

From Waterville Estates Village District Commission Chairman John Herlihy –

Greetings to the Waterville Estates community. I am the Chairman of the Waterville Estates Village District Board of Commissioners and I am sending out this letter to describe the relationship and authority between the two entities that govern our community. Some of you may be new to Waterville Estates and I hope this will help improve understanding of how our community functions.

The pandemic and the closure of WEVD facilities (Community Center and Ski Area & Lodge) ordered by Governor Sununu has impacted the ordinary workings of the District (WEVD) and the Waterville Estates Association (WEA). The District has consulted counsel to ensure the actions of the municipality comply with New Hampshire laws and protect you from Covid-19 exposure.

We have obtained from the attorney a description of both the specific authority provided to the District (WEVD) under New Hampshire law and the role WEA has, as a private organization, in relation to the District. I would like to share with you some thoughts on the matter.

WEA is a homeowner's association that was incorporated in 1972 for the purpose of renting, leasing, owning, operating, and managing certain recreational common property. The Association is funded by dues, fees, and concession revenues. As a **private corporation**, WEA is not a municipal organization and is not subject to the New Hampshire laws regulating municipalities.

WEVD is a village district created in 1977. As a municipal entity, Waterville Estates Village District was created for specific, limited purposes. In the beginning, the purpose was for the layout, acceptance, construction, and maintenance of **roads**. In 1981, the District purposes were expanded to include: (1) the supply of **water**, (2) the construction, maintenance and care of **parks and commons**, and (3) maintenance of **activities for recreational promotion**. In 1982, one last purpose was added – the impoundment of water. WEVD is funded primarily by property tax revenues. The District is a **municipality referred to as a political subdivision of the State of New Hampshire**. **WEVD is subject to NH municipal laws**.

When the District was created, WEA held common property for use by all WEA members in good standing. This common property consisted of recreational facilities including the Community Center, swimming pool, tennis courts, and more. In 1988, a deed was executed transferring the community building and surrounding recreational facilities from WEA to WEVD. The deed contained a restriction which I have included here:

The above premises has previously been dedicated as Common Property pursuant to the Waterville Estates Property Restrictions, Easements and Covenants, . . . as the same have been or may in the future be amended. The premises are conveyed subject to such Property Restrictions, Easements and Covenants and the right of Owners of Waterville Estates to utilize said property for such purposes and under such conditions and restrictions as may be imposed in accordance with said Property Restrictions, Easements and Covenants.

In the event the above premises is not utilized as Common Property as intended and described in the Waterville Estates Property Restrictions, Easements and Covenants . . . this deed shall be considered null and void and all right, title and interest in and to the above described premises shall revert to Waterville Estates Association.

According to the deed, if the property is not utilized as Common Property, the property reverts or returns to WEA. In 2010, two more deeds were executed which transferred the ski area, lodge, and public works garage to the District with similar language. "This conveyance is subject to the condition that should the within-described property not be utilized for public purpose then it shall revert to the Grantor."

This deed language (the possibility the Community Center and Ski Area may revert to WEA) has caused questions regarding WEA's authority as it relates to the District's municipal operations.

The District is a municipality, a political subdivision of the State of New Hampshire and subject to different statutes and requirements than a private corporation.

Under RSA chapter 52, the District is authorized to hold real estate, manage and control its property, and raise and appropriate funds for a specific purpose. The deeds which conveyed the property to WEVD provide the District with the authority to manage the property for its intended purpose – the maintenance and care of parks, commons, and recreational activities. The fact that the property may revert to WEA if the District fails to utilize the property for a public purpose has no bearing on the District's independent authority to control, maintain, and operate its property.

The District must follow restrictions and statutes governing municipalities. For example, the District cannot raise and appropriate money for items other than the specific purpose for which the District was created. The District cannot raise funds without following the rigid budgeting and annual meeting process. The District is limited in what money it can accept from private individuals and/or groups and what type of funds it can maintain. Any unanticipated funds received by WEVD throughout the year and municipal funds, such as the recreational revolving fund created in 2006, are guided by specific statutory limitations and restrictions. The District is subject to statutory penalties and actions if proper municipal processes are not followed.

Both the District and WEA have entered into a Maintenance and Recreation Management Agreement (RMA). The purpose of the RMA is to formalize the operation and financing of the recreational facilities owned by the District. The current version of the RMA is from June of 2020. Our District and Association have been parties to earlier versions of the RMA for decades. Earlier versions of the RMA utilized same or similar language as the June 2020 RMA.

Under the RMA, WEVD is responsible for operating recreational programs, maintenance of facilities, construction of recreational capital improvements, and providing for a "safe and inviting environment of all common areas." Regarding safety, the District has "universal and unilateral authority to take actions to manage its responsibilities relative to safety and professionalism." The District is also responsible for providing personnel, equipment, and accounting/billing services.

Each November **WEA is responsible** for identifying a specific "irrevocable commitment" of money WEA "shall make available" to the District for recreational activities. At the time it identifies its "irrevocable

commitment,” WEA is further required to provide a formal program proposal of recreational activities with associated costs. WEA is also responsible for providing a proposal for recreational capital improvements. A failure by WEA to submit the proposal for Recreational Activities will be considered by WEVD as there being no change from the prior year’s recommendations.

Once WEA notifies the District of its “irrevocable commitment” and program proposal, the District must accept or deny the proposal. WEVD can provide additional funds to deliver services required by proposed Recreational Activities. If the District accepts WEA’s proposal, both WEA and the District must meet to discuss and reconcile budget and program issues.

Once the budget and programs are finalized, WEA is required to pay a Management Fee quarterly after services are rendered (for personnel & equipment to provide services related to recreational activities AND accounting, billing, and clerical). WEVD employs the ‘individuals’ (Corey & Judy) who manage the delivery of ‘services’ (skiing, bars, pools, pond, tennis courts, dining, cleaning the facilities, etc.). WEA is also required to pay an “irrevocable commitment” in quarterly installments or when those services are rendered.

WEA’s duties include the establishment of policies for the maintenance of recreational facilities “so long as said policy does not interfere with the governmental operation of WEVD.” WEA is responsible for confirming the common property is enjoyed by eligible property owners and non-property owners approved by WEA. Finally, WEA “exercises final approval of all recreational activities which are to be funded by the Association.”

In summary, although WEA and the District operate as independent organizations, their functions overlap in certain key areas. Notably, as it relates to the RMA, both WEA and the District are obligated to fulfill certain duties and should work to meet their obligations under the RMA. Most importantly, unlike WEA, the District is subject to specific statutory municipal requirements that it must adhere to. The District risks liability and exposure if it ignores its municipal obligations as required by law.