOW COME Hans G. Huessy, Esq. and Liam Murphy, Esq., of Murphy Sullivan Kronk, Attorneys for the Town of Underhill, and respond to the Plaintiff's Amended Complaint as follows:

FACTS COMMON TO ALL COUNTS

1. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.
2. Admitted.
3. Admitted that Repa Road used to extend to the Westford-Underhill border as a Class 4 road, and otherwise denied. Defendant also disputes the accuracy of Exhibit 2, to the extent the outlined area is alleged to identify the Repa Trail.
4. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.
5. Admitted that the Town attempted to classify a portion of Repa Road as a trail, otherwise denied.
6. This paragraph states a legal conclusion and, therefore, no response is required.
7. Admitted that the two selectboards met to discuss the roads, otherwise denied.

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8. Admitted that a representative appeared at the hearing on behalf of the Eastmans. Defendant is without sufficient information to admit or deny the balance of the allegations and, therefore, denies the same.
9. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.
10. Admitted that a portion of Repa Road was classified as a trail in 2000 and that it is three rods wide, otherwise denied.
11. Admitted that the parties entered into a settlement agreement.
12. The document speaks for itself and, therefore, no response is required.
13. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.
14. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.
15. The documents speak for themselves and, therefore, no response is required.
16. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.
17. The documents speak for themselves and, therefore, no response is required.
18. Admitted that Plaintiff attended two selectboard meetings and corresponded with the Town; the balance of the allegations are too vague to allow for a response.
19. Admitted that no license has been issued to the Plaintiff. The balance of the allegations are in the form of argument and no response is required. To the extent a response is required, the balance of the allegations are denied.
20. Defendant is without sufficient information to admit or deny the allegation and, therefore, denies the same.

COUNT I

21. Admitted that Plaintiff enjoys a limited right-of-way over the Repa Trail. The statute speaks for itself. The balance of the allegations are denied.

COUNT II

22. The first paragraph of averment No. 22 states legal conclusions to which no response is required. Defendant denies that Plaintiff's request is limited to a single residence. The averment includes alleged settlement proposals that are inadmissible and to which Defendant need not respond. Defendant denies that Plaintiff has a need to use the Repa Trail for residential purposes. Furthermore, whether said need is "necessary" is a legal conclusion to which no response is required.

COUNT III

Count III is not properly pled. It is not broken out into numbered factual allegations and mixes factual allegations, legal argument, and requests for relief, making a response impossible. Therefore, to the extent a response is required, Defendant denies all of the allegations under Count III.

AFFIRMATIVE DEFENSES

1. Laches
2. Failure to state a claim upon which relief can be granted.
3. Collateral Estoppel.

WHEREFORE, Defendant requests that this Honorable Court dismiss Plaintiff's Amended Complaint, order Plaintiff to pay all of Defendant's costs and legal fees, and grant any other appropriate relief.

DATED at Burlington, Vermont this 17th day of May, 2016.

MURPHY SULLIVAN KRONK

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