

LEGINSKY CONSULTING COUNSEL

BARRISTERS & SOLICITORS

VLEGINSKY@CONSULTINGCOUNSEL.COM

MEMORANDUM

To: Board of Trustees, Mayne Island Improvement District
CC: Fire Chief, Mayne Island
From: Victor Leginsky
Date: 11/18/2006
Re: Legal Basis for the Operation of a Heliport on Mayne Island

Issue

A question has arisen as to the authority of the Mayne Island Improvement District (“MIID”) to take responsibility to operate and maintain the existing heliport situated on lands dedicated to MIID purposes on Mayne Island. This question has arisen because the MIID is increasing taxes in order to pay for upgrading of the heliport necessary to bring it up to Transport Canada certification standards, and, in reviewing the MIID’s proposed bylaws, a Financial Analyst employed by the Ministry of Community Services has raised some concerns. The legal issues raised by her concerns are twofold:

1. Does the MIID have the authority to run a heliport?
2. Does the operation of a heliport by the MIID expose the improvement district to an unacceptable level of liability?

Facts re: the Mayne Island Heliport

1. The Mayne Island Health Centre Association (“MIHCA”) has operated on land leased from the MIID since approximately 1975. The MIHCA appears to have operated an emergency medical evacuation (“MEDEVAC”) heliport since 1982. The first heliport was located about 200 ft. to the south-west of the medical centre building on an adjoining field, known as Logan’s Farm. Mr. Logan provided the use of the property at no charge as a community service.

The Mayne Island Health Centre operated at that time under the aegis of the Capital Health Region which apparently was a department within the Capital Regional District. When the provincial government introduced the Health Authorities Act in 1993 the Capital Health Region was absorbed into the Vancouver Island Health Authority (“VIHA”).

Ph: +1 604.765.9725 or +1 250.539.2130

Fax: +1 250.539.2129

Mail: Site 1, C59, Mayne, BC V0N 2J0 Canada
Courier: 479 Letour, Mayne, BC V0N 2J0 Canada

Web Site: www.ConsultingCounsel.com

CONFIDENTIAL

2. It appears that the Mayne Island Health Centre was then separated from VIHA and was operated completely by the MIHCA. At present, VIHA provides a doctor and a nurse to the Health Centre and pays a small rent for a nurse's office and the emergency room to the MIHCA. The MIHCA receives additional rent from the doctor for her offices and examination rooms.

The MIHCA receives no other public funding and has operated the Health Centre from society memberships and donations.

3. Mr. Logan decided to sell his property in the mid-1990s and requested that the MIHCA develop an alternate location for the heliport as he felt that the existing heliport would be a significant detriment to the sale of his property. The Mayne Island Lions' Club ("Lions") took this on as a community project and, after receiving permission from the MIID, constructed a new heliport on MIID property some 200 ft. to the west of the Health Centre Building. This heliport was completed in 1997 and turned over to the MIHCA to operate.

4. The existing heliport was registered as a medical emergency heliport by Transport Canada. Attached is a copy of the current reference listing for the Mayne Island Heliport in the "CANADA FLIGHT SUPPLEMENT – Part 3 Aerodromes" and the "Mayne Island Health Ctr Assn (*sic*)" is identified as the Operator.

5. The MIHCA were unable to properly maintain the heliport because of lack of funds and, although informed of certain deficiencies by Transport Canada in 2005, failed to properly and promptly respond. The operators of the B.C. Ambulance Services ("BCAS") MEDEVAC helicopters, HeliJet International Inc. ("HeliJet"), suspended MEDEVAC operations from the Mayne Island heliport in December 2005. This suspension immediately presented a health services crisis to Mayne Island residents.

6. The MIHCA had previously (May 2005) contacted the MIID with respect to the provision of operating funds for the Health Centre. As recounted in the MIID 2007 MIID Budget documents, a proposal by the MIID to operate the Health Centre was not agreed to by the MIHCA in 2005 for inclusion in the 2006 MIID Budget. The MIHCA has agreed to the transfer of operating responsibility for the Health Centre as of 1 January 2007.

7. The MIID was aware that, in 1983, the MIID had applied to the B.C. Government for an extension of its Letters Patent to permit operation of the Mayne Island Health Centre. As a consequence of that extension, the MIID's objects comprise:

"3. The objects of the Mayne Island Improvement District shall be the provision of fire protection, the provision of garbage collection and disposal, **the operation of the Mayne Island Health Centre and the acquisition, maintenance and operation of works, buildings and equipment for these purposes and all matters incidental thereto.**" [bold added]

8. In January 2006, time was of the essence in restoring MEDEVACS from the Mayne Island Heliport, as a lack of MEDEVAC capability constituted a crisis. The Board, mindful of the above objects and facing a crisis, decided to embark on immediate renovation of the heliport. This renovation was carried out in consultation with the BCAS, HeliJet and Transport Canada. The MIID had made sufficient initial improvements to the heliport by the latter part of January 2006 that the Chief Pilot for HeliJet lifted the suspension and permitted MEDEVACS on a volunteer basis by the flight crews. Subsequent improvements which were designed to comply with CARS325, the Transport Canada specification for heliports, are in their final stages and have met with approval from the operators but not yet formally by Transport Canada.

