

Attachment 3
Property Ownership Research



Ronald E. Gauthier, L.S.
Manager Survey Department

34 Blair Park Rd, Suite 10
PO Box 1257
Williston, Vermont 05495
Phone (802) 764-2709
Fax (802) 878-2907
rgauthier@dubois-king.com
ENGINEERING · PLANNING · SURVEY
PROGRAM MANAGEMENT

MEMORANDUM
(121024L1)

TO: Matt Murawski, P.E.
CC:
RE: Combo Pond, Rutland, VT
DATE: APRIL 13, 2011

After researching the deeds for Parcels #1 through #21 (on the attached Sketch of Combination Pond Property Owners dated February 17, 2011) I have come to the conclusion that Parcels # 1, 2, 9, 10 and 21 still belong to Charter Hills, Inc. (Edward, Mark & Gary Godnick) owners (attachment # 1) of the lands which the pond sits on, and of other vacant lands in Charter Hills Development. The lots sold out of the Charter Hills Subdivision, and the former Otter Valley Realty Corp lands, all have Rights to Combination (Healy) Pond as listed and described in Book 103, Page 437-8 (attachment # 2) of the City of Rutland Land Records. A survey of Charter Hills by Young and Hemmingway Engineers in Slide 161 (attachment # 4 - 4 pages) of the City of Rutland records was also referenced in the deeds. I also found an older Map of Otter Valley Realty Lands (Slide 228) showing additional lots and roads which lie on the unsold lands. The lots which were built on the easterly side of Ridgewood drive are shown on this plat.

The Parcels # 3-8 & 16-21 as shown on the above referenced sketch have the same rights as all the Charter Hills owners to Healy Pond as well as the remaining lots in the subdivision based on our limited research.

Parcels #11-#15 do not have any rights to use the pond as they lie in the Stratton Estates Subdivision which abuts the Charter Hills Property. At one point it appears the Stratton Estates did own some of the Charter Hills lands which has not affected the original conditions of the Rights as shown in Book 103, Page 437-8.

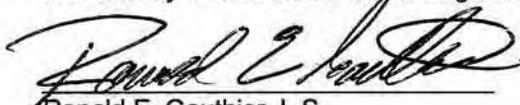
This information is based on limited research of the land records for the Charter Hills Sub-division.

I have also included the deed Book 411 Pages 349-351 (attachment # 3) for parcel # 5 presently owned by Dale & Cindy Bushey which references rights to Healy Pond in Schedule "A". Parcels along Stratton Road and Victory Lane have rights to the pond these parcels are shown on the colored map. (Attachment #5.)

In my professional opinion, it would be advised that any work in the reserve area, or on the dam would need approval from the Owners (Charter Hills, Inc.) of the reserve area and possibly all parties who have rights, to use the reserve area which appears as Parcel #9 on the sketch attached.

See the attached colored photo for the three areas discussed.

An Attorney should be consulted to give a legal opinion on this matter.


Ronald E. Gauthier, L.S.
DuBois & King, Inc.

ATTACHMENTS

- 1 Charter Hills Inc Ownership Documentation. VT Secretary of State Database.
- 2a Parcel map indicating rights to Combination Pond
- 2b Expanded parcel map indicating rights to Combination Pond
- 3 "Establishment of Healy Pond and Rights Therein" in the Charter Hills Subdivision Records. City of Rutland Land Records Book 103 pages 437-438.
- 4 Sample Deed referencing rights to Combination (aka "Healy") Pond. City of Rutland Land Records Book 411 pages 349-351.
- 5 Charter Hills Subdivision Survey. Young and Hemmingway Engineers, City of Rutland land Records Slide 161.



