

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

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SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

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

Defendants.

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THE
COUNTY

**THE NATURE CONSERVANCY'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT**

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Preliminary Statement

Plaintiff's Complaint must be dismissed because Seven Springs, LLC (owned by Donald Trump) has no right to build a road, over what has long been nothing more than an unpaved path, through the Eugene and Agnes E. Meyer Nature Preserve (the "Preserve"), which is owned by The Nature Conservancy.

Plaintiff has no easement (and it certainly has no fee interest) that supports its claim in this case. Plaintiff has no right in law - and certainly none in equity - to destroy the Preserve by building a road solely for the benefit of the prospective purchasers of the *nouveau* mansions it proposes to build.

Plaintiff asks this Court to give it what its grantor

did not: a 50-foot-wide right-of-way through the heart of the Preserve. If it obtains such an easement from this Court, plaintiff will build a road through the Preserve, for the benefit of the 17 or more super-luxury, \$25 million homes it proposes (but does not yet have approval) to build.¹

The Complaint is a belated and impermissible attack on The Nature Conservancy's title, and a belated and collateral attack on the Town of North Castle's actions - taken over 16 years ago - to close the long-abandoned portion of Oregon Road that ran through the Preserve. Plaintiff challenges the Town's 1990 abandonment² of Oregon Road, and seeks a declaration:

- (1) that the abandonment of Oregon Road was improper;
- (2) directing the Town to remove the barrier gate (the "Gate") it installed more than 16 years ago (Complaint ¶41); and

¹ "At Seven Springs, the homes will cover 12,000 to 16,000 square feet on lots of at least 10 acres and sell for about \$25 million. Each of the homes, according to Mr. Trump's plans, would also have a pool and tennis court." Homes by (and for) Donald Trump, *The New York Times*, May 21, 2006, In the Region/Westchester, §11, p. 17. See Exhibit 6.

Plaintiff asks this Court to grant it an easement it does not possess in order to allow it to exceed Bedford's *cul-de-sac* regulations. Code of Bedford, New York, §107-6 (2006). Upon information and belief, plaintiff would not be asking this Court to declare that it has an easement that it does not, in fact, have, if it limited its proposed development to not more than 15 homes. It is plaintiff's desire to build more than 15 super-luxury homes that prompts this unnecessary action.

² For purposes of this Memorandum, we use the word abandonment to refer to the phrases "abandonment" and/or "discontinuance" under the Highway Law.

(3) that plaintiff has a 50-foot-wide easement over that long-abandoned portion of Oregon Road - the fee to which plaintiff acknowledges is owned by The Nature Conservancy (*id.*, ¶30) - to allow it to build a paved road through the Preserve that The Nature Conservancy has owned and maintained for more than 30 years.

Plaintiff, which has owned its property for more than 10 years (*id.*, ¶10), seeks this declaration because, given the size of the residential development proposal it has presented to the Town of Bedford, it may be asked, as a condition of approval of its application, to have a 50-foot-wide right-of-way over the long-closed portion of Oregon Road.

Plaintiff does not have any such easement or right-of-way (see Defendant's Exhibits 3 and 4), and it has never before claimed that it has the easement it seeks to obtain in this action. More importantly, for more than 10 years "Oregon Road" has not been usable as a road or highway, and plaintiff has sat by as the Gate has prohibited any and all vehicular traffic on and over the subject portion of Oregon Road.

Plaintiff asks this Court to give it what plaintiff's grantor, Rockefeller University ("Rockefeller"), did not: a 50-foot wide easement permitting motor vehicles to drive over that portion of Oregon Road which is owned and lies entirely on The Nature Conservancy's land - access to which has been prohibited by the Town's Gate for more than 16 years.

Summary of Argument

Plaintiff's Complaint should be dismissed in its entirety for several reasons:

First, each and every claim in the Complaint is barred by the 10-year statute of limitations contained in CPLR §212(a).
(*Point I*)

Second, plaintiff's second cause of action - which challenges and seeks to invalidate the Town's May 1990 abandonment of Oregon Road - is time-barred by the applicable statute of limitations. (See Motion by Town of North Castle)³

Third, the Town's abandonment of Oregon Road pursuant to the Highway Law extinguished all public and private easements therein. (*Point II*)

Fourth, any easement over the foot-path referred to as Oregon Road was extinguished when the lands owned by plaintiff and The Nature Conservancy were both owned by Eugene Meyer (Complaint ¶16): where the title in fee to both the dominant and servient tenements becomes vested in one person, any easement is extinguished by merger. (*Point III, A*)

³ See also Stupnicki v. Southern N.Y. Fish & Game Assn., 41 Misc. 2d 266, 269, 244 N.Y.S.2d 558, 562 (Sup. Ct. Columbia Co. 1962), *aff'd* 19 A.D.2d 921, 245 N.Y.S.2d 333 (3rd Dep't 1963) ("There is a presumption that public officers have performed their duties. And the burden to establish otherwise is on the one attacking their actions").

