

Smugglers' Notch Shareowner Association, Inc.
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February 2, 2022

State Sen. Ann Cummings
Chair, Finance Committee
Vermont State House
115 State Street
Montpelier, Vermont 05633
acummings@leg.state.vt.us

Re: Senate Bill S. 214 (2022)

Dear Sen. Cummings and Senate Finance Committee members:

My name is Jim Mazur, and I am President of Smugglers' Notch Shareowner Association, Inc. ("SHSOA"), a non-profit association. SNOSA represents the interests of five homeowner associations — Eagles, Owls, Falcons, Kestrels and Trailside Highlands — all located at Smugglers' Notch Resort and totaling 64 two- and three-bedroom units.

Our share owners enjoy all that Vermont has to offer while helping sustain the resort, local restaurants and retail establishments. It is not our intention to avoid paying a fair share of the town's costs or education costs. We want to be good neighbors but also want to be treated fairly and pay property taxes according to the true nature and value of our property.

The key words are FAIR SHARE and TRUE NATURE AND VALUE of our property. My testimony will highlight the differences between owning the "right to access" units via the timeshare model versus owning a condominium unit outright as well as providing a perspective of the current market conditions from an actual owner

All Timeshares are NOT created Equally

The Evolution of Timeshare at Smugglers Notch Resort

The Committee has heard a brief history about the traditional one- and two-week timeshares at Smugglers, so I am not going to repeat it.

The Associations that I represent are not like these original timeshares because we own much longer intervals of time. Many of our share owners started out purchasing a two-week timeshare at Smugglers' Notch but then wanted more time to vacation in Vermont at the Smugglers Notch Resort. The resort responded by developing a variety of "enhanced" options ranging from "family share" (16-17 weeks per year spread throughout the calendar) to "equi share" (25 weeks per year spread throughout the calendar).

Obviously, the more weeks purchased the larger the investment in the property. The purchasers of these family and equishare units were making a commitment to vacation for longer periods of time at Smugglers Notch Resort. My wife, Davia and I, for example, live in South Florida but have spent our entire 6-week summer access in Vermont for the past 15 years. Most of our owners are not walking away from our investments the way traditional timeshare owners have done, creating the distressed market. In fact, until just recently we have historically had very few sales.

The Differences Between Family Share and Equishare versus Fee Simple Ownership of a Condominium

Senate Bill 214 proposes to change how timeshares are appraised so that an entire timeshare unit is compared to a condominium where there is only one owner per unit. Here are some key differences between our ownership and condominium ownership:

- **We do not have unfettered access to the property or our units.** We own only the right to use our units during designated weeks, whereas owners of condominiums own their units outright. Unlike homeowners, we do not have a key that will unlock the front door any time, do not have the right to change anything in the unit or building, and cannot change a decoration or even leave an article of clothing in the apartment. None of the furniture belongs to us – it is owned by the building association. Owners of condominiums, by contrast, have unfettered use of their property and access at any time. All furnishings and personal effects are theirs and they share it with no one. They can choose to leave personal items in the units. They own the furniture and the property in fee simple. This feature alone creates a significant difference in the value of condominium unit compared to a timeshare unit.
- The shared ownership feature created by our Declaration recorded in the land records is an encumbrance or restriction on the property that devalues our units **in the same way a restrictive covenant can devalue a property.** The Declaration makes it difficult, if not impossible, to change the building from a shared ownership building to condominiums even if most of the owners in a building wanted to do so.
- The condominiums have certain deeded rights to access amenities at the resort that are not included in our share ownership. These amenities certainly increase the value of the condominiums. Our owners only gain access to those Smugglers' Notch amenities by entering into a rental agreement with Smugglers' Notch so that it then rents out our unit to its guests.

So, comparing a condominium, where units are wholly owned in fee simple, to our share owner community, where we own a mere right of access for designated weeks and are not permitted to make changes in our units, is like comparing apples to oranges.

