

**ACQUISITION FROM THE
CITY OF MANCHESTER**

**MANCHESTER
HILLSBOROUGH COUNTY REGISTRY**

SHAW'S SHOPPING CENTER

Larry Keniston

From: Larry Keniston
Sent: Tuesday, May 06, 2014 3:19 PM
To: 'Goucher, Pamela'
Cc: LaFreniere, Leon; Craig, William; Connors, Todd; Craig Pearson; Louis Barker
Subject: RE: CA Hoyt property/Portsmouth Branch rail corridor; M&L corridor back entrance to Shaws shopping center

Pamela,

Thanks so much for researching. I will place a copy of this email next to the Bureau copy of the deed so that the Shaw's shopping center issue need not be revisited by others in the future. I apologize for any inconvenience.

Larry Keniston, Intermodal Facilities Engineer, Rail and Transit Bureau, New Hampshire Department of Transportation, 7 Hazen Drive Concord, New Hampshire, 03302 (603) 271-1668 www.bikeped.nh.gov

-----Original Message-----

From: Goucher, Pamela [mailto:PGOUCHER@manchesternh.gov]
Sent: Tuesday, May 06, 2014 12:40 PM
To: Larry Keniston
Cc: LaFreniere, Leon; Craig, William; Connors, Todd
Subject: RE: CA Hoyt property/Portsmouth Branch rail corridor; M&L corridor back entrance to Shaws

Mr. Keniston:

The following information is a time-line for actions related to the easement across the former B & M RR line behind Shaws:

- § The New England Expedition-Manchester, LLC presented their plans for the Shaw's shopping center on South Willow Street to the Planning Board at a public hearing on December 13, 2001. At that meeting, the developer represented that the Airport Authority had already granted them an easement across the RR ROW, that the Board of Mayor and Aldermen had already approved the easement via a telephone poll, and that the telephone poll would be ratified at a BMA meeting of December 18, 2001;
- § The agenda and meeting minutes of the December 18, 2001 BMA meeting indicate that the above mentioned telephone poll was ratified and confirmed;
- § On April 9th, 2002, an Easement Deed granted by the City of Manchester, through it's Department of Aviation, to The New England Expedition-Manchester, LLC was recorded at the HCRD (Book 6613/Page 0030);
- § On August 22, 2003, a Deed from the City of Manchester, through it's Department of Aviation, transferred certain strips of land being portions of the railroad line sometimes referred to as the "Manchester and Lawrence Branch", to the State of New Hampshire, such deed was recorded at the HCRD (Book 7042/Page 0623).

As you can see from the dates, the easement was granted at the time the City owned the RR right-of-way. The land was not transferred to the State until August of 2003. I trust you will agree that the matter you have raised has been resolved.

Regards,
 Pamela

Pamela H. Goucher, AICP

5/6/2014

Shaws developed about 300 feet of the 100-foot wide corridor into a back entrance to their development several years ago. Unlike the Portsmouth Branch, the Department owns the Manchester and Lawrence corridor in fee. Such a development of the corridor would normally have required a lease agreement from the State and a Temporary use Agreement from the State for construction. The Department has no records of either a lease agreement or a TUA.

I had brought the matter up to Planning or Engineering (?) informally while we were discussing another development along the line. Todd Connors didn't offer City coordination at the time and instead suggested informally that the Department approach the property owner independently. Given the scrutiny generally given by municipalities during the development process of a major development like the Shaws plaza, however, this doesn't seem like a reasonable approach. It would seem that the City should partner and coordinate with the Department in resolving the matter. I hadn't questioned Todd on the matter yet. Hearing from you today, however, I have a renewed lead in seeking out the proper partner from the City with whom to work and I was wondering if you know which City office could best formally coordinate in a resolution of this matter.

