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CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

MEMORANDUM

To: Mayor and City Council
From: Eileen Blackwood, City Attorney
Re: Glebe Lands & 1622 North Avenue
Date: June 3, 2016

Background

In April, the City was contacted by an attorney for the owner of 1622 North Avenue, asking the City to execute a quitclaim deed releasing all interest the City of Burlington has in the “leased” or “glebe” lands on this property. This was not the usual procedure the City has practiced in relation to these lease lands, and a quitclaim deed requires City Council approval, which is now requested.

What is Glebe Land?

Glebe or lease land is a concept that dates back to colonial times. Lease land was designated in the original formation of the Town of Burlington as set aside for, or to produce income for, special uses—primarily school, established minister, or church (glebe) uses. Glebe rights were particularly established by the British government in the colonies to support the British national religion, the Church of England. A series of acts were passed by the Vermont legislature beginning in 1794 through 1805 establishing that the glebe rights became vested in the state after the American Revolution, and the state then granted those rights to the towns in which the lands lay. The 1805 act established that the duty of the selectboard to lease out the land (hence the general term “lease land”), using the rents for the use of the schools or to support religious worship. The leases were deemed to be durable or perpetual, and at that time, the selectboard was not allowed to convey or transfer the ownership of the land, only to lease it, because it was supposed to perpetually support the original purpose (religion or schools, e.g.). This was before property taxes provided support for schools.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at 865-7145.

Eventually, the law regarding glebe and other lease lands became codified in 24 V.S.A. §2401 et seq., although still the selectboard was permitted only to lease the land and not to convey it. In 1947, Vermont law changed, and selectboards became permitted to convey lease lands by deed—but only to the leaseholder, if the property was leased, or to anyone else subject to the perpetual lease. 24 V.S.A. 2406. However, the funds received for a conveyance must be kept intact, in trust, and only the income can be used, and then only for the original purpose—schools, e.g.

Where are these lands in Burlington?

An 1810 map of Burlington shows glebe, minister, school, and society lands amounting to hundreds of acres, with one large group north of Appletree Point, another set of parcels around Rock Point, several smaller parcels scattered through the Old North End and downtown, and two larger school parcels that appear to be in the South End. However, many of those parcels have been broken up or otherwise changed over the last two centuries, and we were not able to find a map or inventory of the lease land parcels to show where the lease or glebe boundaries run today. We did find a reference in 1941 board of alderman minutes and another in the 1942 City annual report to plans to conduct surveys and place markers to better identify where these lands were. However, the City Engineer notes in that 1942 report that “it would be wise to wait until after the war is won before attempting to complete this work.” We have not been able to find any indication that after the war the survey was ever completed. As a result, it does not appear that the City has an up to date inventory of these lease lands or clear boundaries.

Right now, we can tell if a property is on lease or glebe land is by looking at the deed and tracing it back to the original grants. For example, the deed of 1622 North Ave. contains the phrase, “This may be lease land, so-called.” In tracing that deed back, we find it is part of a parcel that was conveyed to James G. Spaulding by John O. Northrop in 1885, and that deed recites, “The land here conveyed is part of Lot No. 188 set to the ‘Glebe right’ - so called, and is subject to an annual rent of \$1.65 payable to the City Treasurer on the 1st day of January in each year.” Lot No. 188 was one of a number of lots allotted in 1798, and referenced in the original Proprietors’ records of the Town of Burlington, which consisted of 103 acres each; Lot 188 was identified as a Glebe Right. That 103 acres has now been broken up into multiple parcels.

What about the rents paid on these lands?

Rents were paid on these lands for many years. Records of rent paid by Mr. Northrop through 1894 were kept in official town records that are in the Land Records. After that, it appears that the records of rents were probably kept in the Treasurer’s Office, and those are probably in storage. It does appear, however, as though the City charged and collected rents on glebe lands until 1974. Although we have not found an official record of a meeting of a city body that made this determination, we have found a note and letters signed by Assistant City Treasurer Michael Giroux stating that “on July 5, 1974 the City of Burlington resolved to pay all such Glebe Land rentals to PERPETUITY, thus releasing all owners of such lands from further rental charges.” Although we cannot confirm the date, and the use of the term “owners of such land” is confusing, it is our understanding that it was at this time that the City ceased to charge or collect rents on the glebe and lease lands.

