

CATANIA & PARKER, L.L.P.
ATTORNEYS - AT - LAW

P.O. BOX 2029 ■ MEDIA, PA 19063

PHONE: (610) 565-8101 ■ FAX: (610) 565-7613

STREET ADDRESS:
230 N. Monroe St., 2nd Fl
Media, PA 19063

May 7, 2019

VIA EMAIL AND FACSIMILE

tfriese@pennoni.com

Fax No. 610-231-2033

Thomas J. Friese

Land Development Division Manager

Pennoni Associates, Inc.

2041 Avenue C, Suite 100

Bethlehem, PA 18017

RE: Borough of Clifton Heights Athletic Fields - Property owned by the Upper Darby School District located in the Borough of Clifton Heights and bounded by N. Oak Avenue, W. Wynncliffe Avenue, N. Springfield Avenue, and N. Sycamore Avenue ("Athletic Fields")

Dear Mr. Friese,

I am the Solicitor for the Borough of Clifton Heights.

A representative of Pennoni Associates left a voice message with the Borough yesterday or today indicating that Pennoni will be doing work at the Athletic Fields. Pennoni has no right to do so. Please note the following:

- The Borough is the lawful lessee in possession of the Athletic Fields under a lease with the Upper Darby School District.
- As the lawful lessee in possession the Borough has an implied right of quiet enjoyment to the Athletic Fields.

Pennoni Associates, its employees, agents, subcontractors or vendors, have no right to enter upon the Athletic Fields. Anyone caught doing so faces criminal charges under 18 Pa. C.S.A §3503 - Criminal trespass.

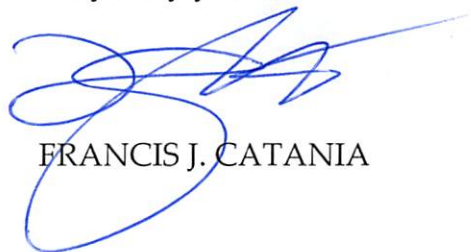
The Borough's covenant of quiet enjoyment of the Athletic Fields was previously breached by others purportedly acting in the name of Pennoni Associates.

Please consider this letter notice that those prior trespasses constitute breaches of the Borough's right to quiet enjoyment of the Athletic Fields for which the Borough reserves the right to seek damages and other legal relief.

Additionally, a surveillance program was recently conducted by unknown parties on or around the Athletic Fields. Please see the attached six (6) page letter dated May 2, 2019 to the Upper Darby School District. Was this letter previously forwarded to your offices? To the extent that Pennoni Associates was involved in surveillance activities described in the attached letter we reserve the right to seek damages and other legal relief.

I am happy to discuss these matters with your attorney. They may contact me directly.

Very truly yours,



FRANCIS J. CATANIA

Attachments

FJC\jlr

Cc: Peter J. Coote, PE, Esq. (via email only)
Upper Darby School Board Secretary (via email only)
Chief Timothy Rockenbach
Borough Manager

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May 2, 2019

VIA EMAIL AND TELECOPIER

pgrant@upperdarbysd.org

Telecopier No.: 610-789-0796

Patrick Grant, School Board Secretary
Upper Darby School District
4611 Bond Avenue
Drexel Hill, PA 19026

RE: Borough of Clifton Heights Athletic Fields ("Athletic Fields")
Preservation Demand Notice

Dear Mr. Grant:

I represent the Borough of Clifton Heights. A legal advertisement appeared in yesterday's *Delaware County Daily Times* indicating that the Upper Darby School Board ("School Board") is having a meeting this evening to "terminate the Clifton Heights Field Lease".

In light of this second vindictive attempt by the School Board to terminate the Borough's lease, long before the School District has any need to do so, I write to put on notice the Upper Darby School District ("UDSD"), the individual Directors of the School Board, all School District Administrators, all employees of the School District and the various contractors vendors and subvendors that the District and/or the School Board has contracted with, that there is a substantial possibility that the actions and/or inactions of these various parties and individuals about matters involving the Clifton Heights Athletics Field will likely lead to litigation in the near future.

Accordingly, UDSD should immediately preserve all of the documents and electronically stored information related to the following:

1. Clifton Heights Borough, its residents and the Borough's elected and appointed officials;
2. the attempt of the School Board to terminate the Clifton Heights Athletic Fields' Lease; and,
3. any action(s), activity(ies), plan(s) or proposal(s) to attempt to undertake or perform any construction and/or development of School District owned property located within the Borough of Clifton Heights including but not limited to the Athletic Fields.

(collectively, "School District's Field Elimination and Construction Project")

that are in the possession or control of any or all of the following entities:

1. Individual Directors of the Upper Darby School Board
2. Upper Darby School District Administrators
3. All employees of the Upper Darby School District
4. All vendors and subvendors of the Upper Darby School District and/or of the Upper Darby School Board.
5. Pennoni Associates
6. Imperial Traffic and Data Collection
7. Trinity
8. Magnum Integrity Marketing (i.e, the School Board's Image Consultant)

(collectively, "the Parties"). The UDSD should inform the Parties of this notice, suspend any normal document retention schedule and disposition policies for the categories of information identified below ("Material"), ensure Material is not deleted or destroyed, and suspend any manual or automated practices in effect prior to receipt of this notice that might lead to the deletion or destruction of any Material.