Summary of Authority Granted to MIID

The MIID was incorporated by Letters Patent of the Lieutenant Governor in Council of the Province of British Columbia issued on April 21, 1964, and its objects were enhanced by amended Letters Patent issued on September 15, 1983. Those objects are:

“The objects of the Mayne Island Improvement District shall be the provision of fire protection, the provision of garbage collection and disposal, the operation of the Mayne Island Health Centre [MIHC] and the acquisition, maintenance and operation of works, buildings and equipment for these purposes and all matters incidental thereto.”

When an improvement district is created, it is imbued with powers necessary to carry out its objects: *Local Government Act*, RSBC 1996, c. 323, s.731 (1)¹

Further, an improvement district is granted all the powers of a corporation, or of a legal person. The *Local Government Act* further states:

“745 (1) An improvement district is a corporation and has all powers necessary or useful in carrying out its objects.

(2) Without limiting subsection (1), an improvement district may do one or more of the following:

- a. acquire, hold and dispose of land and other property, and charges on and interest in it;
- b. borrow money, issue bonds, debentures, mortgages and other securities;
- c. settle claims;
- d. assess land and improvements, levy and collect taxes, tolls and other charges and recover them by suit, by distress or by sale of the assessed land;
- e. construct, repair, improve, manage, maintain and operate works of any kind;
- f. regulate the distribution of water, electricity or any other thing or service provided or conveyed by the improvement district;
- g. make agreements;
- h. any thing incidental to the things referred to in paragraphs (a) to (g) or necessary to carry out its objects”

Section 746 of the *Local Government Act* then grants the authority to the Board of Trustees of the improvement district to make bylaws in relation to the powers granted by ss. 731 and 745.

This is a broad grant of powers. Such a broad grant is necessary, as improvement districts are “independent public corporations”² and “autonomous local government bodies responsible for providing one or more local services for the benefit of the residents in a community”³. They are fundamental to the people they serve as they are only created where “a regional district is unable or unwilling to establish a service area”⁴. This last requirement imports a degree of necessity into the concept of the improvement district that further enhances their powers. Their importance to the people they serve, and their need for autonomy, is underscored by the history of the creation of the improvement district concept. This form of regional government was created in 1965 to meet a critical need. This need has been expressed as follows:

¹ The Lieutenant Governor in Council may, by letters patent, incorporate an area of land comprising 2 or more parcels, whether contiguous or not, and its owners into an improvement district, under a name and with objects that appear advisable and with powers considered necessary to carry out those objects.

² “Improvement District Manual”, Ministry of Community Services, March 2006, page 9:
www.cserv.gov.bc.ca/lgd/gov_structure/library/improvement_district_manual.pdf

³ *ibid*

⁴ *ibid*

“The absence of a general purpose rural government created serious problems in terms of rural communities having citizen access to critical services such as water and fire protection and the lack of political accountability.”⁵

All of the foregoing confirms that improvement districts are autonomous, public corporations, imbued with ample legal authority to carry out the objects (and all matters incidental to the objects) for which they are responsible.

It is therefore axiomatic that the MIID possesses the necessary powers to operate the MIHC, including the powers necessary to ensure the “acquisition, maintenance and operation of works, buildings and equipment for [the operation of the MIHC] and all matters incidental thereto”.

Authority Granted to MIID in relation to the Mayne Island MEDEVAC Heliport

As set out above, it has been seen as important since at least 1982 that Mayne Island should have a heliport for MEDEVAC purposes. That need remains the same. Without a heliport, the residents of Mayne Island would have to rely on boats (water taxis, ferries and the like) to be rushed to hospital for emergency treatment. In this day and age, such a time lag would be below an acceptable service standard and would be unacceptable to the residents of Mayne Island. Further, it is the physician on scene that makes a determination that a patient should be transported to a hospital⁶. Helicopters are the only practical means of transport on an island, so MEDEVAC helicopter transport has to be and remain available at all time.

It is therefore clear that:

1. The MIID has the responsibility to operate the MIHC and all matters incidental to it by virtue of its letters patent;
2. The MIHC has operated the MEDEVAC heliport for in excess of 20 years;
3. It is essential for the health and well-being of the residents of Mayne Island that the MEDEVAC heliport be maintained in a safe and serviceable condition;
4. The responsibility for operating the MEDEVAC heliport resides in the MIID along with the responsibility to operate the MIHC;
5. The MIID has all the powers necessary to “construct, repair, improve, manage, maintain and operate **works of any kind**” in carrying out its responsibilities, as well as the power to do “**any thing incidental** to [its powers] or necessary to carry out its objects”; [bold added]
6. Given that the term “works” is undefined in the relevant legislation, and is modified by the phrase “of any kind”, the term “works” includes a MEDEVAC heliport in this context;
7. Given that the MIID has the power to do “anything incidental” or “necessary to carry out its objects”, it certainly has the power to maintain and keep serviceable an existing MEDEVAC heliport.

