

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE
and JOANN DONOHOE,

Defendants.
-----X

Index No. 9130/06

**AMENDED
COMPLAINT**

FILED

APR 3 - 2008

TIMOTHY C. FRONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Plaintiff, Seven Springs, LLC, by its attorneys, DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP, for its amended complaint against defendants, The Nature Conservancy, Realis Associates, The Town of North Castle, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Seven Springs, LLC ("Seven Springs") is a New York Limited Liability Company duly organized under the laws of the State of New York, and having a principal place of business at c/o The Trump organization, 725 Fifth Avenue, New York, New York 10022.
2. Upon information and belief, Defendant, The Nature Conservancy is a District of Columbia Corporation authorized to do business in the State of New York, and having a principal place of business at 570 Seventh Avenue, New York, New York, 10018.
3. Upon information and belief, Defendant, Realis Associates ("Realis"); is a New York Partnership having a principal place of business at 356 Manville Road, Pleasantville, New York.

4. Upon information and belief, Defendant, The Town of North Castle, is a governmental subdivision of The State of New York, which has been organized and exists under and pursuant to the laws of the State of New York, and is located in Westchester County.

5. Upon information and belief, Defendants Robert Burke and Teri Burke are residents of the State of New York, residing at 2 Oregon Hollow Road, Armonk, New York.

6. Upon information and belief, Defendants Noel B. Donohoe and Joann Donohoe are residents of the State of New York, residing at 4 Oregon Hollow Road, Armonk, New York.

7. This action is brought pursuant to Article 15 of the Real Property Action and Proceedings Law to compel the determination of claims to certain real property herein described and known as Oregon Road located in the County of Westchester.

8. Annexed hereto as **Exhibit "A"**, and made a part hereof, are copies of a portion of the Official Map of the Town of North Castle adopted by the Town Board on October 23, 1997 and portion of the official tax map of the Town of North Castle as of July 18, 1986. The portion of Oregon Road which is the subject of this action, as the same is shown on the said Maps, has been highlighted.

9. Seven Springs is the owner of a parcel of property (the "Seven Springs Parcel") comprising approximately 213 acres, and known on the tax assessment map of the Town of New Castle, County of Westchester as Section 94.17, Block 1, Lots 8 and 9, on the Tax Assessment Map of the Town of North Castle as Section 2, Block 6, Lots 1 and 2, and on the Tax Assessment Map of the Town of Bedford as Section 94.18, Block 1, Lot 1 and Section 94.14, Block 1, Lot 9.

10. Seven Springs acquired title to the Seven Springs Parcel from The Rockefeller University by deed dated December 22, 1995 and recorded in the Westchester County Clerk's Office on December 28, 1995 in Liber 11325 Page 243, which deed more particularly describes the Seven Springs Parcel.

11. Rockefeller University acquired title to the Seven Springs parcel from Seven Springs Farm Center, Inc. by deed dated April 12, 1984 and recorded in the Westchester County clerk's office on May 24, 1984 in liber 7923 page 639.

12. Seven Springs Farm Center, Inc. acquired title to the Seven Springs Parcel from Yale University pursuant to deed dated March 23, 1973 and recorded March 27, 1973 in liber 7115 page 592.

13. Yale University acquired title to the Seven Springs Parcel from the Eugene and Agnes E. Meyer Foundation (the "Foundation") pursuant to deed dated January 19, 1973 and recorded in the Westchester County Clerk's office on March 27, 1973 in liber 7115, page 577.

14. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel to the south is via the road known as Oregon Road.

15. As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in the County of Westchester and State of New York.

16. Included in these lands owned by Meyer was the Seven Springs Parcel as well as certain real property which would ultimately become the property of Defendant, The Nature Conservancy (the "Nature Conservancy Property").

17. The Nature Conservancy Property and the Seven Springs Parcel was part of certain lands acquired over time by Meyer.

18. By virtue of the various deeds pursuant to which Meyer acquired title to said real property Meyer had acquired the entire bed of Oregon Road as show on **Exhibit "A"**.

