

State of New York

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Water Supply Application No. 5799

In the Matter of the Application

- of the -

Town of Guilderland on behalf of the  
McKownville-Birchmont Water District  
for permission to grant to Stuyvesant  
Plaza, Inc. an easement for a water  
line and parking purposes.

McKOWNVILLE-BIRCHMONT WATER DISTRICT

M O D I F Y I N G

D E C I S I O N

Application filed	December 4, 1969
Original Decision	February 5, 1970
Hearing held in Town of Guilderland	February 9, 1973
Modifying Decision	June 25, 1973

## MODIFYING DECISION ON WATER SUPPLY APPLICATIONS NOS. 1839 and 5799

Carl J. Walters, Supervisor of the Town of Guilderland, Albany County, acting in the name of that town and on behalf of the McKownville-Birchmont Water District in that town, on November 29, 1969, made application to the Water Resources Commission for approval of the consolidation of the former McKownville and Birchmont Water Districts and of the granting of an easement across water district property to Stuyvesant Plaza, Inc., for the installation by that corporation of a private water main and a parking lot extension. This application was approved by the Commission on February 5, 1970.

In a letter to the Department of Environmental Conservation dated December 8, 1972, Carl J. Walters, Supervisor of the Town of Guilderland, on behalf of the McKownville-Birchmont Water District requested modification of the decisions on Water Supply Applications Nos. 5799, 1839, and 1839-A to ratify the previous conveyance of two parcels of land to the Niagara Mohawk Power Corporation and to permit the conveyance of an additional parcel of land to Stuyvesant Plaza, Inc.

After due notice was published in the Turnpike Record of Albany, the Altamont Enterprise and Albany County Post, and the Albany Times Union, the hearing on this request was held before William J. Dickerson, Assistant Engineer of the Department, in the Town Hall of the Town of Guilderland, Albany County on February 9, 1973, at 10:00 o'clock in the forenoon. At this hearing the Department considered the letter, maps and plans submitted, examined witnesses and heard arguments for and against the request as shown by the minutes. The applicant was represented at the hearing by Frank J. Williams, Jr., Esq., Town Attorney, Mr. James K. Fraser, Jr., P.E., engineer for the water district and Mr. Durward C. Brewer, Superintendent of the Guilderland Department of Water and Sanitation. Objections to approval of the request were filed by Mr. John K. Esler, P.E. and Mr. Timothy Cohan, AIA, individually, and who appeared on their own behalves. The Albany County Health Department was represented at the hearing by Mr. Thomas Quinn, P.E. The Department caused an inspection to be made of the reservoir and reservoir lands on January 5 and 19, 1973, and on February 9, 1973.

### REQUEST

The applicant requests modification of the conditions in the previous decisions of the predecessors of the Department pertaining to the McKownville and McKownville-Birchmont Water District to ratify the previous conveyance of two parcels of land totaling 0.42 acres, to Niagara Mohawk Power Corporation and to approve the proposed sale and conveyance of approximately 0.61 acres of land to Stuyvesant Plaza, Inc.

### OBJECTIONS

Mr. Timothy Cohan, AIA filed objections to approval of the request on the grounds of no public necessity to disturb the reservoir lands, that further construction on reservoir lands will not provide for proper protection of the supply, that the Town Board has not acted in accordance with law relative to disposal of public property, that the proposed sale price for the land is too low and that the land should be retained for future park lands. Mr. John K. Esler, P.E. objected to the granting of the request on the grounds that the request is defective in that the Town has not acted in accordance with law,

that plans submitted are insufficient to evaluate the proposal, that there is no public necessity for the sale, that the best use of the land is its present use with a possible future use as park lands, that the proposed sale price is not fair or equitable and that the proposed use of the land will place the reservoir site in serious jeopardy.

After due study of the letter and exhibits submitted, of the evidence and arguments given at the hearing, as shown by the minutes, and of prior decisions pertaining to the applicant, the Department finds as follows:

#### FINDINGS OF FACT

1. The McKownville Water District was established by the Town of Guilderland in 1947, at which time two existing private water supply and distribution systems were acquired and improved. These acquisitions and improvements were approved by the Water Power and Control Commission, in a decision on Water Supply Application No. 1839, dated June 8, 1948. This decision stated in part, "The town now proposes to acquire some 9 acres of land along Western Avenue surrounding the two storage reservoirs. Generally, at no point will the boundary of such land be less than 100 feet from the shore of the existing reservoirs. Such acquisition must be required and the area protected to insure the maintenance of satisfactory sanitary conditions."

