

September 21, 2017

Via First Class Mail

Thomas J. Donovan Jr.
Vermont Attorney General
109 State Street
Montpelier, VT 05609-1001

Re: NewVistas Foundation

Dear General Donovan,

I write to you on behalf of the Alliance for Vermont Communities ("AVC"), a Vermont nonprofit corporation dedicated to protecting Vermont's working farms, forests, and communities and promoting responsible development that will sustain Vermont's rural heritage and values for present and future generations. AVC wishes to bring your attention to troubling and apparently unlawful acts of corporate malfeasance committed by the NewVistas Foundation in Vermont, and to urge that you use your authority to hold the NewVistas Foundation accountable.

Relevant Facts

AVC believes the following facts are accurate based on the documentary evidence it has gathered and on information and belief. A packet of Bates numbered documents supporting this recitation of facts is enclosed and referenced in the recitations below.

The NewVistas Foundation is a Utah nonprofit organization. AVC 1–47. One of its directors is David R. Hall. AVC 12. It was registered to do business as a foreign corporation in Vermont from January 22, 2016 until January 23, 2017. AVC 49–53.

In 2015 and 2016, the NewVistas Foundation acquired over 20 properties in the rural Vermont towns of Royalton, Sharon, Strafford, and Tunbridge, amounting to approximately 1,400 acres, at a price in excess of \$6 million. The properties in question include the following:

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|------------------------|-------------------------------|
| Dairy Hill Road | SPAN 534-168-11438 (Royalton) |
| Route 14/Gee Hill Road | SPAN 534-168-10188 (Royalton) |
| 171 Chelsea Street | SPAN 534-168-11106 (Royalton) |
| 180 Sugar Hill Lane | SPAN 534-168-10676 (Royalton) |

| | |
|-------------------------|------------------------------------------------------------------------------------------------|
| 206 Toppin Road | SPAN 534-168-10635 (Royalton) |
| 1344 Dairy Hill Road | SPAN 534-168-10010 (Royalton) |
| 1379 Dairy Hill Road | SPAN 534-168-11538 (Royalton) |
| 1662 Dairy Hill Road | SPAN 534-168-10495 (Royalton) |
| 116 Clifford Farm Road | SPAN 567-181-10359 (Sharon) |
| 117 Clifford Farm Road | SPAN 567-181-10031 (Sharon) |
| 159 Town Farm Road | SPAN 567-181-10424 (Sharon) |
| 1631 Clifford Farm Road | SPAN 576-HH-10378 (Sharon) SPAN 624-196-10243 (Strafford) SPAN 657-207-10330 (Tunbridge) |
| 2026 Fay Brook Road | SPAN 567-181-10224 (Sharon) |
| 2293 Fay Brook Road | SPAN 567-181-10280 (Sharon) |
| Blake Hill Road | SPAN 567-181-10473 (Sharon) |
| 76 Button Hill Road | SPAN 657-207-11021 (Tunbridge) |
| 113 Spring Road | SPAN 657-207-10626 (Tunbridge) |
| 114 Button Hill Road | SPAN 657-207-10850 (Tunbridge) |
| 125 Button Hill Road | SPAN 657-207-10464 (Tunbridge) |
| 166 Button Hill Road | SPAN 657-207-10978 (Tunbridge) |
| 182 Button Hill Road | SPAN 657-207-10760 (Tunbridge) |
| 200 Button Hill Road | SPAN 657-207-10826 (Tunbridge) |
| 201 Robinson Road | SPAN 624-196-10387 (Strafford) |

AVC 59–62.

On December 22, 2016, a Vermont for-profit limited liability company called Windsorange LLC was formed, with its organizer and sole member being Mr. Hall. AVC 54–58. Eight days later, on December 30, 2016, the NewVistas Foundation transferred to Windsorange LLC all or substantially all of its Vermont properties. AVC 63–73.

The property transfer tax returns prepared in connection with these transfers indicate that no consideration was provided by Windsorange LLC. AVC 74–89. In short, Mr. Hall amassed a valuable portfolio of Vermont real estate using a Utah-incorporated and Vermont-registered nonprofit, and then transferred that real estate to a for-profit Vermont LLC of which he is the sole member without paying consideration.

While the NewVistas Foundation is a Utah nonprofit organization, Vermont nonprofit law applied to the real estate transactions engaged in by the NewVistas Foundation described in this letter. Because the NewVistas Foundation was registered to do business as a foreign corporation in



Vermont, it was “subject to the same duties, restrictions, penalties, and liabilities . . . imposed on a domestic corporation of like character.” 11B V.S.A. § 15.05(b). The deeds transferring the properties in the four towns from the NewVistas Foundation to Windsor LLC were executed on December 30, 2016, during the period when the NewVistas Foundation was registered to do business in Vermont as a foreign corporation. Thus, to the extent these real estate transfers would have been unlawful when engaged in by a Vermont nonprofit corporation, they were also unlawful when engaged in by the NewVistas Foundation.

Violations of Law

The above facts appear to reveal a number of serious violations of Vermont law, as described in detail below. The gratuitous transfer of millions of dollars of real property by a private charitable organization to a for-profit limited liability company—in particular one controlled by a director of the nonprofit, as occurred in this case—violates the most basic legal principles governing the management of nonprofit organizations in Vermont, under theories of self-dealing, private inurement, and abuse of the charitable form. A substantial body of common law rules and statutory provisions in Vermont serve to ensure that money, real property, and other assets devoted to charitable purposes are in fact used exclusively to advance lawful charitable purposes. *See* 14A V.S.A. § 106.

