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August 4, 2008

VIA EMAIL AND US MAIL

The Honorable Linda Hodge  
First Selectman  
Town of Colchester  
127 Norwich Avenue  
Colchester, CT 06415

Re: Cody Camp Memorial Foundation Field Project

Dear Linda:

You have asked for our opinion on certain procedural matters relating to the proposal by The Cody Camp Memorial Field Foundation, Inc. to build a baseball field (the "Field") on the grounds of Jack Jackter Intermediate School and to donate the Field to the Town of Colchester. The particular matters you have asked us to address in this opinion are set forth in the attachment to this letter. Shipman & Goodwin attorney Thomas Mooney, counsel to the Colchester Board of Education, provided the portions of the opinion relating to Board of Education matters.

As we have discussed, there are several other approvals that will be required for the construction and operation of the Field (e.g., Conn. Gen. Stat. Section 8-24 and other land use approvals). Such other approvals are not addressed in this letter or the attachment.

Please contact me if you have any questions.

Sincerely,



Mary Jo Andrews

cc: Thomas B. Mooney, Esq. (with attachment)  
Karen Loiselle, Superintendent of Schools (with attachment)  
William Hettrick, Chairman, Board of Education (with attachment)

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ATTACHMENT TO AUGUST 4, 2008 LETTER FROM  
ATTORNEY MARY JO ANDREWS TO FIRST SELECTMAN LINDA HODGE  
REGARDING CODY CAMP MEMORIAL FIELD FOUNDATION, INC.

Brief Facts:

The Cody Camp Memorial Field Foundation, Inc. (the “Foundation”) has proposed that the Foundation, at the Foundation’s sole expense, build a baseball field (the “Field”) on the grounds of Jack Jackter Intermediate School and donate the Field to the Town of Colchester (the “Town”); the Field would then be dedicated to school use. A Donation, Access and Construction Agreement (the “Agreement”), by and among the Town, the Colchester Board of Education (the “Board of Education”) and the Foundation would set forth the terms and conditions pursuant to which the Field project would be undertaken.

Questions Presented:

1. What procedures must the Town and the Board of Education follow to approve the entering into of the Agreement?
2. What procedures must the Town and the Board of Education follow to accept the donation of the Field?
3. What procedures must the Board of Education follow to dedicate the Field to school use?

Discussion:

1. What procedures must the Town and the Board of Education follow to approve the entering into of the Agreement?
  - A. Town
    - i. The Board of Selectmen must act to approve the entering into of the Agreement and authorize the First Selectman to execute the Agreement (see Conn. Gen. Stat. Section 7-12, and Colchester Charter Sections C-302(C) and C-402).
    - ii. Town Meeting approval is not required, as the transaction contemplated by the Agreement does not fall within the provisions of Colchester Charter Section C-1001.
  - B. Board of Education
    - i. The Board of Education must vote to authorize the Chairperson to sign the Agreement on behalf of the Board of Education. This Agreement requires

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that the Board exercise its statutory authority for the “care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes,” and a simple vote is sufficient for that purpose.

2. What procedures must the Town and the Board of Education follow to accept the donation of the Field?
  - A. Town: The Town, as fee owner of the land, will be the fee owner of the Field improvements that constitute real property. When the Field is completed in accordance with the terms of the Agreement, the Foundation should execute and deliver a deed donating the Field improvements to the Town.
    - (i) The Board of Selectmen must act to accept the deed (see Conn. Gen. Stat. Section 7-12 and Colchester Charter Section C-402). In accepting the deed, the Board of Selectmen must acknowledge the purpose of the donation and state that the property is dedicated to use for school purposes, thus conferring authority over the property to the Board of Education.
    - (ii) Town Meeting approval is not required for acceptance of the deed, as this action does not fall within the provisions of Colchester Charter Section C-1001 (see in particular Charter Sections C-1001B(5) and (10)).
  - B. Board of Education: To the extent any portion of the Field constitutes personal property, as distinct from real property<sup>1</sup>, the Board of Education must vote to accept the donation of such personal property from the Foundation in accordance with Conn. Gen. Stat. Section 10-237(c).
3. What procedures must the Board of Education follow to dedicate the Field to school use?

After the Board of Selectmen has accepted the deed with the acknowledgment that the real property involved is dedicated to school use (as contrasted with the underlying real estate that is already dedicated to use for school purposes), the property is automatically under the jurisdiction of the Board of Education. For clarity, we recommend that the Board of Education vote to accept the property for school purposes. The Board of Education will also want to assure that the Field as constructed is suitable for school use. In that regard, prior approval of the Foundation's plans would be appropriate, as well as ongoing supervision of the construction by the Director of Facilities and Operations, as the staff person responsible for both Town and school facilities.

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<sup>1</sup> We do not yet have information sufficient to determine whether the Field will include personal property as well as real property. Following is an example of the difference between the two types of property that might be applicable in the context of baseball Field: if there is a permanently installed flag pole, the pole would constitute real property, while the flag itself would constitute personal property.