19. Upon information and belief, the Nature Conservancy acquired title to the Nature Conservancy Property from the Foundation by deed dated May 25, 1973 and recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

20. Upon information and belief, the Nature Conservancy Property is situated in the Towns of North Castle and New Castle, County of Westchester and is more particularly described in the aforesaid deed recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

21. At some point in time prior to 1973 Oregon Road became a public road by virtue of its having been used as a public highway for a period of 10 years.

22. Up until and including May, 1990 when the Town of North Castle allegedly "discontinued" the subject portion of Oregon Road said road was a public street.

23. Upon information and belief, the said portion of Oregon Road referred to herein, at paragraph 8 "ends" at its southerly terminus, at the portion of Oregon Road, a legally opened public street, that has been improved and paved.

24. The December 22, 1995 deed from the Rockefeller University referred to above, and the prior deeds thereto, conveyed fee simple absolute in the premises described therein together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

25. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road.

26. By virtue of the December 22, 1995 Deed recorded in liber 11325 page 243 and the May 25, 1973 deed recorded in liber 7127 page 719, and the prior deeds thereto, and the facts herein set forth, Plaintiff has a right of way and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Seven Springs Parcel, and that portion of Oregon Road, more particularly identified on Exhibit "A", southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access.

27. That none of the Defendants has any fee interest in or right of user over that portion of the said portion of Oregon Road as described in paragraph 8 hereof, to the exclusion of Plaintiff's right, title and interest in and to Oregon Road.

28. The Defendants and each of them claim, and it appears from the public record that it or they will claim an interest in, and/or the fee title of, the bed of said Oregon Road abutting its or their respective premises as hereinafter set forth, and/or a right to prevent Plaintiff's right of ingress and egress to and from the Seven Springs Parcel to the legally opened portion of Oregon Road.

29. Any estate or interest claimed, or which may be claimed by any Defendant in the premises described in paragraph 8 hereof is invalid and ineffective as against the estate and interest of the Plaintiff therein to a right-of-way and/or easement for ingress and egress over Oregon Road.

30. Any estate, right or interest which Defendant The Nature Conservancy ever had, claims or may claim in the Nature Conservancy Property, or any part thereof, including the estates and interest claimed or which may be claimed by it by virtue of the instruments and facts hereinbefore set forth are ineffective and invalid as against the title and interest of Seven

Springs, LLC, its successors in interest, grantees or transferees in and to an easement for ingress and egress over the Nature Conservancy Property.

31. By reason of the foregoing, and the above-referenced deeds and the rights set forth therein, Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts said property on its westerly side, and there is a valid and enforceable easement and/or right of way for ingress and egress for pedestrian and vehicular access over Oregon Road to the south, including over lands which may be owned by The Nature Conservancy and others to the public portion of Oregon Road in favor of Plaintiff, its successors and assigns (the "Easement" or "Easement Area").

32. Upon information and belief there are no Defendants either known or unknown to Plaintiff not herein joined as a party and there is no Defendant who is or might be an infant, mentally retarded, mentally ill or an alcohol abuser.

33. Any judgment granted herein will not affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the aforesaid premises, and every person in being who would have been entitled to such estate or interest, if such event had happened immediately before the commencement of the action is named as a party hereto.

34. No personal claim is made against any Defendant herein named unless such Defendant shall assert a claim adverse to the claim of the Plaintiff as set forth herein.

35. None of the Defendants or the parcels owned by them is or will be adversely affected by the relief herein sought.

36. The Defendant, Town of North Castle, is joined herein as a party Defendant by, reason of, among other things, Oregon Road is located in the Town of North Castle, and said municipality purported to close and/or discontinue the portion of Oregon Road which is the subject of this action.

37. The Defendant, Realis Associates, is joined herein as a party Defendant by virtue of having been the developer of the subdivision known as "Oregon Trails" under filed map number 22547, a portion of which abuts the westerly side of Oregon Road.