MATERIALS TO BE PRESERVED

The definition of "Material", as used in this Notice, includes: paper documents and electronically stored information (whether in an electronic database, in electronic format, or on electronic media), related to the School District's Field Elimination and Construction Project such as memoranda, notes, letters, e-mails, files, timesheets, calendars, printouts, PDFs, logs, agreements, contracts, proposals, requests for proposals

(RFPs), bids, slides, spreadsheets, databases, presentations, charts, graphs, audio files, voicemails, text messages, Instant Messaging communications, blogs, photographs, videotapes, Social Media posts etc. Final versions as well as all drafts of such materials must be preserved. This request includes not only materials in your possession, but those in your custody or control, including materials that are kept in central or shared environments, archives, or in offsite storage (e.g., departmental files cabinets; central file servers; electronic document repositories; databases; desktop computer; mobile computer; home computer; network data shares; personal intranet sites such as blogs and podcasts; e-mail accounts, including but not limited to, emails in your inbox, sent items, deleted items, drafts folder, and any .pst or .ost files; Instant Messaging applications; portable storage devices such as flash memory devices, DVDs, CDs, diskettes, and iPods; personal data assistant devices such as the Blackberry, Treo, iPhones, and cell phones; file cabinets; drawers; and notebooks; etc.).

USE OF MATERIAL

Primary use of the Material shall be for litigation and to better inform the public of the School District's Field Elimination and Construction Project.

Various Right to Know Requests from several parties will likely be submitted following this letter. This evidence preservation demand is being sent to preserve all records for future proceedings. Examples of the evidence that should be preserved by the Parties include by way of example and not of limitation, the following;

- The actual videos taken by the eighteen (18) cameras placed at the School District's direction on private and public property or near the Athletic Fields and within the Borough of Clifton Heights on or about April 24, 2019 without notification, request for a permit or permission from the Borough of Clifton Heights. This School District initiated surveillance program was the subject of the *Delaware County Daily Times* news article by Kevin Tustin on April 24, 2019 (copy attached).
- The insurance policies of the School District and/or all other Parties that would provide the School District and/or all other Parties, indemnity protection for invasion of privacy claims or other claims that could be brought by anyone suffering legal damage as a result of the School District's surveillance and data collection program.

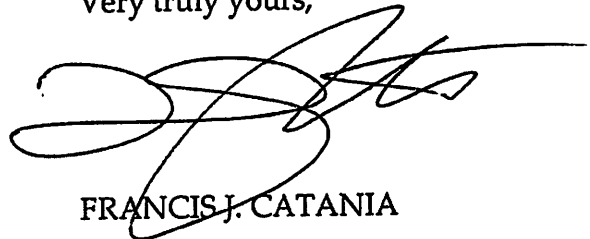
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- The insurance policies of the School District and/or all other Parties that would provide the School District and/or all other Parties, indemnity protection for legal damages suffered because of the School District spray painting the field and planting red marker flags in sports playing areas without notification, request for a permit or permission from the Borough of Clifton Heights.

If this correspondence is in any respect unclear, please contact this office immediately with your questions.

Very truly yours,

A handwritten signature in black ink, appearing to be 'F. J. Catania', written over the printed name.