The Demise of Equi-Share and Family Share Ownership

Our units at purchase ranged from \$200,000 for a family share (16-17 weeks) to \$300,000 for an equishare (24-25 weeks). Due to the differences outlined above, the shares were always difficult to sell. In Eagles there wasn't a single recorded sale in more than 15 years. The Assessed Values showed very little change for many years.

However, due to a variety of economic and situational factors, the market price of these units decreased dramatically. At the root of the problem was the simple formula for valuing real estate of this nature: Rental income minus Assessments = Cash Flow. Rental income began to decrease while Assessments, completely controlled by Smugglers', increased. Most of our share owners were out of pocket thousands of dollars per year.

As the gap between assessments and rental income widened, some owners in our group walked away from the units, handing them back to the Associations and thus leaving the remaining owners to shoulder tens of thousands of dollars in unpaid assessments. Other owners sold their units for a fraction of the original cost.

The recent increase in sales activity, albeit at very low prices, allowed the individual HOAs under the SNSOA umbrella to grieve the original assessments to a level supported by recorded transactions.

What is the Answer? Patience and Thinking Outside the Box

The combination of distressed sales in the SNSOA group and thousands of traditional timeshare owners simply walking away from their investments have taken a huge toll on the total tax base at Smugglers Notch Resort in the neighborhood of \$53 million. Those current Assessed values and the dramatic tax revenue decrease associated with it are the impetus behind Bill S.214.

Our ownership group is well aware that the market for our type real estate has fallen apart. What we bought in the early 2000s has not appreciated in value like other types of real estate. It has depreciated and we are living with a significant financial loss. **However, equitable tax principles say that you are required to pay taxes on the fair market value of the property. As I understand it, this is current Vermont law.**

If this was lake front property on a small lake in Vermont that experienced an environmental disaster (like say a dumping of chemicals) and it killed the lake, everyone's lake front property value would plummet. The solution would not be to value the property as if it were on another unpolluted lake so as to prop the grand list up or create a new rule for how to value just those property owners so as to keep their values higher. That would be inequitable to those taxpayers, just as this proposed bill is inequitable to the owners I represent. In other parts of Vermont, the values of properties are going way up, and the State is reaping that benefit that is totally market driven. It is inequitable to tax people more when their property increases and tax people more when the value of their property decreases.

I end my testimony with some suggestions and a prediction about unintended consequences. As tempting as it may be to advance S.214. It would be far more equitable to be PATIENT. Let the marketplace determine the assessed value of our units. As per the attached table, at these depressed prices, we have seen an encouraging increase in sales activity. The Eagles units are currently assessed at \$160,000 for a half share. The first two sales in 15 years have averaged around \$160,000. The listers will surely note that recent Kestrel sales have exceeded the current assessed values.

I would also point to California and their regulation on how to value timeshares for property tax purposes. The assessor may determine the value of the timeshare appraisal unit by the following method:

1. Determine the full value of resort properties, condominiums, cooperatives, or other properties NOT marketed in increments but which are comparable to the subject property in terms of size, type, and location.
2. Divide such full value by a unit of time equal to the timeshare interest being valued.
3. Add or subtract from the non-timeshare value quotient determined in an amount necessary to reflect any increase or decrease in such value attributable to the fact that the subject property is marketed in increments of time and, if applicable, for a particular season.

Complicated? Yes, but it includes a step that S. 214 ignores. You cannot just make a straight comparison. The appraiser must be required to make an adjustment to reflect the features that automatically devalue a timeshare unit. I am not an appraiser and do not know exactly how to do that, but I submit to the Committee that this is at least an option to examine.

If S.214 becomes law, the unintended consequence could be to accelerate a massive collapse of the remaining timeshare, family and equishare owners at Smugglers Notch Resort and perhaps around the state. A current assessed value of \$49 million could easily erode down to \$15 million or even lower.

I thank Senator Cummings and the entire Senate Finance Committee for the opportunity to testify.

Sincerely,

Jim Mazur

Jim Mazur, President
Smugglers Notch Shareowner Association, Inc.