

DATE: October 8, 2004

SUBJECT: The Final Phase – FII Asset Transfer to Town of Frye Island

1. INTRODUCTION

In 1964 the development of Frye Island was begun by J.A. Bowron and Gould H. Coleman, two New England developers with backgrounds in the development of summer resort properties. Sebago Lake Shores, the development's name, was to be a completely self-sufficient community developed over a 10-year period of time and funded with \$12 million dollars. In 1970 Leisure Living Communities Inc. (Bowron's development company) came under a Temporary Restraining Order to keep from selling lots on Frye Island, due to the contention that soils and sub-soils on Frye Island were incapable of adequately dispersing the wastewater and sewage such a development would produce. The Court case between Leisure Living and the Portland Water District over phosphorous export from the Island to the Lake was still unresolved, pushing Leisure Living towards a state of bankruptcy. In March, 1974 the Court ruled that the number of buildable lots on Frye Island would be limited to 750. Leisure Living went out of business and the developers' assets were transferred to Frye Island Incorporated.

In 1995 Frye Island began a movement to secede from the Town of Standish. Because of the remoteness of Frye Island to the mainland parts of the Town of Standish, the level of service provided to Frye Island by the Town of Standish was insignificant, yet the taxes were high. After years of hard work with the Standish Town Council and the Maine Legislature, Frye Island gained independence and became Maine's newest Town on July 1, 1998.

A unique situation began to become apparent on Frye Island. There was a great deal of similarity in operational goals between Frye Island Incorporated (FII) and the Town of Frye Island. The stockholders of FII and the real estate property owners of the Town of Frye Island were one and the same. There was duplication of effort, resulting in higher costs. Both FII and the Town of Frye Island are small entities. Finding human and fiscal resources to cost-effectively run both entities was difficult.

2. BACKGROUND

After three years of being in independent Town, an understanding began to solidify with both the Frye Island Incorporated (FII) leaders and the Town of Frye Island leaders that the duplication of effort needed to be reduced. The method used to gain the operational efficiency and still provide the needed level of services to the Islanders was to transfer FII assets to the Town. The Town then had sole control, allowing costs to be reduced. The following consolidation efforts have already been accomplished in five separate phases:

- a. October, 2001 Transfer of Water System Assets

- b. October, 2002 Transfer of Mainland Entrance Road Asset
 Transfer of Ferry Trailer & Gantry System Assets
 Transfer of Marina and Golf Course Operations

- c. October, 2003 Transfer of Ferry Boat Assets
- d. July, 2004 Transfer of Marina & Quail Circle Assets
 Transfer of Golf Course Assets
 Transfer of Administration Building & Land Assets
 Transfer of Post Office Building & Land Assets
- e. August, 2004 Transfer of 131 lots and 8 blocks of land with
 deeded conservation covenants

Doing this consolidation in distinct phases, separated in time, has allowed each transfer to be successfully completed before undertaking the next step.

3. FINAL PHASE DESCRIPTION

The final phase in the consolidation process is to transfer all remaining Frye Island Incorporated assets to the Town, with the exception of the roads on Frye Island. The following list highlights the assets to be included as shown on the Sebago Lake Shores map, updated by the Town of Frye Island:

- a. Playground Area, Picnic & BBQ Area (Beachview Drive)
- b. Saddle Club Riding Area
- c. Family Park (ball field)
- d. Beaches #1-12
- e. Timbers Recreation Area
- f. Community Center, Tennis Courts, Basketball Area & Playground
- g. Recreation Area & Beach (Playground Lane)
- h. Recreation Area (Leisure Lane, southwest portion of Island)
- i. Long Beach
- j. Recreation Area, Pool, Cabana, Tennis Courts (Lancaster Loop)
- k. Recreation Area (Twin View Circle)
- l. Undeveloped Lots (currently there are more than 750 lots owned by private parties, making these lots unbuildable under the afore-mentioned Court Order)

The only Frye Island Incorporated (FII) asset remaining after the transfer will be the roads on the Island. These roads have been turned over to the Town of Frye Island by granting the Town an easement interest in the road. This technique provides the Town with advantages concerning the level of road maintenance that it provides. Since FII is not responsible for the road maintenance, it would not be liable for any road problems, and if some party wants to push the envelope and sue FII because of a road problem, FII's pockets are so shallow that any law suit would be fruitless.

