

# MSK

MURPHY  
SULLIVAN  
KRONK

**COPY**

*Via U.S. Mail*

April 17, 2015

Elizabeth M. Demas, Esq.  
Clarke Demas & Baker  
346 Shelburne Road, Suite 203  
P.O. Box 4484  
Burlington, VT 05406-4484

**Re: Repa Trail**

Dear Beth:

Enclosed please find an executed Acceptance of Service in regard to the Complaint filed against the Town of Underhill.

In your prior correspondence dated September 16, 2014, you asked the Town to confirm that your client enjoyed the same rights to use the Repa Trail (the "Trail") as those enjoyed by the parties to the 2002 Stipulation (the "Stipulation"). The Town believes your client enjoys somewhat similar rights to use the Trail that was afforded the parties to the Stipulation, but that your client's rights arise under common law, and are not based upon the provisions of the Stipulation.

In addition, you should be aware that the Town does not agree with the construction of the Stipulation posited by attorneys Foley and Putnam which would extend the use of Repa Trail to a generalized access, including access for residential purposes. The Town believes that when read as a whole, with effect given to all of its provisions, the Stipulation provides A. Johnson Co. and the Bornsteins the right to use the Trail for forestry management and silvicultural purposes only. Their construction of the Stipulation would render several provisions that specifically limit their clients' use of the Trail completely superfluous, most notably portions of section 3 and all of section 9.

Moreover, in your letter of September 25, 2014, you broadened your request to include use of the Trail for all "necessary" access, including using the Trail to bring utility service onto your client's property. We are aware of no case which requires any common law private right over a discontinued roadway to extend to the right to install utilities. In fact, as of this time, we are aware of no Vermont case that extends a general access easement to include the right to install utilities.

In regard to the private rights of the Trust over the discontinued road, now the Repa Trail, as discussed in the Thompson v. Ryan 2007 Vermont Supreme Court case, the common law affords your clients only reasonable access consistent with "historical use." That decision affirmed prior precedent limiting the right of access enjoyed by an abutter to a discontinued road to that access that is reasonable in light of the use being made of the property by the owner of the land at the time the road was discontinued. It is the Town's understanding that all residential use had been discontinued well prior to your client's purchase of the property and decades prior to the discontinuance of the road. Of course, to the extent you have evidence to the contrary, please let us know.

The Town would be willing to execute an agreement permitting the use of the Repa Trail by the Trust for forestry management and silvicultural purposes subject to reasonable conditions to protect the Trail and the other Town roads, including conditions relating to timing, duration and frequency of use, required improvements to the Repa Trail, weight limits and speed limits consistent with Town policies and to avoid damage to Town roads associated with the use of heavy vehicles.

It is the hope of the Town that we might enter into such an agreement and avoid litigation.

We look forward to hearing from you.

Sincerely,



Liam L. Murphy, Esq.

[lmurphy@mskvt.com](mailto:lmurphy@mskvt.com)

Hans G. Huessy, Esq.

[hhuessy@mskvt.com](mailto:hhuessy@mskvt.com)

Enclosures

cc: Town of Underhill  
James D. Foley, Esq.  
Benjamin W. Putnam, Esq.

141624.doc

**MSK** | MURPHY  
SULLIVAN  
KRONK

275 COLLEGE STREET, PO BOX 4485 | BURLINGTON, VT 05406-4485 | PHONE 802 861-7000 | FAX 861-7007 | [MSKVT.COM](http://MSKVT.COM)