VERMONT SECRETARY OF STATE

Jim Condos

- ARCHIVES
- CORPORATIONS
- ELECTIONS
- OTHER PROGRAMS
- PROFESSIONAL REGULATIONS
- SECRETARY'S DESK

Corporation Information

Corporation Name	CHARTER HILLS, INC.
Corporation Status	Inactive
File No	V-12162-0
Type	Vermont
Incorporation Date	12/30/1964
Corporation Description	R.ESTATE SALES
State of Incorporation	VT
Fiscal Month End	12
Registered Agent	JUDY G. BARONE, ESQ
Address	225 SOUTH MAIN STREET
City State Zip	RUTLAND VT 05701
President	EDWARD GODNICK
Vice Pres	MARK GODNICK
Secretary	JUDY BARONE
Treasurer	GARY GODNICK
Director1	EDWARD GODNICK
Principal Street Address	RR2 BOX 9100
City State Zip	RUTLAND VT 05701
Last Annual Report	12/31/1998
Terminated	04/30/1997
Reinstated	01/23/1999
With/Dissolve	12/31/1999

Above accurate as of: 03/09/2011

[Information Contact](#)

[Home](#) | [Site Search](#) | [Help](#)
[Vermont State Page](#) | [Disclaimer](#)

This Web Page is



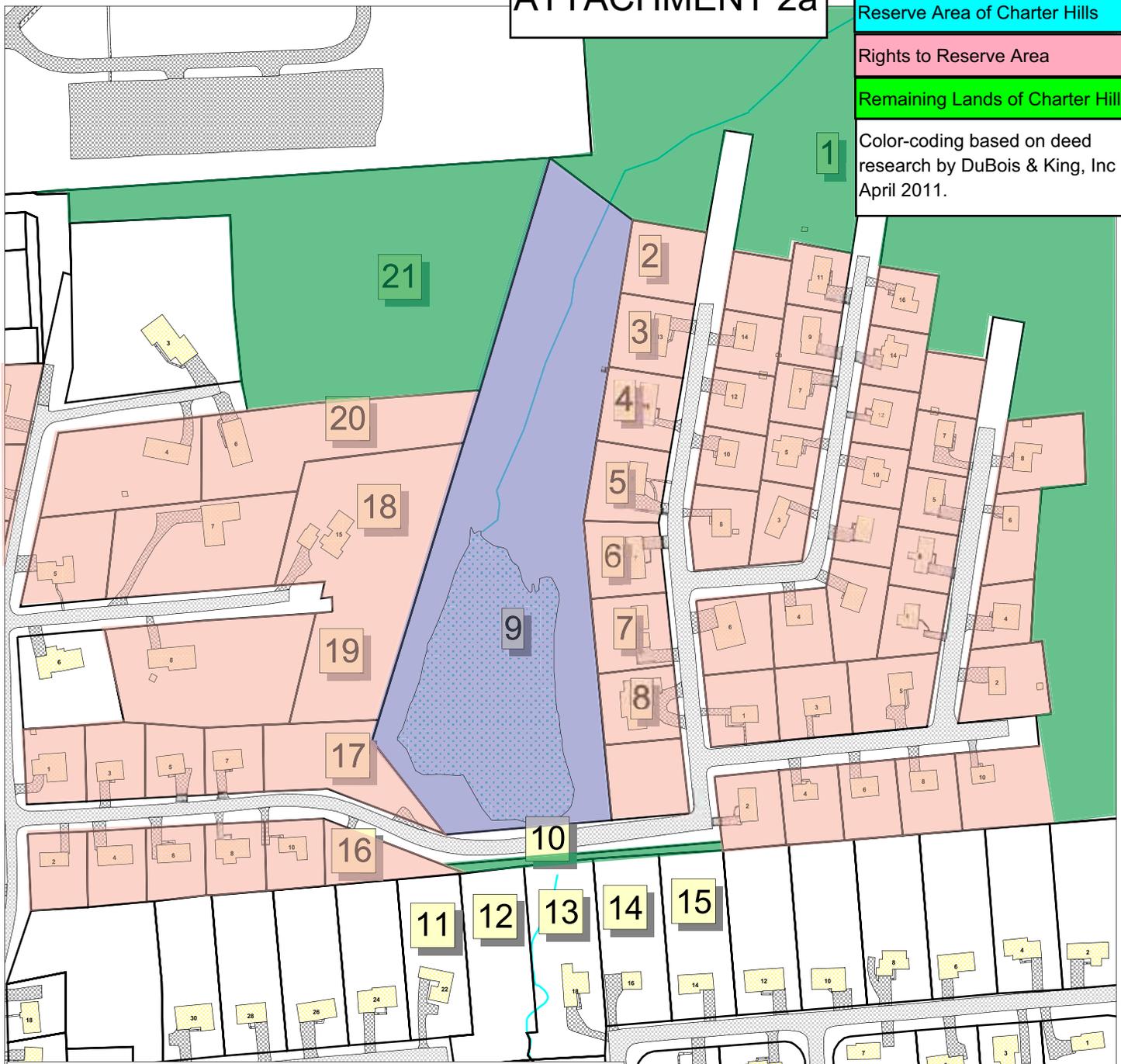
ATTACHMENT 2a

Reserve Area of Charter Hills

Rights to Reserve Area

Remaining Lands of Charter Hills

Color-coding based on deed research by DuBois & King, Inc April 2011.