The 2005 FII Budget shows that the annual expenses for the corporation without the execution of the Final Phase Asset Transfer is \$31,000. The Lease with the Town provides \$31,000 in income to FII. If the Final Phase Asset Transfer is not approved, the annual costs will go up each year probably 5-8% per year; the Lease to the Town will have to go up by the same amount, since that is the only real source of income. If the Final Phase Asset Transfer is approved, the FII costs will go to zero and the Lease with the Town can be eliminated (i.e., go to zero).

4. MILESTONES

The following milestones describe the steps necessary to complete this final phase of the consolidation process:

- a. September, 2004 Modify By-Laws to allow Board-less Operation
- b. October, 2004 FII Board approval of Final Transfer Phase Plan
Review Final Phase Transfer Plan at FII Stockholders' Meeting
- c. June, 2005 Send Proxy Ballot to all FII Stockholders
- d. July, 2005 Vote on Final Phase Transfer Plan at Stockholders Meeting
Vote on Change to Board-less Operation at Stockholders Meeting
- e. September, 2005 Complete Transfer, including Covenants in Deeds
- f. April, 2006 Complete 2005 Income Tax Returns
Donate Excess Cash Assets to Town Capital Reserve

5. JUSTIFICATION

When considering the reasons that justify the transfer of real estate assets from FII to the Town, one should bear in mind that the "owners" of FII are the same as the "owners" of the Town, and both administrations are elected by vote. So, what's really the issue is the vehicle of ownership – municipality or corporation?

Why would the property owners of Frye Island prefer to have their real estate assets be part of a municipality, the Town of Frye Island, rather than a corporation, Frye Island Incorporated?

- a. **ELIMINATE OPERATIONAL COSTS:** The duplication is eliminated so the operational costs of FII go to zero. With the FII costs going to zero, the Town will save more than \$31,000 per year since the FII Lease to the Town can be eliminated.
- b. **REDUCE SAD 6 COSTS:** The Island assessed value used to determine Frye Island's share of SAD6 costs will be reduced by \$1,000,000. This will save the Town more than \$10,000 per year.

- c. **IMPROVED UTILITIZATION OF HUMAN RESOURCES:** Because of the small size of Frye Island, there is a very limited number of competent people available to fill all of the Town's Boards & Committees. By eliminating the operational aspect of FII, there is no need to fill the nine FII Board positions, freeing up those people to be available to the Town.
- d. **REDUCE LIABILITY RISK:** All the assets owned by FII could be lost in a large enough law suit, whereas the most that can be collected from the Town (or its insurer) is \$400,000. This fact makes leasing real estate assets to the Town inherently risky for FII.
- e. **REDUCE INSURANCE COST:** The cost of insuring real estate assets owned by a municipality is substantially less than the cost of insuring real estate assets owned by a corporation. One reason for this is that there is a limit on liability awards (not more than \$400,000) that can be collected from municipalities in Maine. Another is that a group of municipalities merge their interests through membership in the Maine Municipal Association and thereby obtain better policies and rates
- f. **AVOID TAXES:** Frye Island Incorporated is a for-profit corporation. As such, FII must pay taxes on any net income, as well as property taxes. If the assets are transferred to the Town, the Town is not required to pay income or property taxes on them.

In the transfer of these assets to the Town of Frye Island, covenants will be recorded with the deed to insure that the property owners of Frye Island (a.k.a., stockholders of FII) will remain in control of the operation. These covenants can be summarized as follows:

1. Clearly requiring the Town of Frye Island to give sole final control and budgeting responsibility to the Town of Frye Island Board of Island Trustees and the sole control & responsibility for the operations to the Town of Frye Island Executive Committee for the conveyed assets.
2. The transferred assets would revert to FII ownership if for any reason the Town ceases to exist (e.g., becomes a part of another Town).

The Town of Frye Island has gone to a great extent in the Town Charter to include the property owners in the operation of the Town, even if they are not residents of the Town. This gives the needed checks & balances to make sure the Island is run in the best interest of all Islanders.

In addition to the above covenants, the Town of Frye Island will be required to accept the financial responsibility of any legal and/or tax implications coming from the transfer of these assets, and all prior FII asset transfers to the Town. It is generally felt that these implications are zero. If something unforeseen causes a legal and/or tax implication, then the Town of Frye Island can choose to sell some of the transferred property to cover the costs incurred.