

Exhibit A Land Use Change Tax Assessment. Eighteen months thereafter is August 19, 2009. The notice of lien was filed on September 14, 2009. *See, Exhibit B Notice of Lien.*

6. The Land Use Change Tax having been filed defectively, Roswell’s mortgage on the property of the Garrison Place Real Estate Investment Trust is senior to that of the Town taxes.

7. Roswell believes that the real estate taxes attaching to the property which are senior to its claims are as follows:

Nottingham 2008		As of 12/31
L01000034	Garrison Pla	\$460,166.21
All Other invoices	Garrison Pla	\$367,725.44
Lien Fees		\$300.00
Lot 03-000006	Rotondo	\$49,402.58
Lot 03-000009	Rotondo	\$91,216.92
 Barrington		 \$11,060.94
 Total Tax		 \$979,872.09
Portion Junior to Roswell		\$394,215.01
Tax Senior to Roswell		\$585,657.08

8. Roswell is willing to assent to the proposed sale provided that the proceeds be paid substantially as shown on the following chart:

Purchase Price	\$1,200,000.00	
Commission	\$60,000.00	5.00%
 Net	 \$1,140,000.00	
 Added Funds Held by R&B	 \$23,000.00	
Rents	\$5,000.00	
 Total Funds	 \$1,168,000.00	
 Real Estate Taxes	 \$585,657.08	

Net	\$582,342.92	
Carveout's		
May 29 Stip	\$42,500.00	
Atty Fees	\$35,000.00	
Accountant fees	\$3,000.00	
CRG/Deloitte	\$70,000.00	
Transfer stamps	\$9,000.00	0.75%
Trustee fees	\$61,400.00	
Recording Costs	\$200.00	
Total Carveout	\$221,100.00	
Roswell	\$361,242.92	

9. As indicated in the chart, Roswell is willing to assent to the sale provided that the sum of \$361,242.92 (approximately) be paid to it free and clear of the claims of all other parties.

10. In the absence of such payment, or satisfactory alternate arrangement, Roswell objects to the proposed form of sale.

WHEREFORE, Roswell Commercial Mortgage, LLC respectfully requests that this Honorable Court order and decree as follows:

A. That the sale be approved together with payment to Roswell of the net proceeds thereof after payment of agreed upon carveouts including real estate taxes in an amount not greater than \$585,657.08; and

B. That the sale be approved subject to and preserving Roswell's rights with respect to the priority of the tax liens; and

C. For such other and further relief as may be just and equitable.

Respectfully submitted,
Roswell Commercial Mortgage, LLC

By Its Attorneys,
FORD & MCPARTLIN, P.A.

Dated: October 19, 2016

By: /s/ Edmond J. Ford
Edmond J. Ford, Esq. (#01217)
10 Pleasant Street, Suite 400
Portsmouth, NH 03801
603-433-2002
603-433-2122 (Fax)
eford@fordlaw.com

EXHIBIT A

FOR REGISTER OF DEEDS USE ONLY

FILE COPY

FORM

A-5

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
LAND USE CHANGE TAX

STEP 1 PROPERTY OWNER (S)

PLEASE TYPE OR PRINT	LAST NAME Garrison Place Real Estate Investment Trust	FIRST NAME
	LAST NAME Francesco Rotundo, Trustee	FIRST NAME
	STREET ADDRESS 155 Old Turnpike Road	
	ADDRESS (continued)	
	TOWN/CITY Nottingham	STATE NH

STEP 2 PROPERTY LOCATION

PLEASE TYPE OR PRINT	STREET 145 Old Turnpike Road					
	TOWN/CITY Nottingham			COUNTY Hockingham		
	NUMBER OF ACRES 12	CHECK ONE: PARTIAL RELEASE <input checked="" type="checkbox"/> FULL RELEASE <input type="checkbox"/>		BOOK # 2517	PAGE # 1621	
	MAP # 3	LOT # 10	MAP #	LOT #	MAP #	LOT #

STEP 3 LOCAL IDENTIFICATION OF LAND BEING DISQUALIFIED

(a) Owners Name of Record When Land Was First Classified Pulcinella, Alice L.	Book # 2517	Page # 1621
(b) Number of Acres Originally Classified	121	
(c) Number of Acres Previously Disqualified	-	
(d) Acres Disqualified per this Assessment	12	
(e) Number of Acres Remaining in Current Use [3(b) minus 3(c) and 3(d)]	109	

STEP 4 ASSESSMENT OF LAND USE CHANGE TAX

(a) Narrative description of the disqualification: Building site and associated areas no longer qualify	
(b) Actual Date of Change in Use (MM/DD/YYYY)	07/12/07
(c) Full and True value at Time of Change in Use	\$ 1,345,000
(d) Land Use Change Tax (Step 4(c) x 10%)	\$ 134,500

FORM
A-5

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
LAND USE CHANGE TAX

STEP 5 SIGNATURES OF A MAJORITY OF SELECTMEN/ASSESSORS

TYPE OR PRINT NAME (in black ink) Peter M. Bock	SIGNATURE (in black ink) <i>Peter M. Bock</i>	DATE 02/19/08
TYPE OR PRINT NAME (in black ink) William P. Netishen	SIGNATURE (in black ink)	DATE 02/19/08
TYPE OR PRINT NAME (in black ink) Mary L. Bonser	SIGNATURE (in black ink) <i>Mary L. Bonser</i>	DATE 02/19/08
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE

STEP 6 LAND USE CHANGE TAX NOTICE (TO BE COMPLETED BY LOCAL ASSESSING OFFICIALS)

PLEASE TYPE OR PRINT	LAST NAME Garrison Place Real Estate Investment Trust	FIRST NAME	
	ADDRESS 155 Old Turnpike Road		
	ADDRESS (continued)		
	TOWN/CITY Nottingham	STATE NH	ZIP CODE 03290
(a) Date of Release (MM/DD/YYYY)	07/12/07		
(b) Date of Bill (MM/DD/YYYY)	02/21/08		
(c) Full and True Value at Time of Change in Use	\$ 1,345,000		
(d) Total Tax Due	\$ 134,500		

STEP 7 CHECKS PAYABLE TO AND MAILED TO (TO BE COMPLETED BY TAX COLLECTOR)

(a) Make Check Payable to: Town of Nottingham-Tax Collector			
(b) Mail To:	NAME William J. Garnett-Nottingham Tax Collector		
	ADDRESS PO Box 150		
	TOWN/CITY West Nottingham	STATE NH	ZIP CODE 03291
(c) Tax Collector's Office Location: 139 Stage Road, Nottingham, NH 03290			
(d) Tax Collector's Office Hours: Wed 7-9PM, Thurs & Sat 9AM-Noon			
(e) Include a separate check in the amount of \$ 16.41 Payable to <u>Rockingham</u> County Register of Deeds for recording fee.			
(f) Payment of this tax is due no later than 30 days after mailing of this bill. Interest, at the rate of 18% per annum, shall be due if this tax is not paid on or before <u>March 22, 2008</u>			

STEP 8 ACKNOWLEDGMENT OF PAYMENT

SIGNATURE (in black ink) OF TAX COLLECTOR	DATE PAID
---	-----------

EXHIBIT B

Printed from Internet for on 10/19/2016

BK 5050 PG 0784

045902

2009 SEP 14 AM 10: 18

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Town of Nottingham		
Lien Execution Report		
Executed On 09/11/2009 at 8:20AM		
<u>Address</u>	<u>LEVY YEAR 2008</u>	<u>Office Hours</u>
PO Box 150		Wed 7 - 9 PM, Thurs and Sat 9 AM - noon
W. Nottingham, NH 03291		Phone: (603) 679-1630

ANDERSON, PAUL Property Located At: 171 MITCHELL ROAD
ANDERSON, ANDREA Map Lot Sub: 000008 000008 000001
 171 MITCHELL ROAD Property Described As: 5.000 AC & IMPROVEMENTS
 NOTTINGHAM, NH 03290

	Taxes	Interest	Lien Cost	Exec. Cost	Total
2008P02000505 Taxes:	\$ 847.00	\$ 75.19	\$ 18.00	\$ 18.50	\$ 958.69
	\$ 847.00	\$ 75.19	\$ 18.00	\$ 18.50	\$ 958.69

ANDERSON, RICHARD A Property Located At: 28 GILE ROAD
 Map Lot Sub: 000028 000012 000000
 PO BOX 184 Property Described As: 10.000 AC & IMPROVEMENTS
 NOTTINGHAM, NH 03290-0184

	Taxes	Interest	Lien Cost	Exec. Cost	Total
2008P01000507 Taxes:	\$ 1,707.00	\$ 245.25	\$ 18.00	\$ 18.50	\$ 1,988.75
2008P02000506 Taxes:	\$ 1,928.00	\$ 171.14	\$ 0.00	\$ 0.00	\$ 2,099.14
	\$ 3,635.00	\$ 416.39	\$ 18.00	\$ 18.50	\$ 4,087.89

BALBONI, JOHN J. Property Located At: 49 SHORE DRIVE
 Map Lot Sub: 000068 000042 000000
 15 COLONIAL DRIVE Property Described As: 0.330 AC & IMPROVEMENTS
 BILLERICA, MA 01821

	Taxes	Interest	Lien Cost	Exec. Cost	Total
2008P01001207 Taxes:	\$ 3,013.00	\$ 432.88	\$ 18.00	\$ 18.50	\$ 3,482.38
2008P02001203 Taxes:	\$ 3,402.00	\$ 301.99	\$ 0.00	\$ 0.00	\$ 3,703.99
	\$ 6,415.00	\$ 734.87	\$ 18.00	\$ 18.50	\$ 7,186.37

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BK 5050 PG 0791

GARRISON PLACE REAL ESTATE INV
FRANCESCO ROTUNDO, TRUSTEE
 155 OLD TURNPIKE ROAD

Property Located At: 145 OLD TURNPIKE ROAD
 Map Lot Sub: 000003 000010 000000
 Property Described As: 78.000 AC & IMPROVEMENTS

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01012503 Taxes:	\$ 11,982.00	\$ 1,721.47	\$ 18.00	\$ 18.50	\$ 13,739.97
2008P02012502 Taxes:	\$ 13,533.00	\$ 1,201.29	\$ 0.00	\$ 0.00	\$ 14,734.29
2008U01-S0004 Taxes:	\$ 134,500.00	\$ 35,684.88	\$ 16.44	\$ 0.00	\$ 170,201.32
	<u>\$ 160,015.00</u>	<u>\$ 38,607.64</u>	<u>\$ 34.44</u>	<u>\$ 18.50</u>	<u>\$ 198,675.58</u>

HARVEY, ALBERT A.

Property Located At: 6 CILLEY RD

Map Lot Sub: 000057 000002 00BLDG

CILLEY ROAD

Property Described As: 0.000 AC & IMPROVEMENTS

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01014406 Taxes:	\$ 623.00	\$ 89.51	\$ 18.00	\$ 18.50	\$ 749.01
2008P02014405 Taxes:	\$ 705.00	\$ 62.58	\$ 0.00	\$ 0.00	\$ 767.58
	<u>\$ 1,328.00</u>	<u>\$ 152.09</u>	<u>\$ 18.00</u>	<u>\$ 18.50</u>	<u>\$ 1,516.59</u>

HATCH, JUDITH A.

Property Located At: RAYMOND ROAD

Map Lot Sub: 000067 000009 000001

TRUSTEE FAITH REALTY TRUST
 PO BOX 800

Property Described As: 11.790 AC

GREENLAND, NH 03840

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01014606 Taxes:	\$ 11.00	\$ 1.58	\$ 18.00	\$ 18.50	\$ 49.08
2008P02014606 Taxes:	\$ 13.00	\$ 1.15	\$ 0.00	\$ 0.00	\$ 14.15
	<u>\$ 24.00</u>	<u>\$ 2.73</u>	<u>\$ 18.00</u>	<u>\$ 18.50</u>	<u>\$ 63.23</u>

HAWKINS, MATTHEW A.

