

**NEUSE, DUPREY & PUTNAM, P.C.**

ATTORNEYS AT LAW

ONE CROSS STREET

MIDDLEBURY, VERMONT 05753-1445

ANTHONY R. DUPREY  
BENJAMIN W. PUTNAM

AMY R. MENARD (also admitted in Alaska)  
JUDSON E. HESCOCK

KARL W. NEUSE (RETIRED)

TEL: (802) 388-7966  
FAX: (802) 388-9713

EMAIL: MAIL@NDP-LAW.COM  
WEBSITE: WWW.NDP-LAW.COM

August 21, 2018

Selectboard  
Town of Middlebury  
77 Main Street  
Middlebury, VT 05753

**Re: Municipal Lease Lands and Act 152 – Confidential Attorney/Client Advice**

Dear Members of the Board:

In the 2018 legislative session, the Vermont Legislature enacted Act 152, which made changes to the laws governing municipal lease lands. A copy of the Act is attached. This letter outlines the Town of Middlebury's options under the new statute.

**A. Background.**

Lease lands were originally granted to Vermont municipalities as a means of support for schools and other public institutions. The municipalities would grant perpetual leases to private individuals (lessees), who would become entitled to use the land in exchange for an annual rent payment.

Because the leases were perpetual, the lessees received broad rights to use their lease land parcels in a similar manner as if they owned the land outright. The primary exception to this general rule is that under Vermont case law, the municipality retains the mineral rights to lease land.

Over the more than 200 years since the lease lots were created, the leasehold interests have passed through multiple lessees, often being split up and divided between multiple parcels. In many cases, the precise location of the lease lands is no longer known, and because the rent payments were not typically indexed to inflation, most towns have stopped collecting rent.

The continued existence of lease lands can nevertheless pose a problem for landowners who are selling or refinancing property, because the municipality's retained interest in the land has come to be viewed as a cloud on title. From time to time, Middlebury and other towns will receive a request to issue a quitclaim deed giving up the municipality's interest in an area of lease land. Middlebury has generally granted such requests as a matter of course, usually on the condition that the requesting party pay the Town's legal fees.

**B. Act 152.**

In response to an increasing number of requests to release municipal lease land interests, the Legislature enacted Act 152, which provides for an automatic termination of such interests. The new law provides that a municipality's interest in lease lands will be permanently extinguished as of January 1, 2020, unless the legislative body of that municipality affirmatively votes to retain its interest prior to that date.

Act 152 also contains provisions allowing a municipality to vote to relinquish some or all of its lease land interests at any time. Thus, a municipal selectboard could vote to relinquish its lease land interests prior to January 1, 2020. Alternatively, a selectboard that voted to affirmatively retain its lease land interests could later change its mind and relinquish them at any time in the future.

In short, Middlebury and other Vermont towns now have three primary options:

1. Take an affirmative vote to retain some or all of the Town's lease land interests, allowing them to remain in effect after January 1, 2020.
2. Vote to relinquish some or all of the Town's lease land interests prior to January 1, 2020.
3. Take no action, which will result in automatic termination of the Town's interests on January 1, 2020.

**C. Recommendations.**

Because the Town of Middlebury has typically been willing to grant requests to relinquish lease lands, it may make sense to allow the January 1, 2020 date to pass without taking action. After that date, all lease land rights would be extinguished, and the Town would no longer need to take the time to consider requests from individual parties.

On the other hand, if the Town would like to retain the right to review requests on a case-by-case basis, it should vote to maintain its lease land interests. For example, there may be cases in which the mineral rights to lease land are of some value, and the Town might want to keep its options open with regard to such lands.

I would be happy to answer any further questions the Board may have about the above issues and the various options open to the Town.

Very truly yours,



Benjamin W. Putnam, Esq.

[benj@ndp-law.com](mailto:benj@ndp-law.com)

BWP/ll  
Enclosure