FRANCIS J. CATANIA

Attachments

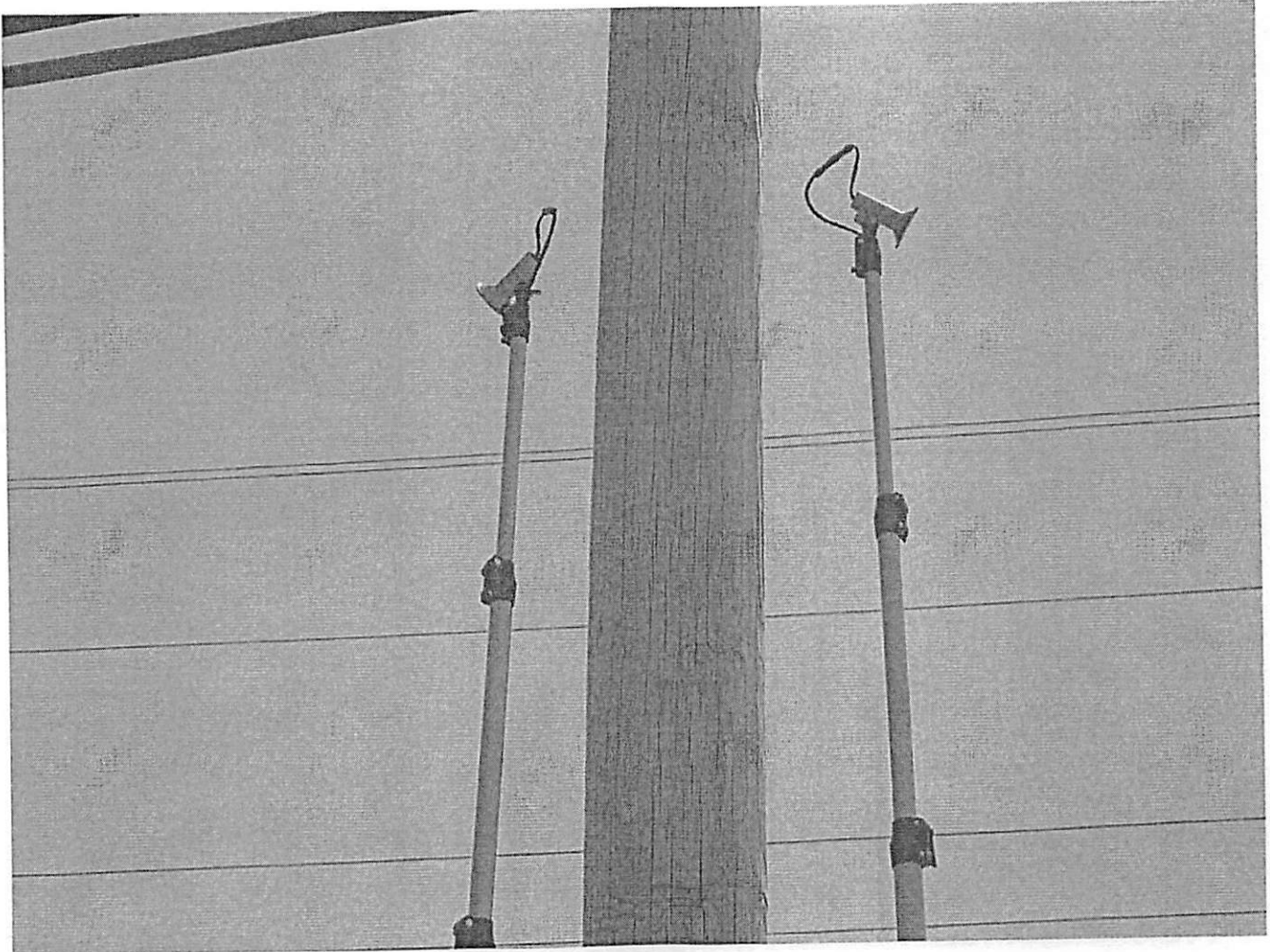
FJC\jlr

cc: Borough of Clifton Heights

Candid Camera? Traffic study done near proposed school site in Clifton

delcotimes.com/candid-camera-traffic-study-done-near-proposed-school-site-in/article_7e1d8c6e-66d1-11e9-a314-d7e3128e92a8.html

April 24, 2019



CLIFTON HEIGHTS — A study to observe traffic on the streets surrounding the proposed site for a new middle school in Clifton Heights got underway this week.

Over a dozen traffic data collector units were placed around the more than 13-acre field on North Springfield Road where Upper Darby School District is looking to put a new school. The tall units were seen mounted to utility poles, stop signs and traffic light poles on North Springfield Road, North Oak Lane, North Sycamore Avenue and West Wynccliffe Avenue as their high-mounted cameras capture the number of vehicles that use these streets.

The units belonged to Cherry Hill, New Jersey-based Imperial Traffic.

A traffic study is part of schematic work approved by the school board last month as they start to get information about the validity of building a 160,000-square-foot school on the property known as Clifton Fields.

An Imperial Traffic representative said Wednesday afternoon that the units were installed Tuesday evening and were due to be taken down Wednesday evening. The units will slated to take video of the streets and will be processed via artificial intelligence software. This turning movement count information is to assess traffic improvements and safety. The representative said it was collecting four hours worth of information.

The installation of the cameras took some borough residents by surprise and raised fears of surveillance amid Cliftonites who have registered their vehement opposition to the district building a school on what many believe is "sacred ground, the site of many community activities and youth sports events.

Not knowing what these tall instruments were, Clifton Heights Mayor Joe Lombardo Jr. on Wednesday said he received a slew of calls Wednesday morning inquiring about what they were. Some speculation of invasion of privacy was reported, but the Imperial Traffic representative said peoples' houses are not getting looked into with these devices.

Traffic was one of the top concerns of borough residents when the district first introduced the proposed middle school plans back in February, and is still a towering point continuing through to town hall meetings on the plans held two weeks ago.

Lombardo said the company did not go through the proper channels to put the units throughout the borough.

"If they want to do it again, they'll have to go through L&I (licenses and inspections)," he said Wednesday.

The Imperial Traffic representative said no permits were obtained for the units.

Results of the traffic study are expected at a May school board committee meeting.

Lombardo said the borough will consider its own traffic study in the future.