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August 13, 2021

Dan Best, CAO
The Corporation of the Municipality of South Huron
322 Main Street South
P.O. Box 759
Exeter, ON N0M 1S6
via email to cao@southhuron.ca

Dear Mr. Best,

Re: Kirkton Woodham Community Centre Agreement

You have requested our comments concerning the the Joint Use Agreement entered in by the Municipality in 2013 concerning the Kirkton Woodham Community Centre. Specifically, you have enquired whether the municipality has a right or ability to terminate the agreement and what notice period may be required. You have also enquired whether the Municipality could allow the Township of Perth South to operate the facility on its own.

In order to provide a response, it is necessary to provide some preliminary comments about the agreement. The agreement indicates that there are three parties: 1) the Municipality of South Huron, 2) the Township of Perth South and 3) the Kirkton-Woodham Community Board. As noted in connection with a similar agreement concerning the Kirkton-Woodham Pool, it is unclear how the Board could be a party to an agreement which includes provisions that “create” the Board.

On page 2 of the Agreement, the preamble suggests that “Kirkton-Woodham” was previously incorporated. Oddly, the term Kirkton-Woodham is not defined; we can only presume that this was intended to refer to the Kirkton-Woodham Community Board (the “Community Board”). As we understand there are no documents that would suggest the Community Board was formally incorporated under either of the *Ontario Business Corporations Act* or the *Ontario Corporations Act*.

Section 202 of the *Municipal Act, 2001* enables municipalities to establish “joint service boards” and pursuant to section 197 such a board would be considered a “body corporate”

unless the Municipalities have clearly provided otherwise when establishing the board. The current agreement makes reference to a prior agreement concerning the facility (dated December, 1988). Considering that agreement was entered into under the old *Municipal Act*, and we do not have a copy of the agreement, we cannot confirm whether the Community Board was actually a body corporate. In any event, by virtue of the termination of the old agreement, even if it had been a corporate entity at one time (by operation of the *Municipal Act*), in order to have any continuing corporate status, that status would have to be based upon the 2013 Agreement.

Upon reviewing section 3.1 of the current agreement, one could immediately conclude that the Community Board was not created in such a way so as to establish it as a separate corporate entity. It was created for the purposes of “*assisting with administration...*” and as a “*working committee*”. There is further language that supports the conclusion that the Board was not established as a separate corporate entity having complete control/responsibility for the facility.

Overall, the agreement lacks “substance” (for lack of a better term). That said, it would seem that the agreement remains valid as between the two municipalities.

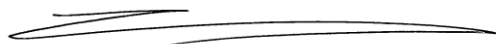
Section 5 imposes only two obligations upon each of the two Parties (specifically identified as Perth South and South Huron). Those obligations are limited to obtaining “*services, consultants, opinions, reports and advice...as is reasonably necessary*” and “*maintaining WSIB accounts in good standing*”. Oddly, it provides no direction concerning the most basic elements of the joint operation of a facility such as this such which would include the scope and nature of services/rental opportunities that are to be provided, when the facility might be open for use and rentals, the requirement for rental/use contracts etc.

There are no express provisions that would permit early, unilateral termination. In our opinion, it would seem that there is no pressing need for or benefit to termination as there is nothing in the agreement that obliges the Municipality of South Huron to make the facility available for use and/or rentals at any given time. Furthermore, such an approach would only serve to strain municipal relations and undermine efforts (suggested below) to reach a new agreement.

We would suggest that, in light of the lack of substance in the agreement, it would be best for the Municipality to commence discussions with the Township of Perth South about the preparation of a new, comprehensive agreement to deal with the facility. As part of the discussions, the Municipality of South Huron could propose an arrangement whereby the Township of Perth South is authorized to operate the facility on its own. Among other things to consider, the facility is located entirely in South Huron and as such (based upon sections 19 and 20 of the *Municipal Act, 2001*) the Township of Perth South has no authority to operate a community or recreation centre at this location without the consent of the Municipality of South Huron.

We trust our comments are of assistance.

Sincerely,



Edward B. Veldboom
(electronically signed)