38. Defendants, Robert Burke and Teri Burke, acquired title to real property known as 2 Oregon Hollow Road, Armonk, New York pursuant to deed dated April 29, 1993 and recorded May 12, 1993 in liber 10576 page 243 and are joined herein as party Defendants by virtue of their ownership of the title to Lot 2 in the Oregon Trails subdivision, which said property abuts Oregon Road. Upon information and belief the aforesaid deed does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

39. Defendants, Noel B. Donohoe and Joann Donohoe, acquired title to real property known as 4 Oregon Hollow Road, Armonk, New York pursuant to deed dated July 27, 1994 and recorded August 9, 1994 in liber 10929 page 35 and are joined herein as party Defendants by virtue of their ownership of the title to Lot 1 in the Oregon Trails subdivision, which said property abuts Oregon Road. Upon information and belief the aforesaid deed does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

40. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

41. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 40 above as if the same were more fully set forth at length herein.

42. Defendant Town of North Castle caused at some point in time to be erected and thereafter maintained a barrier on Oregon Road at or near the point designated as "Pole 40" and where the road abuts the public portion of Oregon Road, a barrier consisting of a gate (the "Gate") thereby partially blocking and obstructing direct access to or from Oregon Road to the south by persons in vehicles and depriving Plaintiff, Plaintiff's visitors, trades people and vehicles and the like their lawful right to pass unimpeded over the road and to have ingress and egress over the road to and from the Seven Springs Parcel to or from the publicly opened section of Oregon Road.

43. That the Gate is an unlawful encroachment and obstruction upon the Plaintiff's Easement as aforesaid and has caused and will continue to cause damage to the Plaintiff by reason of Plaintiff's inability to have direct access to the Seven Springs Parcel unimpeded from the south.

44. That by reason of the Gate as aforesaid, the Plaintiff has been and will in the future be deprived of the full use and enjoyment of the Seven Springs Parcel and Plaintiff has thereby suffered and will in the future suffer damages thereby.

45. That the Plaintiff has notified Defendant North Castle that the Gate obstructs direct access to the Seven Springs Parcel from the south, has demanded that Defendant North Castle remove the Gate, and the Defendant has failed to remove the same.

46. That the injuries complained of are consistent and continuous and Plaintiff has suffered and will suffer injury, which injury will be continuous, and that to obtain any redress the Plaintiff will necessarily be involved in continued litigation with the Defendant and will suffer continuing damages.

47. That on or about February 13, 2008 a Decision was issued by the Appellate Division, Second Department in the matter entitled Seven Springs, LLC v. The Nature Conservancy, et al., (NYAD 2d Dept, 2008 NY Slip Op. 01327).

48. That the Decision provides in pertinent part that “the abandonment of a public highway pursuant to Highway Law § 205 does not serve to extinguish private easements, as Highway Law § 205 does not provide for compensation to the owners of any private easements that would be extinguished. (Citations omitted)”. That by reason of the foregoing Decision it has been judicially determined that Defendant North Castle never extinguished the Easement pursuant to Highway Law § 205.

49. It has been acknowledged in prior Court proceedings by the Town of North Castle that, upon the closing of Oregon Road for public purposes, title reverted to Rockefeller University (Plaintiff’s predecessor in interest) upon the closure.

50. By reason of the foregoing, North Castle has no legal interest in and to the private use of the Easement Area by the private persons entitled to the benefits of the Easement, no claim to public use of the Easement Area or any claim of any kind or nature with regard to the Easement, no basis in law or fact to advance any claim with regard to the Easement and use of the Easement Area by the Town of North Castle, in its capacity as a municipal corporation, or by residents of the Town or the public generally, and no basis in law or fact to maintain the Gate on or over Oregon Road, or prevent or attempt to prevent Plaintiff from having unobstructed access to the Seven Springs Parcel over Oregon Road.

51. As a result of Defendant’s actions Plaintiff has been, and will in the future be, deprived of the full use and enjoyment of the Seven Springs Parcel, and the value of the Seven

Springs Parcel has been greatly diminished, and Plaintiff has suffered and will in the future suffer damages thereby.

52. That unless the relief be granted to Plaintiff, as hereinafter prayed for, the Plaintiff will suffer irreparable damages and injuries.

