



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

Green Acres Program
Mail Code 501-01
P.O. Box 420
501 East State Street, 1st Floor
Trenton, NJ 08625-0420
Tel.# 609-984-0631 / Fax # 609-984-0608
www.NJGreenAcres.org

January 13, 2017

Mayor Richard Palombo
Township of Upper
P.O. Box 205
Tuckahoe, New Jersey 08250

Re: Township of Upper, County of Cape May
Block 350, part of Lot 12
Recreation and Open Space Inventory (ROSI)
Notice of Omission of Property from the ROSI (N.J.A.C. 7:36-25.3(m))

Dear Mayor Palombo,

In accordance with N.J.A.C. 7:36-25.3 (m), I am writing to notify you that the Green Acres Program has reason to believe that a portion of Block 350, Lot 12 in Upper Township, Cape May County (the "Property") was held for recreation or conservation purposes at the time the Township of Upper ("Township") accepted Green Acres funding and was erroneously not listed on the Township's Recreation and Open Space Inventory ("ROSI"). The basis for our belief that a portion of the Property should be listed on the Township's ROSI, and therefore is encumbered with Green Acres restrictions, is detailed below.

Background

As you are aware, in April 2014, the Green Acres Program made a determination that Block 350, Lot 12 in Upper Township, Cape May County was not subject to Green Acres restrictions. (See N.J.A.C. 7:36). This jurisdictional determination was not requested by the Township, but was made in response to an inquiry to our program by South Jersey Gas ("SJG") as part of its due diligence for the construction of the Mt.

Pleasant-Tuckahoe Road Interconnect Station in support of the BL England pipeline project. A copy of this email is attached in Exhibit 1.

After reviewing additional information provided to our office by the Township as well as the Pinelands Preservation Alliance ("PPA") and the New Jersey Conservation Foundation ("NJCF"), we affirmed and supplemented our original determination via a letter issued to the Township on November 12, 2015 (attached in Exhibit 1). This letter was captioned as our "final determination" on the jurisdiction issue based on our belief that the Township had provided us with all relevant information from its files about this matter.

PPA/NJCF filed a Notice of Appeal from our November 12, 2015 final determination on December 23, 2015. It is our understanding that PPA continues to research the history of the Property while the appeal is pending. On October 25, 2016, the Township supplied our office with a copy of its response to an Open Public Records Act ("OPRA") request submitted by PPA. This response included minutes from Upper Township Committee meetings held on November 29, 1971 and December 13, 1971 (Exhibit 2). Further, on November 8, 2016, PPA provided excerpts of various Township Master Plan documents from 1960 to 1984 (Exhibit 3). This information was not provided to us prior to issuance of the November 12, 2015 final determination.

The following provides a summary of the additional information provided to Green Acres since our November 2015 final determination:

Township Committee Meeting Minutes - November 29, 1971

The November 29, 1971 minutes state on page 114, in relevant part, that "the Fourth of July Committee rescinded their approval to locate a basketball court on the fringe of the existing ball field, stating that they would urge the placement of the court on the 3 ½ acre site across the street."

Township Committee Meeting Minutes – December 13, 1971

The December 13, 1971 minutes, on page 120, clarify the location of the 3.5-acre site mentioned in the November 29, 1971 minutes by memorializing the Township's establishment of a 3.5-acre recreation area on Block 72, Lot 3. The Township's ROSI indicates that this parcel now represents the Tuckahoe Park/Recreation Area, which is located across Mt. Pleasant Tuckahoe Road (County Route 664) from the Property.

1960s Upper Township Master Plan

Excerpts from the 1960s Township Master Plan, prepared for the Upper Township Planning Board by the Cape May County Planning Staff, dated March

1962, include three maps: 1960 Land Use, Facilities & Services and Future Land Use Plan. The 1960 Land Use map depicts public and quasi-public use on the Property. The Facilities & Services map depicts a park and playground on the property and the Future Land Use Plan depicts the Township Hall as well as a playfield/playground on the Property.

On November 30, 2016, we filed a Notice of Motion for Remand in the pending appeal before the Appellate Division of the Superior Court of New Jersey (Docket No. A-1787-15T1). The purpose of the motion was to allow the Department sufficient opportunity to evaluate the new information and determine whether it alters our November 12, 2015 final determination. The court granted that motion on January 5, 2017, and remanded the matter to Green Acres for 90 days to consider newly available evidence and amend its determination, if warranted, based on that information.