Property Located At: 112 HIGHLAND AVENUE

Map Lot Sub: 000067 000041 000000

112 HIGHLAND AVE

Property Described As: 0.390 AC & IMPROVEMENTS

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P02014703 Taxes:	\$ 1,767.81	\$ 156.92	\$ 18.00	\$ 18.50	\$ 1,961.23
	<u>\$ 1,767.81</u>	<u>\$ 156.92</u>	<u>\$ 18.00</u>	<u>\$ 18.50</u>	<u>\$ 1,961.23</u>

HEMEON, ROGER
HEMEON, CHARLENE
 PO BOX 69

Property Located At: BACKLAND

Map Lot Sub: 000004 000014 000000

Property Described As: 10.400 AC

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01014807 Taxes:	\$ 274.00	\$ 39.37	\$ 18.00	\$ 18.50	\$ 349.87
2008P02014807 Taxes:	\$ 309.00	\$ 27.43	\$ 0.00	\$ 0.00	\$ 336.43
	<u>\$ 583.00</u>	<u>\$ 66.80</u>	<u>\$ 18.00</u>	<u>\$ 18.50</u>	<u>\$ 686.30</u>

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:)
)
USA SPRINGS, INC.) **Chapter 7**
) **Case No. 08-11816-JMD**
Debtor.)
)

**LIMITED OBJECTION TO MOTION OF CHAPTER 7 TRUSTEE FOR
AUTHORITY TO SELL ESTATE PROPERTY AT PRIVATE SALE
PURSUANT TO 11 U.S.C. § 363**

The State of New Hampshire Department of Environmental Services (“Environmental Services”), by its attorneys, the Office of the Attorney General, hereby objects to the Motion of Chapter 7 Trustee for Authority to Sell Estate Property At Private Sale Pursuant to 11 U.S.C. § 363 (the “Sale Motion”), doc. no. 1069. Environmental Services objects because the Sale Motion purports to sell the Debtor’s rights to a variety of State issued permits and authorization which, for the most part, no longer exist.¹ In support hereof, Environmental Services respectfully represents as follows:

1. Environmental Services issued the Debtor a 10-year large groundwater withdrawal permit (“LGWP”) in accordance with various State laws in 2004.²
2. The Debtor’s LGWP expired July 1, 2014, according to its terms and applicable non-bankruptcy law and is no longer capable of simply being renewed. A purchaser of the property would be required to seek a new permit in accordance with current standards and procedures. Under applicable State law (and the terms of the LGWP itself), a complete application for renewal must have been filed with Environmental Services not later

¹ Environmental Services does not otherwise take any position about the merits of the proposed sale.

² LGWP 2004-0003.

than April 2, 2014. *See* N.H. Admin. R. Env-Ws 388.26(a) (permittee shall submit application at least 90 days prior to expiration) (effective in 2004 but superseded by Env-Wq 403 which now requires application 1 year before expiration). No renewal application of any kind was received before that date or since. As a result, from Environmental Services' perspective there is no LGWP to transfer.

3. In addition to the LGWP, the Trustee purports to sell rights in several other expired State permits. *See* Sale Motion, Exhibit "B".

- The groundwater management permit (no. 2) expired but the certificate of no further action (no. 3) related to it indicate that nothing more needed to be done at that time. Hydrology of the site and regulatory requirements may have changed in the interim and the buyer would be expected to conduct all appropriate inquiry prior to purchasing the property. *See* 40 C.F.R. part 312.
- The original Alteration of Terrain (Site Specific) permit (no. 4) was amended and superseded (no. 9). As so amended and superseded, this permit expired May 11, 2014. Any additional earth disturbance at the property would require the attainment of a new Alteration of Terrain permit.
- The Wetlands and Non-Site Specific permit (no. 5) has long expired and cannot be extended or renewed. The buyer is required to reapply and conform to all current rules, including mitigation.
- The monitoring structures permit (no. 6) is only good if the structures are intact and serviceable, otherwise they will need to be re-permitted in conformance with current rules.

- Number 7 on the list, the dam permit, was for the construction of a dam. If the dam has been built there is no need to get a new dam construction permit though other regulatory requirements may apply. If the dam was not built, the permit is still valid.
- The holding tank approval (no. 8) is apparently still valid and runs with the land on which the tank is installed.
- The subsurface system construction permit (no. 10) has expired and must be applied for anew.
- Number 11 on the list appears to be a town subdivision item and not a state permit.
- Number 12, the bottled water approval, is expired and cannot be transferred. Any bottled water sources developed at the property would need to be approved in accordance with N.H. Admin. R., Env-Dw 303.

While the Sale Motion does not purport to seek judicial intervention in the State's permitting processes, the Trustee previously expressed his belief that "the equitable powers of the Court" could be "employed to renew" the large groundwater withdrawal permit. *See* Opposition of the Chapter 7 Trustee to the Creditors Request for Dismissal of Bankruptcy Filed By Ralph Fiaella, Jr., doc. 1054, at ¶11. Environmental Services opposed this, doc. 1057. Thus far, the Trustee has not taken any steps to actually invoke the Court's equitable powers in the manner he suggested. Nevertheless, Environmental Services would oppose this approach for all of the same reasons it stated in its 2014 pleading. Those arguments are summarized below but are by no means complete and Environmental Services reserves the right to fully engage on the issue should the Trustee or anyone else seek to have the Court require the renewal of the permits.

A. Section 105 Cannot Be Used to Alter the Permit Process

It is, of course, widely held, including by this Court, that section 105 cannot be used in a manner inconsistent with the demands of the Bankruptcy Code and does not anoint the Bankruptcy Court with “a roving commission to do equity.” *In re Perrotta*, 406 B.R. 1, 15-16 (Bankr. D.N.H. 2009) (section 105 may be invoked when an equitable remedy is “necessary to preserve a right elsewhere provided in the Code, is consistent with the Code, and does not alter the Code’s distribution of other substantive rights.”). There is no provision of the Code that authorizes the Court to control State administrative agency action concerning the any of the environmental permits. Moreover, there is no provision of the Code that tolls the expiration of permits during the bankruptcy process.

B. 28 U.S.C. § 959(b) Requires Compliance With State Law.

Federal law requires every trustee to manage the estate property “according to the requirements of the valid laws of the State.” 28 U.S.C. § 959(b). The Trustee cannot by injunction or declaration of this Court supplant the valid laws of the State with respect to the permits, their conditions, and their renewal. *E.g. Midlantic Nat’l Bank v. New Jersey Dept. of Env’tl. Protect.*, 474 U.S. 494, 501 (1986) (bankruptcy does not provide general exemption from state environmental laws); *Cumberland Farms, Inc. v. Florida Dept. of Env’tl. Protection*, 116 F.3d 16 (1st Cir. 1997) (“It is by now abundantly clear that in state-regulated areas such as protection of the environment, a bankruptcy court must comply with the laws of the state involved. Debtors in possession . . . do not have carte blanche to ignore state and local laws protecting the environment against pollution.”); *see Wilner Wood Prods. v. Maine*, 128 B.R. 1, 2 (D. Me. 1991) (debtor cannot use bankruptcy proceeding to avoid requirement of obtaining environmental permit); *In re Stevens*, 68 B.R. 774, 783 (D. Me. 1987)(Cyr, J.)

(bankruptcy's priorities give way to environmental laws designed to protect public health and safety); *In re Lauriat's Inc.*, 219 B.R. 648 (Bankr. D. Mass. 1998) (no exception to requirement to follow law for administrative convenience or cost savings); *Grace Coal Co. v. Kentucky (In re Grace Coal Co.)*, 155 B.R. 5, 6-7 (Bankr. E.D. Ky. 1993) (debtor cannot use bankruptcy to avoid obtaining state mining permit); *In re Canarico Quarries, Inc.*, 466 F. Supp. 1333 (D.P.R. 1979) (holding under 28 U.S.C. § 959(b) that bankruptcy debtor cannot operate quarry without air pollution permit); *accord Munce's Superior Petroleum Prods., Inc. v. New Hampshire Dept. of Env'tl. Svcs. (In re Munce's Superior Petroleum Prods., Inc.)*, 736 F.3d 567 (1st Cir. 2013) (debtor's post-petition environmental compliance costs are administrative priority claims).

The decisions of whether to grant, deny or renew a particular permit or to suspend or revoke it are questions for the technical and administrative expertise of State officials acting under applicable non-bankruptcy law. *See, e.g.*, N.H. Rev. Stat. Ann. 485-C:21 (procedure and standards for reviewing application for large groundwater withdrawals); N.H. Admin. R. Env-Wt 300 *et seq.* to 800, *et seq.*; N.H. Admin. R. Env-Wq 403 *et seq.* (criteria and procedures for permitting groundwater withdrawals); *Appeal of Town of Nottingham*, 153 N.H. 539, 555 (2006) (agency interpretations of rules and law accorded deference). If the State determines to deny or not renew a permit, in general the applicant is entitled to seek rehearing and to make an appeal of that decision in accordance with State law. *E.g.* N.H. Rev. Stat. Ann. 541:6; 541-A:29-30, 482-A:10, 482:14, 21-O:14, 483-B:14; and 485-C:21 (VI); N.H. Admin. R. Env-Wq 403.19 & 403.33 (procedures for revoking or suspending groundwater withdrawal permit and appeals); N.H. Admin. R. Env-Wt 202.03. *See Nottingham*, 153 N.H. at 552 (discussing appeals for groundwater withdrawal permit).

C. The Bankruptcy Code Does Not Enhance Property Rights

The Bankruptcy Code does not create or enhance property rights of a debtor. *In re Gull Air, Inc.*, 890 F.2d 1255, 1261-62 (1st Cir. 1989); *see, e.g., Winthrop Old Farm Nurseries, Inc. v. New Bedford Institution for Savs. (In re Winthrop Old Farm Nurseries, Inc.)*, 50 F.3d 72, 76 (1st Cir 1995) (a bankruptcy court cannot allow debtors to obtain value of property which “would have been completely beyond reach save for the filing...”); *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir.) (“whatever rights a debtor has in property at the commencement of the case continue in bankruptcy – no more, no less”), *cert. denied*, 469 U.S. 982 (1984). It is clear that under State law the Debtor’s interest in the permits was limited by the laws in place providing for their grant, revocation and renewal, as well as the complex regulatory enforcement programs that the permits represent. *See In re Gull Air*, 890 F.2d at 1260 (debtor’s “interest in the slots, however, is a limited interest encumbered by conditions that the FAA imposed in its regulations”).

Respectfully submitted,

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

By its attorneys,

ANN M. RICE
DEPUTY ATTORNEY GENERAL

Date: October 20, 2016

/s/ Peter C.L. Roth
Peter C.L. Roth
Senior Assistant Attorney General
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3679

Certificate of Service

I, Peter C.L. Roth, do hereby certify that the foregoing was served on October 20, 2016, by the court's ECF system upon those parties requesting ECF service.

Dated: October 20, 2016

/s/ Peter C.L. Roth
Peter C.L. Roth

Dan & Rebecca Butcher

31 New Bow Lake Rd.
Barrington, NH 03825

603-664-7606

FILED
2016 OCT 31 AM 11:23

CLERK OF THE
BANKRUPTCY COURT
DISTRICT OF NH

Oct. 27, 2016

US Bankruptcy Court
District of New Hampshire
1000 Elm Street, Suite 1001
Manchester, NH 03101-1708

RE: Case No. 08-11816-JMD

Dear Honorable Members of the Court,

We are writing to object to the purchase of the heretofore bankrupt USA Springs, Inc. by Nottingham Springs, LLC. It has come to our attention that Nottingham Springs, LLC intends to purchase the land to extract water from the property for their profit. The town of Barrington adopted a Rights-Based Ordinance to protect the waterways of Barrington and any purchase of the USA Springs property to extract water to sell is a violation of that ordinance, as it is a violation of the Nottingham Water Rights and Local Self-Government Ordinance.

Moreover, given the current pressures on our water supply by other development in our town, by climate change and most notably this summer's drought, we ask the Court to consider the health and well-being of Barrington and Nottingham citizens in allowing a sale of property where the sole intent is to profit from the extraction of water resources. This property is at the headwaters of the Oyster River and provides important water resources for a large segment of the populations of Nottingham, Barrington, Lee and Durham. The natural habitats on this property contribute to a healthy biodiversity in our communities and support recreational and educational programs in our towns.

Thank you for your consideration of citizen rights and water resource protection as you deliberate this decision.

