

Rose Harvey, Commissioner
New York State Office of Parks, Recreation and Historic Preservation
Albany New York 12238

May 23, 2013

Attorney General Eric T. Schneiderman
The Capitol
Albany, NY 12224-0341

May 23, 2013

Thomas D. DiNapoli, State Comptroller
Office of the State Comptroller
110 State St.
Albany, NY 12236

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The purpose of this letter is to inform you that an alienation of park land in the McKownville Water District park has occurred. This park 8.4 acres, is situated in Guilderland, NY on Western Avenue, west of Fuller Road and south of Stuyvesant Plaza. The alienation occurred when an easement of 0.51 acres of land was granted to Stuyvesant Plaza by the Town of Guilderland for a portion of the 8.4 acres. It is our position that this easement is illegal and should be rescinded. Our Association officers have carefully read the *Handbook on the Alienation and Conversion of Municipal Parkland*, published by New York State, and we believe the information in this publication supports our conclusion. In accordance with the procedure suggested in this publication, we are contacting you.

In 1947, the McKownville Water District was established on about 9 acres of land with two storage reservoirs. In 1972, the residents of McKownville ceased using this reservoir as their household water source; however, the McKownville Water District property continued to be used as a park. Residents, who moved to this area, as long ago as 1969, recall this area functioning as a park. It is still possible to contact residents who can attest to this fact.

During the 1970's the Guilderland Town Recreation Department sponsored ice skating at this location. The Town took responsibility for providing "No Skating" signs and other signs. There was a "warming room" inside the old McKownville Water District pump house. Ice depth was monitored by the Town Recreation Department. Sometimes the adjoining property owner, Stuyvesant Plaza, would, as a public service, promote ice skating on the reservoir. Included with this letter are seventeen (17) reprints from the *Altamont Enterprise*, a local weekly newspaper, reporting on ice skating and other park like activities at the McKownville Reservoir park, dated 1978 through 1985. In addition to newspaper reports there are many people in the community who remember the ice skating, the warming hut, and the signage at this location. The McKownville (volunteer) Fire Department aided park ice skating by spraying the ice from time to time—to renew its surface. The Town also, during this time, installed a "spray" fountain in the pond---to add to its attractiveness as a park.

After the pond was no longer able to support ice skating, due to changes in depth owing to surrounding development, (New York State permitted Crossgates to discharge its storm water into the pond which caused much silting and other changes in the pond), the McKownville Water District property continued to be used for hiking/walking, fishing and canoeing. These practices continued through the 1990's and into this century. To support that this area was used as a park we have attached copies of newspaper stories and Town Board minutes that support our claim. (See Appendix E).

On October 20, 2006, the Town of Guilderland entered into a contract with New York State Office of Parks, Recreation and Historic Preservation for the purpose of construction of a new park, the McKownville Reservoir Park. This grant was for \$99,000, New York State Agency Number, EPF-40687-SC and New York State Comptrollers Number C406087 with an initial contract period of October 20, 2006. For its portion of the matching funds, the Town of Guilderland listed the value of the McKownville Water District park land, 8.4 acres, as \$225,000. These monies were used to develop trails and other improvements. The town added picnic tables, benches, fencing, and a pedestrian bridge. (See Appendix D).

On November 16, 2009 a Deed, Easement, was granted by the Town of Guilderland to Stuyvesant Plaza Inc. Document Number 10533525 Book: 2963 Page: 1064 was filed with the Albany County Clerk granting Stuyvesant Plaza Inc. 0.51 acres of the McKownville Water District park. Stuyvesant's plans call for removing trees, grading and paving this area, to be used as a parking lot.

In conclusion, we are asking for three determinations. First, we ask that the 2009 easement with Stuyvesant Plaza be declared null and void. Secondly, we seek restoration of the land area of the McKownville Reservoir Park to the size testified to in the October 2006 funding grant of \$99,000, which was 8.2 acres. Finally, we request that all easements granted by the Town in 1978 and later be examined for possible alienation of park land.

We are counting on you to assess our concerns regarding park land alienation. We must be sure that New York State law is being applied justly.