2. The decision on Water Supply Application No. 1839 contained several conditions, one of which reads as follows:

- (2) The town must acquire by ownership the land adjacent to and including the existing reservoirs shown on Exhibit F submitted with the petition and remove from the area so acquired any sources of pollution such as cesspools, privies or unsatisfactory sewer lines. Such land must in the future be used for water supply purposes only. It is suggested but not now required that this area be fenced.

Exhibit F of Water Supply Application No. 1839 has been reproduced as an insert on the map designated Exhibit D in these present proceedings.

3. On November 21, 1958, John E. King, Supervisor of the Town of Guilderland filed a petition requesting a modification of Condition No. 2 of the decision on Water Supply Application No. 1839 to permit the granting of an easement on the extreme easterly fifty feet of land at the reservoir site to Stuyvesant Plaza, Inc., for the sole purpose of ingress and egress to the shopping center. This parcel of land is located downstream of the reservoir.

4. The decision on Water Supply Application No. 1839 was revised by the Water Power and Control Commission on December 9, 1958 and Condition No. 2 was changed to read as follows:

- "2. The town must acquire by ownership the land adjacent to and including the existing reservoirs shown on Exhibit F submitted with the petition and remove from the area so acquired any sources of pollution such as cesspools, privies, or unsatisfactory sewer

lines. Such land must in the future generally be used for water supply purposes only but there may be included within the restricted area a roadway such as is indicated on the map submitted in 1958 in connection with the request for modification of this decision which map so entitled, "Site Plan Stuyvesant Shopping Center."

5. In the original proceedings on Water Supply Application No. 5799 filed by the Town of Guilderland, the town requested the Water Resources Commission to ratify the consolidation of the McKownville and Birchmont Water Districts and approve the granting of a pipeline and parking lot easement across water district property. This application was approved on February 5, 1970.

6. The applicant now proposes to convey a parcel of land containing approximately 0.61 acres located in the western most portion of the reservoir lands to Stuyvesant Plaza, Inc. The town also requests ratification of the past conveyance of two parcels of land to Niagara Mohawk Power Corporation containing a total of approximately 0.42 acres which are adjacent to and east of the parcel to be sold to Stuyvesant Plaza, Inc., and one of parcels for which an easement was granted to Stuyvesant Plaza, Inc. (Water Supply Application No. 5799).

7. A strip of land approximately 75 feet wide located between the parcels of land conveyed to the Niagara Mohawk Power Corporation on the west and the remainder of the reservoir land on the east apparently was never purchased by the Water District and belongs to the Niagara Mohawk Power Corporation. This land abuts the western most portion of the reservoir and divides the water district property.

8. The parcel of land containing approximately 0.61 acres to be conveyed to Stuyvesant Plaza, Inc., lies approximately 120 feet west of the existing reservoir, and would appear to have no appreciable effect on the reservoir.

9. A sanitary sewer line has been constructed through the reservoir land immediately adjacent to and south of the reservoir contrary to the provisions of Condition No. 2 of WSA No. 1839 as modified. The conditions resulting from this construction have caused the silting of the western portion of the reservoir.

10. Drainage from catch basins west of the Executive Tower office building and from the northwestern portion of the parking lot flows into the reservoir. Contamination from the melting of snow and debris plowed from the parking lot to the land sloping to the reservoir is possible despite the construction of an asphalt curb.

11. Despite the recommendations of the Albany County Health Department that the Town abandon the reservoir as a source of water supply, the reservoir is the present source of water supply for 2700 people in the McKownville-Birchmont Water District. The long range plans of the Town envision the reservoir as a standby or emergency water source.

12. The objections that the Town of Guilderland did not follow the requirements of Town Law in authorizing the sale of reservoir lands, that the land should be retained for park lands and that the proposed sale price is so low as to be inequitable to the taxpayers within the district are not matters within the jurisdiction of the Department.