Thank you, Larry Keniston, Intermodal Facilities Engineer, Rail and Transit Bureau, New Hampshire Department of Transportation, 7 Hazen Drive Concord, New Hampshire, 03302 (603) 271-1668
www.bikeped.nh.gov

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DEED WITHOUT COVENANTS

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF MANCHESTER, a body corporate and politic, through its Departments of Aviation, whose mailing address is One Airport Road, Suite 300, Manchester, New Hampshire 03101, hereinafter, the "Grantor", for consideration paid, hereby grants, without any warranties or covenants, to the STATE OF NEW HAMPSHIRE, whose mailing address is Department of Transportation, P.O. Box 483, 1 Hazen Drive, Concord, New Hampshire 03302-0483, hereinafter, the "Grantee", a certain tract of land and the improvements located thereon situated in the City of Manchester, County of Hillsborough, State of New Hampshire more particularly described as follows:

Certain parcels or strips of land (former railroad right-of-way) located in the City of Manchester, County of Hillsborough, State of New Hampshire and being portions of the railroad line sometimes referred to as the "Manchester and Lawrence Branch", so-called, including all stations, buildings, structures, crossings, culverts, and improvements thereon and including all appurtenances thereto, and being more particularly described as follows:

Beginning at a point designated as Engineering Station 2656+88.96 at the Northwesterly side line of Goffs Falls Road as shown on Federal Valuation Plan V10, Map 21, thence running in a Northwesterly direction and terminating at a point designated as Engineering Station 2780+36± located on the Southerly side line of Elm Street, Manchester, New Hampshire as shown on Federal Valuation Plan V10NH, Map 23.

Said parcel containing a total area of about 979,040 square feet, more or less, or about 22.47 acres, more or less.

Meaning and intending to describe Parcel "C" conveyed by the Boston and Maine Corporation to the Grantor herein by release deed dated August 31, 1998 and recorded in the Hillsborough County Registry of Deeds at Volume 6160, Page 550.

BK7042PG0623

This conveyance is made subject to the following easements and/or rights of way: Telecommunications Easement, so-called, described in Paragraph 2 of the release deed from the Boston and Maine Corporation to the Grantor herein dated August 31, 1998 and recorded in the Hillsborough County Registry of Deeds at Volume 6160, Page 550; Right of Way Occupancy Agreement with American Telephone and Telegraph dated July 29, 1986; any rights of way and/or easements shown on Plan No. 29893 recorded in the Hillsborough County Registry of Deeds; and the Easement to Public Service Company of New Hampshire dated November 9, 1939 and recorded in the Hillsborough County Registry of Deeds at Volume 999, Page 255.

This conveyance is further made subject to any and all other easements, covenants, restrictions, and agreements of record.

The Grantor reserves to itself and its successors any and all property interests it may have with respect to any public streets, associated rights of way, and/or municipal utilities, including, but not limited to, water lines and sewer lines, located in whole or in part within the above-described parcel and reserves the right to enter upon the above-described parcel to maintain, repair, and/or replace the same. Nothing in this deed shall be construed as to convey any interest in said streets, associated rights of way, and/or municipal utilities to the Grantee.

The Grantor further reserves for itself those rights and interests associated with the avigational easement more particularly described in Exhibit "A" attached hereto and incorporated herein.

The exceptions, restrictions, conditions, or covenants set forth herein shall be deemed to run with the land and be binding upon the Grantee, its successors, and its assigns.

This conveyance is made pursuant to formal action taken by the City of Manchester Board of Mayor and Aldermen on April 16, 2002. This conveyance is further made as a part of the Manchester, STP-TE-X-000S(234),12652 project, and in accordance with approval of this acquisition by a vote of the Governor and Executive Council on January 6, 1999 (Item no.123).

IN WITNESS WHEREOF, the City of Manchester has caused this deed to be executed in its name and on its behalf by Kevin A. Dillon, its Airport Director, this 5TH day of AUGUST, 2003.

Signed
in the presence of

Witness

CITY OF MANCHESTER
DEPARTMENT OF AVIATION

Kevin A. Dillon,
Its Airport Director

BK 704 2 PG 06 24

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH, SS.

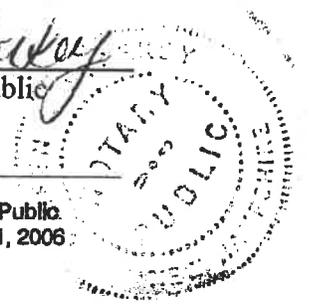
Before me, the undersigned, personally appeared Kevin A. Dillon, Airport Director, known to me to be the person whose name is subscribed to the foregoing deed, and who acknowledged that he executed the same with full authority for the purposes therein contained on this 5th day of August 2003.