53. That Plaintiff has no adequate remedy at law.

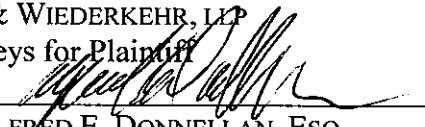
WHEREFORE, Plaintiff demands judgment:

- (1) That the Defendants and each of them and any and every person claiming through or under them and each of them be barred from any and all claim to an estate or interest in the property described in the complaint;
- (2) Declaring that there is a valid and enforceable easement and/or right of way of no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from The Seven Springs Parcel to the south to the section of Oregon Road more particularly identified in **Exhibit "A"** annexed hereto, including over lands which may be owned by the Nature Conservancy and others, in favor of Plaintiff, its successors and/or assigns.
- (3) Declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts the Seven Springs Parcel on its westerly side.
- (4) Declaring that Plaintiff, its successors and assigns also have the right to an easement and/or right of way of no less than 50 feet in width for ingress and egress, and for pedestrian and vehicular access over Oregon Road;

- (5) Enjoining Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiffs' property as aforesaid.
- (6) That the Defendants be restrained by injunction or otherwise from maintaining any obstructions, barriers, gates, or the like, on, or across Oregon Road which obstructs or blocks the use by Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land to have ingress and egress over Oregon Road to the Seven Springs Parcel.
- (7) That Defendant, Town of North Castle, be directed to remove the Gate and all obstructions and/or barriers placed and/or maintained by it, on, or across Oregon Road which obstructs the use of Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land and to have ingress and egress over Oregon Road to the Seven Springs Parcel.
- (8) That the Plaintiff have such other, further and different relief in the premises as to the Court may seem just, equitable and proper, together with the costs and disbursements of this action, such costs to be against such Defendants as may defend this action.

Dated: White Plains, New York
April 3, 2008

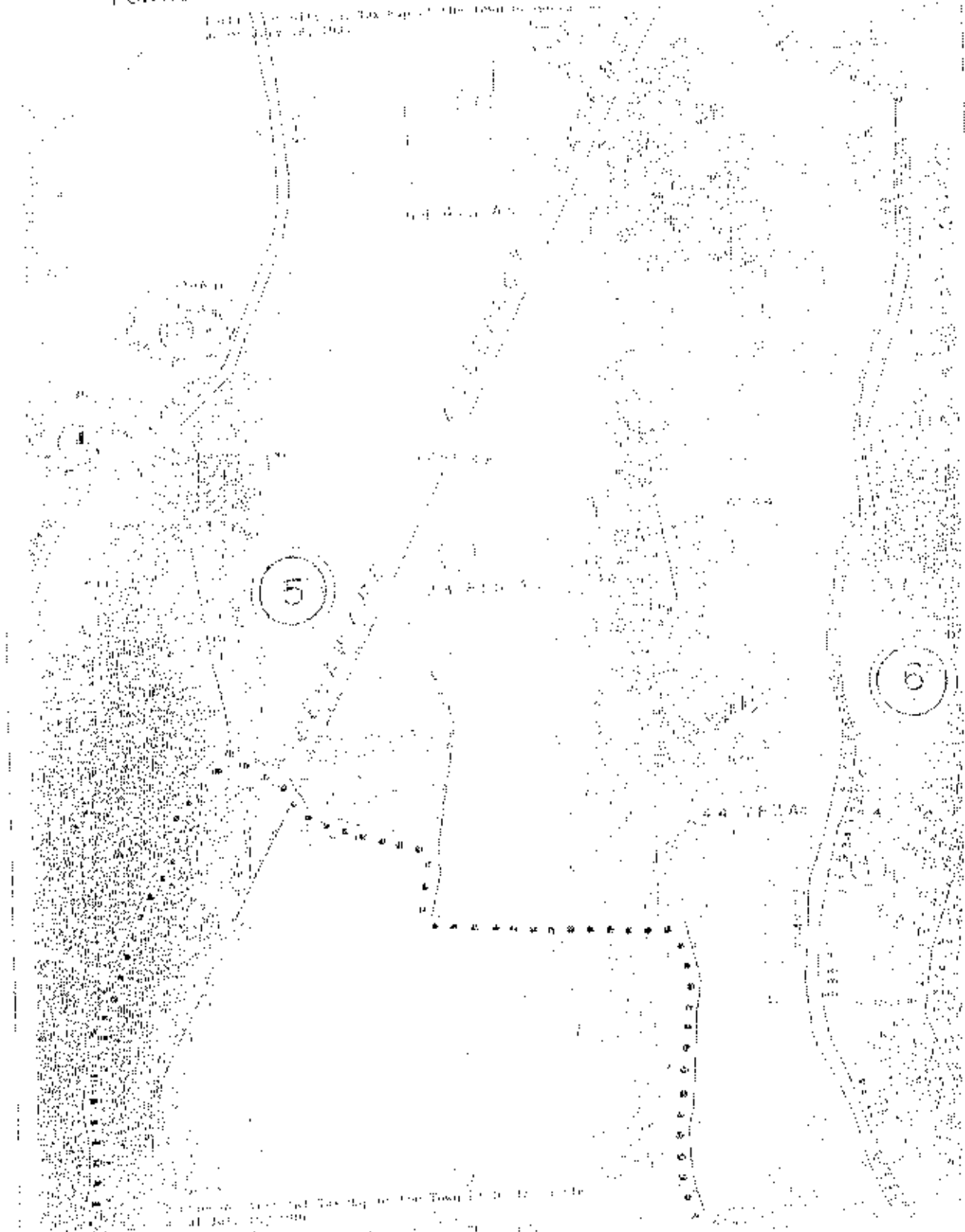
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(914) 681-0200