Fifth, even if the private easements were not extinguished by the Town's conduct - and they were - then, to the extent plaintiff claims that it has an easement over any lands owned by The Nature Conservancy, and even assuming, *arguendo*, that Rockefeller had such an easement, Rockefeller abandoned any such easement when it consented to the Town's abandonment of Oregon Road and installation of the Gate. (*Point III, B*)

Sixth, even if Rockefeller had not consented to the abandonment of its easement, the easement has been extinguished by adverse possession, because the Gate - which precludes and prohibits vehicular access to Oregon Road - was in place when plaintiff acquired title in December 1995, and has been in place for more than 10 years. (*Point III, C*)

The facts relevant to the determination of this motion are contained in the Complaint, the affirmation of Leonard Benowich, and the exhibits annexed thereto, as well as in the motions of the co-defendants, in which The Nature Conservancy joins.

Argument

Point I

THE COMPLAINT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS

Plaintiff's action is time-barred. The action is subject to the ten-year statute of limitations contained in CPLR §212(a), which provides that:

Possession necessary to recover real property. An action to recover real property or its possession cannot be commenced unless the plaintiff, or its predecessor in interest, was seized or possessed of the premises within ten years before the commencement of the action.

Plaintiff admits in its Complaint that the Gate was installed in 1990 - more than 16 years ago. Plaintiff has held title to the Seven Springs Parcel for more than ten years, and it has been excluded from and precluded from possessing or enjoying that portion of Oregon Road that is owned by and lies entirely within The Nature Conservancy's lands for at least that time.

This action, having been commenced more than ten years after plaintiff acquired title to the Seven Springs parcel and more than 16 years after the Gate was installed, has been out of possession as to the claimed easement for more than ten years.

This action is, thus, time-barred. Spiegel v. Ferraro, 73 N.Y.2d 622, 543 N.Y.S.2d 15 (1989); Orange and Rockland Utilities, Inc. v. Philwold Estates, Inc., 52 N.Y.2d 253, 437 N.Y.S.2d 291 (1981); Ford v. Clendenin, 215 N.Y. 10

(1915); Reinwald v. Accardi, 201 A.D.2d 476, 607 N.Y.S.2d 406 (2nd Dep't 1994); Piedra v. Vanover, 174 A.D.2d 191, 579 N.Y.S.2d 675 (2nd Dep't 1992); Downes v. Peluso, 115 A.D.2d 454, 495 N.Y.S.2d 691 (2nd Dep't 1985).

Point II

THE TOWN'S ABANDONMENT OF OREGON ROAD PURSUANT TO THE HIGHWAY LAW EXTINGUISHED ALL PUBLIC AND PRIVATE EASEMENTS

New York law is settled: where, as here, a road or highway is abandoned and its use precluded pursuant to a statute which affords compensation, then the abandonment thereof pursuant to such statute extinguishes all public and private easements. Barber v. Woolf, 216 N.Y. 7 (1915).

This rule was applied by the Second Department most recently in Municipal Housing Authority for the City of Yonkers v. Harlan, 24 A.D.2d 633, 262 N.Y.S.2d 161 (2nd Dep't 1965). In that case, the Second Department held that a local ordinance enacted by the City of Yonkers which closed a street and contained:

. . . appropriate provision for the payment of damages. . . serve[d] to extinguish all easements, public and private, in the thoroughfare closed. Barber v. Woolf, 216 N.Y. 7, 16 [(1915)]; Crossin v. Woolf, 182 App. Div. 607, 608, 169 N.Y.S. 943 [(1st Dep't 1918)]; Matter of Joiner [City of Rochester], 177 App. Div. 361, 366, 164 N.Y.S.2d 272, 275 [(4th Dep't 1917)]; Wells and River holding Corp v. Otis Elevator Co., 5 A.D.2d 883, 171 N.Y.S.2d 691 [(2nd Dep't 1958)].

In this case, the Highway Law also contains "appropriate provision for the payment of damages" which are occasioned by the abandonment of a road or highway. Highway Law §209 provides, in pertinent part, as follows:

Any person or corporation interested as owner or otherwise, in any lands and claiming any loss or damages, legal or equitable, by reason of the discontinuance, abandonment or closing of any street or highway not within the limits of an unincorporated village, under or pursuant to the provisions of the last two sections, may, upon ten days written notice to the town superintendent of the town in which such lands are situated apply to the supreme court or to the county court of the county within which such lands are situated for the appointment of commissioners of appraisal to estimate and determine such loss and damage, whereupon the court shall appoint three disinterested commissioners of appraisal to estimate and determine such damage, and the amount of compensation to be paid by said town therefor. . . .

Rockefeller, which consented to the abandonment, and which was the owner of the Seven Springs Parcel at the time of the abandonment, was the only party that could have been entitled to any such damages. See e.g. King v. City of New York (Trustees of St. Patrick's Cathedral), 102 N.Y. 172, 175 (1886); Holloway v. Southmayd, 139 N.Y. 390, 409 (1893).

Plaintiff has no standing to seek any such payment (and no such payment is sought in this action), and any such claim is barred under CPLR §214(2) (3-year limit on action to recover on a liability, penalty or forfeiture created or imposed by statute).

Point III

EVEN ASSUMING THERE WAS AN EASEMENT AS ASSERTED BY PLAINTIFF, IT HAS BEEN EXTINGUISHED

Even if any private easement was not extinguished by the Town's actions - and it was - any such easement was extinguished by (a) the merger of the various parcels when - many grantors ago - they were owned by Eugene Meyer, (b) Rockefeller's abandonment of any such easement, or (c) adverse possession.

