



KROB LAW OFFICE, LLC
Attorneys at Law

MEMORANDUM

To: Palmer Lake Mayor and Trustees

From: Scotty P. Krob, Town Attorney

Date: November 14, 2024

Re: Approval of multi-year leases of Town property

A citizen recently brought to our attention that the EcoSpa lease was approved by the Town by resolution, when it should have been done by ordinance. This memo is intended to address the matter.

Pursuant to statute, the Board of Trustees has the authority to lease property owned by the Town. While leases for one year or less may be approved by resolution, leases for one year or longer must be approved by ordinance. C.R.S. §31-15-713(1)(c).

There are three multi-year leases of Town property approved by resolution, that should have been approved by ordinance.¹ One leasing a Town Municipal Building to the Pikes Peak Library District, ; another leasing a portion of the Elephant Rock Property to EcoSpa, LLC; and a third leasing a parcel of Town property to CORE Electric Cooperative for a dual electric vehicle charger.

The leases were approved by resolution, rather than ordinance, at the direction of our firm. I apologize for that.

There are two options available to the Board at this point. One option is for the Board to conclude the leases were approved by resolution in error and therefore the leases are invalid.

¹ The Town has a lease with the Palmer Lake Historical Society for the Lucretia Vaile Center that indicates it is for a term of 15 years with an option to extend it for additional five year periods. However, the addendum to the lease approved in 2022 allows the Town to terminate the lease at any time with 30 days notice to the Historical Society. This provision makes this a thirty day, rather than multi-year obligation of the Town and therefore it was properly approved by resolution.

However, if the lease holders undertook any substantial efforts or expended any substantial funds in reliance on the Town's approval of their respective leases, the lease holders are likely to be able to assert that the leases are valid and enforceable on the bases of an "estoppel" argument.

An estoppel argument says, in essence, that when a governmental entity, acting through the person or body that is authorized to grant an approval, purports to grant such approval, and the person seeking such approval takes substantial action or spends substantial funds in reliance on that approval, the governmental entity is prohibited or "estopped" from withdrawing that approval if it is subsequently determined that the approval was improperly granted. Here, the Board of Trustees is the Town entity that has authority to approve multi-year leases of Town property under the statute. By approving the resolutions for each of the leases, the Board purported to approve the leases. The extent the Library Distric, EcoSpa, or CORE undertook substantial efforts or spent substantial funds in reliance on the Board's approval of their lease, the Town is likely to be estopped from now taking the position the leases are invalid and can be withdrawn.

The second option available to the Board is to reaffirm its approval of the leases through the correct process of adopting ordinances approving the leases. The ordinance would recognize that the Board intended to approve the leases when it approved the resolutions, and then reaffirm that intent by adopting the ordinances. My recommendation is that the Board exercise this second option because it carries out what the Board intended and it avoids exposing the Town to liability.

I have drafted ordinances reaffirming the Board's approval of each of the leases, for your consideration. As this was an error by our office, I have not billed the Town for any of my time in preparing or the ordinances or this memo.

I will be glad to address any questions the Board may have.