Sincerely,



Dan Butcher and Rebecca Butcher

CC: Commissioner of DES, Thomas Bivacle
Director of Water Division, Eugene Forbes, PE

FILED

2016 OCT 31 PM 12:58

CLERK OF THE
BANKRUPTCY COURT
DISTRICT OF NH

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In Re:)	
)	Chapter 7
USA SPRINGS, INC.)	Case No. 08-11816-JMD
)	
Debtor.)	
)	

**LIMITED OBJECTION TO MOTION OF CHAPTER 7 TRUSTEE FOR
AUTHORITY TO SELL ESTATE PROPERTY AT PRIVATE SALE
PURSUANT TO 11 U.S.C. & 363**

We, the following community residents of Nottingham and Barrington, New Hampshire (collectively "Community Residents"), appearing *pro se*, hereby object because the Sales Motion purports to sell the Debtor's rights to a variety of state and locally issued permits and authorization which, for the most part, no longer exist and are otherwise contrary to local law, namely the Nottingham Water Rights and Local Self-Government Ordinance and the Barrington Community Bill of Rights.

In support hereof, Community Residents respectfully represents as follows:

1. Chris and Gail Mills, along with Alexandra Neff are residents of Nottingham and members of Nottingham Water Alliance. Chris and Gail Mills are co-founders of the Nottingham Water Alliance, while Alexandra has been a participating member of the grassroots community group since its inception. The Nottingham Water Alliance's purpose is to empower residents and ecosystems of Nottingham, New Hampshire to protect inherent and unalienable rights of human and natural communities

to water and self-government through the enactment of the Nottingham Water Rights and Local Self-Government Ordinance.

2. Russell Brackett and Doug Bogen are residents of Barrington and sit on the Board of Directors for the Barrington Waterways Protection Committee. Both were involved with the drafting, community rights educational outreach, and enactment of the Barrington Community Bill of Rights. Barrington Waterways Protection Committee's purpose is to protect the health, safety, and welfare of residents and ecosystems of Barrington, New Hampshire with a Community Bill of Rights.

3. On October 20, 2016, the State of New Hampshire Department of Environmental Services ("Environmental Services") filed a Limited Objection to the Sale Motion. (Doc. 1081). Community Residents hereby adopt and incorporate Environmental Services Limited Objection.

4. Environmental Services Limited Objection explains why the Debtor does not have a valid large groundwater withdrawal permit. Nor does it have rights to several other expired State permits listed in Environmental Services Limited Objection.

5. Any alleged rights of the Debtor to withdraw groundwater or to engage in any of the other previously permitted activities regarding the water would also be contrary to local law.

6. On March 8, 2016, the Barrington community passed a Rights Based and Local Self-Government Ordinance, at the Barrington Annual Town Meeting, attached hereto as **Exhibit A** ("Barrington Ordinance").

7. The Barrington Ordinance prohibits corporations from corporate mining of ground and surface water which is held in the public trust, and provides for enforcement of the Bill of Rights against corporations engaged in those activities and projects.

8. On March 15, 2008, the Nottingham community passed a Water Rights and Local Self Government Ordinance at the Nottingham Annual Town Meeting, attached hereto as **Exhibit B** (“Nottingham Ordinance”).

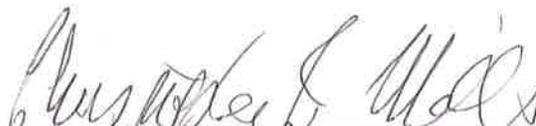
9. The Nottingham Ordinance prohibits corporations from corporate mining of ground and surface water which is held in the public trust, and provides for enforcement of the Bill of Rights against corporations engaged in those activities and projects.

10. Therefore, even if the large groundwater withdrawal permit and other expired State permits were otherwise valid -- which they are not -- local laws, in particular, the Barrington and Nottingham Ordinances, may also invalidate, and further affect the reissuance of, any permits.

11. On October 19, 2016, the New Hampshire Community Rights Network, of which Michelle Sanborn is Chair, prepared a letter objecting to the sale, attached hereto as **Exhibit C**. The letter outlines the history of Nottingham and Barrington residents’ opposition to using USA Springs, Inc.’s property for corporate water withdrawals, explains the basis for the Barrington and Nottingham Ordinances, and objects to the sale. Community Residents hereby incorporate the letter in this Limited Objection.

Respectfully submitted,
Community Residents of Nottingham and
Barrington, New Hampshire

Dated: _____

By: 

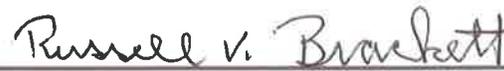
Christopher J. Mills
76 Gebig Road, Nottingham, New Hampshire 03290
(603) 942-8969

By: 

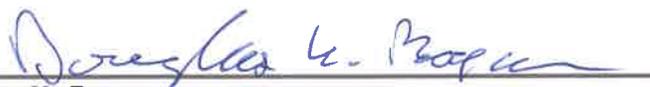
Gail A. Mills
76 Gebig Road, Nottingham, New Hampshire 03290
(603) 942-8969

By: 

Alexandra D. Neff
23 North River Lake Road, New Hampshire 03290
lakesidesan@comcast.net

By: 

Russell V. Brackett
198 Greenhill Road, Barrington, New Hampshire 03825
brackredge@metrocast.net
(603) 534-8331

By: 

Douglas K. Bogen
21 Lois Lane, Barrington, New Hampshire 03825
(603) 664-2696

EXHIBITS

Exhibit A: "Barrington Ordinance"	6 pages
Exhibit B: "Nottingham Ordinance"	4 pages
Exhibit C: New Hampshire Community Rights Network Letter	2 pages

Community Bill of Rights

ESTABLISHING A COMMUNITY BILL OF RIGHTS FOR THE PEOPLE OF BARRINGTON WHICH PROHIBITS ACTIVITIES AND PROJECTS THAT WOULD VIOLATE THE BILL OF RIGHTS, AND WHICH PROVIDES FOR ENFORCEMENT OF THE BILL OF RIGHTS AGAINST CORPORATIONS ENGAGED IN THOSE ACTIVITIES AND PROJECTS

When people and communities find that laws ostensibly enacted to protect them, and to foster their health, prosperity, and fundamental rights, do neither; and that the very air, land, and water -on which their lives and happiness depend -are threatened; it becomes necessary for the people to reaffirm, reclaim, and assert their inalienable rights.

Therefore, we the People of Barrington, in the State of New Hampshire, reaffirm Article 1 of Part First of the New Hampshire constitution, which declares that: *All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.*

We reaffirm Article 14 of Part First of the New Hampshire constitution, which declares that: *Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property or character, to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws.*

We reaffirm Article 8 of Part First of the New Hampshire constitution, which declares: *All power residing originally in, and being derived from the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them.*

We further reaffirm Article 10 of Part First of the New Hampshire constitution, which declares that: *Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.*

We also declare, following upon these first principles of state government, that the People of Barrington possess the constitutional right to alter or abolish our current system of municipal governance if it either fails to recognize the authority of the people to self-govern or if it is rendered unable to secure the people's rights.

And since all power of governance is inherent in the people, we, the People of Barrington, New Hampshire, declare and enact the following civil rights law:

We the People of Barrington, New Hampshire find that our current system of government fails to recognize our self-governing authority because corporations may assert their "rights" to override our laws; our local government and elected representatives can be preempted by state or federal government even when our elected representatives act to protect our community's health, safety, and

welfare; and our local government is banned from adopting and enforcing laws that have not been authorized by the state; and

We the People of Barrington, New Hampshire assert that the operation of those legal doctrines renders our local government unable to protect our rights, and the application of those doctrines renders us powerless to exercise our self-governing authority; and

We the People of Barrington, New Hampshire possess the constitutional right to change our current system of government because that system of government fails to recognize our self-governing authority and it has been rendered unable to secure our rights; and

We the People of Barrington, New Hampshire hereby declare that our current system of government is illegitimate and that we adopt this law to create a new system of local governance that recognizes our self-governing authority while securing and protecting our rights; and

We the People of Barrington, New Hampshire find that commercial resource extraction and toxic waste disposal are economically and environmentally unsustainable, in that they damage property values and the natural environment, place the health of residents at risk, threaten the quality and quantity of the natural water systems within the Town, while failing to provide real benefits to the people of this community; and

We the People of Barrington, New Hampshire find that commercial resource extraction and toxic waste disposal violate the rights of Barrington residents, including our right to make decisions about what happens to the places where we live.

Therefore, We the People of Barrington hereby exercise our inherent and inalienable right of local community self-governance to adopt this Community Bill of Rights law, in order to assert and enforce our fundamental civil, human, and environmental rights.

Section 1 - Definitions

(a) "Corporation," for purposes of this law, includes any corporation, or other business entity, organized under the laws of any state or any country.

(b) "Ecosystem" includes, but is not limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora and fauna, soil dwelling or aquatic organisms.

Section 2 - Statements of Law - A Community Bill of Rights

(a) *Right to Access Water.* All residents and ecosystems in Barrington possess a right to sustainably access, use, consume, and preserve water drawn from natural water cycles to provide water necessary to sustain life within Barrington.

(b) *Right to Pure Water.* All residents and ecosystems in Barrington possess a right to pure water untainted by toxic waste.

(c) *Right to Clean Air.* All residents and ecosystems in Barrington possess a right to clean air untainted by toxic waste.

(d) *Right to Peaceful Enjoyment of Home.* Residents of Barrington possess a right to the peaceful enjoyment of our homes, free from interference, intrusion, nuisances, or impediments to access and occupation, caused by corporations.

(e) *Rights of Ecosystems.* Ecosystems in Barrington possess rights to exist, flourish, and naturally evolve. Residents of Barrington shall possess legal standing to enforce those rights on behalf of those ecosystems.

(f) *Right to Scenic Preservation.* All residents of Barrington possess a right to protect and preserve the scenic, historic, and aesthetic values of the town, including clean air, pure water, healthy soil, and unspoiled vistas, that provide the foundation for a rural quality of life and economic sustainability for local businesses.

(g) *Governmental Legitimacy.* All legitimate governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities. Any system of government that becomes destructive of those ends is not legitimate, lawful, or constitutional.

(h) *Right of Local Community Self-Government.* The People of Barrington possess both a collective and individual right to self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

(i) *Right to Assert the Right of Self-Government.* The People of Barrington possess the right to use their local government to make law, and the making and enforcement of law by the people through a municipal corporation, or any other institution, shall not eliminate, limit, or reduce their sovereign right of local community self-government.

(j) *Rights as Self-Executing.* All rights secured by this law are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors. Further implementing legislation shall not be required for the Town of Barrington, the residents of Barrington, or the ecosystems and natural communities protected by this law, to enforce all of the provisions of this law.

Section 3 – Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

(a) It shall be unlawful within Barrington for any corporation or government to engage in resource extraction or toxic waste disposal as defined by this Ordinance.

(i) "Resource extraction" includes, but is not limited to, the physical extraction of water, minerals, gravel, sand, or other minerals and mineral products. This phrase does not include the removal of timber.

(ii) "Toxic waste disposal" includes, but is not limited to, the physical deposition of toxic waste

onto the land, or into waterways within Barrington. "Toxic waste" includes, but is not limited to, waste products from petroleum refining or pesticide manufacturing, discarded pesticides or pharmaceuticals, sediment sludge, wastewater treatment sludge, heavy metals, chemical residue from manufacturing processes, biomedical wastes, mining residuals, radioactive wastes, or any other waste material that poses substantial present or potential hazard to human health or the environment.

(b) It shall be unlawful for any corporation or government to violate the rights recognized and secured by this Ordinance.

(c) No permit, license, privilege, charter, or other authority issued by any state or federal entity that would violate the prohibitions of this Ordinance or any rights secured by this Ordinance, the New Hampshire Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Barrington.

Section 4 - Exceptions

The People of Barrington hereby allow the following exceptions to the Statements of Law contained within Section 3 of this Ordinance:

(a) Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Barrington and those utility corporations providing water, for the provision of water within the Town of Barrington.

(b) Corporations operating under valid and express contractual provisions in agreements entered into between residents of the Town of Barrington and those corporations for water, when the withdrawn water is used solely for on-site residential, household, agricultural or commercial facilities within the Town of Barrington, as long as such commercial facilities do not withdraw water for sale outside of the Town of Barrington, or purchase water withdrawn from the Town of Barrington for sale outside of the Town.

(c) The City of Rochester operating under valid and express contractual agreements entered into between that municipality and the Town of Barrington for water used solely for on-site residential, household, agricultural or commercial facilities within the City of Rochester, as long as such extraction does not withdraw water for sale outside of the City of Rochester.