Plaintiff claims that it has an easement over that portion of Oregon Road which lies entirely within The Nature Conservancy's lands (Complaint ¶30) and was abandoned by the Town in 1990. Plaintiff also alleges this easement is not less than 50-feet wide (Complaint ¶25), although there is no reference to any such easement in any deed identified in the Complaint. See Defendant's Exhibits 3, 4.

A. Any Easement was Extinguished by Merger

Any easement claimed by plaintiff was extinguished long ago when the lands now owned by plaintiff (the "Seven Springs Parcel") and the lands now owned by The Nature Conservancy were owned by Eugene Meyer. (Complaint ¶16)

The Second Department has repeatedly recognized the settled rule that "where the title in fee to both the dominant and servient tenements become vested in one person, an easement is extinguished [by merger]." Castle Associates v. Schwartz, 63

A.D.2d 481, 486, 407 N.Y.S.2d 717 (2nd Dep't 1978); Simone v. Heidelberg, *supra*; New York City Council v. City of New York, 4 A.D.3d 85, 770 N.Y.S.2d 346, 350 (1st Dep't 2004), *quoting* Castle Associates; Alfassa v. Herskowitz, 239 A.D.2d 307, 657 N.Y.S.2d 1003 (2nd Dep't 1997). The merger doctrine proceeds from a recognition that a person cannot have an easement in his or her own land because all the uses of an easement are fully comprehended in the general right of ownership. *Id.*; Beekwill Realty Corporation v. City of New York, 254 N.Y. 423 (1930).

Accordingly, any easement was extinguished long ago - even before Rockefeller acquired the "Seven Springs Parcel."

B. Any Easement was Abandoned by Rockefeller

Even assuming, *arguendo*, that Rockefeller had an easement such as plaintiff describes in its Complaint - and it did not - that easement has been extinguished in two ways: *First*, it was abandoned by Rockefeller's consent to the Town's abandonment of Oregon Road and installation of the Gate. *Second*, the easement has been extinguished by adverse possession, precisely because the Gate - which prevents any and all vehicular access to the easement - has been in place for more than 16 years, including the more than 10 years that plaintiff has owned its property.

In either event, the easement has been extinguished, and it is settled law that, once extinguished, an easement cannot

be revived except by an express grant. "Once extinguished, an easement is gone forever and cannot be revived," Sam Development, LLC v. Dean, 292 A.D.2d 585, 740 N.Y.S.2d 90 (2nd Dep't 2002); quoting Stilbell Realty Corp. v. Cullen, 43 A.D.2d 966, 967, 352 N.Y.S.2d 656 (2nd Dep't 1974).

In December 1995, when it conveyed to plaintiff, Rockefeller did not own The Nature Conservancy's lands which plaintiff now claims are servient to its easement. In December 1995, those lands had been owned by The Nature Conservancy for more than 20 years. Rockefeller simply was powerless to convey to its grantee (plaintiff) an easement it did not have, over lands it did not own, Estate of Thomson v. Wade, 69 N.Y.2d 570, 516 N.Y.S.2d 614 (1987), and as to which plaintiff and The Nature Conservancy do not even share a common grantor. Kent v. Dutton, 122 A.D.2d 558, 505 N.Y.S.2d 287 (4th Dep't 1986) "[t]he implied private easement. . .arises to insure that a grantee. . .[is] not deprived of the use of the right-of-way existing at the time title was acquired"); Stupnicki v. Southern N.Y. Fish & Game Assn., 41 Misc. 2d 266, 244 N.Y.S.2d 558 (Sup. Ct. Columbia Co. 1962), *aff'd* 19 A.D.2d 921, 245 N.Y.S.2d 333 (3rd Dep't 1963) (claim to private easement denied following the abandonment of a public highway, absent a showing of a common grantor; a common

source of title is not a common grantor).⁴ Plaintiff does not allege that it shares, and as a matter of fact and law plaintiff does not share, a common grantor with The Nature Conservancy.

It is settled law that an easement may be extinguished by abandonment. Gerbig v. Zumpano, 7 N.Y.2d 327, 197 N.Y.S.2d 161 (1960). Abandonment is established with evidence of an overt act or failure to act which carries the implication that the owner of the easement neither claims nor retains any interest in the easement. *Id.*; see also Simone v. Heidelberg, 27 A.D.3d 639, 812 N.Y.S.2d 608 (2nd Dep't 2006); DeJong v. Aphill Associates, 121 A.D.2d 678, 504 N.Y.S.2d 445 (2nd Dep't 1986).

In this case, there is more than sufficient evidence that Rockefeller abandoned any easement it may have had over that portion of Oregon Road which lies within The Nature Conservancy's lands. Welsh v. Taylor, 134 N.Y. 450 (1892).