Before me,

Doreen A. Starkey
Justice of Peace/Notary Public

My commission expires: _____

DOREEN A. STARKEY, Notary Public
My Commission Expires April 11, 2006



BK 7042 PG 0625

EASEMENT PARCEL C

The City of Manchester, New Hampshire (hereinafter, the "Grantor") excepts and reserves an easement and right of way for the unobstructed and unrestricted flight and passage of all types of aircraft over, in, about, and through the airspace from the Primary, Approach, Horizontal, and Transitional Surfaces of Runway 17-35 of the Manchester Airport to an infinite height above the same imaginary planes or surfaces over the tract of land and improvement conveyed herewith (hereinafter, the "Premises") to the State of New Hampshire (hereinafter, the "Grantee"). The imaginary planes or surfaces are described below:

PRIMARY SURFACE - A surface longitudinally centered on Runway 17-35, one thousand and 00/100 (1,000.00) feet in width, extending two hundred and 00/100 (200.00) feet beyond each end of the Runway. The elevation of any point on the Primary Surface is the same as the elevation of the nearest point on the runway centerline.

RUNWAY 17 APPROACH SURFACE - A surface longitudinally centered on the extended runway centerline and extending upward and outward from the end of the Primary Surface. The inner edge of the Approach Surface is the same width as the Primary Surface, one thousand and 00/100 (1,000.00) feet. The Approach Surface expands uniformly to a width of sixteen thousand and 00/00 (16,000.00) feet at a horizontal distance of fifty thousand and 00/100 (50,000.00) feet from the end of the Primary Surface. The Approach Surface slopes upward one and 00/100 (1.00) foot vertically for each thirty-four and 00/100 (34.00) feet horizontally from elevation two hundred seventeen and 10/100 (217.1) feet Mean Sea Level (MSL) at the end of the Primary Surface.

HORIZONTAL SURFACE - A horizontal plane at elevation four hundred - seventeen and 10/100 (417.10) feet MSL constructed by swing of arcs of ten thousand and 00/100 (10,000.00) feet from the centerline of each end of the Primary Surface of each runway and connecting the adjacent arcs by lines tangent to those arcs.

TRANSITIONAL SURFACES - These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of one and 00/100 (1.00) foot vertically for each seven and 00/100 (7.00) feet horizontally from the side of the Primary Surface and from the edge of the Approach Surface until the Horizontal Surface is intersected.

The surface and plane restrictions translate into an elevation matrix whereas the premises can be examined for available vertical clearance from existing ground elevation.

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The elevation height matrix is as follows:

Station	Existing Grade	Surface Elevation	Protected Surface	Vertical Surface
2656+88.96	222'	260'	Approach 50:1	38'
2660+00	222'	265'	Approach 50:1	43'
2665+00	226'	276'	Approach 50:1	50'
2670+00	228'	286'	Approach 50:1	58'
2675+00	230'	295'	Approach 50:1	65'
2680+00	234.5'	305'	Approach 50:1	70.5'
2685+00	238'	315'	Approach 50:1	77'
2690+00	240'	325'	Approach 50:1	85'
2695+00	241'	335'	Approach 50:1	94'
2700+00	241'	345'	Approach 50:1	104'
2705+00	241.5'	356'	Approach 50:1	114.5'
2710+00	242'	366'	Approach 50:1	124'
2715+00	242'	376'	Approach 50:1	134'
2720+00	237'	386'	Approach 50:1	149'
2725+00	232'	396'	Approach 50:1	164'
2730+00	230'	406'	Approach 50:1	176'
2735+00	228.5'	416'	Approach 40:1	187.5'
2740+00	225'	429'	Approach 40:1	204'
2745+00	223'	441'	Approach 40:1	218'
2750+00	221'	453'	Approach 40:1	232'
2755+00	218'	466'	Approach 40:1	248'
2760+00	215'	478'	Approach 40:1	263'
2765+00	210'	491'	Approach 40:1	281'
2770+00	206'	503'	Approach 40:1	297'
2775+00	200'	516'	Approach 40:1	316'
2780+00	191'	528'	Approach 40:1	337'
2780+36	191'	529'	Approach 40:1	338'

Drawing Sources that developed the above matrix are as follows:

- Federal Valuation Plans,
- AES Londonderry Cogeneration Facility Natural Gas Pipeline Plans by Coler & Colantonio, March 2002,
- City of Manchester Topographic Mapping Plans on file in the City of Manchester, April 10,1995,
- Parcel-C Plan Drawings developed by Edwards and Kelcey, Inc. for Manchester Airport, January 2003.