(d) Sand or gravel extraction from existing, permitted gravel and sand extraction operations located within the Town of Barrington, which were operating prior to the date of enactment of this Ordinance.

(e) Future sand and gravel extraction operations operating under valid and express contractual provisions with the Town of Barrington, when the extracted gravel or sand is used solely for municipal, on-site residential, household, agricultural or commercial facilities within the Town of Barrington, as long as such commercial facilities do not extract sand or gravel for sale outside of the Town of Barrington, or purchase sand or gravel from the Town of Barrington for sale outside the town.

Section 5 - Enforcement

- (a) Any corporation or government that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this law, shall count as a separate violation.
- (b) The Town of Barrington, or any resident of Barrington, may enforce the rights and prohibitions of this law through an action brought in any court possessing jurisdiction over activities occurring within the Town of Barrington. In such an action, the Town of Barrington or the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.
- (c) Ecosystems and natural communities within Barrington may enforce their rights, and this law's prohibitions, through an action brought by the Town of Barrington or residents of Barrington in any court possessing jurisdiction over activities occurring within the Town of Barrington, in the name of the ecosystem or natural community as the real party in interest. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to the Town of Barrington to be used exclusively for the full and complete restoration of the ecosystem or natural community.
- (d) If the Town of Barrington fails to enforce or defend this law, or a court fails to uphold this law's limitations on corporate power, the law shall not be affected by the failure to enforce or defend, or by the failure to uphold the limitations on corporate power, and any person may then enforce the rights and prohibitions of the law through direct action. If enforcement through direct action is commenced, this law shall prohibit any private or public actor from filing a civil or criminal action against those participating in direct action. If filed in violation of this provision, the applicable court must dismiss the action promptly, without further filings being required of direct action participants. "Direct action" as used by this provision shall mean any activities or actions carried out to directly enforce the rights and prohibitions contained within this law.

Section 6 - Enforcement - Corporate Powers

- (a) Corporations that violate this law, or that seek to violate this law, shall not be deemed to be "persons" to the extent that such treatment would interfere with the rights or prohibitions enumerated by this law, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or prohibitions enumerated by this law, including standing to challenge this law, the power to assert state or federal preemptive laws in an attempt to overturn this law, or the power to assert that the People of Barrington lack the authority to adopt this law.
- (b) All laws adopted by the legislature of the State of New Hampshire, and rules adopted by any State agency, shall be the law of the Town of Barrington only to the extent that they do not violate the rights or prohibitions of this law.

Section 7 - Effective Date and Existing Permit Holders

This law shall be effective immediately on the date of its enactment, at which point the law shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or

Nottingham Water Rights & Self Government Ordinance
As Amended and Approved at Town Meeting, March 15, 2008

Section 1. Name. The name of this Ordinance shall be the “Nottingham Water Rights and Local Self-Government Ordinance.”

Section 2. Preamble and Purpose. We the People of the Town of Nottingham declare that water is essential for life, liberty, and the pursuit of happiness – both for people and for the ecological systems, which give life to all species.

We the People of the Town of Nottingham declare that we have the duty to safeguard the water both on and beneath the Earth’s surface, and in the process, safeguard the rights of people within the community of Nottingham, and the rights of the ecosystems of which Nottingham is a part.

We the people of Nottingham declare that all of our water is held in the public trust as a common resource to be used for the benefit of Nottingham residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community – placing the control of water in the hands of a corporate few, rather than the community – would constitute tyranny and usurpation; and that we are therefore duty bound, under the New Hampshire Constitution, to oppose such tyranny and usurpation. That same duty requires us to recognize that two centuries’ worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities, and requires us to take affirmative steps to remedy that usurpation of governing power.

Section 3. Authority. This Ordinance is adopted and enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Town of Nottingham to self-government and under authority granted to the people of the Town by all relevant state and federal laws including, but not limited to the following:

- Part First, Article 10 of the New Hampshire Constitution, which declares that government is instituted for the common benefit, protection and security of the whole community, and not for the private interest of any class of men;
- Part First, Article 1 of the New Hampshire Constitution, which declares that government is founded upon the consent of the people and instituted for the common good;
- The spirit of Part Second, Article 5 and Part Second, Article 83 of the New Hampshire Constitution, which subordinate corporations to the body politic;
- NH RSA 31:39 I (a), (l) and III which, under powers and duties of Towns, permits bylaws for the care, protection, preservation of the commons; the ordering of their prudential affairs; and the enforcement of such bylaws by suitable penalties.
- The Declaration of Independence, which declares that governments are instituted to secure people’s rights, and that government derives its just powers from the consent of the governed;
- The General Comment of the United Nations Covenant on Economic, Social, and Cultural Rights, which declares that “the human right to drinking water is fundamental to life and health. Sufficient and safe drinking water is a precondition to the realization of human rights.”

Section 4. Statement of Law. No corporation or syndicate shall engage in water withdrawals in the Town of Nottingham. The term "corporation" means any corporation organized under the laws of any state of the United States or any country. The term "syndicate" includes any limited partnership, limited liability partnership, business trust, or Limited Liability Company organized under the laws of any state of the United States or any country. The term "engage" shall include, but not be limited to, the physical extraction of water, and the buying and/or selling of water extracted within the Town of Nottingham.

Section 5. Statement of Law. No corporation doing business within the Town of Nottingham shall be recognized as a "person" under the United States or New Hampshire Constitutions, or laws of the United States or New Hampshire, nor shall the corporation be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the New Hampshire Constitution, within the Town of Nottingham.

Section 5.1. Rights. All residents of the Town of Nottingham possess a fundamental and inalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Nottingham. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.

Section 6. Exceptions. The people of the Town of Nottingham hereby allow the following exceptions to the Statement of Law contained within §4 of this Ordinance:

- (1) Municipal authorities established under the laws of the State of New Hampshire engaged in water withdrawals providing water only to residential and commercial users within the Town of Nottingham;
- (2) Nonprofit educational and charitable corporations organized under state non-profit corporation law, and qualifying under §501(c)(3) of the federal Tax Code, which do not sell water withdrawn within the Town of Nottingham outside of the Town of Nottingham;
- (3) Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Nottingham and those utility corporations, for the provision of service within the Town of Nottingham;
- (4) Corporations operating under valid and express contractual provisions in agreements entered into between residents of the Town of Nottingham and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial facilities within the Town of Nottingham, as long as such commercial facilities do not withdraw water for sale outside of the Town of Nottingham, or purchase water withdrawn from the Town of Nottingham for sale outside of the Town.
- (5) This ordinance shall not apply to any emergency vehicle.
- (6) This ordinance shall not apply to military vehicles.
- (7) This ordinance shall not apply to any vehicle that uses water as its cooling medium.
- (8) This ordinance shall not apply to septic system disposal.

Section 7. Enforcement. Any corporation planning to engage in water withdrawals within the Town of Nottingham must notify the Town of such activity at least sixty (60) days prior to engaging in water withdrawals. Such notification shall contain a claim to one of the exemptions listed in Section 6 of this

Ordinance. Any violation of this Ordinance shall be considered a criminal summary offense, and will subject the Directors of the noncompliant corporation to joint and several liability with the corporation itself.

The Board of Selectmen of the Town of Nottingham authorizes a fine of up to \$1,000.00 per violation. Each act of water withdrawal and each day that water is withdrawn shall be considered a separate violation of this Ordinance. The Board of Selectmen of the Town of Nottingham may also file an action in equity in any Court of competent jurisdiction to abate any violation defined in Section 4 of this Ordinance. If the Selectmen of the Town of Nottingham fail to bring an action to enforce this Ordinance, any resident of the Town has standing in front of the Court for enforcement.

Section 7.1. Civil Rights: Any person acting under the authority of a permit issued by the Department of Environmental Services, any corporation operating under a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any Town resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Nottingham for restoration of those natural communities and ecosystems.

Section 7.2. Environmental Protection:

It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems. The Town of Nottingham, along with any resident of the Town, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for damages caused to natural communities and ecosystems within the Town, regardless of the relation of those natural communities and ecosystems to Town residents or the Town itself. Town residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 7.3. Civil Rights Enforcement:

Any Town resident shall have standing and authority to bring an action under this Warrant Article's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and Town residents, as recognized by this Warrant Article.

Section 7.4. Town Action Against Preemption.

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure rights to life, liberty, property, and pursuit of happiness. Any attempts to use county, state, or federal levels of government – judicial, legislative, or executive - to preempt, amend, alter, or overturn this Warrant Article or parts of this Warrant Article, or to intimidate the people of the Town of Nottingham or their elected officials, shall require the Board of Selectmen to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Warrant Article or other levels of government used to intimidate the people of Nottingham or their elected officials.

Section 7.5. Strict Liability. Persons using corporations to engage in water withdrawal in a neighboring

municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Nottingham from those activities, and for all harms caused to ecosystems and natural communities within Nottingham.

Section 7.6. Liability. No permit, license, privilege or charter issued by any State or federal Regulatory Agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any Nottingham resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Nottingham. Additionally, any employee, agent or representative of any State or federal Regulatory Agency, Commission or Board who issues a permit, license, privilege or charter to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Nottingham for restoration of those natural communities and ecosystems.

Section 7.7. Future Lost Profits. Within the Town of Nottingham, corporate claims to "future lost profits" shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.

Section 7.8. Prohibition on Board of Selectmen Challenge.

The Board of Selectmen of the Town of Nottingham or any other agent or agency of the Town shall be prohibited from taking any action to annul, amend, or overturn this Warrant Article, unless such action is approved by a prior Town Meeting at which a majority of the residents of the Town attending the Town Meeting approve such action.

Section 8. Severability. The provisions of this Ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the people of Nottingham that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

Section 9. Effect. This Ordinance shall be effective immediately upon its enactment.

*A true copy, attested
Sandra Weston
Town Clerk
7/30/14*

EXHIBIT C



New Hampshire Community Rights Network

102 Lakeview Hts., Alexandria, NH 03222
info@nhcommunityrights.org

10-19-16

US Bankruptcy Court
District of New Hampshire
1000 Elm Street, Suite 1001
Manchester, NH 03101-1708

Re: Objection to the motion to sell USA Springs Inc., Case No. 08-11816-JMD

To Whom It May Concern:

The New Hampshire Community Rights Network (NHCRN) was established as communities within New Hampshire enacted local rights-based laws to elevate their rights over corporate claimed "rights," and protect themselves from harmful corporate activities. NHCRN was founded to educate and empower communities and elected officials about our individual and collective right to local self-governance in order to secure and protect the inherent and unalienable rights of all inhabitants of New Hampshire to economic, social and environmental justice, including the rights of nature.

NHCRN believes that sustainable environmental and economic development can be achieved only when the people affected by governing decisions are the ones who make such decisions. We oppose for-profit corporations or other such entities, such as USA Springs Inc. and Kevin Delaney/Nottingham Springs LLC, seeking to use claimed "property rights" and privileges to violate the inherent and unalienable right of real persons to protect their natural rights as enumerated within the Bill of Rights of the New Hampshire Constitution.

Article 2. Natural Rights. *All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and in a word, of seeking and obtaining happiness...*]

1

Residents of Nottingham and Barrington opposed USA Springs' intent to use the property for the purpose of groundwater extraction since their original proposal in 2001. Nottingham and Barrington residents understand water withdrawal from a confined and contaminated bedrock aquifer would violate their natural right enumerated in the Article above, to protect their private property and seek happiness in the places where they live.

Against all reason and scientific evidence, permits were issued to USA Springs Inc. that resulted in drawing contamination into one their test wells. Since the USA Springs bankruptcy proceedings beginning in 2008, Nottingham residents have presented themselves before the court multiple times whenever there has been a potential buyer for the property. Each time, they have presented the potential buyer with a letter notifying them of their democratically enacted *Nottingham Water Rights & Self-Government Ordinance* which prohibits the corporate withdrawal of water within the Town of Nottingham to sell beyond the borders of the Town. Barrington residents democratically enacted a similar ordinance during this year's town meeting.

Kevin Delaney's decision to move forward with the purchase of the USA Springs Inc. property even after he has been notified of the Ordinances in both towns implies his intent to ignore the laws of Nottingham and Barrington. The Notice of Intended Private Sale filed by Kevin Delaney, a.k.a. Nottingham Springs LLC, with this court reveals his determination to exercise his "right" to profit at the cost of residents' right to protect their own health, safety and welfare, economic sustainability, and natural environment. Kevin Delaney plans to use the Towns of Nottingham and Barrington as resource colonies for profit against residents' democratically enacted laws.