First, Rockefeller consented to the abandonment. The Town's Certificate states that Rockefeller "has consented" to the closing and "has adequate ingress and egress to its property by alternative means." These statements of fact in the Certificate

⁴ Plaintiff alleges that: it acquired its title from Rockefeller (Complaint ¶10), Rockefeller acquired its title from an entity known as Seven Springs Farm Center, Inc. (*id.*, ¶11), Seven Springs Farm Center, Inc., acquired its title from Yale University (*id.*, ¶12), and Yale acquired its title from the Eugene and Agnes E. Meyer Foundation. (*Id.* ¶13)

Unlike plaintiff, The Nature Conservancy acquired its title from the Meyer Foundation. (*Id.* ¶19)

are *prima facie* evidence thereof. CPLR §§4518(c), 4540, 2307. Rodriguez v. Triborough Bridge and Tunnel Authority, 276 A.D.2d 769, 716 N.Y.S.2d 24 (2nd Dep't 2000); Barcher v. Radovich, 83 A.D.2d 689, 583 N.Y.S.2d 276 (2nd Dep't 1992); Laduke v. State Farm Ins. Co., 158 A.D.2d 137, 557 N.Y.S.2d 221 (4th Dep't 1990).

Second, plaintiff acknowledges that the Gate was installed in 1990, long before Rockefeller's December 1995 conveyance to plaintiff. As a result, this portion of Oregon Road has been closed, and it could not lawfully be used as a road, street or highway - by anyone; a fact of which plaintiff had to have been aware when it took title.⁵

Third, the Gate effectively and completely bars motor vehicles from Oregon Road. Plaintiff itself alleges that the Town installed the Gate at "Pole 40" (Complaint ¶41), and it

⁵ See Holloway v. Southmayd, 139 N.Y. 390, 409 (1893) ("[grantee] was bound to know, when the grant was made to [it], that the public highway no longer existed, and that he must be presumed to have bought it in view of that fact. With such knowledge, chargeable to [it], [grantee] could not be heard to say that by bounding the grant upon the highway his grantors had conveyed an easement in the highway"), citing King v. City of New York (Trustees of St. Patrick's Cathedral), 102 N.Y. 172, 175 (1886) ("Merely bounding premises by a public highway for purposes of description, and where it is referred to as any fixed mark or monument might be, is very different from selling by reference to a map or plat on which the grantor has laid out streets, and made a dedication, and exposed himself to the equities of an estoppel. And then the road was in fact closed when the deed was made to Brennan, who knew, or was bound to know that the public highway no longer existed, and must be presumed to have bought and fixed his price in view of that fact") (emphasis added).

acknowledges that passage by motor vehicle is impossible. *Id.*

Fourth, the December 1995 deed from Rockefeller to plaintiff does not contain any express grant of, or other express reference to, any easement over Oregon Road. Contrary to the allegation in paragraph 23 of the Complaint,⁶ the deed from Rockefeller to plaintiff conveyed the land described therein:

TOGETHER with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the premises to the centerlines thereof [emphasis added].

Plaintiff, thus, acquired no greater rights than Rockefeller had or enjoyed at the time of its conveyance to plaintiff. Rogers v. Germano, 300 N.Y. 251 (1949).⁷

New York's courts long have recognized that where, as here, a road or highway is closed, or an obstruction (such as a gate or barrier) to its use as such is installed with the knowledge and consent of the party who would otherwise be entitled to the easement, that party is deemed to have abandoned its interest in the easement, and the easement is extinguished.

⁶ "The December 22, 1995 deed from Rockefeller...conveyed fee simple absolute in the premises described therein with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof."

Because this allegation is contradicted by the language of the deed, it is not entitled to the presumption that is accorded to well-pleaded allegations on a pre-answer motion to dismiss.

⁷ Significantly, the deed by which Rockefeller acquired its lands was a quitclaim deed. See Exhibit 4.

Indeed, abandonment of an easement is presumed where the owner performs acts, or acquiesces in the performance of acts by others which are inconsistent with the owner's continued enjoyment of the easement. Porter v. International Bridge Co., 200 N.Y. 234 (1910); Welsh v. Taylor, 134 N.Y. 450 (1892).

The erection and maintenance of something which is incompatible with the exercise of the easement, when done by or with the acquiescence of the one benefitted by the easement, constitutes abandonment of that easement. *Id.*; Tremberger v. Owens, 80 App. Div. 594, 80 N.Y.S. 694 (1st Dep't 1903) (easement abandoned as a matter of law by construction of a barrier across the right-of-way; abandoned easement may not be reclaimed); Thyhsen v. Brodsky, 51 Misc. 2d 1023, 274 N.Y.S.2d 832 (Sup. Ct. Monroe Co. 1966); Empire Chevrolet, Inc. v. Lantana Holdings, Inc., 82 N.Y.S.2d. 131 (Sup. Ct. Kings Co. 1948) (plaintiff's predecessor-in-interest - *Trump Construction Co.* - built homes and a retaining wall across a right-of-way, thus abandoning same as a matter of law).

In DeCesare v. Feldmeier, 184 A.D.2d 220, 584 N.Y.S.2d 803 (1st Dep't 1992), the First Department affirmed the extinguishment of an easement by abandonment. In that case, the easement had been for "many years prior to plaintiff's acquiring title blocked at one end by the use of a garden." Significantly the Court found that the easement had been abandoned

"notwithstanding a declaration of easement filed prior" to the plaintiffs' "acquiring the property and the recitation of the easement in their deed." The First Department also considered it "pertinent" that the party claiming the easement "ha[d] ingress and egress to the main street via another easement."⁸

In this case, evidence of the abandonment and extinguishment of the claimed easement is far more compelling. *First*, the easement here was obstructed by the Gate, a locked barrier, not by a garden. *Second*, unlike in DeCesare, there is no "declaration of easement" filed, and there is no reference in the deed from Rockefeller to plaintiff of any easement over Oregon Road. Finally, as in DeCesare, Rockefeller had ingress and egress to another portion of Oregon Road, connecting to Byram Lake Road. See also Zeledon v. MacGillivray, 263 A.D.2d 904, 693 N.Y.S.2d 330 (3rd Dep't 1999) (easement extinguished by

⁸ In paragraph 14 of the Complaint, plaintiff asserts that: "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." (Emphasis added.)

