



KENAI PENINSULA BOROUGH

Legal Department

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LAYDOWN

JOHN J. WILLIAMS
BOROUGH MAYOR

MEMORANDUM

TO: Ron Long, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: John J. Williams, Kenai Peninsula Borough Mayor

FROM:  Colette Thompson, Borough Attorney

DATE: October 10, 2006

SUBJECT: Follow-up report regarding North Pacific Volcano Learning Center property

Agenda Item M.I.a.
 Committee Mayor's Report
 Page Number Laydown

During the September 19, 2006, assembly meeting, the assembly requested that the legal department further investigate the circumstances surrounding the sale of former borough property from the North Pacific Volcano Learning Center, Inc. ("NPVLC") to Emmitt and Mary Trimble. Specifically, it appeared the assembly was concerned with whether there were legal improprieties from the borough's perspective involved in the sale of this property to the Trimbles.

The NPVLC approached the Kenai Peninsula Borough in the late 1990s seeking assistance to buy property to be used for a volcano learning center in the Anchor Point area. The board had identified property owned by Bertha Glud and had entered a purchase agreement agreeing to pay her \$450,000 for the property. As a part of the initial purchase of this property, in 1999 the NPVLC had paid Mrs. Glud \$50,000 for the purchase. Mrs. Glud would only sell the property for \$450,000. In Ordinance 98-48, the assembly authorized the mayor to purchase the subject property for \$315,000. The property was then to be platted, and ultimately used as a volcano learning center. That purchase was consummated in January 1999 when the Kenai Peninsula Borough purchased the property from Bertha K. Glud. The borough paid \$315,000, which left a balance remaining of \$85,000. Of that, \$50,000 was intended to be the realtor's commission. Mr. Trimble, the realtor managing the sale of the property from Mrs. Glud to the NPVLC, waived his commission, reducing the balance due to \$35,000. The NPVLC then executed a promissory note to Mrs. Glud agreeing to pay her that sum.

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In April 2000, the assembly enacted Ordinance 2000-18 authorizing the sale of Tract B Glud Subdivision to NPVLC. The sale price was \$315,000 plus interest accruing at the rate of 10.5 percent per year. The NPVLC was responsible for paying all costs associated with the sale. Section 4 of Ordinance 2000-18 restricted the use of the land to construction, operation, and development of a volcano learning center, for trails throughout the property, and other associated purposes. It further provided that if the property was not primarily used for these public purposes for a continuous period of one year, the Kenai Peninsula Borough may foreclose the deed of trust for failure to comply with this condition unless otherwise agreed upon in writing by the borough and the NPVLC. The payment conditions required the NPVLC to pay \$1 per year for the first five years and to begin making monthly payments of \$3,251.34 beginning February 1, 2006. This would fully pay off the note with a large balloon payment due in 2026. Further, the ordinance provided that upon paying in full the \$315,000 plus all costs, interests, and fees, then the conditions contained in Section 4 would no longer apply.

It should also be noted that in 2002 and again in 2004, the State of Alaska Division of Occupational Licensing listed NPVLC as being in an "active noncompliance" status for not filing the required biennial report for the two 2-year periods. The biennial reports were subsequently filed, and the corporation was not involuntarily dissolved. In March 2005, the Internal Revenue Service listed the NPVLC as a private fundraiser due to its alleged failure to maintain its status as a public charity or operating foundation. However, this did not constitute a breach of any agreement between the NPVLC and the borough.

The borough began foreclosure proceedings against NPVLC for failure to pay taxes for the years 2003 and 2004, totaling \$4,336.28. Judgment and a decree of foreclosure were entered July 15, 2004. It should be noted that upon entering a judgment and decree of foreclosure, a taxpayer has one year to redeem the property by paying the back taxes. The back taxes were paid, and a certificate of redemption was issued in May 2005 which placed title to the property back in the NPVLC. These taxes were paid by Emmitt Trimble.

On February 29, 2000, the NPVLC paid Mrs. Glud \$10,000 of the \$35,000 owing. Another payment was made in April of 2001 in the amount of \$5,000. With interest accruing, the balance remaining at the end of August 2005 to Mrs. Glud was \$27,253.40. Mrs. Glud passed away and her probate was opened in May 2004 by the law offices of Dale Dolifka. Mr. Dolifka then proceeded to probate the estate. As a part of his actions, Mr. Dolifka worked with the NPVLC board to obtain the balance due to Mrs. Glud's estate. After sending several requests for payment, Mr. Dolifka sent a request on July 20, 2005, to the board members for NPVLC indicating that he required certain documents regarding payments made and the anticipated balance due. Mr. Dolifka indicated that he would have to commence legal proceedings on behalf of the estate of Bertha Glud against NPVLC if certain steps were not taken toward determining the balance due and paying off the balance. In addition, the first major payment to the borough was due in early 2006.

During the course of this review, I contacted three of the five remaining board members: Sammy Crawford, Dave Karp, and Emmitt Trimble. According to all three board members and public documents, many efforts had been made by the board over the years to raise funds to develop the North Pacific Volcano Learning Center as originally proposed. This project was

originally anticipated to cost in the neighborhood of \$10.5 million. Funding efforts were stalled for many reasons, including competition from other nonprofit organizations on the peninsula. Also, the Alaska delegation was very reluctant to support obtaining more federal funding for another nonprofit organization to be located on the Kenai Peninsula while other similar organizations were experiencing financial difficulties. As the board's efforts to raise funding continued to face insurmountable obstacles, their level of concern regarding the outstanding notes payable increased sharply. This was particularly true after receiving the above-described letter from Mr. Dolifka, the borough's pending tax foreclosure, and the borough's possible foreclosure against the deed of trust. Mr. Trimble then contacted the members of the board of directors and obtained their approval to purchase the property by paying all outstanding debts in full. Subsequently, Mr. Trimble paid in full all amounts owed to both the estate of Bertha Glud and the Kenai Peninsula Borough and others.

According to the terms and conditions of the deed from the borough to the NPVLC, when all amounts owed were paid in full, the deed restrictions were removed. Accordingly, Mr. and Mrs. Trimble now own the property without such restrictions, and we have found no legal improprieties affecting the legality of this sale.