

ORDINANCE #2696-23-0221

ACCEPTING THE GRANT OF AN AMENDED AND RESTATED CONFIRMATORY EASEMENT FOR BOROUGH UTILITIES ON PRIVATE PROPERTY (TAX BLOCK 1, LOT 4.01), 50 KIRBY AVENUE AND FOR THE CONSTRUCTION OF IMPROVEMENTS BY THE PROPERTY OWNER WITHIN THE EASEMENT TO FACILITATE THE RESIDENTIAL REDEVELOPMENT PROJECT ON THE PROPERTY LOCATED IN THE KIRBY AVENUE REDEVELOPMENT AREA

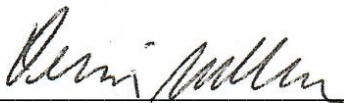
BE IT ORDAINED by the Borough Council of the Borough of Somerville, County of Somerset and State of New Jersey that:

- Section 1. Pursuant to the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq., the Borough of Somerville (the “Borough”) has the power to acquire and/or sell any real property or interests therein for a public purpose.
- Section 2. Pursuant to N.J.S.A. 40A:12-4 a municipality may acquire any real property, including easements for utilities.
- Section 3. CT-CT07 50 KIRBY LLC and DT-DT07 50 KIRBY LLC, as tenants-in-common (the “Owner”), own Block 1, Lot 4.01 located at 50 Kirby Avenue (the “Property”).
- Section 4. 50 Kirby Urban Renewal, LLC (the “Redeveloper”) is the contract redeveloper of the Property and an affiliated entity of the Owner that proposes to redevelop the Property with residential uses pursuant to a redevelopment agreement with the Borough in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.
- Section 5. Somerville Industries, Inc., Owner’s predecessor-in-interest, agreed to grant to Borough certain drainage and sanitary sewer easements on the Property (the “Easements”), as more fully set forth in that certain Resolution adopted by the Somerville Borough Council on February 21, 1966 (the “Resolution”).
- Section 6. The Resolution provided that the grant of the Easements would not take effect “until such time as Somerville Industries, Inc. shall have installed and constructed the sanitary and storm sewers as provided in an agreement entered into between the Borough of Somerville and Somerville Industries, Inc. dated February 21, 1966.
- Section 7. Certain sanitary and storm sewer improvements were installed subsequent to the adoption of the Resolution.
- Section 8. Prior to October 30, 2019, the public record reflected that no documentation memorializing the grant of the Easements was ever recorded in the Office of the County Clerk of Somerset County.
- Section 9. The Easements are depicted upon the present tax map of the Borough of Somerville, thereby suggesting that the Easements were effectively delivered and granted to the Borough of Somerville but apparently not placed on the public record.

- Section 10. That certain Confirmatory Deed of Easement dated October 30, 2019, confirming the grant of the Easements was recorded on November 1, 2019, in the Somerset County Clerk's office at Book 7164, Page 411.
- Section 11. The Borough and Owner desire to acknowledge, agree, confirm and memorialize for the public record in an Amended and Restated Confirmatory Deed of Easement, a copy of which is attached hereto and made part of this Ordinance, that the grant of the Easements took effect upon the completion of the existing sanitary and storm sewer improvements, all upon the terms and conditions more fully set forth below, and that the Easements remain in full force and effect.
- Section 12. The Borough and Owner desire to acknowledge, agree, confirm and memorialize for the public record that the Owner and/or its affiliates, including the Redeveloper, may install, construct, maintain, repair, and replace within the Easements those certain future improvements depicted upon the site plans entitled "Preliminary & Final Site Plan for 'Kirby Village' Apartments" as prepared by Crest Engineering Associates, Inc., dated March 23, 2018 and revised to November 21, 2022, Sheets 1-20.
- Section 13. The Borough has determined that it would benefit the citizens of the Borough of Somerville, County of Somerset and State of New Jersey to confirm the Easements for utilities in order to support the redevelopment of the Property by the Redeveloper.
- Section 14. The acceptance of the easement for utilities on Block 1, Lot 4.01 by the Borough from the Owner is hereby authorized for compensation in the amount of One Dollar and 00/100 (\$1.00) and other good and valuable consideration.
- Section 15. The Mayor and Borough Clerk are hereby authorized and directed to execute the necessary amended and restated confirmatory deed of easement substantially consistent with the form of agreement attached hereto, as well as any other documents which may be required to convey the aforesaid interests.

BE IT FURTHER ORDAINED that this ordinance shall take effect following adoption and approval in a time and manner prescribed by law.

Introduction: February 21, 2023
First Publication: February 24, 2023
Adoption: March 6, 2023
Final Publication: March 10, 2023



Dennis Sullivan, Mayor



Kevin Sluka, Clerk/Administrator