Sincerely,

Appendix

- A. Easement between Town of Guilderland and Stuyvesant Plaza 11/16/2009 including map
- B. Agreement between Stuyvesant Plaza and the Town of Guilderland
- C. Map of McKownville Water District
- D. Copy of result of Foil request to NYS Office of Parks, Recreation and Historic Preservation
- E. Reprints of pages from the *Altamont Enterprise*, a weekly newspaper, various dates, 1978 to 1985, of stories concerning the use of the McKownville Reservoir as a park:
 - 1. December 15, 1978, As weather permits figure skating rinks at Tawasentha Park at the McKownville Reservoir (Stuyvesant Plaza) andwill be open.
 - 2. January, 12 1979, ice skating will be available at McKownville Reservoir
 - 3. December 9, 1982, The town will operate skating and the McKownville Reservoir will have lighted night skating until 9 p.m.
 - 4. December 23, 1982, ice skating, cooperation between Stuyvesant Plaza and Dennis Moore town parks department, "lights, a warming room, better ice care.....maybe even a refreshment booth..."
 - 5. January 6, 1983, "the town will supervise day and evening ice skating..."
 - 6. January 27, 1983, "... whims of the winter frustrated up to now any plans for ice skating on the McKownville Reservoir."
 - 7. February 10, 1983, photo caption.... "this is the first year the town has offered public skating at the site...."
 - 8. March 31, 1983, "it is worth noting..."
 - 9. May 5, 1983, "fleet of canoes at the McKownville Reservoir..."
 - 10. January 12, 1984 "Skating on the McKownville Reservoir pond..... Those responsible for parks and recreation for the Town of Guilderland should closely monitor the condition of the ice"
 - 11. January 19, 1984, "the ice skating sign went up...."
 - 12. March 7, 1985 Mr. Moss was quoted, "When asked about skating on the reservoir,"
 - 13. January 30, 2003 "The McKownville reservoir/pond at Stuyvesant was going forward...."

14. June 9, 2005 "Tuesday, the board decided to apply for grants to build a small park in McKownville," The site of the proposed "McKownville Reservoir Park" is....
15. May 4, 2006 "The grants applications are for a \$97,450 for the creation of a passive park surrounding the former McKownville Reservoir"
16. December 21, 2006 "Next year the land around the old McKownville reservoir will be a park thanks to a \$99,000 state grant"
17. August 7, 2008 "the town will dedicate the land around the McKownville reservoir as parkland and"

F. Reprints of Town of Guilderland Board Minutes, found at www.townofguilderland.org

1. December 19, 2006 "Supervisor Runion stated that the Town has been awarded a grant in the amount of \$99,000 for the construction of a park in the McKownville Reservoir...."
2. March 17, 2009 "The improvements will to hold storm drainage water; it will create a park like setting...."
3. June 16, 2009 "The Town receiving a grant from the NYS Office of Parks and Recreation \$1,000,000 for the the McKownville Reservoir into a Town park setting...."



**New York State Office of Parks,
Recreation and Historic Preservation**

Albany, New York 12238

www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

April 22, 2013

Donald Reeb
5 Norwood Street
Albany, NY 12203-3410

Re: Freedom of Information (FOIL) Request
EPF-406087 - McKownville Reservoir Park Map

Dear Mr. Reeb:

Enclosed is the information you requested in regards to the above mentioned FOIL request.

By law, I am required to inform you that you have 30 days by which to appeal this determination. Appeals must be directed to Patrick A. Bradford, General Counsel, to the address contained on the letterhead.