NHCRN assists communities in elevating their right to protect themselves and the places they live, for the sake of the health, safety and welfare of residents, local economies, and environmental sustainability. Nottingham and Barrington residents impacted by the proposed sale of the USA Springs Inc. property to Kevin Delaney have overwhelmingly

NHCRN is a 501(c)3 organization. All donations are deductible.



New Hampshire Community Rights Network

expressed opposition to the use of the USA Springs property for purposes of corporate water withdrawal. Approval of the court for the sale of the USA Springs property to Kevin Delaney or the Town of Nottingham accepting tax liens, does not constitute community support.

The State is charged with protecting people's rights – the most fundamental of all being the right to local community self-government, which is the right of people to collectively decide what happens where they live. When human communities find that laws ostensibly enacted to protect them, and to foster their health, prosperity, and fundamental rights, do neither; and that the very air, land, and water – on which their lives and happiness depend – are threatened; it becomes necessary for the people to reaffirm, reclaim, and assert their inalienable rights.

Residents of Nottingham and Barrington have found that our current system of government fails to protect their right to decide to what happens where they live. Their democratically enacted rights-based ordinances reaffirm, reclaim, and assert their inalienable right to access pure water and clean air; right to the peaceful enjoyment of their homes; rights of ecosystems to exist and flourish; right to scenic preservation and government legitimacy; right of local community self-government, and the right to assert the right of self-government. Using the USA Springs Inc. property for the purpose of corporate water withdrawals to bottle and sell beyond town boundaries would be ignoring the rights-protecting prohibitions enumerated within their local laws.

Therefore, NHCRN objects to the sale of USA Springs, Inc. property to anyone intending to use the property for purposes that violate the fundamental rights of human and natural communities protected within a democratically enacted rights-based ordinance that establishes a Community Bill of Rights protecting the health, safety and welfare of both. The *Water Rights & Self-Government Ordinances* enacted by residents of Nottingham and Barrington do just that. Residents affected by the sale of the USA Springs, Inc. property must have the authority to make the final governing decision as to whether or not it moves forward.

Sincerely,

Michelle

Michelle Sanborn
NHCRN Coordinator, Board of Directors
www.nhcommunityrights.org
(603) 524-2468

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

In Re:) Chapter 7
)
USA SPRINGS, INC.) Case No. 08-11816-JMD
) Hearing: November 15, 2016, at 11:00
Debtor.)

CERTIFICATE OF SERVICE

I, Gail Mills, hereby certify that copies of the attached Objection by the Community Residents of Nottingham, NH, and Barrington, NH, to Trustee's Motion for Authority to Sell Estate Property at Private Sale were forwarded electronically this day to:

Alan L. Braunstein, Timothy Britain, Mark P. Cornell, Euriprides Dalmanieras, Michael A.Fagone, Michael B. Feinman, Jeffrey S. Follett, Edmond J. Ford, William S. Gannon, Terrie Harman, Geraldine Karonis, Robert J. Keach, James S. LaMontagne, Brian F. McCaffrey, Edward C. Mosca, Earl D Monroe, Alexander G. Nossiff, Office of the US Trustee, Kelly L. Ovitt Puc, David K. Pinsonneault, Thomas J. Raftery, James F. Raymond, Peter C. L. Roth, Ryan C. Siden, Timothy P Smith Tony F. Soltani, Macken Toussaint, UST, and Lisa C. Wood.

Paper copies have been sent via first class US mail to:

Steven A. Bolton, Bolton Law Offices, 127 Main Street, Suite 2, Nashua, NH 03060

Jeffrey DeLucia, 9 Woodland Drive, Plaistow, NH 03865

Laurie DeLucia, 9 Woodland Drive, Plaistow, NH 03865

Diom, c/o Steve Collins, P.O. Box 143, Newton, NH 03858

Duane A. D' Agnese & Company, PA, 132 Portsmouth Street, Concord, NH 03301

Ralph Faiella, 128 Newton Road, unit 38, Plaistow, NH 02865

Bruce Hardwood on behalf of Plaintiff USA Springs, Inc., Sheehan, Phinney, Bass & Green, 1000 Elm st, 17th Floor, PO Box 3701 Manchester, NH 03105

MyKroWaters, Inc., P.O- Box 1088, Concord, MA 01742

NHSC, Inc., 202 Kent Place, Newmarket, NH 03857

Kevin H. O'Neill, O'Neill on behalf of Creditor State of NH, Law Office, 6-D Dobson Way, Unit 111, Merrimack, NH 03054

Paul Papas, WBPFOR Group Trust, 4727 East Bell Road, 45 350 Phoenix, AZ 85032

Jennifer Rood on behalf of Creditor Committee Official Committee of Unsecured Creditors, Bernstein Sur, 670 N. Commercial st., Ste 108, P.O. Box 1120, Manchester, NH 03105-1120

Francesco Rotondo, 16 Hobbs Road, Pelham, NH 03076

Siden & Associates, pc, 20 Park Plaza, Suite 505, Boston, MA 02116

Allen R. Smith, on behalf of Creditor Malom Group AG, P.O. Box 1032, Winter Haven, FL 33882-1032

The Bankruptcy Estate of Francesco Rotundo, Olga Gordon, Esq., Murtha Cullina, 99 High St, 20th Floor, Boston, MA 02110

The Kane Company, Inc., 210 Commerce Way, Suite 300, Portsmouth, NH 03801

W. C. Cammett Engineering, Inc., 297 Elm Street, Amesbury, MA 01913

John Marshall, JM Partners, 6800 Paragon Place, Suite 202, Richmond, VA 23230-1656

Dated: 11/1/2016

By: Gail A. Mills

Gail A. Mills
76 Gebig Road
Nottingham, NH 03290
(603) 942-8969

FILED

2016 NOV -4 PM 12: 15

CLERK OF THE
BANKRUPTCY COURT
DISTRICT OF NH

Nov. 1, 2016
Judith Doughty
343 Stage Road
Nottingham, N.H. 03290

To:
U.S. Bankruptcy Court
Dist. Of N.H.
1000 Elm St. Suite 1001
Manchester, N.H. 03101-1708
Case No. 08-11816-JMD

To-Honorable Members of the Court,

I am contacting the court out of concern for the potential damage which would result from the sale and resulting construction of a water extraction and bottling plant in Nottingham on the property of the (bankrupt) USA Springs.

Past history from documentation of found contamination and results of the (failed) pump test which revealed inadequate water to supply the proposed water withdrawal, as well as a detailed study by a professor of Hydrology from U.N.H. clearly predict the damage such a project would cause.

At the time of the initial U.S.A. Spring plant proposal, Nottingham had not yet experienced the population we now have and the state-especially the seacoast area-was not in a severe drought condition. All this additional information further predicts a failure of any large groundwater withdrawal project.

Many years have passed since the initial U.S.A. Springs failed project and it seems that many more years could, potentially be wasted if such a sale should be approved, leaving all the creditors in a worse situation than at present.

I live on a small 14 acre farm and have a 12 foot spring fed well, my sole source of water. This well has never gone dry, but if a large water withdrawal should occur-especially an ongoing -day to day withdrawal, as proposed by a commercial water bottling plant, I, along with many other Nottingham residents would certainly be adversely affected.

For all the reasons stated above, as well as the long term environmental damage that would result from the granting of this proposed sale, I urge the court to deny this proposed sale.

Thank-you for considering my comments and for considering the long range consequences that a large bedrock aquifer water withdrawal would cause.

Sincerely,
Judith Doughty

(Nottingham resident since 1964)

since the one issued to the Debtor has expired and is no longer valid. David Carroll, an attorney with the New Hampshire Local Government Center presented a law lecture for municipal officials on October 21, 2009. He stated in his handout, “a special exception becomes null and void if a zoning amendment that affects the special exception is enacted before the special exception is implemented. *Navin v. Exeter*, 115 N. H. 248 (1975). An automatic expiration of an unimplemented special exception protects the public interest in the event there has been a “**material change of circumstances**” that would currently justify denial of the special exception” (**Exhibit B**).

3. The results of the DES required 10-day pump test conducted in 2002 by the Debtor revealed a “**material change of circumstances**” (adverse impacts) according to their report issued on August 12, 2003, whereby they denied the Debtor’s application for a Major Groundwater Withdrawal Permit based on the pump test results and 27 findings of scientific reasoning (**Exhibit C** – Findings #20, 21 and 22 on pages’ 4353 and 4354). Several residential wells had projected drawdowns of between 39 to 61 feet, one of which was located more than 3000 feet away from the nearest USA Springs pumping wells. If the Debtor or his successor applied for a new special exception, the ZBA may not vary or waive any of the requirements set forth in the Nottingham zoning ordinances. *Tidd v. Town of Alton*, 148 N.H. 424 (2002); *Midge v. Precinct of Haverhill Corner*, 133 N.H. 881 (1991); and *New London Land Use Assoc. v. New London Zoning Board*, 130 N.H. 510 (1988). Moreover, the applicant has the burden of presenting sufficient evidence to support a favorable finding on each special exception requirement. *The Richmond Company, Inc. v. City of Concord*, 149 N.H. 312 (2003); and *McKibben v. City of Lebanon*, 149 N.H. 59 (2002).
4. The Nottingham Selectboard hired Dr. Thomas Ballestero, PhD, PE, PH, CGWP, PG to

review the findings contained in the DES denial letter of August 12, 2003. **Dr. Ballestero, a renowned hydrogeologist from the University of New Hampshire** provided technical information and reports to the Town of Nottingham and to DES. One summary report on the pump test results contained five technical points. He also **stated**, “a very strong case is made on the water level and pumping data that **there is insufficient groundwater and recharge at the site to support the USA Springs request without severe consequences (Exhibit D).**”

5. Due to a change in state law (RSA 674:33 IV), the Debtor’s special exception expired on September 22, 2013 because it was not fully-exercised within two years. This state law was changed to read, “Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the ZBA for good cause, provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception” (**Exhibit E**). The ZBA approved the special exception on May 1, 2001.
6. The Nottingham Planning Board granted conditional site plan approval on November 16, 2005 to the Debtor. However, USA Springs waited 20 months (until July 26, 2007) before obtaining a 1-year building permit from the Town’s Code Administration Office. This prevented them from gaining vested rights under RSA 674:39. Moreover, when their building permit was due to expire they chose not to renew it for a cost of only \$10. Thus, the building permit expired on July 25, 2008. In October 2010, the Debtor “requested information from the Code Administration Office concerning the necessary steps in obtaining a new building permit for the manufacturing plant owned by USA Springs (**Exhibit F**). It stated in part that, “Copies of all Federal, State and Local permits issued and/or renewed shall be submitted to the Building Inspector”.

Conclusion

Municipalities, now more than ever, are challenged to respond to environmental impacts in their communities. Since 2001 this environmentally complex project has been considered in one way or another by local land use boards, board of selectmen, state agencies, federal agencies, the Office of the NH Attorney General, citizen groups, local and national natural resource organizations, the NH Local Government Center, the NH Superior Court, the NH Supreme Court, the NH Wetlands Council, the NH Water Council, the NH Legislature, legislative study committees, the Governor of NH, the NH Congressional delegation, and the US Trade Representative. Since the beginning of this project it has cost Nottingham and Barrington taxpayers in excess of \$1 million in legal and other costs to protect their water supply, wetlands and property values. This project negatively impacted wells and primary wetlands during the 2002 pump test. **This Court should not be allowed to subvert the local and state permitting process by making any of these expired permits whole again.**

WHEREFORE, the Neighborhood Guardians respectfully prays that this Honorable Court:

- A. Order that the municipal permits issued by the Town of Nottingham that have expired and are contained in **Exhibit G** (Exhibit B of the Motion of Chapter 7 Trustee for Authority to Sell) cannot be usurped and transferred from the Debtor to the Buyer by the Bankruptcy Court.
- B. Further order that any other municipal permits not listed in Exhibit B that have since expired, (e.g. special exception) also cannot be transferred to the Buyer by this Court.
- C. Grant such further relief as is just and proper.