That change in practice was consistent with a change in state tax law. In 1967, the state legislature adopted 32 V.S.A. §3610, which dealt with the taxation of perpetual leased lands. Subsection (f) provided that “the annual rental payable under a perpetual lease shall be credited in each year against the tax payable in respect of that lease to the town in which the subject land is located.” Following that enactment, many towns ceased charging separate rent and just assessed the full property taxes against the leaseholder.

It is important to note that when rents were being collected, they were not necessarily significant amounts. The above-referenced letter from Assistant Treasurer Giroux notes that the annual rental on 1-3-5-7 Johnson Street was 22 cents. A Burlington Free Press article from Dec. 10, 1971, cited that for 28,000 municipally held acres, the total rent was only about \$560 per year.

How do we handle these lands when they are transferred?

Probably since 1974, and certainly in recent years, the City has been regularly contacted by attorneys when land is being conveyed and the “lease land” or “glebe land” designation is found during the title search. The City Attorney’s Office has generally issued a letter confirming “that there is no rent due, nor will there be rent due at any time in the future to the City of Burlington for this ‘leased land’ or ‘glebe land.’” It is our understanding that this letter generally satisfied both landowners and their title companies, and homeowners bought and sold land with the “lease land” designation noted on the deed, but not affecting the transfer or use of the property. It is also our understanding from the City Assessor that at least during the current appraiser’s tenure, his appraisals have not reduced the assessed value of the property by virtue of the leased-land designation on the deed, so the properties have been paying the full property tax.

The attorney for the seller of 1622 North Ave., however, has indicated that title companies or lenders are increasingly seeking releases of the municipal interests so that homeowners are able to pass a full fee simple title. To that end, he has requested that the City sign a quitclaim deed (without any compensation to the City), which would give up the City’s glebe rights to the landowner. The City Assessor communicated with several other assessors and found much the same situation in those communities—no inventory of the lands and no rents currently being paid. A quick Internet search came up with other examples and media reports of properties that were quitclaimed, apparently without compensation. There are, however, communities that continue to charge rent. The Town of Wilmington, VT, for example, has a lease through 2030 with Mount Snow Ski Area for a glebe lot.

In addition, there is a possibility that the City’s glebe rights do hold some value. In a 1998 case, *Galkin v. Town of Chester*, the issue of who owned the mineral rights under glebe land arose, and the Court ruled that even though Galkin had a perpetual lease, the mineral rights belonged to the fee simple owner of the real property, in the case of glebe rights, the Town. Thus, it is possible that as the owner of glebe rights, the City could relocate water lines or install pipelines through lease land without having to exercise eminent domain. The City could have mineral or air rights below or above the surface. These rights may or may not have some residual value, depending on the location of the property. As the City appears not to have ever had these lease-lands surveyed, though, these

rights may be practically difficult to exercise. It also is not clear whether or not the City could practically exercise the potential rights outlined above, depending on what has been built on or the use that has been made of any individual property.

What happens if the City does or does not execute the quitclaim deed?

The homeowner at 1622 North Ave. has requested that the City quitclaim its interests. Thus, the City Council could authorize the Mayor to sign the quitclaim deed, extinguishing the City's glebe rights. This would eliminate the potential residual rights of the City described above.

The homeowner's request does not include any compensation for the City. The City Attorney's Office consulted with the City Assessor about the potential value of the glebe rights, and he was not able to find any comparable market rates to use as a basis. His analysis of other private long-term lease properties, such as the Starr Farm Beach properties, led him to a figure of 23% of the fair market value, but there are significant differences with those leases, and that percentage is not a terribly reliable indicator of the value of the glebe rights.

The homeowner of 1622 North Ave. has asserted that the City's refusal to execute a quitclaim deed will mean that she cannot sell her property. Her attorney indicates that resolving these leases may be required by title or lending companies. We have not confirmed whether or not this position is true for all title companies or lenders, but we are told that it is likely that at least some title insurers will continue to ensure over the leasehold, as there have not been major issues with this practice to date. However, because of the number of lease-land parcels in Burlington, it is likely that whatever the Council determines could affect many Burlington homeowners.

Essentially, the City Council must weigh retaining the City's potential residual rights in these properties against the possible difficulties caused to homeowners who have been paying property taxes on the property for the last forty years. If the Council determines that it wishes to continue the City's current practice of issuing a letter stating that no rents are due, we should consider developing an inventory or survey of these lands, and determining the full extent of the City's residual rights in them, to reduce uncertainty in the future.