Sincerely,

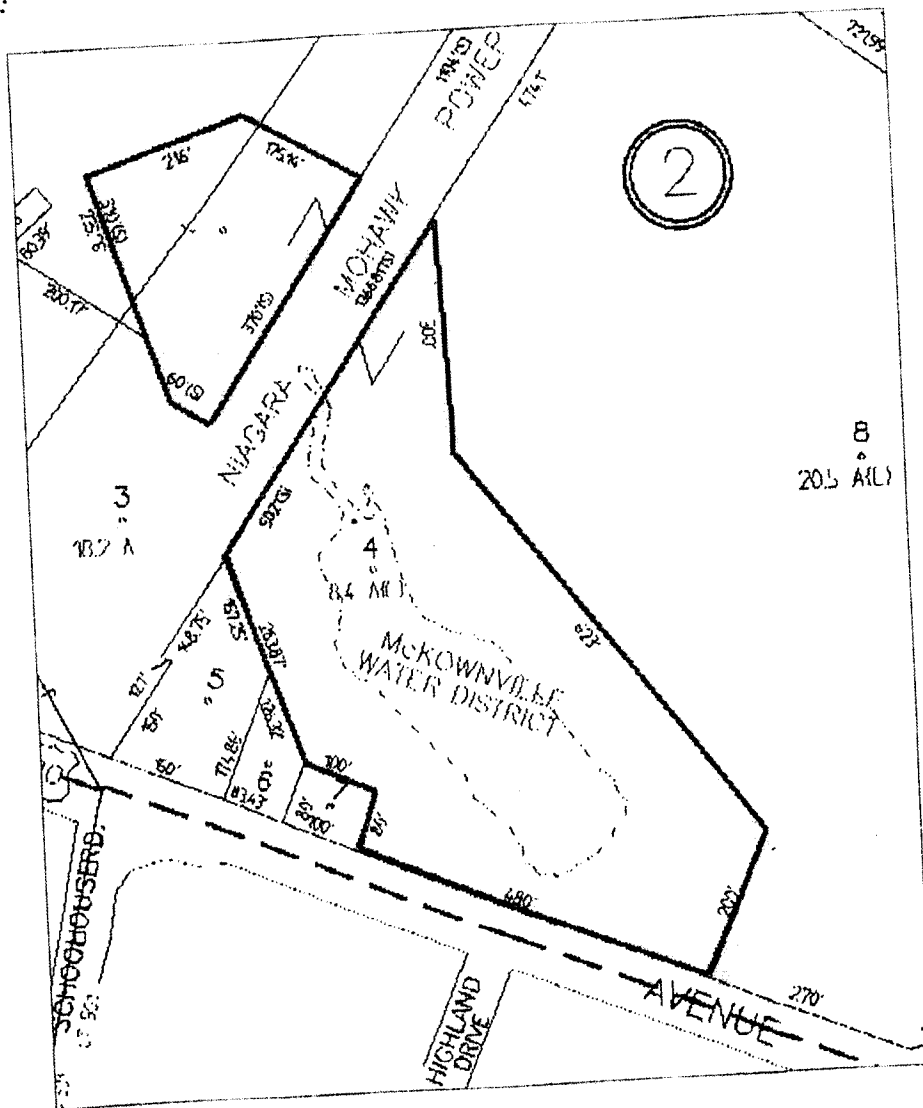
Petra M. Larsen
Records Access Officer

Legal Description of the Subject Property

The subject property is located at 1515 Western Avenue in a neighborhood commonly known as "McKownville" in the town of Guilderland, Albany County, New York State and is identified as Tax Map No.52.04-2-4.

The subject property consists of 8.4 +/- acres of land per public records.

Tax Map:



There is a lot of good information in the package. The bottom line is that "the State Park agency," is not regulatory in nature. Basically, they operate the State Park system.

They comment to the Legislature when alienation legislation is before it, and advise the Governor's Office when legislation that has passed is on his desk to sign, just "advising" and have no ability to prevent a municipality from alienating parkland. Both the Legislature and the Governor's Office are merely relying on NYS Park's expertise in parkland in those instances, not on any official role that State Parks has.

Even in the case of the violation of a grant agreement (which Runion was probably careful to avoid in this instance), the Park's role, if they thought there was an illegal alienation, would be to refer it to the Attorney General's Office for legal action.

Such a referral would be a low priority for the AG, unless it involved a highly visible park such as Washington Park in Albany or something of that stature. In which case, AG action would probably not be required because of private action.

Private action is really the best enforcement method. That is where private citizens who have standing (such as the McK Improvement Association) bring a private lawsuit against the Town and, in this case, Stuyvesant Plaza to rescind the easement based on the public trust doctrine - which says that a municipality cannot alienate parkland without an act of the State Legislature. The many news articles that Don put together make a pretty good case that this land was used as a park for many years. There are probably many live witnesses that could testify and/or submit affidavits to the effect that they skated/hiked/picnicked etc. That is the type of proof that is necessary and it is through a private action that the Town's act of alienating the parkland can be reversed. Such an action is based on the public trust doctrine, not a grant agreement, so it would not be limited to just the area shown on the map submitted with the grant agreement. If the entire parcel was historically used as a park, then it would all be considered a park that could not be alienated without legislative approval. And keep in mind, the Town did not have to formally dedicate the land as a park. If it was owned by the Town and the residents used it - formally or informally - as a park, then it is a park that cannot be alienated without legislative approval. The State Comptroller only has the power to audit. If the folks there were interested, they could audit the Town's use of the grant funds - but once again, Ken was probably careful to circumscribe only the active parkland on the map he submitted with the grant application. As long as the parking lot did not encumber the area shown on the map, neither the State Comptroller nor anyone else for that matter can reverse the easement based on the grant agreement.

There is no harm in sending the letter as is, it is just that I don't think the Association will get anything in return but a polite response.