

MAYOR
DANNEL P. MALLOY



CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS

888 WASHINGTON BOULEVARD
P.O. BOX 10152
STAMFORD, CT 06904-2152
(203) 977-4081
FAX (203) 977-5560

DIRECTOR OF LEGAL AFFAIRS
AND CORPORATION COUNSEL
THOMAS M. CASSONE

DEPUTY CORPORATION COUNSEL
SYBIL V. RICHARDS

ASSISTANT CORPORATION COUNSEL
JAMES V. MINOR
JOHN W. MULLIN, JR.
KENNETH B. POVODATOR
BURT ROSENBERG
MICHAEL S. TOMA

Robin Stein
Erin McKenna
Planning Board
Stamford, CT

March 11, 2005

Re: Rights of owner of 359 Merriebrook Lane to exclude members of public from "private drive" and the entrance to Mianus River Park

Dear Robin-

You have requested an opinion as to whether the owner of Treetops at 359 Merriebrook Lane, Mr. Brownstein, has the right to restrict use of Merriebrook Lane west of the Merriebrook Lane bridge, which leads to the sole entrance in Stamford to Mianus River Park. Mr. Brownstein and his attorney, Mr. Fraulo, have stated that Merriebrook Lane west of the Merriebrook bridge is a City-owned, "private" road, but that the owner of Treetops has the right to restrict usage. This portion of the road leads to the Stamford park entrance, then to Mr. Brownstein's driveway, and then to a State of Connecticut owned parcel of land which may be the site of a future public parking lot.

The answer is no. There is nothing in the deeds into 359 Merriebrook Lane that allows the owner to restrict public access to Merriebrook Lane. Also, any attempt to frustrate public usage would be contrary to the past history of use of public and private funds to create, expand and preserve public access to this park.

I have reviewed the deeds into the property which do not support Attorney Fraulo's assertion that Mr. Brownstein has the right to restrict public access. These deeds all refer to the right to use the private road **along with others**.

Also, a review of the history of the acquisition of land in 1972 indicates that local (Greenwich and Stamford), State and federal funds were used, along with private funds, to purchase land that comprises Mianus River Park for passive recreation. Millions of federal, state and local taxpayer dollars were used to provide public access, and this would be frustrated if a private owner could erect signs that state "private road, authorized vehicles only." Use of freestanding gates may be permissible on a temporary basis, pending final plans for public access, to warn the public that there is no parking now available beyond the Mianus river bridge. But any attempt by a private owner to discourage public pedestrian access would be contrary to the expenditure of the public dollars to create a park open to the public.

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Mr. Brownstein has had problems with park users who have driven up to the entrance of the park. Mr. Brownstein states that drivers discover that there is no parking on the west side of the bridge near Mr. Brownstein's driveway, and then turn around and hit his electronic gate. There is currently no adequate signage that guides people to the parking lot next to the Red Barn on the east side of the bridge, and the City intends to address this problem in the spring. Mr. Brownstein requested permission from the City to gate the road, and was denied. In the meanwhile, however, Mr. Brownstein has posted "Private Road" signs on freestanding gates to restrict traffic. The gates have solved the car problem, but park users have complained about the signs since they resent the idea that a private property owner can claim control of the road that is the sole accessway to the entrance to their park. The situation is aggravated by the fact that many park users illegally let their dogs walk up the road without their leashes, and Mr. Brownstein and his wife continue to have altercations with people about this.

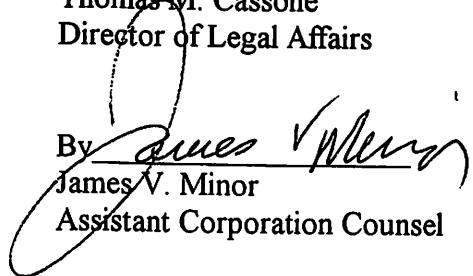
I suggest that the freestanding gates be allowed to stay pending implementation of plans for signs as to public access, but any signs stating "private road" or "authorized vehicles only" be removed. Otherwise it may appear that the City condones the claim by private property owners to restrict the public from walking to the entranceway to their park.

If this cannot be accomplished, I suggest that the Attorney General's office be contacted for assistance in determining the next appropriate legal steps.

Please do not hesitate to call if you have any questions.

Very truly yours,

Thomas M. Cassone
Director of Legal Affairs

By 
James V. Minor
Assistant Corporation Counsel