This carefully-worded allegation fails to include the simple truth that plaintiff has other access to its property - from the north - over the still-open portion of Oregon Road, which connects to Byram Lake Road. Therefore, plaintiff does not - because it cannot - contend that it has an easement "by necessity" over Oregon Road. Necessity, not inconvenience, is required. Town of Pound Ridge v. Golenbock, 264 A.D.2d 773, 695 N.Y.S.2d 388 (2nd Dep't 1999). Absent an easement by necessity, the assertion in paragraph 14 is irrelevant to plaintiff's claim, but supports the fact that Rockefeller did - and plaintiff does - have access onto the northerly portion of Oregon Road.

abandonment where dominant estate was aware that the servient estate had blocked and used the easement for more than 10 years).

In Albanese v. Dominianni, 281 App. Div. 768, 118 N.Y.S.2d 347 (2nd Dep't 1953), the Second Department held that the plaintiffs' own construction of a wooden fence and garden which prevented their own use of the easement and their acquiescence in defendants' construction and maintenance of a curbing, garden and metal fence, together with nonuser of the purported easement constituted abandonment.

Where, as here, Oregon Road was closed by the Town in 1990, and the Gate was installed with the knowledge, consent and acquiescence of Rockefeller, any easement has been abandoned. See Holden v. Palitz, 2 Misc. 2d 433, 154 N.Y.S.2d 302, 309 (Sup. Ct. West. Co. 1956) (any easement over a road which has been abandoned has been extinguished because "never again can there be use of the subject [land] for a right of way" as a road).

C. Any Easement was Extinguished by Adverse Possession

Alternatively, if Rockefeller did not consent to the abandonment of the so-called easement, the easement has been extinguished by adverse possession. See e.g. RPAPL §§501, 521.

As the Court of Appeals stated in Spiegel, *supra*:

[w]here an easement has been definitively located and developed through use, there is no requirement that its owner demand the removal of obstructions blocking the easement before it may be extinguished by adverse possession. A use of an easement which is

exclusive, open and notoriously hostile to the interests of the owner commences the running of the prescriptive period and the use may extinguish the easement if that use continues uninterrupted for a period of 10 years.

73 N.Y.2d at 626 (emphasis added). The Spiegel Court continued to note that "an easement may be lost by adverse possession if the owner or possessor of the servient estate claims to own it free from the private right of another and excludes the owner of the easement, who acquiesces in the exclusion for [the prescriptive period] (*Woodruff v. Paddock*, 130 N.Y.[618], at 624 (1892))." *Id.*; see also Walling v. Przybylo, ___ N.Y.2d. ___, ___ N.Y.S.2d ___, 2006 WL 1593948, 2006 N.Y. Slip Op. 04747 (June 13, 2006) ("the ultimate element in the rise of a title through adverse possession is the acquiescence of the real owner in the exercise of an obvious adverse or hostile ownership through the statutory period"), quoting Monnot v. Murphy, 207 N.Y. 240, 245 (1913).

A party seeking to extinguish an easement by adverse possession must establish the five elements of adverse possession: "that the use of the easement has been (1) hostile and under a claim of right, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for a period of 10 years." Koudello v. Sakalis, ___ A.D.3d ___, 814 N.Y.S.2d 730, 2006 N.Y. Slip Op. 03730 (2nd Dep't May 9, 2006); Walling, *supra*; Spiegel, *supra*, 73 N.Y.2d at 624.

Significantly, in Koudello, the Second Department recognized that while adverse possession generally requires proof that the use has been "hostile and under a claim of right," that Court also recognized that "generally 'an inference of hostile possession or claim of right will be drawn when the other elements of adverse possession are established'." *Id.*, quoting MAG Associates v. SDR Realty, 247 A.D.2d 516, 517, 669 N.Y.S.2d 314 (2nd Dep't 1998).

These other elements are present in this case. The Gate, which plaintiff alleges prevents use of Oregon Road for vehicular access, has been adverse to Rockefeller and plaintiff for more than 15 years. It is, and has been for that time, open, notorious and exclusive. See Brand v. Prince, 35 N.Y.2d 634, 364 N.Y.S.2d 826 (1974).

The construction of the Gate across the entirety of the southerly portion of Oregon Road constitutes adverse possession as a matter of law. Mourelatos v. Fraternal Society of Canicatti, Inc., 6 Misc. 3d 183, 185, 787 N.Y.S.2d 814 (Sup. Ct. Queens Co. 2004) (chain link fence is a "'substantial enclosure' as a matter of law" and is a total obstruction of the easement; dominant estate owner admitted "being aware of the fence from the time he bought the property and that the fence entirely blocked the subject easement at that time"); see also Zeledon v. Macgillivray, *supra*.