Sketch of
Combination Pond
Area Property Owners
Rutland City

features based on
aerial photos dated
December 3, 2001

This sketch as supplied
by DPW shows selected items
visible on the aerial photos
and may not be complete
as to each feature class

All feature locations
are approximate

February 17, 2011

N

 Lot lines are approximate
and are not to be used
for construction location,
property rights conveyance,
or other purposes where
the locations of such lines
are important

	City Lot
	Building
	Street
	Parking
	Driveway
	Public Sidewalk
	Private Sidewalk
	Streams
	Surface Water



Legend

- Remaining Lands of Charter Hills
- Rights to Reserve Area
- Reserve Area of Charter Hills



Harrington Avenue marked by an iron pipe; thence North eight degrees (8°) East fifty (50) feet, to the place of beginning.

All corners and angles in said proposed street have been monumented with long iron pipes driven in the ground. The foregoing lands and premises are conveyed solely for highway purposes.

Said Killington Bank and Trust Company joins in this conveyance for the sole purpose of releasing the lands and premises hereinbefore described from the lien of a certain mortgage deed from Otter Valley Realty Corporation to Killington Bank and Trust Company dated July 20, 1956 and recorded in Rutland City Land Records in Book 103 at page 163. As to the balance of the lands and premises described in said mortgage deed the same are to remain unaffected hereby.

To Have and to Hold all our right and title in and to said quit-claimed premises, with the appurtenances thereof, to the said The City of Rutland, its successors and assigns forever.

And furthermore we the said Grantors do for ourselves and our successors, covenant with the said Grantee, its successors and assigns, that from and after the ensealing of these presents we the said Grantors will have and claim no right, in or to the said quit-claimed premises.

In Witness Whereof, we hereunto set our hands and seals this 29th day of October A.D. 1958.

In Presence of
R. Clarke Smith
J. M. Giorgetta

OTTER VALLEY REALTY CORP.
By: Dan J. Healy L S
President and Agent
(Otter Valley Realty Corp.)
(Rutland, Vermont)
(Corporate Seal)
THE KILLINGTON BANK & TRUST CO.
By: E. P. Shaw L S
Agent
(THE KILLINGTON BANK & TRUST CO.)
(1883 Rutland, Vermont)

Josephine C. Rosmus
Ida M. Danforth

State of Vermont,)
RUTLAND County) ss.

At the City of Rutland this 29th day of October A.D. 1958 Dan J. Healy, President and Agent for that purpose duly authorized of Otter Valley Realty Corp. personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, and the free act and deed of said Otter Valley Realty Corp.

Before me R. Clarke Smith Notary Public

STATE OF VERMONT)
RUTLAND COUNTY, ss)

At the City of Rutland, this 29th day of October, A.D. 1958 personally appeared E. P. Shaw, Agent for that purpose duly authorized of Killington Bank and Trust Company and acknowledged the foregoing instrument by him subscribed and sealed, to be his free act and deed and the free act and deed of said Killington Bank and Trust Company.

Before me,

Josephine C. Rosmus Notary Public

Received for record November 19, A.D. 1958, at 2 o'clock 20 minutes P.M.

Attest: *Edwin De Marshall*
City Clerk.

