

THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

_____)	
In Re:)	
)	Chapter 11
USA Springs, Inc.)	Case No. 08-11816-JMD
)	Hearing: <u>November 15, 2016 at 11:00 a.m.</u>
Debtor)	
_____)	

**OBJECTION BY TOWN OF NOTTINGHAM TO MOTION OF CHAPTER 7 TRUSTEE
FOR AUTHORITY TO SELL ESTATE PROPERTY AT PRIVATE SALE PURSUANT
TO 11 U.S.C. § 363 (DOCKET NO. 1069)**

NOW COMES The Town of Nottingham (the “Town”), a secured creditor, by its attorneys, and respectfully objects to the Trustee’s Motion for Authority to Sell Estate Property at Private Sale (Docket # 1069), and states:

1. The Town is a secured creditor, holding tax liens for pre and post-petition real estate taxes, which are first priority liens under state law.

2. The Trustee has filed a motion to obtain authority to sell the Debtor’s real and personal property (Docket #1069) (the “Sale Motion”).

3. The Town acknowledges that under Code § 363, the Trustee may obtain approval to sell the property, subject to payment of the Town’s tax liens and other secured creditors. The proposed sale price is more than the amount of the tax liens, but is less than the aggregate value of all liens on the property. See §363 (f)(3). The Sale Motion, however, expressly does not request approval for distribution of the net sale proceeds (See Sale Motion, ¶ 14), suggesting that the order of distribution of the net sale proceeds, which claims are to be satisfied, and the priority of claims are to be determined at a later time. That determination is material to the Town’s consent to the sale. Accordingly, the Town respectfully objects to the Sale Motion to the extent

the Trustee intends to distribute the net sale proceeds to the creditors other than in accordance with the priorities of the interests in the debtor's property created by state law.

4. The Sale Motion includes in its description of the property to be sold a general and broad description of real and personal property, including rights to permits issued to the debtor, a partial list of which is attached as Exhibit B to the Sale Motion, including specifically certain permits issued by or attributed to the Town, including a large ground water permit actually issued by the State of New Hampshire.

5. The debtor previously filed a motion requesting this Court to determine the validity of certain permits (docket #445), on August 13, 2010, to which the Town objected (docket #456), but the debtor then withdrew its motion without prejudice (docket #457), leaving open the contentions raised in that motion.

6. The Sale Motion does not expressly request this court to determine whether the permits listed in Exhibit B, or any other permits, are still valid. Nevertheless, as the Court in this case has not expressly ruled on the validity of the permits, the status of the permits arguably remains an open issue.

7. As stated in the Town's earlier objection, the debtor retains no rights to permits that have lapsed, it is not entitled to reissuance of any permits by virtue of this case, and it must reapply for any municipal and other governmental permits in the ordinary course. Moreover, and more specifically, because of the lapse of time and condition of the partially constructed building on the property, the owner of the property, whether the debtor or the purchaser, will have to reapply for a building permit.

8. Accordingly, the Town respectfully objects to the Sale Motion to the extent that it makes, rests on, or implies any finding or determination of the status of the land use and other permits.

Wherefore, the Town of Nottingham respectfully requests that this Honorable Court:

- A. Deny the Sale Motion; and
- B. Grant such other relief as is just.

Respectfully submitted,

TOWN OF NOTTINGHAM

By Its Attorneys

UPTON & HATFIELD, LLP

Dated: October 24, 2016

By: /s/ James F. Raymond
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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Objection by Town of Nottingham to Trustee's Motion for Authority to Sell Estate Property at Private Sale Filed were forwarded electronically this day to Alan L. Braunstein, Timothy Britain, Mark P. Cornell, Euriprides Dalmanieras, Michael A. Fagone, Michael B. Feinman, Jeffrey S. Follett, Edmond J. Ford, William S. Gannon, Terrie Harman, Geraldine Karonis, Robert J. Keach, James S. LaMontagne, Brian F. McCaffrey, Edward C. Mosca, Earl D. Monroe, Alexander G. Nossiff, Office of the US Trustee, Kelly L. Ovitt Puc, David K. Pinsonneault, Thomas J. Raftery, Peter C. L. Roth, Ryan C. Siden, Timothy P. Smith, Tony F. Soltani Macken Toussaint, UST, and Lisa C. Wood. Paper copies have been sent via first class US mail to:

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