13. In view of the encroachments within the reserved lands, the potential for contamination from melting snow plowed from the parking lots and the failure of the town to enforce the terms of the easement regarding drainage from parking lots approved in the original proceedings on WSA No. 5799, stringent measures to protect the reservoir are required. The restricted area of 100 feet originally envisioned in Water Supply Application No. 1839 to protect the reservoir must be maintained. The Town of Guilderland must acquire and maintain ownership of all land within 100 feet of the reservoir including that portion of land adjacent to the western edge of the reservoir which the town has not heretofore acquired. This land must be fenced and used for water supply purposes only and suitable measures must be taken to protect any drainage originating from the parking areas of Stuyvesant Plaza from entering the reservoir. ?

#### DETERMINATION

Therefore, Condition No. 2 of the decision of June 8, 1948 of the Water Power and Control Commission on Water Supply Application No. 1839 as modified on December 8, 1958, is revised to read as follows:

2. As long as the existing McKownville-Birchmont Water District reservoir is used as an actual or standby source of public water supply, the Town of Guilderland must acquire, and maintain ownership of all land adjacent to and within 100 feet of the existing reservoir. This land shall be used for water supply purposes only. Any sources of pollution, such as cesspools, privies, or sewer lines, shall be removed from this area. The land surrounding the reservoir shall be enclosed with a fence provided with gates which normally shall be kept locked. The entrance of animals or unauthorized persons within this enclosure must be prevented as far as possible. The banks of the reservoir shall be seeded and maintained to prevent, in so far as possible, any further silting of the reservoir. ?

The decision of February 5, 1970 of the Water Resources Commission on Water Supply Application No. 5799 is hereby further modified by the addition of four new conditions as follows:

- D. Drainage from catch basins within the parking area of Stuyvesant Plaza and particularly those designated in the present proceedings by the letters A, B, and C on Exhibit D shall be prevented from entering the reservoir.
- E. Suitable diversion ditches or embankments shall be constructed to prevent, as far as possible, drainage from the melting of snow removed from the Stuyvesant Plaza parking lots from entering the reservoir. } Asph curb

- F. Prior to the transfer of ownership of any land now owned by the McKownville-Birchmont Water District at the reservoir site the terms of the revised Condition No. 2 of WSA No. 1839 contained herein and of Conditions D and E above must have been fully complied with and the applicant advised in writing of the Department's approval of the measures taken to meet these conditions.
- G. The Department of Environmental Conservation reserves the right to reconsider this approval at any time and after due notice and hearing at that time to continue, rescind or modify these decisions in such a manner as may be found to be just and equitable.

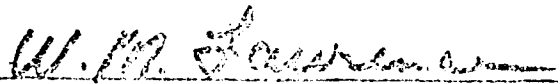
In all other respects, the decisions will remain as originally written.

MODIFYING DECISION

WHEREFORE, the Department of Environmental Conservation does hereby modify the previous decisions of the Water Power and Control Commission and the Water Resources Commission on the applications of the McKownville-Birchmont Water District, as herein modified.

IN WITNESS WHEREOF, the Department of Environmental Conservation has caused this determination and modification to be signed and has filed the same with all maps, plans, reports, and other papers relating thereto at its office in the County of Albany this 25th day of June, 1973.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

  
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W. M. LAWRENCE, Deputy Commissioner  
for Environmental Management



New York State Department of Environmental Conservation  
Albany, N. Y. 12201 Bureau of Water Regulation

Henry L. Diamond,  
Commissioner

July 5, 1973

Mr. Carl J. Walters  
Supervisor  
Town of Guilderland  
Guilderland, New York 12084

Dear Mr. Walters:

Water Supply Application No. 5799  
McKownville-Birchmont Water District

We are serving herewith two copies of the modifying decision of the Department of Environmental Conservation on the above-entitled matter.

The request for a modification of the original decision on this application was granted by the Department on June 25, 1973.

Very truly yours,

EDWIN L. VOPELAK  
Chief, Bureau of Water Regulation

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Encls. (2)

bc (w/encl.): Mr. Timothy Cohan, AIA  
Mr. John K. Esler, P.E. ✓  
Mr. Frank J. Williams, Jr.