ESTABLISHMENT BY OTTER VALLEY REALTY CORP. OF HEALY POND AND DECLARATION OF RIGHTS THEREIN

WHEREAS Otter Valley Realty Corp., a Vermont Corporation with its principal place of business at the City of Rutland, in the County of Rutland and State of Vermont, is the owner of certain lands and premises located on the easterly side of Stratton Road, so-called, in the City of Rutland, and being all and the same lands and premises conveyed to it by deed of Charlotte Chaffee Fletcher dated July 20, 1956 and recorded in Rutland City Land Records in Book 103, at page 161 which it is in the process of sub-dividing into building lots and improving with streets, sewers and other facilities for the improvement of said lands and premises as an area wherein single family dwelling houses may be erected, and

WHEREAS there is located on said lands and premises a certain pond of water hereby designated as Healy Pond, within the area hereinafter described, and

WHEREAS it is contemplated that there will be conveyed to purchasers of building lots within said parcel so owned by said Otter Valley Realty Corp. as hereinbefore set forth certain rights, privileges and easements in and to said pond and the parcel of land whereon the same is located, as hereinafter set forth, subject to certain conditions, covenants and restrictions, and

WHEREAS it is deemed desirable in the interests of economy and brevity to set forth in a single instrument a description of the rights, privileges and easements to be granted and reserved and the lands and premises to which the same are servient

in order the same may be incorporated by reference rather than set forth in detail in each conveyance.

NOW THEREFORE, said Otter Valley Realty Corp. does by these presents define, publish and declare the following rights, privileges and easements in and to certain lands and premises lying and being in the City of Rutland, in the County of Rutland and State of Vermont, as follows:

1. Premises.

The lands to which the rights, privileges and easements hereinafter set forth are servient are bounded and described as follows, viz:

Beginning at a point in the northerly line of the right of way of Central Vermont Public Service Corporation located South 81° 15' East, 741 feet from the easterly line of Victor Place, so-called, and marked by an iron pin; thence North 26° 45' West a distance of 297 feet to an iron pin; thence North 29° 30' East a distance of 1,054 feet, more or less, to an iron in the northerly line of lands of Otter Valley Realty Corp.; thence South 43° 30' East in the northerly line of said lands of said Otter Valley Realty Corp. 200 feet, more or less, to an iron pin; thence South 22° West 552 feet, more or less, to an iron pin; thence South 7° 30' West a distance of 579 feet to an iron pin in the northerly line of said right of way; thence North 81° 15' West in the northerly line of said right of way a distance of 245 feet to the point of beginning.

2. Use.

The right, privilege and easement in common with others of bathing, swimming, wading, boating and fishing in and upon the waters of the pond located on the parcel of land hereinbefore described; of skating on the surface of said pond; and of passing on foot over and across and otherwise using for lawful recreational purposes, the lands hereinbefore described.

3. ACCESS.

The right in common with others to pass on foot and in vehicles over and across the farm road which leads easterly from Victor Place, so-called, past the southerly boundary of the parcel hereinbefore described. The easement set forth in this section shall terminate when a street or highway is layed out and accepted which shall give access to said parcel.

4. Limitations on use.

The rights, privileges and easements created pursuant to the terms hereof may not be severed from the lands to which they are appurtenant and any attempt to convey or reserve the same separate and apart from said lands shall be null and void; provided, however, that said rights, privileges and easements may be exercised and enjoyed by the members of the household, guests and invitees of the owner or owners of the same. Said rights, privileges and easements shall not be used or exercised for the private profit of any person, firm or corporation having a right to use or exercise the same.

5. Rights reserved and excluded.

The creation of the rights, privileges and easements hereinbefore set forth shall impose no obligation upon Otter Valley Realty Corp. or its successors in title to the parcel hereinbefore described to maintain, repair or replace the dam whereby the waters of the pond are impounded, to maintain the waters of said pond at any particular level, to fence said parcel or to maintain or improve said parcel for any purpose whatsoever.

IN WITNESS WHEREOF said Otter Valley Realty Corp. has hereunto caused its corporate name to be subscribed and its corporate seal affixed by Dan J. Healy, its President and Agent for that purpose duly authorized, the 17th day of November, 1958.

Signed, sealed and
delivered in the presence of:
R. Clarke Smith
James T. Haugh

OTTER VALLEY REALTY CORP.
By Dan J. Healy L.S.
President and Agent
(OTTER VALLEY REALTY CORP.)
(RUTLAND, VERMONT)
(CORPORATE SEAL)

STATE OF VERMONT
RUTLAND COUNTY, SS.