Respectfully submitted,

NEIGHBORHOOD GUARDIANS

By Its Chairman and Treasurer

JAMES HADLEY

Dated: November 4, 2016

By: James Hadley
James Hadley, MPA, MBA, MS in
Community Economic Development
Chairman and Treasurer
Neighborhood Guardians
PO Box 104
West Nottingham, NH 03291
(603) 952-7254

CERTIFICATE OF SERVICE

I hereby certify that **copies** of the attached Objection by the Neighborhood Guardians to Trustee's Motion for Authority to Sell Estate Property at Private Sale Filed **were forwarded electronically this day** to

Alan L. Braunstein, Timothy Britain, Mark P. Cornell, Euriprides Dalmanieras, Michael A. Fagone, Michael B. Feinman, Jeffrey S. Follett, Edmond J. Ford, William S. Gannon, Terrie Harman, Geraldine Karonis, Robert J. Keach, James S. LaMontagne, Brian F. McCaffrey, Edward C. Mosca, Earl D. Monroe, Alexander G. Nossiff, Office of the US Trustee, Kelly L. Ovitt Puc, David K. Pinsonneault, Thomas J. Raftery, James F. Raymond, Peter C. L. Roth, Ryan C. Siden, Timothy P. Smith, Tony F. Soltani, Macken Toussaint, UST, and Lisa C. Wood.

Paper copies have been sent via first class US mail to:

Steven A. Bolton, Bolton Law Offices, 127 Main Street, Suite 2, Nashua, NH 03060
Jeffrey DeLucia, 9 Woodland Drive, Plaistow, NH 03865
Laurie DeLucia, 9 Woodland Drive, Plaistow, NH 03865
Diom, c/o Steve Collins, P.O. Box 143, Newton, NH 03858
Duane A. D'Agnes & Company, PA, 132 Portsmouth Street, Concord, NH 03301
Ralph Faiella, 128 Newton Road, unit 38, Plaistow, NH 02865
Bruce Hardwood on behalf of Plaintiff USA Springs, Inc., Sheehan, Phinney, Bass & Green, 1000 Elm St, 17th Floor, PO Box 3701 Manchester, NH 03105
MyKroWaters, Inc., P.O. Box 1088, Concord, MA 01742
NHSC, Inc., 202 Kent Place, Newmarket, NH 03857
Kevin O'Neill on behalf of Creditor State of NH, Law Office, 6-D Dobson Way, Unit 111, Merrimack, NH 03054
Paul Papas, WBPFOR Group Trust, 4727 East Bell Road, 45-350 Phoenix, AZ 85032
Jennifer Rood on behalf of Creditor Committee Official Committee of Unsecured Creditors, Bernstein Sur, 670 N. Commercial St., Ste 108, P.O. Box 1120, Manchester, NH 03105-1120
Francesco Rotundo, 16 Hobbs Road, Pelham, NH 03076
Siden & Associates, PC, 20 Park Plaza, Suite 505, Boston, MA 02116
Allen R. Smith, on behalf of Creditor Malom Group AG, P.O. Box 1032, Winter Haven, FL 33882-1032
Bankruptcy Estate of Francesco Rotundo, Olga Gordon, Murtha Cullina, 99 High St, 20th Floor, Boston, MA 02110
The Kane Company, Inc., 210 Commerce Way, Suite 300, Portsmouth, NH 03801
W. C. Cammett Engineering, Inc., 297 Elm Street, Amesbury, MA 01913
John Marshall, JM Partners, 6800 Paragon Place, Suite 202, Richmond, VA 23230-1656

Dated: November 4, 2016

By: James Hadley
James Hadley, MPA, MBA, MS in CED
Chairman and Treasurer
Neighborhood Guardians
PO Box 104, West Nottingham, NH 03291
(603) 952-7254

Multiple Documents

Select the document you wish to view.

Part	Description	
<u>1</u>	<u>Main Document</u>	5 pages
<u>2</u>	<u>Exhibit A</u>	3 pages
<u>3</u>	<u>Exhibit B</u>	3 pages
<u>4</u>	<u>Exhibit C</u>	4 pages
<u>5</u>	<u>Exhibit D</u>	2 pages
<u>6</u>	<u>Exhibit E</u>	2 pages
<u>7</u>	<u>Exhibit F</u>	2 pages
<u>8</u>	<u>Exhibit G</u>	2 pages

[Type here]

EXHIBIT A

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

MINUTES

1 MAY 2001

Chair Walsh called the meeting to order at 7:15 pm. Also present were members Dorothy Nazarian, Earle Rourke, Doug Leib; alternate member/recording secretary Amy Stanton.

Chair Walsh opened the public hearing for Garrison Place Real Estate Investment Trust. Present for the hearing was Atty. Armand Hyatt, Ray Talkington, Dennis Hamel Larry Morse, Francesco Rotondo; abutters Jenn Gilman, Rick & Pat Woollett, David Drapeau; guests Mary Bonser, Sam Demeritt, Elaine Schmottlach, Betsy Saunders, Koki Leasure. Chair Walsh read the public hearing notice and designated Ms. Stanton to sit in for Beverly Barney. Chair Walsh informed the applicant that a full Board consists of 5 members and tonight there are only 4. Mr. Walsh continued to state Mr. Rotondo could request a recession to another date in the hopes of getting 5 members but he could not guarantee 5 members would be present at any given time. Atty. Hyatt representing Mr. Rotondo stated they would proceed. Atty. Hyatt gave a history of the project. Board members reviewed the plans. Atty. Hyatt stated the proposal is to construct and operate a water bottling facility on the property. Mr. Hyatt stated due to wetlands and the protective well radii the plant can only be put in the residential area of the lot. (The commercial/industrial zone extends 1000 feet back from Rte. 4 for lots with frontage on Rte. 4.) Atty. Hyatt read the criteria necessary to obtain a special exception and stated he felt the application met the criteria. Atty. Hyatt stated the plant will be in operation 24 hours per day. Mr. Hyatt continued to state trucking will be between the hours of 8:00 am - 5:00 pm Monday - Saturday, there will be no trucking on Sunday.

Ray Talkington, geohydrologist from Geosphere Environmental Management informed the Board there will be 3 wells and one natural spring outlet. Mr. Talkington stated the wells are bedrock and vary in depth from 500-560 feet. Mr. Talkington continued to state well 1 produces 100 gallons of water per minute, well 2 150 gallons per minute, and well 4 50 gallons per minute. Mr. Talkington stated these wells will require a

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submersible pump and pipes will lead from these wells into the bottling facility. Mr. Talkington noted the natural spring outlet produces 5 gallons per minute and will not require a submersible pump. Mr. Talkington stated the State requires the applicant send notification to abutters and those people who could be effected by the facility. The people have an option of having a public hearing held by the State and they also have the option of the company putting a pressure transducer in their wells to determine if there is any adverse effect.

Larry Morse of N. H. Soil Consultants stated he is currently working with the Conservation Commission to address wetlands issues. Mr. Morse stated approximately 16,000 square feet of wetlands are involved.

Ms. Schmottlach stated there was a water bottling facility on Rte. 27 in Raymond, which has since gone out of business, and the neighbors complained about the noise. Atty. Hyatt stated the entire operation is inside and truck traffic is limited to Monday - Saturday 8:00 am - 5:00 pm. Mr. Hamel stated a berm is to be erected then a 12 foot high sound fence and cedars and firs are to be planted to minimize the noise. Ms. Schmottlach suggested the Town get an objective opinion not just opinions from professionals who work for Mr. Rotondo. Mr. Drapeau questioned how the building would be heated. Mr. Rotondo stated oil. Mrs. Woollett questioned who guarantees that if a well goes dry that it will be replaced. Mr. Rotondo stated the corporation does. Mr. Talkington explained the procedure a person would take if they feel their well has been adversely effected by the bottling plant. Ms. Bonser questioned if the company changes ownership would the new owners still be bound by the agreement. Atty. Hyatt stated they would be. Ms. Bonser questioned how many employees the plant would have. Mr. Rotondo stated 75 - 83 not including the truck drivers who are a separate entity. Ms. Schmottlach asked what the barn will be used for. Mr. Rotondo stated office space. Ms. Schmottlach questioned if there would be any waste from the manufacturing of the plastic bottles. Mr. Rotondo stated there is none as the plastic comes in a pelletized powder form. Ms. Schmottlach questioned if the water is to be exported to other countries does the water still have to meet U.S. standards. Mr. Rotondo stated it did. Atty. Hyatt stated the proposal benefits the Town by

ZBA: 5-1-01 Page 3

creating jobs, tax revenue, preserving open space, and no burden on the school system.

Chair Walsh made a motion to approve the application of Garrison Place Real Estate Investment Trust to allow the construction and operation of a water bottling facility on map 3 lot 10 subject to the following conditions: 1) Trucking operation is to be between the hours of 8:00 am - 5:00 pm Monday - Saturday. There is to be no trucking on Sunday. 2) No more than 60 trucks can enter and leave the premises within a 24 hour period. 3) N. H. Department of Environmental Services and the Nottingham Planning Board will monitor and approve the water testing to ensure residents will have no adverse impact in their own personal water systems. Mr. Rourke seconded the motion. The motion was approved with 4 affirmative votes (Leib, Walsh, Rourke, Nazarian) and 1 abstention (Stanton).

Mr. Rotondo thanked the Board.

Board members reviewed the mail.

Mr. Rourke made a motion to approve the minutes of 17 April 2001 as printed. Mr. Leib seconded the motion. The motion was unanimously approved. (Mr. Walsh abstained from voting as he was not present at that meeting.)

At 10:00 Mr. Walsh made a motion to adjourn. Ms. Nazarian seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Stanton

Recording Secretary

—2009—
Municipal **LAW**
LECTURE Series

LECTURE THREE

**What Do You Do
When They Stop Building?**
Vested Rights, Modified Approvals,
Violations and Revocation

Presenters:

Attorney David R. Connell
New Hampshire Local Government Center
25 Triangle Park Drive
Concord, NH 03302-0617
Tel: 603.224.7447, ext. 384

Attorney Matthew R. Serge
Upton & Hatfield LLP
10 Centre Street / PO Box 1090
Concord, NH 03302-1090
Tel: 603.224.7791

NEW HAMPSHIRE LOCAL GOVERNMENT CENTER

A properly drafted LOC is preferable to a performance bond because it is typically easier and quicker to collect the funds from the issuer than from a surety company.

Additional details will be discussed in section II, E on collection issues, below.

D. 2009 AMENDMENTS TO RSA 676:3 REQUIRE WRITTEN DECISIONS DETAILING CONDITIONS OF APPROVAL

Laws 2009, Chapter 266 (SB 189), effective September 14, 2009, amended RSA 676:3, regarding written decisions of land use boards to require that conditions of approval be spelled out in detail and that the decision be recorded in the registry of deeds if the plan is recorded. The statute with changes now provides as follows:

*I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit **and make a copy of the decision available to the applicant.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. **If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.***

*II. Whenever a local land use board votes to approve or disapprove an application or deny a motion for rehearing, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons therefor **and all conditions of approval,** shall be placed on file in the board's office and shall be made available for public inspection within ~~[144 hours]~~ 5 business days of such vote. Boards in towns that do not have an office of the board that has regular business hours shall file copies of their decisions with the town clerk.*

III. Whenever a plat is recorded to memorialize an approval issued by a local land use board, the final written decision, including all conditions of approval, shall be recorded with or on the plat.

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III. WHEN THE DEVELOPER DOESN'T PERFORM: VESTED RIGHTS, AGAIN?

A. LAPSE OR EXPIRATION OF CONDITIONAL APPROVAL

Land use approvals and permits do not necessarily expire when they are not promptly implemented after issuance. When a project is unexpectedly delayed, the circumstances that supported the original approval may change with the passage of time. Applicable ordinances and regulations may change. Nevertheless, developers will typically claim a vested right to retain approvals and permits. Municipal officials must understand the legal status of unexercised approvals and permits.

1. Variances, Special Exceptions and Building Permits

Prior to the enactment of the State Building Code, the building codes adopted by municipalities typically provided that building permits expire if not exercised within a certain period, six

months or a year. As a result, most zoning ordinances also have such a provision. Reissuance is not precluded, but the building official has an opportunity to see if the owner is still entitled to the permit.