This easement shall run with the land and be appurtenant to and for the benefit of all of the real property comprising and known as the Manchester Airport and such additional property or interest therein as shall be subsequently acquired or designated from time to time by Grantor or its successors and assigns as constituting a part of Manchester Airport. The easement shall be in gross for the benefit of Grantor and all other persons and entities who directly or indirectly use the easement as a result of any type of use of the property and facilities constituting Manchester Airport, including aviation ground and flight operations.

In addition, this easement grants the right and privilege: (1) of passage of all lawful flight operations and all noise resulting directly or indirectly therefrom within the described air space; (2) to cause noise that may enter the above-described air space which results directly or indirectly from the operations of the Airport, now and in the future, including but not limited to, ground and flight operations of aircraft at, over, on, or in the vicinity of Manchester Airport, and regardless of whether arriving, departing, or enroute, while recognizing that the quantity of operations may increase in the future; and (3) to

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generate vibration, emit fumes and dust and fuel particles as well as other aircraft related effects that may be caused in the operation of aircraft over the Premises.

Further, the Grantee hereby waives and releases any right, claim or cause which the Grantee now has or which the Grantee may have in the future against the Grantor, its successors and assigns, or of any other person or entity entitled to the benefits of this easement, for: (1) damage to property, or physical or emotional injury to persons, animals, and any other living thing; (2) the diminution in value of any personal or real property; (3) any discomfort; (4) any interference with the audio portion of television and/or radio; and (4) any noise, vibration, fumes, dust, fuel particles and/or other effects that may be caused, or may have been caused, in the normal operation of aircraft over the Premises.

The Grantee shall:

a. not erect, maintain or allow on said above-described land, structures or objects of natural growth which extend or might extend in the future above said imaginary surface(s); and to grant all rights of entry, ingress and egress to Grantor to mark, light, trim or remove completely, trees, other vegetation, structures or objects which may from time to time extend above the imaginary surfaces described above. Whether to mark, light, trim or completely remove the trees, vegetation, structures or objects and the methods utilized to complete the removal or trimming shall be at the Grantor's sole discretion and expense. After the removal of the obstruction, the Grantor shall restore at its sole expense the area to a condition equal to that which existed prior to the obstruction removal work;

b. not use or permit any use of the Premises for any purposes which will interfere with the use, operation, maintenance and further development of Manchester Airport; and, in addition, not to use or permit the use of said land and of structures thereon for the purposes which will create or result in a hazard to flight including, but not limited to, purposes which will: (1) produce electrical interference with radio communications; (2) make it difficult for pilots to distinguish between airport lights and others; (3) project glare in the eyes of the pilots; (4) impair visibility in the vicinity of Manchester Airport; or (5) otherwise endanger the landing, taking off and maneuvering of aircraft.

c. for and during the life of said aviation easement, not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantees' property any structure in the Runway Protection Zone that is an airport hazard or which might create glare or misleading lights or lead to the construction of residences, fuel handling and storage facilities, or smoke generating activities; and the grantees, for themselves, their heirs, administrators, executors, successors, and assigns, further agree they will not permit places of public assembly upon Grantees' property, such as, churches, schools, office buildings, shopping centers, restaurants, child care facilities, and stadiums.

BK 7042PG0628

And for the consideration hereinabove set forth, the Grantees, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantees' property any building, structure, tree or other object extending into the airspace above the aforesaid imaginary plane, and that they shall not hereafter use or permit or suffer the use of Grantees' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or to permit any use of the Grantees' land that causes a discharge of fumes, dust or smoke so as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off or maneuvering of aircraft. Grantees furthermore waive all damages and claims for damages caused or alleged to be caused by or incidental to such activities.

The Grantee agrees that the rights granted and covenants undertaken in and by this instrument shall be binding on the successors and assigns of the Grantee and shall run with the land above described which shall be servient tenement, it being intended that the land now and hereafter comprising Manchester Airport shall be the dominant estate until Manchester Airport is abandoned and ceases to be used for public airport purposes.

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RECEIVED AND RECORDED
HILLSBOROUGH COUNTY REGISTRY OF DEEDS
Judith A. MacDonald
JUDITH A. MACDONALD, CPO, REGISTRAR