Methodology and Analysis

As documented in our November 2015 final determination letter, under *N.J.A.C. 7:36-25.3(m)*, in determining whether a property should have been listed on a ROSI as unfunded parkland, Green Acres looks at whether the parcel in question was "held" by the municipality, the purposes for which it was held and the timing of the receipt of Green Acres funding, including the following factors (*N.J.A.C. 7:36-25.3(f)*):

- The purpose for and the method by which the local unit acquired the parcel;
- Any evidence relevant to the local unit's intentions regarding the use of the parcel or a portion of the parcel at the time of acquisition and of receipt of Green Acres funds;
- Whether the local unit took any formal action to dedicate the parcel for recreation and conservation purposes or for any other purpose;
- Whether the parcel is identified with a recreation or conservation designation on the official map of the municipality or its zoning map, or in the local unit's master plan;
- Whether the parcel is identified as parkland by signs placed the local unit; and,
- Whether the local unit expended funds to provide recreation or conservation use of the parcel or otherwise supported or encouraged such use.

Additionally, courts have determined that to be included on a municipal ROSI as unfunded parkland, the property must be "held by a municipality for recreational and conservation purposes" at the time funding was received. *Cedar Cove v. Stanzione*, 122 N.J. 202 (1991) and *Matter of Amendment to Recreation and Open Space Inventory of the City of Plainfield to Remove Park-Madison Site, Block 246, Lot 1*, 353 N.J. Super. 310 (App. Div. 2002). This inquiry takes into account all relevant facts such as whether the municipality "was aware of such use, whether it supported and encouraged the use, and whether the municipality had taken any official action to allow the property to be used for such purposes."

In support of our original and final decisions, our office determined the Green Acres encumbrance window and reviewed the Township's ROSI submissions, conducted a thorough historic aerial review and reviewed all documentation submitted by the Township, PPA and NJCF in support of their respective positions. While our original and final determinations were based on comprehensive reviews of all information available to Green Acres at the time, we believe we have an ongoing obligation to review our determinations for accuracy if new information (that is both substantive and relevant) becomes available.

The Township's recent submittal of Committee meeting minutes, as well as excerpts from an earlier Master Plan, includes information we have not previously been aware of and/or evaluated. Read together, in light of the 1970 aerial photograph previously provided by PPA/NJCF which depicts what could be considered a ball field on the Property, this additional information strongly suggests that a recreational area, including at least one ball field, existed on the Property by 1971.

While this information does not provide evidence that the Township expended funds to provide recreation or conservation uses in this area or otherwise supported or encouraged such use during the encumbrance window, it does provide evidence, not previously provided to Green Acres, that the Township was aware of a ball field on the Property.

Conclusion

In accordance with our ROSI amendment rules at *N.J.A.C. 7:36-25.3 (m)*, we now have reason to believe that a portion of Block 350, Lot 12 consisted of a ball field and was, therefore, held by the Township for recreation and conservation purposes at the time of receipt of Green Acres funding. Therefore, we request that the Township amend its ROSI to include the portion of the Property that contained recreational amenities.

If the Township agrees that a portion of the Property should be listed on the ROSI, the Township should draft an amended ROSI for our review including a map/aerial that

clearly depicts the area to be encumbered. This submittal should be made within 30 days of the Township's receipt of this letter. However, if the Township disagrees with our above determination, the Township must submit documentation supporting its assertion that the Property was not held or recreation and conservation purposes at the time of receipt of Green Acres funding within 30 days of its receipt of this letter. In order to allow us to comply with the terms of the January 5, 2017 remand order, we will not be able to provide the Township with any extension to the 30-day deadline.

In order to ensure that we review all available information on the Property, including information the surrounding community may have regarding the historic use of the Property prior to 1982, before authorizing the amended ROSI to be filed or accepting any defenses raised by the Township, we will be providing the opportunity for public input after we receive the Township's response to this letter. We intend to post the Township's response, along with our prior decisions, on our website (<http://www.nj.gov/dep/greenacres/notices.html>) along with notice of a 30 day period for written submissions on this matter. After this 30 day period, Green Acres will evaluate all documentation submitted by the Township, along with any information submitted by the public, and will notify the Township in writing of our final decision.

If you have any questions regarding this letter, please feel free to contact Jessica Patterson, Cape May County Steward, at 609-984-0558 or Jessica.Patterson@dep.nj.gov.

Sincerely,



Martha Sullivan Sapp
Director

cc: Paul Dietrich, Sr., P.E., Upper Township Municipal Engineer
Daniel J. Young, Upper Township Solicitor
Theresa Lettman, Pinelands Preservation Alliance
Carleton Montgomery, Pinelands Preservation Alliance
Emile DeVito, Ph.D., New Jersey Conservation Foundation
Kerry Kirk Pflugh, NJDEP, Office of Local Government Assistance