COURI & RUPPE, P.L.L.P

Michael C. Couri*
Robert T. Ruppe**
Mark S. Allseits

**Also Licensed in Illinois*

***Also Licensed in California*

Attorneys at law
705 Central Avenue East
PO Box 369
St. Michael, MN 55376-0369
(763) 497-1930
(763) 497-2599 (FAX)
www.courirupe.com

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VIA EMAIL
willmarmarie@imagetrack.com

Marie Ostby
7390 Long Lake Road
Dovre Town Hall
3077 Co Road 27 NW

Re: Dovre Township; Authority for Township to Assess or Expend Township Funds - Vikse Park

The purpose of this memorandum is to advise the Town Board regarding the Horizon Hills neighborhood's request that the Township resume collecting a $50 annual assessment from area households for the maintenance and property tax obligations associated with Vikse Park. After reviewing the plat for Horizon Hills Estate, applicable state statutes, and the public-purpose limitations applicable to townships, my conclusion is that Dovre Township has no legal authority to impose or collect such an assessment.

There is no authorization in the law for the Township to levy an assessment for the maintenance of private property. The fundamental rule of municipal government in Minnesota is that local units of government get all of their authority to act from the state legislature. Cities and towns "have no inherent power and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred." See *Northern States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn. App. 1990) (quoting *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966). This means that cities and towns have to go one step further than everyone else; they cannot rely on the fact that there is no statute prohibiting a certain action but instead have to find a statute that specifically permits it.

The plat for Horizon Hills Estate identifies "John Vikse Park" but does not dedicate the parcel to the public or to Dovre Township. The parcel remains privately owned by Vikse Park Corporation. Because the property was not dedicated to the Township, it is not

public land, and the Township has no statutory basis to levy assessments for its benefit. Minnesota Statutes Chapter 366.012, Chapter 365A, and Chapter 429 each authorize assessments only for public improvements or public purposes. None of these statutes permit a township to levy or collect funds for the maintenance, tax obligations, or other expenses of privately owned land.

In addition, the Township is constitutionally and statutorily prohibited from expending public funds for a private purpose. Once the Township receives the park maintenance funds from the assessment, the funds are considered "public" and fall under the public purpose doctrine. Under the public-purpose doctrine, a township may spend money only when the expenditure serves a clear public purpose and benefits the public at large. The public purpose doctrine is based on a number of constitutional provisions and essentially states that public funds may only be spent on public purposes. *City of Pipestone v. Madsen*, 178 N.W.2d 594, 599 (Minn. 1970). Although "public purpose" cannot be precisely defined, the courts typically define it to mean "such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government." *Id.* (quoting *Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958)). The primary object of the expenditure must serve a public purpose rather than promote some private end. Because Vikse Park is privately owned and not dedicated to the Township, any expenditure of Township funds for its maintenance, taxes, or improvements would constitute an impermissible use of public money for a private purpose.

Providing funds to the Vikse Park Corporation for maintenance of Vikse Park in violation of these prohibitions may lead to adverse consequences for Dovre Township:

- Taxpayer lawsuits. It is costly for the Town Board to defend itself in a lawsuit. A Town Board could be legally responsible for the expenditure because of the responsibility to spend the public's money for a public purpose (*Walser Auto Sales v. City of Richfield*, 635 N.W.2d 391 (Minn. App. 2001)). Individual Town Board members could also be legally responsible for the expenditure.

- Noncompliance finding by the State Auditor. This could result in future special audits and embarrassment for the Township.

- Public mistrust. The Town Board could lose the trust of the people in the community.

- Changes in law. Serious violations may cause the Legislature to make more restrictive laws on township expenditures.

For these reasons, I advise the Board that the Township cannot assess residents of the Horizon Hills neighborhood for the benefit of Vikse Park and cannot expend Township funds on the property. The Horizon Hills homeowners' association will need to determine, under its own governing documents and private agreements, how it intends to fund the maintenance and tax obligations associated with its private park. The Township has no role in those private arrangements and will not provide legal opinions regarding internal HOA governance.

If you have any questions, please do not hesitate to contact this office.

Sincerely,

Robert T. Ruppe
Couri & Ruppe, P.L.L.P.