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**VIA EMAIL:** [asaverino@aol.com](mailto:asaverino@aol.com)

Angelo Saverino

Pavilion Homeowners Association, Inc.

**Re: Pavilion Homeowners Association, Inc.**

Dear Mr. Saverino:

This letter is intended to respond to your inquiry regarding the Association's access to utility boxes for maintenance and landscaping purposes.

According to the filed map of the Pavilion Major Subdivision, in addition to a fifty foot right of way for the roadways, there is a twenty-five-foot setback before private property lot lines begin. None of the lot owners have title beyond their individual front lot lines.

The Master Deed contains a section entitled Definition of Terms, which defines common elements as "all parts of the property other than the detached single family dwelling units and their appurtenant fee simple lots..." It further provides, "Common elements are those areas equally and openly accessible to all unit owners. A limited common element is an area which is maintained by the Association but is typically from an access perspective limited to the Townhouse unit to which it is appurtenant, e.g., balconies and decking. Note that from a maintenance perspective, individual unit owners are solely responsible for maintenance of the interior of their homes."

Article II, Section 2, of the By-Laws provides in relevant part, "The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, the rules and regulations of the Association and the provisions of the Master Deed and the Declaration of Rights, Covenants and Restrictions as they may be amended from time to time, are accepted and ratified and will be complied with.

Article IV, Section 2, provides in relevant part as follows, "The Board of Trustees shall have the powers and duties necessary for the administration and management of the affairs of the Association and may do all such acts and things except those which by law, by the Master Deed, by the Declaration of Rights, Covenants and Restrictions or by these By-Laws may not be delegated to the Board of Trustees by unit owners. ... The Board of Trustees duties shall include but shall not be limited to the following:

- a. Operation, care, upkeep, repair and replacement of the common elements it services and personal property of the Association, if any, maintenance and upkeep of members units and the land appurtenant to such units, together with the right to use all funds collected by the Association to effectuate the foregoing."
- e. Adoption and amendment of rules and regulations covering the operation and use of the Development.

Subparagraph (q) provides in relevant part, "When in the opinion of the Board of Trustees any of the common elements requires protection, renewal, maintenance or repair or when the enforcement of any of the Association's rules and regulation so require or when the abatement of any nuisance is required or in any emergency situation, the Board of Trustees will have the right to enter any Unit for such purposes. Such entry shall however, be done with as little inconvenience to the unit owners thereof as is reasonably possible. By the acceptance of occupancy or of a deed conveying each Unit to the unit owner, each occupancy or unit owner expressly and irrevocably grants and confirms the aforesaid rights of entry, with notice and at a reasonable hour." (emphasis added)

Paragraph B, located in Section 8 of the By-Laws, states a dwelling unit will not permit landscaping to be maintained other than in good repair in a safe, neat and attractive condition. Furthermore, the cost of such work may be assessed against the owner.

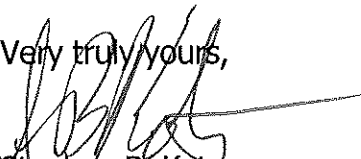
A blanket right of way in a development was recorded in 1988 in Deed Book 4688 beginning at Page 448, granting Jersey Central Power and Light Company and Bell Telephone Company a blanket easement in "The Pavilion – Phase 1, 2 & 3" which includes the right from time to time to enter without notice upon said tract and to install, extend, inspect, operate, alter, rebuild, replace, relocate, repair, remove and perpetual maintain upon, under, across, along and beyond any and all streets and roads whether or not dedicated or accepted for public use and all other public ways or places of said development now existing or hereinafter laid out, and upon, under, across and along a ten foot wide strip of land on all lots of the development parallel with an adjacent to the street line thereof, transformers, transformer pads, switches and switch enclosures, enclosure pads, service pedestal's, street lights standards and underground wires, cables, conduits, ducks, manholes and fixtures and appurtenances for the transmission and

distribution of electricity and the operation of communications and CATV systems together with the right from time to time to install underground service wires across lots and includes the rights for all aerial plat necessary to support said development.

Thus, the lots are burdened by a utility easement which allows access to utilities for purposes of maintenance of electrical service.

Lastly, the site plan adopted by Brick Township Board of Adjustment clearly indicates the lot lines of the individual dwellings are set back from the roadways and sidewalks. Therefore, I conclude that maintenance of the landscaping by the Association surrounding the utility boxes is clearly authorized.

Very truly yours,



Stephen B. Kotzas

SBK /lmh