A zoning ordinance can validly provide for the automatic expiration of a variance if not exercised within a specified time. *Wentworth Hotel, Inc. v. New Castle*, 112, N.H. 21 (1972). In the absence of such a restriction, an unimplemented variance remains valid indefinitely. However, a variance becomes null and void if a zoning amendment that affects the variance is enacted before the variance is implemented. *Navin v. Exeter*, 115 N.H. 248 (1975). Automatic expiration of an unimplemented variance protects the public interest in the event that there has been a material change of circumstances that would currently justify denial of the variance. Expiration also protects abutters from a sudden change of use based on an old, forgotten variance.

→ The same considerations apply to special exceptions.

2. Subdivisions and Site Plans

Subdivision and site plan applications are protected from changes in land use control ordinances and regulations from the date the completed application is submitted, or sooner in the case of design review. RSA 676:12, VI. Applications that achieve final approval are thereafter protected by RSA 674:39. (See discussion in Part One.) But what is the status of a conditionally approved plan that remains unfinalized for an extended period on account of a downturn in the real estate market? Is it still protected by RSA 676:12, VI? For how long? Many cities and towns have had drawers filled with such plans during economic recessions, with no clear answers.

To prevent such uncertainty, subdivision and site plan regulations and/or the conditions of approval should provide that a conditional approval automatically expires unless conditions are fulfilled or some specified level of development commences within a specific time.

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B. MODIFICATION OF CONDITIONAL APPROVAL

Besides delaying their projects, developers may also seek to downscale or otherwise modify an approved project during a business recession. When an approved project has not even been started, a landowner is absolutely entitled to a completely different project, provided, of course, the second project complies with all applicable ordinances and regulations. *Feins v. Wilmot*, 154 N.H. 715 (2007) (planning board improperly denied proposal for eight multifamily dwellings as “inconsistent with the intent” of a previously approved office park). More common and more problematic are cases where a developer proposes relatively minor changes to the layout of the project or the conditions of approval. Several issues are raised with such changes.

1. Jurisdiction for Small Changes?

First, does the planning board or ZBA have jurisdiction over the proposed modification? A developer might argue that, as with the natural expansion of a nonconforming use, there is an inherent right to change an approved project in any way that does not change the nature and purpose of the use, nor substantially affect the neighborhood. This analysis applies to a change of a use by variance where no specific condition of approval is modified. *Bio Energy, LLC v. Hopkinton*, 153 N.H. 145, 155 (2005) (burning of woodchips from construction and demolition debris not substantially different from other wood sources). However, the analysis is not applicable to a change that would be contrary to a specific condition of approval. *Pope v. Little Boar's Head District*, 145 N.H. 531 (2000) (natural expansion would not be permitted where

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State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



August 12, 2003

Francesco Rotondo
USA Springs, Inc.
9 Regis Drive
Pelham, New Hampshire 03078

Subject: USA Springs – Final Application Report Dated February 4, 2003

Dear Mr. Rotondo:

The purpose of this letter is to inform you that your application for: 1) Major Groundwater Withdrawal Permit; and 2) New Source of Bottled Water has been denied in accordance with Env-Ws 388.23 and Env-Ws 389.20.

On February 4, 2003, USA Springs, Inc. (USA Springs) submitted an application report titled "Large Groundwater Withdrawal Report – Proposed USA Springs Bottling Plant" to the Department of Environmental Services (DES) in order to fulfill the requirements of New Hampshire Administrative Rules Env-Ws 388-Major Large Groundwater Withdrawal and Env-Ws 389-Groundwater Sources of Bottled Water to obtain approval to withdrawal up to 310,000 gallons of groundwater a day for the purpose of bottling water.

In a letter dated March 20, 2003, DES established the review period for the application which extended through August 12, 2003 so that supplemental information obtained from an investigation at an adjacent property pertaining to contamination may be incorporated into the application submitted by USA Springs.

In a letter dated April 11, 2003, DES provided USA Springs with preliminary technical findings on the application relative to the requirements of Env-Ws 388 and 389. In the cover letter accompanying the technical comments, DES noted that no findings pertaining to issues related to groundwater contamination and the ongoing investigation at the adjacent K&B site were provided with the preliminary findings because it anticipated that additional information regarding this matter would be forthcoming.

USA Springs has not provided supplemental information to address issues of contamination at the adjacent site, or to respond to DES's preliminary technical findings before the August 12, 2003 review period deadline. Accordingly, DES has attached decisions and findings regarding all aspects of the application, which includes only the material dated February 4, 2003. Each of the decisions and findings included with this document provide a separate and independent basis for denial of the application for a Major Groundwater Withdrawal Permit in accordance with Env-Ws 388.23 and/or a basis to deny a new source of bottled water in accordance with Env-Ws 389.20.

USA Springs may initiate a process whereby DES will provide a formal review of any supplemental information USA Springs deems necessary to satisfy the requirements of Env-Ws 388 and 389. This process may be initiated by petitioning for a rehearing in accordance with RSA 485-C:21, VI, which stipulates that any person directly affected by DES's decision may appeal and request a rehearing to DES in accordance with RSA 541. Such an appeal must be made to the DES within 30 days and must be addressed to the Administrator of the Water Supply Engineering Bureau, 6 Hazen Drive, PO Box 95,

Francesco Rotondo
USA Springs - Groundwater Withdrawal Application
August 12, 2003
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Concord, NH 03302-0095. An anticipated timeline and activities associated with a rehearing process, if requested by USA Springs, are described below:

- 1) A request for a rehearing is submitted by USA Springs within thirty (30) days of receipt of the denial;
- 2) DES will act upon the motion within ten (10) days of receipt; and
- 3) If DES grants the motion for a rehearing, DES will allow USA Springs ten (10) days to submit any additional information it deems is necessary for DES to review. DES will establish a thirty day (30) public input period during which a public input meeting would be scheduled. USA Springs would then have ten (10) days to provide any response it deems appropriate to public comment received. DES will close the administrative record and issue a decision two weeks after the close of the administrative record.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,


Brandon Kernen, P.G.
Hydrologist
Water Supply Engineering Bureau


Anthony P. Giunta, P.G.
Administrator
Water Supply Engineering Bureau

Enclosure

cc: M. Sharma, Gradient Corporation
G. Smith, Esquire
R. Head, NHDOJ
S. Pillsbury, DES
H. Stewart, DES
M. Nolin, DES
C. Reilly, Town of Barrington
C. Brown, Town of Nottingham
S. Fournier, Town of Northwood
C. Copeland, Strafford Regional Planning Commission

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Francesco Rotondo
 USA Springs - Groundwater Withdrawal Application
 Findings and Decisions
 August 12, 2003
 Page 15 of 23

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19) *Miscellaneous Omissions in the Application Relative to Wetland Assessment:* Appendix D of the application contains the following omissions or information that is provided has not been updated from the preliminary application to reflect information contained in other sections of the application:

- a) Table 1 which is referenced on page 1, paragraph 2, but is not included in the appendix;
- b) A revision of this section to reflect the zone of influence that was delineated in accordance with the requirements of Env-Ws 388.09(a), Env-Ws 388.06, Env-Ws 388.14 and Env-Ws 379.11(e)(8);
- c) A figure showing the location of onsite wetlands that are described in Attachment C; and
- d) An explanation of how the requirements of Env-Ws 388.09(d) which requires the monitoring of representative wetlands were complied with.

Accordingly, DES finds that the information in the report produced in accordance with Env-Ws 388.17 is: 1) Not complete and correct as required by Env-Ws 388.23(b)(1); and 2) Not assessed accurately to the extent that it can be demonstrated that the withdrawal will not produce impacts or result in impacts that can and will be mitigated as required by Env-Ws 388.23(b)(2).

20) *Private Well Adverse Impact Assessment:* The application states that the pumping of the three wells may dewater the water column in private wells by a factor of only 10% (page 35). However, this much dewatering may result in the dewatering of a primary water bearing fracture that supplies water to the well, and, as a result an adverse impact in accordance with Env-Ws 388.18(c) could occur. This means an alternative water supply may have to be provided to these water users. The application does not contain a mitigation program in accordance with Env-Ws 388.21(a)(1) as required by Env-Ws 388.17(c).

Projected 180-day drawdown results (Table 4-1) show that four of the domestic wells monitored would experience a drawdown greater than or equal to 10% of the available water column under high recharge conditions. All of these wells (Brett and Stephanie Gillespie, Irene Gillespie, James Page, Jr. and John Pierce) are located along Rt. 4 (Old Turnpike Road), west of the USA Springs site (Figure 3-13). The Brett and Stephanie Gillespie well has a projected drawdown of 61 feet, and the Page well shows a projected drawdown of 39 feet and is more than 3000 feet away from the nearest USA Springs pumping well. Additional wells in this vicinity have projected drawdowns that are greater than 5% of the water column. Of the four wells with greater than 10% projected drawdown, none has a Well Completion Report in Appendix C, and Appendix C contains a questionnaire only for the Pierce well. This questionnaire indicates that a new pump motor was installed in March 2002, but does not provide pump depth or other information. The application asserts (page 35) that "anticipated depth of pump intakes (is) expected to be ... at sixty to seventy-five percent of the well depth", but provides no evidence. The report predicts "no loss of available water to the users of these wells." Based on the data presented in the application, this assertion has not been justified.

Accordingly, DES finds that the information in the report produced in accordance with Env-Ws 388.17 is: 1) Not complete and correct as required by Env-Ws 388.23(b)(1); and 2) Not assessed

Francesco Rotondo
USA Springs - Groundwater Withdrawal Application
Findings and Decisions
August 12, 2003
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accurately to the extent that it can be demonstrated that the withdrawal will not produce impacts or result in impacts that can and will be mitigated as required by Env-Ws 388.23(b)(2).

21) Private Well Adverse Impact Assessment and Mitigation: The application indicates that pump intakes of private wells will be lowered (page 35) to mitigate an impact. However, this mitigation measure may not be adequate to prevent an adverse impact from occurring in accordance with Env-Ws 388.18(c) as required by Env-Ws 388.23(b)(2). Loss in hydraulic head within the water column of the well casing may cause a well pump to fail, and a new more powerful pump may need to be installed to off-set head losses caused by the pumping at USA Springs.

Accordingly, DES finds that the information in the report produced in accordance with Env-Ws 388.17 is: 1) Not complete and correct as required by Env-Ws 388.23(b)(1); and 2) Not assessed accurately to the extent that it can be demonstrated that the withdrawal will not produce impacts or result in impacts that can and will be mitigated as required by Env-Ws 388.23(b)(2).

22) Private Well Adverse Impact Assessment and Mitigation for Water Users Not Monitored During Withdrawal Testing: The application states "there is no current evidence that suggests that adverse impacts will occur, similar minor mitigation steps (i.e. - lowering the pump) might be required at very few other private wells"(page 35). The application does not identify which area and wells USA Springs is referring to. Also, impacts were observed at the edge of the monitoring network in the westerly direction during withdrawal testing, however the application did not describe or assess how much further beyond the network impacts may extend. Other wells in the area were not monitored during the test, and some of these may also experience significant drawdowns during USA Springs' pumping. The application does not contain an impact monitoring and reporting program in accordance with Env-Ws 388.20 or a mitigation program in accordance with Env-Ws 388.21(a) as required by Env-Ws 388.17(c) to respond to these data gaps and potential adverse impacts.

Accordingly, DES finds that the information in the report produced in accordance with Env-Ws 388.17 is: 1) Not complete and correct as required by Env-Ws 388.23(b)(1); and 2) Not assessed accurately to the extent that it can be demonstrated that the withdrawal will not produce impacts or result in impacts that can and will be mitigated as required by Env-Ws 388.23(b)(2).

23) Discrepancies in Water Quality Sampling Results: The last two lab reports in Appendix G (samples 75790 and 75791) of the application are both labeled as collected from well OW-1, but show very different results (both in amount of volatile organic compounds (VOCs) concentrations and type of constituents present). There is no explanation for the discrepancy meaning that there is substantial ambiguity regarding the occurrence of groundwater contamination at this portion of the site.

Accordingly, DES finds that the information in the report produced in accordance with Env-Ws 388.17 and Env-Ws 389.19 is not complete and correct as required by Env-Ws 388.23(b)(1) and Env-Ws 389.20.