It is my opinion that the MIID has the power (indeed, the responsibility) to operate and maintain the Mayne Island MEDEVAC heliport.⁷

⁵ A Primer on Regional Districts in British Columbia, Ministry of Community Services, 2006, page 4.

⁶ “Overview of the British Columbia Ambulance Service” at <http://www.healthservices.gov.bc.ca/bcas/overview/>

⁷ As a matter of interest, there is nothing in the federal aeronautics regulations which would restrict the MIID from being responsible for a heliport. The *Regulations Amending the Canadian Aviation Regulations* (Parts I and III) (*Statutory authority, Aeronautics Act*) Vol. 140, No. 25 — June 24, 2006 show the regulatory intent as to the bodies which can

Does the operation of a heliport by the MIID expose the improvement district to an unacceptable level of liability?

The types of potential liability at law relevant to this matter are liability for:

1. The patient(s);
2. The employees and volunteers of the MIID;
3. The employees of the BC Ambulance Authority;
4. The employees of the air medical service provider (at present, HeliJet Air Medical Services, a division of HeliJet International Inc.);
5. The aircraft;
6. The public generally;
7. Property generally.

Time does not permit a full explication of the host of defences, indemnities and immunities which exist at law in the context of emergency medical services and the transportation of patients in emergent situations.

However, it must be noted that:

- Sections 10 and 11 of the *Health Emergencies Act* RSBC 1996 c.182 (and the agreements which are made pursuant to that *Act*) contain immunities from suit and prosecution for the relevant commission, and for Emergency Medical Technicians who must perform medical procedures in emergent situations, and the agreements which are made pursuant to that *Act* typically contain further and other immunities from suit and prosecution;
- The *Good Samaritan Act*, RSBC 1996 c.172, protects volunteers that act in emergent situations, absent gross negligence;
- Section 287 of the *Local Government Act*, *supra*, contains immunities for trustees of improvement districts (287(1)(c)), officers and employees of improvement districts (287(1)(l)), volunteer firefighters (287(1)(n)) and “a volunteer who participates in the delivery of services by [an improvement district] under the supervision of an officer or employee of the [improvement district]”. Absent gross negligence or malicious or wilful misconduct, no action damages will lie against those persons for the execution of such services;
- Only the provincially authorized air medical service provider performs the MEDEVACS, and it can be assumed that HeliJet Air Medical Services has adequate insurance and WorkSafe BC coverage for its aircraft and personnel;
- The *Workers Compensation Act*, s.10, restricts law suits by any “worker, dependant or member of the family of the worker” against “the employer of the worker, or against any employer within the scope of [the *Act*], or against any worker” for anything done in the scope of employment.
- The MIID has taken all steps possible to avoid being negligent in the operation of the MEDEVAC heliport by:

hold a heliport certificate at s.305.04

“A person is eligible to hold a heliport certificate if the person is

- (a) a citizen of Canada;
- (b) a permanent resident of Canada;
- (c) a corporation incorporated under the territorial, provincial or federal laws of Canada; or
- (d) a municipal, provincial or federal entity.”

- Doing all the work necessary to obtain Transport Canada certification for the heliport;
 - Supporting its fire chief and first responders to obtain all training necessary;
 - Adequately fencing, signing and lighting the heliport to keep unauthorized persons out of the heliport area
- The MIID is properly insured for liabilities, including against public liability and property damage.

Given the range of immunities and insurances in place, and given that the MIID has taken all steps necessary to obtain Transport Canada certification for the heliport, and to secure it from unauthorized intrusion, it is difficult to imagine how properly operating a heliport attracts liability. This can be contrasted with the liability which may very well be attracted by a failure to have a fully operational MEDEVAC heliport available for medical emergencies.

Conclusion

It is my opinion that the MIID has the power and authority to operate and maintain the MEDEVAC heliport at the MIHC. Further, on balance, given all of the immunities available at law and insurances in place, less liability will be attracted by the MIID operating the heliport properly than by abandoning the service.

I have also considered what body other than the MIID could potentially operate the MEDEVAC heliport. Given that the heliport is on MIID land, and given that that land was separated from VIHA, it is doubtful that the provincial authority has any interest in taking responsibility for the heliport. Likewise, BC Ambulance Authority has no interest in taking responsibility for its operation. Further, since the *status quo* is working effectively, and since the MIID has shown that it can operate and maintain the heliport effectively, there is little impetus for change in the identity of the operator of the facility.

I remain available to answer any questions you may have.

Victor Leginsky