Conclusion

Plaintiff has no easement over Oregon Road; it has no easement over that portion of Oregon Road which is owned by The Nature Conservancy and which was abandoned in 1990, with Rockefeller's knowledge, consent and acquiescence.


The Gate - a complete barrier to motor vehicles' access to Oregon Road - was erected at the southern terminus of Oregon Road, on The Nature Conservancy's land, with Rockefeller's knowledge, consent and acquiescence. The Gate remained locked at all times, with the key thereto in the Town's control.

Plaintiff does not allege that Rockefeller or plaintiff has ever demanded removal of the Gate until the commencement of this action. Since Rockefeller consented to the abandonment of Oregon Road and the installation of the Gate, then the easement claimed herein was abandoned by Rockefeller, and was not and could not have been conveyed to plaintiff. Alternatively, the claimed easement has been extinguished by adverse possession or merger.

The Complaint should be dismissed in all respects.

Dated: June 30, 2006

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Certificate of Service by First Class Mail

LEONARD BENOWICH, an attorney duly admitted to practice in this Court, hereby affirms, under the penalty of perjury, that on June 30, 2006, I caused a true copy of the foregoing **Memorandum of Law** to be served upon the following counsel:

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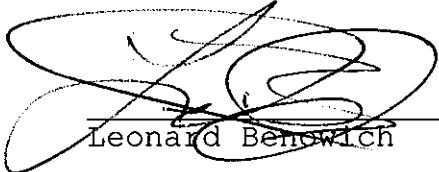
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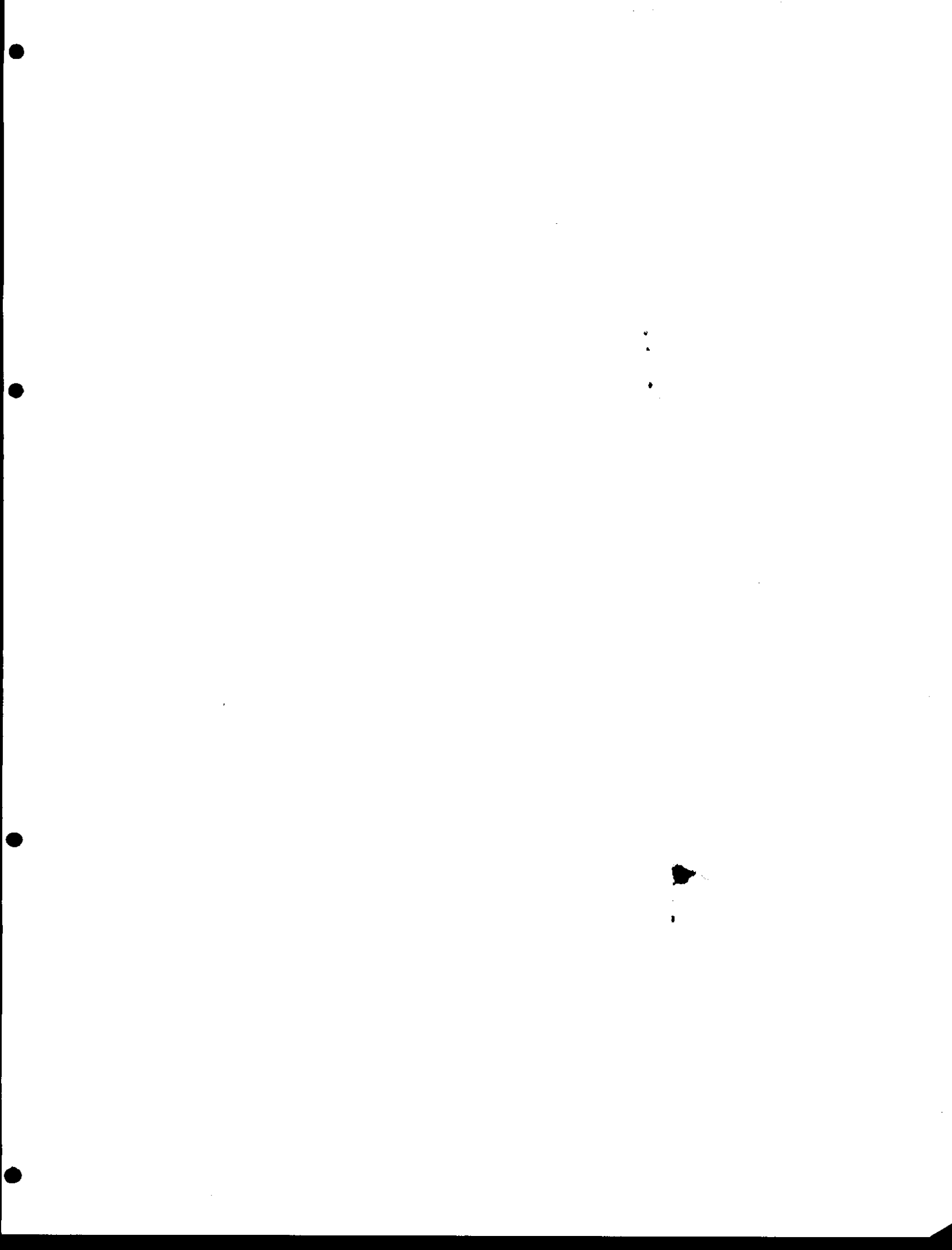
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356 Manville Road
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by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to the party and/or parties listed above.

