
MEMO

DATE: MARCH 4, 2016

**TO: ROBERT MALLOZZI
TOM TESLUK**

**FROM: DOUGLAS E. LOMONTE, ESQ.
MATTHEW L. STUDER, ESQ.**

RE: NATURE CENTER (BLISS PARK) DEED RESTRICTIONS

You have asked us to review the deeds to the New Canaan Nature Center (the “Nature Center” or the “Park”) to determine whether the Town of New Canaan (the “Town”) could sublease a portion of the Park for the purpose of installing a cell site. This memorandum is limited to a review and analysis of the applicable deed restrictions. It does not address the legal, political or practical considerations relating to the siting of telecommunications facilities.

The Nature Center consists of 39.778 acres made up of two parcels of 26.341 acres (the “North Parcel”) and 13.437 acres (the “South Parcel”), respectively. The Town took title to the North Parcel first by gift from Susan D. Bliss on January 5, 1960 pursuant to a Quitclaim Deed recorded at Volume 138, Page 479 of the Land Records (the “1960 Bliss Deed”).

The 1960 Bliss Deed (applicable to the 26.341 acre North Parcel) contains the following restrictive covenant:

“Said parcel of land is conveyed subject to the following restrictive covenant and agreement which shall run with the land and shall be binding upon the Releasee [the Town], its successors and assigns, to wit:

This deed is given by Susan D. Bliss and accepted by the Town of New Canaan as a gift of the above described premises by the Releasor [Susan D. Bliss]...the same to be held and used by the Town of New Canaan for the purposes only of an arboretum, bird sanctuary, nature center, horticulture, and for passive recreation and related purposes, including, but without limitation, a museum site.”

The Town took title to the South Parcel by gift from Susan D. Bliss one year later, on January 3, 1961 pursuant to Quitclaim Deed recorded at Volume 145, Page 358 of the New Canaan Land Records (the “1961 Bliss Deed”). The 1961 Bliss Deed (applicable to the 13.437 acre South

Parcel) repeats the North Parcel Restrictive Covenant verbatim with the following additional clause added at the end:

“... and for various uses relating to public health, including administrative facilities.”

Both restrictive covenants run with the land, meaning that the Town will remain bound by the restrictive covenants in perpetuity unless the Town obtains a court order reforming the 1960 Bliss Deed and the 1961 Bliss Deed or exercises its powers of eminent domain.

Given the additional clause in the 1961 Deed restriction, the uses permitted in the North Parcel are somewhat more limited than the uses permitted in the South Parcel. In our opinion, the Town is precluded from subleasing a portion of the North Parcel for the purpose of installing a cell site. Use of the North Parcel as a cell site is inconsistent with the restrictions contained in the 1960 Deed (i.e. natural uses and passive recreation).

The Town is also likely precluded from subleasing a portion of the South Parcel, unless it can show that the installation of a telecommunications tower relates to, and/or benefits the public health. The argument can conceivably be made that filling the gaps in the Town's wireless coverage benefits the public health. Such an argument is strengthened if the proposed cell site is used by, and provides better emergency service communication for, the Town's police and fire departments.

Notwithstanding the above, we think the nature of the proposed cell site may be an important factor. If, for example, the proposed cell site consists of a series of unobtrusive nodes placed on existing utility poles, then it is conceivable that the Town will not violate the restrictive covenants in the Bliss deeds. Arguably, the installation of an unobtrusive add-on to an existing fixture does not constitute a “use.” Would it be a “use” if, for example, the Town were to extend a natural gas line to one or more buildings on the parcel? The Town could argue that the installation of unobtrusive cellular communications facilities constitutes a supplemental utility which does not otherwise alter the use or character of the Nature Center.