Be it remembered that at the City of Rutland, on the 19th day of November, 1958 personally appeared Dan J. Healy who subscribed and sealed the foregoing written instrument as President and Agent for that purpose duly authorized of Otter Valley Realty Corp. and acknowledged the same to be his free act and deed and the free act and deed of said Otter Valley Realty Corp.

Before me,
L S R. Clarke Smith Notary Public

Received for record November 19, A.D. 1958, at 4 o'clock 45 minutes P.M.

Attest: . . . *Edward A. Maxwell*
City Clerk.

411349

WARRANTY DEED

NOW ALL MEN BY THESE PRESENTS THAT: I, KENNETH HALL, of the City of Rutland, County of Rutland and State of Vermont, Grantor, in the consideration of One Dollar and other good consideration paid to my full satisfaction by DALE E. BUSHEY and CINDY L. BUSHEY, husband and wife,, of the City of Rutland, County of Rutland and State of Vermont, Grantee, do freely GIVE, GRANT, SELL, CONVEY and CONFIRM unto the said Grantees, DALE E. BUSHEY and CINDY L. BUSHEY, husband and wife, tenants by the entirety, their heirs and assigns forever, a certain piece of land in the City of Rutland, County of Rutland and State of Vermont described as follows, viz:

Being all the same lands and premises conveyed to Kenneth Hall by Warranty Deed of Thomas DeMartino and Francine DeMartino, husband and wife, dated September 28, 1998 and recorded in Book 378 at Page 748 in the City of Rutland Land Records and more particularly described in a Schedule A attached to this Deed and incorporated herein by reference.

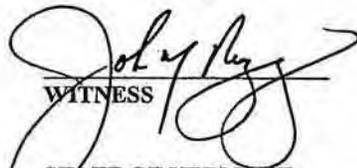
TO HAVE AND TO HOLD said granted premises with all privileges and appurtenances thereof to said Grantees, DALE E. BUSHEY and CINDY L. BUSHEY, husband and wife, their heirs and assigns, to their own use and behoof forever;

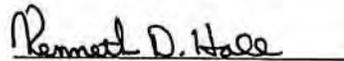
AND I said Grantor, KENNETH HALL do for myself and my heirs executors and administrators do covenant with said Grantees, DALE E. BUSHEY and CINDY L. BUSHEY, husband and wife, heirs and assigns, that until the ensembling of these presents, that I am the sole owner of the premises and have good right and title to convey the same in manner aforesaid, that they are Free from Every Encumbrance;

AND I, said Grantor, KENNETH HALL, engage to Warrant and Defend the same against all lawful claims whatever, except as aforesaid.

IN WITNESS WHEREOF, the said Grantor set his hand and seal this 16th day of April 2001.

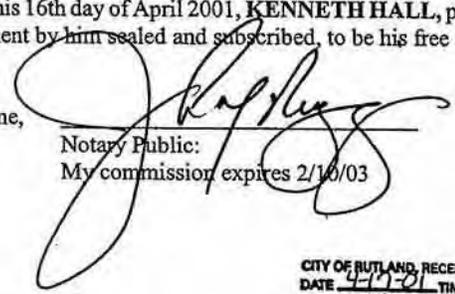
IN THE PRESENCE OF:

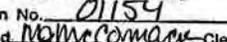

WITNESS
STATE OF VERMONT
COUNTY OF RUTLAND, SS.


KENNETH HALL

At the City of Rutland this 16th day of April 2001, KENNETH HALL, personally appeared and acknowledged this instrument by him sealed and subscribed, to be his free act and deed.

Before me,


Notary Public:
My commission expires 2/10/03

Vermont Property Transfer Tax
-ACKNOWLEDGEMENT-
Return Rec'd - Tax Paid
Return No. 01154
Signed  Clerk
Date April 17, 2001
9 Charter Hills

CITY OF RUTLAND, RECEIVED FOR RECORD
DATE 4-17-01 TIME 8:35
BOOK 411 PAGE 349-351
W. Macdonald - ASST. CITY CLERK
Pd CARSONO & CARSONO

~~378743~~

Property: 9 Charter Hill Drive
Rutland, Vermont

SCHEDULE A
Description

Being all and the same lands and premises conveyed to Thomas DeMartino and Francine DeMartino, husband and wife, by Warranty Deed of Ronald J. Barrett and Marianne C. Barrett dated September 29, 1983, and recorded in the City of Rutland Land Records in Book 232, page 813, and therein described as follows:

"Being all and the same lands and premises conveyed to Ronald J. Barrett and Marianne C. Barrett by Warranty Deed of Charter Hill, Inc. dated July 3, 1975 and recorded in the Land Records of the City of Rutland in Book 179, pages 506-9 and more particularly therein described as follows:

Beginning at an iron pipe in the westerly line of Charter Hills Drive, so-called, at the northeasterly corner of Lot #17, said iron pipe also marking an angle point in the westerly line of said Charter Hills Drive; thence from the iron pipe at the point of beginning N.23°-00'E. along the westerly line of said Drive one hundred nineteen and one tenth (119.1) feet to an iron pipe at the southeasterly corner of Lot #19; thence N.67°00'W. along the southerly line of said Lot #19 one hundred twenty-five (125) feet to an iron pipe at the southwesterly corner of Lot #19; thence S.23°-00'W. one hundred thirty-five (135) feet to an iron pipe at the northwesterly corner of Lot #17; thence S. 74°-15'E. one hundred twenty-six (126) feet along the northerly line of said Lot #17 to the point of beginning.

It is intended to convey hereby Lot #18, in the Charter Hills Development, so-called, and in support of the above description, reference is had to a survey or plan of such Development made by Young and Hemenway Engineers, dated March 1965, on file in the office of the City Clerk of said City of Rutland.

Said premises are the same as those conveyed to it said Charter Hills, Inc. by Stratton Estates, Inc. by Warranty Deed dated June 26, 1975 presently being recorded in the City of Rutland Land Records, to which deed and the record thereof when made, reference is hereby had.

Together with the rights, privileges and easements in and to Healy Pond so-called as set forth in an instrument designated as the Establishment by Otter Valley Realty Corp. of Healy Pond and Declaration of Rights Therein, dated November 17, 1958 and recorded in Book 107, page 437, of the Rutland City Land Records, but subject, nevertheless, to the restrictions, covenants and conditions set forth therein. Reference is hereby had to said instrument and the record thereof for a more particular description.

The premises above described are subject to the following expressed conditions and agreements, which shall be binding upon said Grantees, Ronald J. Barrett and Marianne C. Barrett, husband and wife, their executors, administrators, heirs and assigns; that the main part of any dwelling house or other building erected on the Lot hereby conveyed shall be at least twenty (20) feet from any boundary line of the Lot hereby conveyed; that not more than one dwelling house shall be erected or maintained on the Lot hereby conveyed; that no dwelling house shall be erected or maintained on said premises unless and until the plans and specifications shall be approved in writing by said Grantor, which approval shall not be unreasonably withheld; that any dwelling house erected upon said premises shall cost above the foundation not less than \$20,000 at the present purchasing price of the United States Dollar; that no trailer or structure detached from a dwelling house shall be erected or maintained on said premises; that any dwelling house shall be connected with the City of Rutland sewerage system as soon as is reasonably possible, which thereafter shall be the sole and exclusive method used for disposal of all sewage from said dwelling house; that the Lot hereby conveyed shall not be subdivided; that no livestock or poultry of any kind shall ever be kept upon the premises conveyed; that before and after the construction of any buildings, the grass shall be kept cut and the premises maintained in a presentable and clean appearance; that in the event the present zoning ordinances of the City of Rutland are repealed or

411351

~~378750~~

amended, the present provisions of said ordinances shall continue to apply to the premises herein conveyed, it being intended hereby to incorporate and make a part of the conditions and agreements herein, the zoning ordinances of the City of Rutland, Vermont as the same apply to the premises herein conveyed.

Nothing herein shall be deemed to require said Grantor its successors or assigns, to include the above conditions and agreements or any one or more of them, in any subsequent deed of other premises in this or any other area; nor to restrict or prevent said Grantor from inserting any other condition or agreement it may deem suitable in any such subsequent deed or deeds.

Reference is hereby made to various Agreements by and between the previous owners of the premises above described and the City of Rutland. The Grantees herein, Ronald J. Barrett and Marianne C. Barrett, husband and wife, covenant to assume and fulfill all obligations and duties of said previous owners to said City of Rutland insofar as the same are applicable to the portions of the street adjacent to the premises hereby conveyed.