Self-Dealing. The real estate transfers by the NewVistas Foundation in Vermont represent unlawful self-dealing. Title 11 V.S.A. § 561 forbids nonprofit organizations from engaging in self-dealing as defined in 26 U.S.C. § 4941. Title 26 U.S.C. § 4941 defines self-dealing as, among other things, a transfer of property between a private foundation and a disqualified person. NewVistas Foundation sought and ultimately received recognition from the Internal Revenue Service as a private operating foundation. AVC 42. The real estate transfers described above represent a transfer between a private foundation and a disqualified person because David Hall, the sole member of Windsor LLC, is a director of the NewVistas Foundation, and thus a disqualified person as defined under 26 U.S.C. 4946(a)(1). In addition, the NewVistas Foundation was required by Vermont law to comply with its Articles of Incorporation, 11B V.S.A. § 3.02, which require the NewVistas Foundation to “not engage in any act of self-dealing” as defined in IRC § 4941(d). AVC 02. *See also* 11B V.S.A. § 14.30(a)(1)(C) (stating that the Superior Court may dissolve a corporation in a proceeding initiated by the Attorney General if “the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted”).

Private Inurement. The real estate transfers also represent unlawful private inurement. It is a fundamental principle of nonprofit law that a charitable organization cannot be created or operated for the benefit of private interests. In accord with this principle, the NewVistas Foundation’s Articles of Incorporation state that “[n]o part of the net earnings of the Corporation shall inure to the benefit of or be distributed to, its members, trustees, officers, or other private persons.” AVC 01. While 11B V.S.A. § 3.02 generally grants nonprofit organizations the power to “sell, convey, . . . exchange, and otherwise dispose of” property, this grant of authority is subject to



the following limitation: “unless its articles of incorporation provide otherwise.” Thus, because, again, the NewVistas Foundation was required to comply with its Articles of Incorporation by Vermont law, *see* 11B V.S.A. § 3.02, the property transfers described above represent unlawful private inurement.¹

Lack of Notice to the Attorney General. Finally, the transfers are apparently illegal for lack of prior notice to the Attorney General. Under 11B V.S.A. § 12.02(g), “[a] public benefit corporation must give written notice to the Attorney General 20 days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.” It appears that the NewVistas Foundation disposed of all or substantially all of its Vermont property on December 30, 2016.² Clearly this transaction was not in the “usual and regular” course of the corporation’s activities, inasmuch as the sale or other disposition of real property is not within the scope of activities described in the foundation’s Articles of Incorporation, Bylaws, or federal Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code. AVC 14–37. The available public record reveals no evidence of notice to the Attorney General prior to the transaction. So far as AVC is aware, the NewVistas Foundation gave no written notice to the Attorney General prior to the real property transfers, nor did it secure a waiver of this requirement.

Authority of Attorney General; Remedies.

As the Attorney General, you have the authority to take action against these abuses of Vermont’s corporate forms. *See* 11B V.S.A. § 3.03. When a corporation has engaged in unlawful property transfers like those described above, your office can bring an action to void the transfers or even dissolve the corporation. *See Old R.R. Bed, LLC v. Marcus*, 2014 VT 23, ¶ 17, 196 Vt. 74 (voiding property transfers); 11B V.S.A. § 14.30(a)(1) (dissolution of corporation). These remedies are not available to private citizens, underscoring the Attorney General’s unique role as the keeper of the public trust with regard to charitable organizations. The NewVistas Foundation has failed to adhere to what one court has described as “the basic requirement of a nonprofit public benefit entity: that it be operated exclusively for a charitable purpose, that it serve a public rather than a

¹ In addition, the Internal Revenue Service has provided guidance that any transaction, including sales or exchanges of property, “between an organization and a private individual in which the individual appears to receive a disproportionate share of the benefits of the exchange relative to the charity served presents an inurement issue.” IRS, OVERVIEW OF INUREMENT/PRIVATE BENEFIT ISSUES IN IRC 501(c)(3) (1990), *available at* <https://www.irs.gov/pub/irs-tege/eotopic90.pdf>.

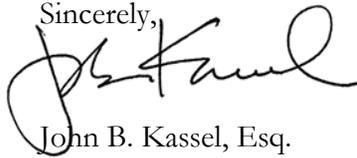
² The NewVistas Foundation more or less simultaneously disposed of all or substantially all of the separate property it owned in Utah. Because the NewVistas Foundation is a Utah nonprofit organization, we understand the Utah Attorney General’s Office is being apprised of the facts relating to both the Utah and Vermont property transfers described above.



private interest, and that its income or assets not be distributed to individuals in control of the entity.”³ As Attorney General, you should hold the NewVistas Foundation to account.

AVC urges you to investigate the real estate transactions described above, confirm our understanding that the transfers were made gratuitously and the other factual premises set forth above, direct Windsorange LLC to restore the transferred properties to the NewVistas Foundation, and (if necessary) initiate legal proceedings to obtain a court order declaring these transfers void and directing that the properties be restored to the NewVistas Foundation. In addition, AVC urges you to consider imposing fines and other penalties on NewVistas Foundation and Windsorange LLC to deter similar violations of Vermont nonprofit law in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Kassel". The signature is fluid and cursive, with a large initial "J" and "K".

John B. Kassel, Esq.

³ *Summers v. Cherokee Children & Family Services, Inc.*, 112 S.W.3d 486, 527 (Tenn. App. 2002) (construing statute identical to 11B V.S.A § 14.30).