Water Availability at the USA Springs Site

In the past months, correspondences from USA Springs (or their representatives) to the New Hampshire Department of Environmental Services has made various references to the fact that USA Springs and NH DES are in agreement that there is substantial groundwater at the site to meet the USA Springs request (e. g., 24 November 2003 letter from Gregory Smith to NH DES Commissioner Michael Nolin, "...the **Department [NH DES] has concluded that there clearly is sufficient quantity of water to approve the application by USA Springs for Large Groundwater Withdrawal Permit...**"). In The April 11, 2003 NH DES preliminary comments to the USA Springs pumping test report, NH DES did not come to such a conclusion, and this letter specifically requested more detail to support such a conclusion by USA Springs. In addition, **in the August 12, 2003 permit denial, NH DES cited, on more than one occasion, that the information presented by USA Springs did not, "demonstrate that the withdrawal will not produce impacts or result in impacts that can and will be mitigated". Env-Ws 389 does not prescribe for any interim decision on a permit until the application is complete and submitted to NH DES. The August 12, 2003 denial of the request demonstrates that NH DES does not agree with the USA Springs claim of water availability: even in light of the supplemental information submitted by USA Springs on the same day as the denial.**

Despite the lack of ideal field data, **a very strong case is made by the water level and pumping test data that there is insufficient groundwater and recharge at the site to support the USA Springs request without severe consequences. Five points that demonstrate that there is insufficient water at the site to meet the pumping request follow.**

1. The bedrock well water level data prior to the pumping test demonstrated a reaction to precipitation. USA Springs interpreted this reaction to be the direct recharge of the bedrock. However the physical reality is that very little precipitation recharge goes to the bedrock. This is because the bedrock is a confined system: recharge water can only enter storage in the formation by increasing the density of water or by expanding the size of the rock fractures. Therefore a precipitation event of one inch that leads to a bedrock well water level increase of one half foot, is in reality a recharge of only 0.0024 inches. When these calculations are carried out over an average year of precipitation, **it is very obvious that the bedrock does not enjoy the 8 inches per year of bedrock recharge claimed by USA Springs, but only a very small fraction (less than 2%). Since the groundwater pumping cannot be met by recharge on the assumed wellhead area, the consequence is dramatic dewatering of the bedrock and nearby wetlands: which were observed during the pumping test.**
2. The observation well data during the pumping test can be analyzed to yield the bedrock transmissivity. When multiplying this transmissivity times the ambient bedrock groundwater gradient for the depth of the USA Springs wells, **it is evident that there is less ambient groundwater flowing under the site than**

the USA Springs request. This directly refutes the USA Springs claim that they are taking only a small fraction of the water that is flowing by.

3. **The 10-day pumping test, although much shorter than 10 years of pumping, clearly demonstrated a dramatic reduction in the overburden groundwater levels below wetlands.** In fact, the ambient vertical gradients below the wetlands displayed groundwater discharge (even during the wet period of the pumping test), and these were reversed by the pumping test. This is clear evidence that the USA Springs request will definitely tap protected wetlands and therefore not simply take groundwater that is “flowing by”.
4. The volume of the formation that was dewatered during the pumping test was by far the most significant source of water to the USA Springs wells (figures 3-12 and 3-14 of the 3 February 2003 Gradient Pumping Test Report). The pumping test did not demonstrate that the ambient flow of groundwater under the site exceeds the USA Springs request. **The net effect is that the USA Springs request will result in adverse consequences:** the only way to satiate the demand is to dewater the bedrock and rob water from wetlands.
5. **At the end of the pumping test, the pumping well water levels had still not stabilized.** In accordance to Env-Ws 389, the drawdown data is extrapolated to 180 days to reflect a long period of no recharge. 180 days may in fact be too short, since previously (point 1 of this letter) it was shown that a very small amount of bedrock recharge actually occurs. To compound this, the **severe drawdown in the USA Springs wells may actually accelerate after 180 days, since drawdowns more than 50% of the well depths may lead to nonlinear well losses.**

NH DES is on record in the permit denial letter that USA Springs has not demonstrated that adequate groundwater exists at the site to meet the request. In summary these five technical points, based in the field data collected and provided by USA Springs, demonstrate that **there is insufficient groundwater flow at the site to support their request.**

Sincerely,

**Thomas P. Ballesterro
PhD, PE, PH, CGWP, PG**

Exhibit E

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:33

674:33 Powers of Zoning Board of Adjustment. –

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(1) The variance will not be contrary to the public interest;

(2) The spirit of the ordinance is observed;

(3) Substantial justice is done;

(4) The values of surrounding properties are not diminished; and

(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

I-a. Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

III. The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance. Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such special exception shall expire within 6 months

after the resolution of a planning application filed in reliance upon the special exception.

V. Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

VI. The zoning board of adjustment shall not require submission of an application for or receipt of a permit or permits from other state or federal governmental bodies prior to accepting a submission for its review or rendering its decision.

VII. Neither a special exception nor a variance shall be required for a collocation or a modification of a personal wireless service facility, as defined in RSA 12-K:2.

Source. 1983, 447:1. 1985, 103:20. 1987, 256:1. 1998, 218:1. 2009, 307:6. 2013, 93:1, 2, eff. Aug. 19, 2013; 267:9, eff. Sept. 22, 2013; 270:3, eff. Sept. 22, 2013.

Exhibit F



Town of Nottingham
P.O. Box 114
Nottingham NH 03290

Office 603-679-9597
Fax 603-679-1013
E-Mail pcolby@nottingham-nh.gov
www.nottingham.gov

Code Administration Office

Rocci DeLucia Jr.
386 Merrimack Street
Methuen, MA 01844

October 12, 2010

Dear Mr. DeLucia;

This letter is in reference to your request of information concerning the necessary steps in obtaining a building permit for the manufacturing plant on property owned by USA Springs.

This property is located at Nottingham Tax Map 3 Lot 10, known as 145 Old Turnpike Road.

After meeting with you and AHO Construction I have reviewed the documents supplied by you and the original Settlement Stipulation issued by the Rockingham County Superior Court, dated October 16, 2006, I find that the following items shall be submitted to obtain a building permit:

1. An original completed building permit application
2. Building permit application fee paid in full.
3. NH DES subsurface approval CA2005572713 shall be renewed, per stipulation #2 & 12
4. NH DES Groundwater permit #GWP-200302008-N-01 shall be renewed per stipulation #12
5. We have received notification that the NH DOT Driveway Permit 06-351-296 has been renewed until September 29, 2011
6. It should be noted that the Groundwater Sources of Bottled Water permit issued October 25, 2005 will expire on October 25, 2010 per NH Code of Administrative Rules Part Enc-Dw 303. this permit shall be renewed upon expiration to obtain a building permit, per stipulation #12
7. The Performance Bond issued by Western Surety Company #70201809 shall be renewed and submitted to the Town, per stipulation #17
8. Plans for the automatic fire sprinkler system shall be submitted for review and approval, per stipulation #22.
9. The fire protection plan for the resin storage silos and propane storage tanks shall be submitted for review and approval, per stipulation #25
10. A new baseline report shall be submitted to reflect current conditions, per stipulation #30
11. All environmental protective measures shall be restored and verified by a wetland professional with verifications submitted to the Building Inspector

12. Copies of all Federal, State or Local permits issued and /or renewed shall be submitted to the Building Inspector.

If you have any questions concerning these requirements to obtain a building permit, please contact my office.

Sincerely,

Paul W. Colby
Building Inspector

Cc: Nottingham Board of Selectmen
AHO Construction, INC.
File

Exhibit G



Loan No.

File No. 53648/83177

EXHIBIT B

USA SPRINGS, INC.

PERMITS

NHDES

1. Large Groundwater Withdrawal Permit No. LGWP 2004-0003
Date of Issuance: July 1, 2004
Date of Expiration: July 1, 2014
Permit Holder: USA Springs, Inc.
2. Groundwater Management Permit No. GWP-200302008-N-001
Date of Issuance: July 1, 2004
Date of Revision: November 30, 2004
Date of Expiration: June 30, 2009
Permit Holder: USA Springs, Inc.
3. Certificate of No Further Action dated April 28, 2005
Certificate Holder: USA Springs, Inc.
4. Site Specific Permit WPS-7147
Date of Issuance: May 11, 2005
Date of Expiration: May 11, 2007
Permit Holder: Garrison Place Real Estate Investment Trust
5. Wetlands and Non-Site Specific Permit 2001-00716
Date of Issuance: May 25, 2005
Date of Expiration: May 25, 2010
Permit Holder: Garrison Place Real Estate Investment Trust
6. Approval of Request to Retain 6 Monitoring Structures dated May 26, 2005
to Garrison Place Real Estate Investment Trust
7. Permit No. 184.22 – Permit to Construct a New Dam dated May 26, 2005
Permit Holder: Garrison Place Real Estate Investment Trust
8. Approval of Application for Holding Tank Registration dated June 8, 2005
Application Holder: USA Springs, Inc.
9. Amendment of Site Specific Permit WPS-7147 dated July 14, 2005
(New Permit No. WPS-7147-A)
Permit Holder: Garrison Place Real Estate Investment Trust
10. Approval No. CA2005072713 dated June 10, 2005
to Garrison Place Real Estate Investment Trust
- 11. Site Plan Review for Site Specific Permit No. WPS-7147 dated October 17, 2005
for USA Springs, Inc.

Loan No.

File No. 53648/83177



- 12. Approval of Wells USA-1, USA-2, USA-4 dated October 25, 2005 to USA Springs, Inc.

NHDOF

- 13. Driveway and Excavation Permit No. 06-351-296
Dated: September 15, 2004
Date of Expiration: September 15, 2007
Permit Holder: Garrison Place Real Estate Investment Trust

U.S. ARMY CORP OF ENGINEERS

- 14. Confirmation of Authorization by NH SPGP, Permit No. 52, dated July 19, 2006 with attached Work Start Notification Form to Garrison Place Real Estate Investment Trust

- 15. Declaration of Restrictive Covenant by the Garrison Place Real Estate Investment Trust recorded in the Rockingham County Registry of Deeds on August 8, 2006, Book 4692, Page 2263

- 16. Application for Building Permit No. 141-06 - Town of Nottingham dated November 22, 2006
Applicant: Garrison Place Real Estate Investment Trust

- 17. Building Permit No. 141-06 - Town of Nottingham issued November 22, 2006
Owner: Garrison Place Real Estate Investment Trust

U.S. E.P.A. NPDES

- 18. Stormwater Construction General Permit (CGP)
Issued 12-28-05 EPA Tracking Number NHR10B032

Heather Holt Totty

FILED

2016 NOV -4 PM 12:15

CLERK OF 242 Hall Road • Barrington, NH 03825
BANKRUPTCY COURT
DISTRICT OF NH

heather.totty@gmail.com

www.heathertotty.com

November 2, 2016

US Bankruptcy Court
District of New Hampshire
1000 Elm Street, Suite 1001
Manchester, NH 03101-1708

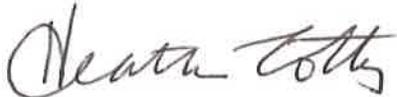
To Whom It May Concern:

I am writing to object to the motion to sell USA Springs (Case No. 08-11816-JMD). I understand that Nottingham Springs, LLC has filed with this court to purchase USA Springs, Inc. with the intent to extract water from the property.

The use of USA Springs property for the purpose of extracting water to sell would be a violation of my town's democratically enacted Rights Based Ordinance (RBO). Barrington's *Community Bill of Rights to Protect the Waterways of Barrington and Local Self-Government Ordinance* was adopted last year. Kevin Delany of Nottingham Springs, LLC does not have a "right" to profit that overrides the rights of community residents to protect their own health, safety and welfare, economic stability and natural environment. This true right of the citizens of my town – and throughout New Hampshire – is further upheld in Article 2 of the New Hampshire Constitution.

Thank you for your consideration.

Sincerely,



Heather H. Totty

11/2/16

US Bankruptcy Court
District of New Hampshire
1000 Elm Street, Suite 1001
Manchester, NH 03101-1708

FILED

2016 NOV -4 PM 12: 13

CLERK OF THE
BANKRUPTCY COURT
DISTRICT OF NH

RE: Case No. 08-11816-JMD

Your Honor,

I am writing to file an objection to the above referenced case and to inform you of my intent to enforce the *Community Bill of Rights to Protect the Waterways of Barrington and Local Self-Government Ordinance*. I wish to notify you and Nottingham Springs, LLC that use of the USA Springs property for the purpose of extracting water to sell would be a violation of our RBO.

Thank You,



David G. TOTTY
242 Hall Road
Barrington, NH 03025