Grantor reserves the right to install and maintain either above or below ground, electrical transmission lines and other facilities along and near the boundary lines of the premises above conveyed, and excepts the sewer right of way previously conveyed to the City of Rutland."

PERMIT
HARRINGTON
CLARK PERMIT



DEVELOPMENT
VERMONT

Side

P-2



**CITY OF RUTLAND
LEGAL DEPARTMENT**
CITY HALL
1 STRONGS AVENUE
RUTLAND, VERMONT 05701
(802) 770-5366

ANDREW G. COSTELLO
CITY ATTORNEY
andrewc@rutlandcity.com

May 3, 2011

Evan Pilachowski, P.E.
City Engineer
City of Rutland, VT

Re: Combination Pond

Evan,

We recently talked about the possibility of changes to Combination Pond in light of the work being done for the city by DuBois & King, Inc. Specifically, we discussed the alternatives that would be available to the owners of the Pond given the rights that were conveyed to property owners by the 1958 instrument entitled "Establishment by Otter Valley Realty, Corp. of Healy Pond and Declaration of Rights Therein".

Let me first say that this memo is not intended to be legal advice to the current owners of the Pond, Charter Hills, Inc. Charter Hills will ultimately have to make their own decision on the course of action they take with the Pond, considering regulatory requirements, the potential for legal action from surrounding property owners, and the rights granted by the 1958 document. This memo only conveys my opinions on the matter.

In 1958, Otter Valley Realty Corp. executed a document that granted certain rights to "purchasers of building lots within said parcel so owned by said Otter Valley Realty, Inc." These rights extend to property owners on Stratton Road, Victor Place, Healy Lane, Hill Pond Road, Sharon Drive, Charter Hills Drive, Brentwood Drive, Ridgewood Drive, and Irving Heights. Chiefly, the rights to use Combination Pond (then referred to as "Healy Pond") for fishing, bathing, ice skating, swimming, and boating were conveyed. These rights attach to the property and can not be transferred separate from the properties to which they were originally attached. However, the granting of these rights is not without limitation. The document states that neither Otter Valley Realty Corp., or its successors are under any obligation to maintain, repair or replace the dam that creates Combination Pond, or to maintain the waters of the Pond at any particular level, or to maintain or improve the Pond "for any purpose whatsoever".

I understand that Dubois & King is considering a number of alternatives to mitigate the downstream effects of the Pond. If any of these alternatives involve lowering the water level of the Pond (through, for example, channeling of the Moon Brook) I do not believe that such an action would run afoul of the 1958 easement. As stated above, the 1958 document expressly states that Otter Valley Realty Corp. or its successors are under no obligation to maintain the Pond at any particular water level. If there are any other alternatives that preserve the Pond itself and its availability for the uses listed above, then I believe that these alternatives would be acceptable as well. As long as the Pond remains on site and accessible in some semblance of its current form then it is difficult to envision a scenario where the owners could make a colorable claim of interference with easement. However, if the Pond is eliminated through

means other than the natural deterioration of the dam (which the successors to Otter Valley Realty Corp. have no duty to maintain), then I believe this may present a legal problem to the Pond's owners. The easement grants very specific rights of use to the Pond, and the successor to Otter Valley Realty is bound to continue offering these rights. If they were to destroy the Pond, even if for the laudable goal of mitigating downstream impacts, they could be liable for interference with the easement, and in turn be liable for damages to the easement's owners. However, I believe that the Pond's owners would have a stronger defense to a claim of interference with easement if they were *ordered* to take actions that eliminate the Pond by the regulatory agency with jurisdiction over this matter. If that was the case, the owners could defensibly say that they were only acting on the orders of the agency, and that any suit for interference with the easement should be brought against the agency itself.

In summary, I believe that Charter Hills, Inc., as successor to Otter Valley Realty, Corp. is liable to continue the recreational easement granted in 1958. The easement, however, does not prevent them from lowering the Pond level, or taking any other action that preserves the Pond short of its outright elimination. If the Pond is to be eliminated, I believe that Charter Hills, Inc. would be wise to wait for an order before taking such an action.

If you have any questions please feel free to contact me.

Sincerely,


Andrew Costello