Dated: White Plains, New York
June 30, 2006


Leonard Benowich



JRL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130-06

-against-

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

Defendants.

-----X

**AFFIDAVIT IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS**

RECEIVED

AUG 31 2006

CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

DONALD J. TRUMP, being duly sworn hereby deposes and says:

I own directly and indirectly 100% of the member interests in Seven Springs, LLC, Plaintiff (hereinafter sometimes referred to as "Plaintiff") in the above entitled action. I have reviewed the books and records kept by Plaintiff in the regular course of business and the public records regarding the premises which are the subject of this action, and which are more particularly identified below, and as such, I am fully familiar with the facts and circumstances set forth herein.

This affidavit and the accompanying Memorandum of Law are respectfully submitted on behalf of the Plaintiff in opposition to the motion of Defendant Town of North Castle ("North Castle"), the motion of Defendant The Nature Conservancy (the "Nature Conservancy"), and the motion of Defendants ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE and JOANN DONOHOE, which seek an Order pursuant to CPLR 3211 (a) (1), (5) and (7) dismissing the instant action.

FILED
NOV - 3 2006

(5)

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.

This action is brought pursuant to Article 15 of the Real Property Actions and Proceedings Law of New York to compel the determination of claims to the Subject Premises.

The Complaint filed in this action seeks Judgment for the following relief:

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 to the Complaint, including over lands 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 Defendant, Town of North Castle, be directed to remove all obstructions 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.

(A copy of the Summons and Complaint is annexed hereto as **Exhibit "A"**).

Defendants' motions to dismiss should be denied because Plaintiff has stated valid causes of action in the Complaint, and the defenses asserted in Defendants' motions are without merit.

Annexed hereto as **Exhibit "B"**, 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 (the "Easement" or "Easement Area"). The section of Oregon Road that is the subject of this action is unimproved vacant land.

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. (A copy of the deed is annexed hereto as **Exhibit "C"**).

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. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road. Access to Oregon Road is currently partially blocked by a 20 foot long gate (the "Gate"). It is possible for vehicles and pedestrians to access the subject portion of Oregon Road by going around the Gate. The Gate does not enclose the Easement Area, and can be readily removed. In fact, Con Edison vehicles regularly access the subject portion of Oregon Road from the south in order to service electrical equipment located in the Easement Area which provides electrical service to property located on the Seven Springs Parcel.

While the use to which Plaintiff intends to put Oregon Road is not an issue in this case it is necessary to respond to certain inaccuracies set forth in Defendants' motion papers. Specifically, it is alleged in the Nature Conservancy Memorandum of Law that Plaintiff's use of the Easement Area will "destroy the Preserve". (Nature Conservancy Memo of Law page 1). Initially, it should be noted that this allegation is not set forth in an

Affidavit, and is not supported by any proof or evidence. Simply put, Defendants' assertion is baseless and false.

The Plaintiff intends to improve the existing dirt road over the Easement Area with a road that is approximately 20 feet in width, which is commensurate with the paved section of Oregon Road. The road will blend in with the terrain, and will be strictly limited to use by emergency vehicles only. In addition, the road will have at its southerly terminus a gate that can only be opened and closed by an infra-red line of sight transmitter that is restricted to emergency vehicles. It is respectfully submitted that the road proposed by Plaintiff will enhance the Easement Area, and provide for better security than is currently in place.

A title search was conducted of the chain of title of the Seven Springs Parcel and adjoining properties as of April, 2006. (A copy of the Certified Title Search dated August 15, 2006 is annexed hereto as **Exhibit "D"**). The search of the Westchester County Clerk's records of the record owners of the Seven Springs Parcel and The Nature Conservancy Property as of April 26, 2006 certified by Fidelity National Title Insurance Company of New York and dated August 15, 2006 reveals the following:

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

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").

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

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 "B"**.

The Nature Conservancy acquired title to the Nature Conservancy Property from the Eugene and Agnes E. Meyer Foundation ("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. The Nature Conservancy Property is situated in the Towns of North Castle and New Castle, and is more particularly described in the above referenced deed recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719. (A copy of the deed is annexed hereto as **Exhibit "E"**).

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 in the deeds together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

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. (A copy of the deed is annexed hereto as **Exhibit "F"**).

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. (A copy of the deed is annexed hereto as **Exhibit "G"**).

Yale University acquired title to the Seven Springs Parcel from 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. (A copy of the deed is annexed hereto as **Exhibit "H"**).

It is Plaintiff's position in this case, as more particularly set forth in the Certified Title Search, that based upon the deeds in Seven Springs' chain of title and Nature Conservancy's chain of title, the legal descriptions contained in the deeds, the conveyancing language which refers to the center line of Oregon Road, as well as the inclusion in the deeds of the appurtenance clause "Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof", Seven Springs has fee title in and to the one-half portion of Oregon Road, as the road abuts the Seven Springs Parcel on its westerly side. Furthermore, as a result of the legal descriptions contained in the deeds into Meyer, specifically the references in the deeds to the properties being bounded by Oregon Road, Seven Springs and Nature Conservancy, Seven Springs has a non-exclusive private easement as it abuts its property as well as over The Nature Conservancy Property and others to the public portion of Oregon Road to the south.

