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Via U.S. Mail

January 12, 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 Cnev**

Dear Carmen:

Please find enclosed Defendant's Reply Memorandum in Support of Defendant's Motion to Require Joinder, 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
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,)
)
 Defendant)

CERTIFICATE OF SERVICE

I certify that I have today delivered **Defendant's Reply Memorandum in Support of Defendant's Motion to Require Joinder** 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 12th day of January, 2016.

Signature: _____

Print Name: _____ Hans G. Huessy, Esq. _____

Counsel for: _____ Defendant _____

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Brianne E. Chase, Trustee of the Revocable Living)
Trust of Barbara S. Eastman,)
)
Plaintiff)
)
v.)
)
Town of Underhill,)
)
Defendant)

**DEFENDANT’S REPLY MEMORANDUM IN SUPPORT OF DEFENDANT’S
MOTION TO REQUIRE JOINDER**

NOW COMES Defendant, the Town of Underhill, Vermont (the “Town”), by and through its attorneys, Murphy Sullivan Kronk, and respectfully submits the following Reply Memorandum in Support of its pending Motion to Require Joinder.

1. Plaintiff objects to Defendant’s Motion for Joinder on the grounds that 1) Defendant has the requisite statutory authority to regulate the use of trails, such as the Repa Trail (the “Trail”), and 2) the Underhill Trail Ordinance (the “Ordinance”) allows a resident to apply for a permit to use a motor vehicle on a trail or to improve a trail.¹
2. As to the Town’s authority to regulate the use of the Trail as a trail, this is not contested by the Town. The Town can regulate the use of the Trail consistent with Title 19 and its regulations. If Plaintiff merely wanted to use the Trail, this would be relevant.

¹ Plaintiff references the settlement in the prior action regarding the Trail, but does not advance any argument that this decision supports a finding of *res judicata* or issue preclusion, merely as evidence of the Town’s authority.

3. However, Plaintiff does not merely seek permission to use the Trail. Plaintiff seeks permission to convert the Trail into a private road. Plaintiff proposes to substantially improve the Trail so it can be used as a road to routinely access one or more residential properties on a year-round basis. This is a level of use inconsistent with the Trail's designation as a trail.
4. While Plaintiff now alleges this is primarily a question of the Town's statutory authority, that assertion is wholly inconsistent with its own prior filings in this matter. The first header in its argument in support of Plaintiff's Motion for Summary Judgment is that "Plaintiff has a common law right to use Repa Trail for access" and the second header alleges its proposed use is "reasonable and convenient," *i.e.* consistent with the common law standard pertaining to such access. Finally, Plaintiff expressly asserted in its final header that the Town "has no authority to prohibit Plaintiff's use of its land," *i.e.* use the Trail for access to its land. Having categorically contended that this is a matter of common law outside the scope of the Town's authority in its prior pleading, it is confusing at a minimum that Plaintiff now asserts that this is a matter of statutory law and well within the Town's authority.
5. As previously noted, Plaintiff has conceded that the scope of Plaintiff's Right of Way over the Trail must be determined based on common law, *i.e.* what constitutes "reasonable and convenient access," and not by reference to the Town regulations. *Thompson v. Ryan*, No. 2006-286, 2007 WL 5313344, at *2-3 (Vt. May 2007) (unpublished mem.), available at <https://www.vermontjudiciary.org/UPEO2006->

2010/eo06-286.pdf (citing *Okemo Mountain, Inc. v. Town of Ludlow*, 171 Vt. 201, 209 (2000)).

6. That determination is not a matter of Town regulation and will clearly have an impact on landowners whose properties adjoin the Trail.
7. Adjoining landowners would clearly have standing to file an action contending that Plaintiff's proposed use of the Trail is not reasonable or convenient.
8. The fact that adjoining landowners are not required participants when a party applies for permission to drive on a Trail has no bearing on the instant matter. Such a party would be applying for discretionary permission to use the Trail as a trail, not to convert it into a private road based upon an alleged common law right of access. These are two entirely different matters.
9. Whether the use proposed by the Plaintiff is reasonable and convenient is a determination outside of the scope of the Town's authority and can only be made by this Court.
10. Plaintiff is asking that the Town confirm the scope of its common law Right-of-Way. Plaintiff is essentially asking that the Town give Plaintiff an advisory opinion as to what a Court might subsequently determine constitutes reasonable and convenient access, something the Town has no obligation to provide.
11. The fact that per the Ordinance the Town has the authority to allow parties to drive motor vehicles over the Trail is not the same as allowing the Trail's conversion back into a road.
12. As an initial matter, the Ordinance cited by Plaintiff applies only to the Crane Brook Trail and does not apply to Repa Trail.

13. As a second matter, Plaintiff has never asked for permission to use the Trail as a trail consistent with the Ordinance, but rather to convert the trail into a private road while asserting the Town lacks the legal authority to stop it from doing so.

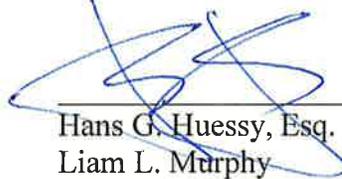
14. However, even assuming for the sake of argument that the Crane Brook policy would be applied in the same fashion to Repa Trail, the clear intent of the Town Trail Regulation is to limit the use of motor vehicles to the greatest extent possible, not to allow parties to convert trails back into roads.

15. The authority to grant permission for the improvement of a trail is not the same as the authority to grant permission for a party to convert a trail back into a road.

Accordingly, the Court should grant the pending Motion to Require Joinder and or Dismiss.

Dated at Burlington, Vermont this 12th day of January, 2016.

MURPHY SULLIVAN KRONK



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