



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION NATURAL AND HISTORIC RESOURCES

Office of the Assistant Commissioner

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BOB MARTIN
COMMISSIONER

January 30, 2015

Michael Rogers, Administrator
Town of Morristown
Town Hall
200 South Street
Morristown, NJ 07960

Re: Town of Morristown, Morris County, New Jersey
Headquarters Plaza – Pioneer Park (formerly known as Washington Park)
Block 4901, p/o Lots 1.04, 1.06 and 1.08
Amended and Restated Public Access Easement—Green Acres Jurisdictional
Determination

Dear Mr. Rogers,

This letter is intended to clarify the jurisdiction that the Green Acres Program asserts over a portion of the property known as Headquarters Plaza, which is the subject of an Amended and Restated Easement between the Town of Morristown and Sixth ROC-Jersey Associates L.L.C. (the “Easement”), and to restate Green Acres’ confirmations set forth in Paragraph 3 of the Easement to which this letter is attached as Exhibit E. The portion of Headquarters Plaza that is the subject of the Easement comprises part of Block 4901 Lots 1.04, 1.06, and 1.08 in the Town of Morristown, Morris County, New Jersey as more particularly described in the Easement (the “Easement Area”).

By way of background, Morristown was the fee simple owner of Block 4901, Lots 1.04, 1.06, 1.07¹ and 1.08 at the time that it received Green Acres funding for park improvements to Pioneer Park (Green Acres Project Agreement #1424-13-255, dated June 22, 1983), which funding was subject to the rights of the Town and the lessees of such property existing at such time. The “as-built” drawing, entitled “Speedwell Development Project, Site and Landscape Plan,” dated October 27, 1981, prepared by Irving Gershon (the “As Built Plan”), submitted to the Green Acres Program shows the area of Green Acres encumbrance. Generally, the encumbered parkland is inclusive of the area between the 1776 on the Green office building, 2 Headquarters Plaza office building, retail mall and restaurants, and concrete wall above Water Street. It also includes a small noncontiguous section of Block 4901, Lots 1.06 and 1.08 at the intersection of Speedwell Avenue and Spring Street. Upon receipt of payment from the Green Acres Program, the property known as Pioneer Park (formerly known as Washington Park) became subject to Green Acres Program restrictions. While Block 4901, Lot 14 is shown as part of the Green Acres

¹ According to correspondence dated December 9, 2014 from the First American Title Insurance Company, Block 4901, Lot 1.07 no longer exists as a separate tax lot.

encumbered plaza on the As Built Plan, it is under separate ownership and is not the subject of the Easement. Likewise, the portions of public rights of way shown on the As Built Plan as being subject to Green Acres restrictions are not the subject of the Easement.

In 1979, prior to execution of the above-referenced Green Acres Project Agreement, Second ROC-Jersey Associates, L.L.C. ("Second ROC") entered into a 50-year lease with the Town of Morristown covering a portion of Headquarters Plaza known as the "Upper Area," which is inclusive of the majority of today's Pioneer Plaza. The lease was executed in connection with the Morristown Urban Renewal Project, N.J. R-159. Pursuant to an Addendum to the Amendment to the Project Contract, dated January 21, 1982, Second ROC (as lessee of the Upper Area) granted a perpetual and exclusive easement to Morristown to utilize a portion of the Upper Area called the "Public Plaza Area" for public use as a public plaza, walkway and recreational area (the "Original Easement") as set forth in the Original Easement attached to the Easement as Exhibit C. The Original Easement (i) granted Second ROC the right to alter the boundary lines of the Public Plaza Area for purposes of constructing, altering or expanding the boundaries of the Upper Area Improvements without prior municipal consent, providing the boundary line changes did not exceed five percent (5%) of the square footage of the Public Plaza Area; and (ii) authorized Second ROC to reserve the right to build, operate and maintain HVAC and related support systems benefiting the Upper Area Improvements in the Public Plaza Area as more specifically set forth in the Easement. While the Original Easement granted a perpetual public access easement in connection with the public plaza area, the Original Easement was never recorded in the Office of the County Clerk of Morris County and lacked clarity as to its scope.