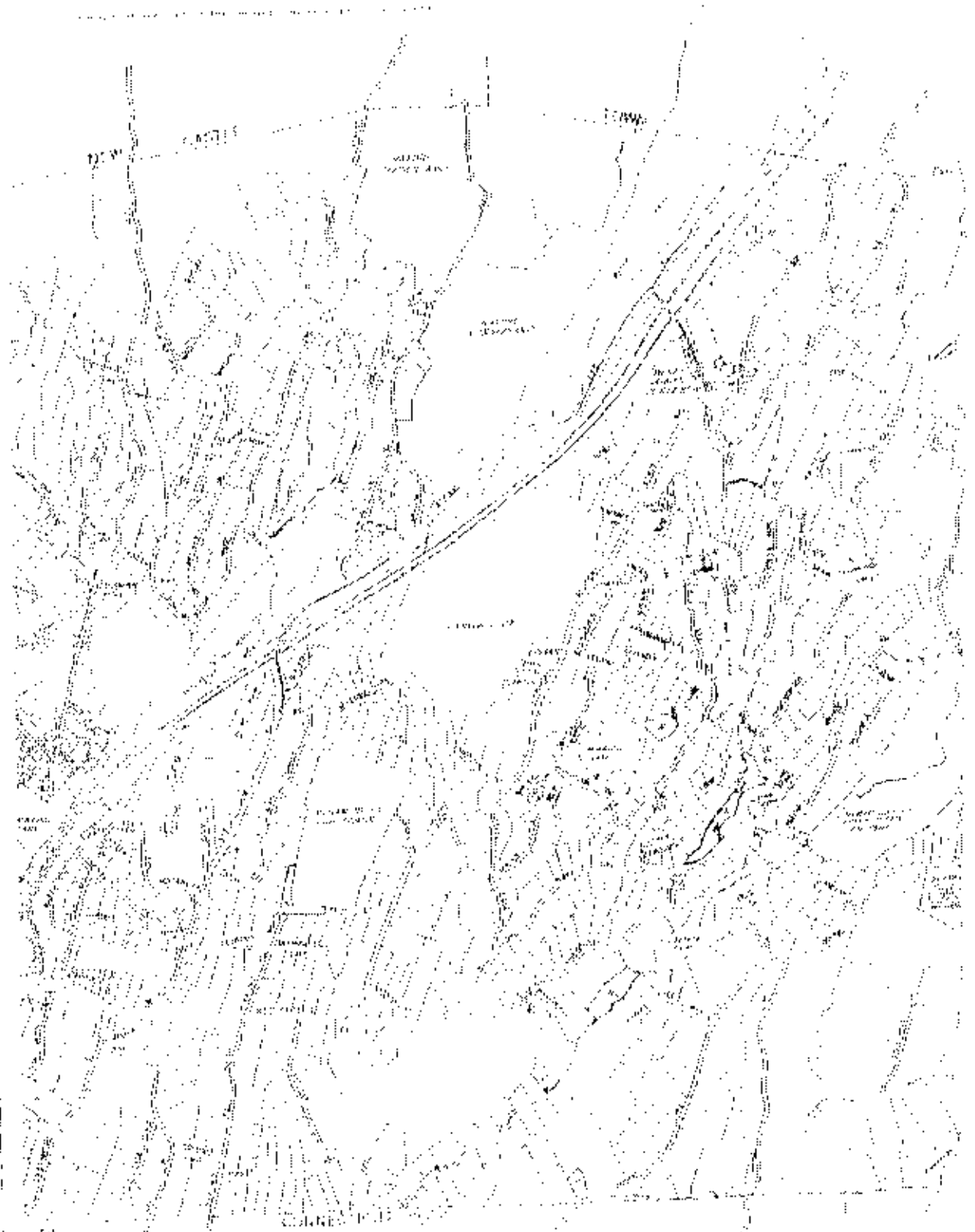
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EXHIBIT A TO COMPLAINT - PORTION OF THE OFFICIAL MAP OF THE TOWN OF NORTH CASTLE