Consistent with the terms of the Lease of Upper Area, dated November 12, 1979, the Town of Morristown is entering into an Agreement of Sale with Sixth ROC-Jersey Associates, L.L.C. ("Sixth ROC"), an affiliate of Second ROC concerning the property comprising the Upper Area of Headquarters Plaza². With the anticipated sale of the Upper Area, Morristown has directed Sixth ROC to grant for recordation at the Morris County Clerk's office an exclusive easement in perpetuity to Morristown on behalf and for the benefit of the public over, upon and across the area coinciding with the public plaza area as more specifically defined in the Easement.

In anticipation of the sale of the Upper Area of Headquarters Plaza, Morristown has also requested authorization from the Green Acres Program for the placement of outdoor seating in connection with future adjacent food and beverage service.

Based on the above findings of fact, the Green Acres Program concludes the following:

1. The Green Acres Program is in agreement that the Easement Area set forth in the Easement comprises the portion of Pioneer Park located within the limits of the Upper Area. The Easement to be recorded at the Morris County Clerk's office, governing the Easement Area, constitutes Green Acres-encumbered parkland and the area described in the Easement is subject to the provisions of N.J.S.A. 13:8A-31(a), N.J.S.A. 13:8A-47, N.J.S.A. 13:8C-1 et seq., and N.J.A.C. 7:36 (as may be amended and supplemented.)
2. Given the pending sale of Headquarters Plaza, the recordation of the Easement on behalf of the public over the Easement Area avoids there being diversion or disposal of parkland (since perpetual restriction of the Easement Area was a condition of the receipt of

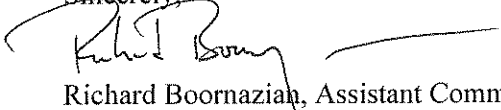
² The referenced Agreement of Sale is also with First ROC-Jersey Associates L.L.C. for the purchase of a portion of Headquarters Plaza known as the "Lower Area".

funding under the Pioneer Park project agreement) and/or an assertion of same by the Green Acres Program.

3. Because the Original Easement was executed prior to receipt of Green Acres funding for Pioneer Park, the provisions in the Original Easement pertaining to the Easement Area have precedence over the Green Acres Program rules as they pertain to future management and operation of the Easement Area. Accordingly, the Green Acres Program acknowledges the preexisting right, as initially set forth in the Original Easement, to (i) reduce the boundary lines of the Easement Area by up to five percent (5%) in the aggregate of the square footage of the Easement Area, and (ii) construct, operate and maintain ventilation, air-conditioning and/or heating units or apparatus or any related support systems within the Easement Area as reasonably necessary to benefit the improvements at Headquarters Plaza. The Easement Area comprises 58,540 square feet (1.342 acres), and the area currently restricted for use in connection with a daycare facility contains 1,810 square feet (0.041 acres) as more specifically set forth in the Easement. The existing restricted area constitutes a portion of the five percent (5%) threshold. Any reduction in the area comprising the Easement Area in excess of five percent (5%) of the total aggregate area constitutes a diversion, requiring Commissioner and State House Commission approval.
4. Morristown is seeking authorization for the use of up to ten percent (10%) of the Easement Area for outdoor seating in connection with food and or beverage service at Headquarters Plaza as more specifically set forth in the Easement. The intent of having outdoor seating associated with food and beverage service is to stimulate economic revitalization of Headquarters Plaza including increasing public use and enjoyment of Pioneer Park. An outdoor seating area, not to exceed ten percent (10%) of the Easement Area, shall be subject to a lease or license agreement between Morristown, Sixth ROC and tenant, which must be approved by the Green Acres Program in accordance with *N.J.A.C. 7:36-25.13*. This future outdoor seating area shall not factor into the five percent (5%) limit in terms of reducing the boundaries of the Easement Area.
5. Green Acres restates herein those confirmations set forth in Paragraph 3 of the Easement to which this letter is attached as Exhibit E.

Please do not hesitate to contact the Green Acres Program if you have any questions about this summary or the future administration of the Easement Area.

Sincerely,



Richard Boornazian, Assistant Commissioner
Natural and Historic Resources

Enc.

- c. Judeth Yeany, Chief, Bureau of Legal Services and Stewardship
John Inglesino, Esq.
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Amy Ward, Esq.