FILED IN OFFICE OF TAX MAPS OF THE TOWN OF NORTH CASTLE
ON MAY 15, 1991.



Scale: 1 inch = 100 feet
Copyright © 1991 by the Town of North Castle
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Map of the area around the town of ...
Scale 1:50,000

9130

06

Index No.

Year 20

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

SEVEN SPRINGS, LLC,

Plaintiff,

-against-

**THE NATURE CONSERVANCY, REALIS ASSOCIATES, THE TOWN OF
NORTH CASTLE, ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,**

Defendants.

AMENDED COMPLAINT

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
COUNSELLORS AT LAW

Attorneys for

Plaintiff

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Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: Signature

Print Signer's Name.....

Service of a copy of the within is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon., one of the judges of the within-named Court,
at
on 20 at M.

Dated:

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
COUNSELLORS AT LAW

Attorneys for

To:

ONE NORTH LEXINGTON AVENUE
WHITE PLAINS, NEW YORK 10601

Attorney(s) for

ORIGINAL

STATE OF NEW YORK, COUNTY OF

ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

Check Applicable Box

Attorney's Certification

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for

I have read the annexed

Attorney's Affirmation by Affirmation

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following.

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.

Dated: _____
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am

in the action herein; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Check Applicable Box

Individual Verification

the of

a corporation, one of the parties to the action; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Corporate Verification

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on _____, 20 _____
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am not a party to the action, am over 18 years of

age and reside at

On _____, 20 _____, I served a true copy of the annexed in the following manner:

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service, addressed to the address of the addressee(s) indicated below, which has been designated for service by the addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

Check Applicable Box

Service by Mail

by delivering the same personally to the persons at the address indicated below:

Personal Service

by transmitting the same to the attorney by facsimile transmission to the facsimile telephone number designated by the attorney for that purpose. In doing so, I received a signal from the equipment of the attorney served indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service, addressed to the address of the addressee(s) as indicated below, which has been designated for service by the addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

Service by Facsimile

by transmitting the same to the attorney by electronic means upon the party's written consent. In doing so, I indicated in the subject matter heading that the matter being transmitted electronically is related to a court proceeding:

Service by Electronic Means

by depositing the same with an overnight delivery service in a wrapper properly addressed, the address having been designated by the addressee(s) for that purpose or, if none is designated, to the last-known address of addressee(s). Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Overnight Delivery Service

Sworn to before me on _____, 20 _____

(Print signer's name below signature)