It should also be noted that it has come to our attention that the law firm of Stephens Baroni Reilly & Lewis, LLP, the attorneys for North Castle in this action, had previously requested that another title company, Fidelity Title, Ltd., also search the chain of title of Oregon Road, specifically for easement and access rights in favor of Seven Springs, LLC over Oregon Road, and that by letter dated February 16, 2006 to Mr. Baroni, Fidelity Title, Ltd. confirmed that Seven Springs, LLC has a private easement for access over Oregon Road. (A copy of the letter dated stamped received by the Town of North Castle Planning Board on March 1, 2006 is annexed hereto as **Exhibit "I"**).

It is not alleged by any of the Defendants, nor does the certified search annexed hereto as **Exhibit "D"** reveal, that Oregon Road was ever owned by, or dedicated to, the Town of North Castle.

It is alleged in Defendants' motion papers that the Easement was extinguished by abandonment or adverse possession and that Plaintiff's claims are barred by the Statute of Limitations. These contentions are without merit.

At no time did Seven Springs abandon its right to the Easement Area, and no proof, evidence or documentation is submitted to establish that any of Plaintiff's predecessors in interest, including Rockefeller University, conveyed the Easement, abandoned their right to the Easement, particularly for private purposes, or consented to the discontinuance of Oregon Road.

Seven Springs demanded that the Easement Area be opened and that the Gate be removed upon the commencement of this action. The demand arose out of the fact that Seven Springs did not have the occasion to assert its right to the Easement until the issue of secondary access was raised in connection with Plaintiff's development of the Seven Springs Parcel in October, 2004. I am advised by counsel that the Statute of Limitations does not start to run until Plaintiff makes such a demand and the demand is refused. Further, Seven Springs was not aware of the undated "Certificate of Discontinuance" (a copy of which is annexed to North Castle's motion papers as "E"), or that it would be unable to access Oregon Road to the south at the time that it purchased the Seven Springs Parcel.

Finally, it is not alleged, and no proof or evidence has been presented in Defendants' motion papers, that any of the Defendants have maintained, cultivated or taken any action with respect to the subject portion of Oregon Road at any time.

Based upon the above Defendants' claim that the Easement was extinguished, and that Plaintiff's claims are time barred are without merit.

Defendants, Robert Burke and Teri Burke ("Burke"), are joined in this action as party Defendants by virtue of their ownership of the title to Lot 2 in the Oregon Trails subdivision, which property abuts Oregon Road. Upon information and belief, 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. (A copy of the deed is annexed hereto as **Exhibit "J"**). A review of the Burke's deed reveals that it does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

Defendants, Noel B. Donohoe and Joann Donohoe ("Donohoe"), are joined in this action as party Defendants by virtue of their ownership of the title to Lot 1 in the Oregon Trails subdivision, which property abuts Oregon Road. 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. (A copy of the deed is annexed hereto as **Exhibit "K"**). A review of the Donohoe's deed reveals that it does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

Defendant, Realis Associates, is joined as a party Defendant in this action 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. (A copy of filed map number 22547 is annexed hereto as **Exhibit "L"**). I am informed by Plaintiff's counsel that Realis Associates has not appeared in this action.

On or about June 12, 2006 title to the property owned by Realis Associates, which is adjacent to the Burke and Donohoe properties, referred to above, was transferred to Seven Springs. A copy of the deed from Realis Associates to Seven Springs is annexed hereto as **Exhibit "M"**. It should be noted that the deed from Realis Associates to Seven Springs specifically provides that "the premises being conveyed are, and are intended to be, the same premises retained by the party of the first part as set forth in deed from Realis Associates to Robert Burke and Teri Burke dated April 29, 1993 and recorded on May 12, 1993 in liber 10576 page 243, and as set forth in deed from Realis Associates to Noel B. Donohoe and Joann Donohoe dated July 27, 1994 and recorded August 8, 1994 in liber 10929 page 35". Furthermore, the description of the property includes a road widening easement for the future widening of Oregon Road approximately twenty-five (25) feet in width, along the easterly boundary line, said easement as shown on Subdivision Map of Property known as Oregon Trails, filed in the Westchester County Clerk's Office on December 9, 1986, as Map No. 22547.

Based upon the above Defendants Burke and Donohoe clearly have no rights in Oregon Road.

It is submitted that by reason of the above facts, 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.

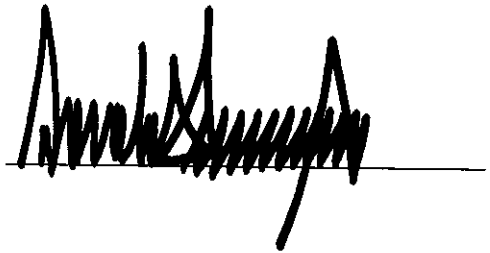
Further, based upon the above, and as set forth in the Complaint, Plaintiff has a right of way and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Seven Springs Parcel, and that portion of Oregon Road, more particularly identified on Exhibit "A", southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access. The width of the Easement is estimated to be no less than 50 feet in width based upon the references in the above referenced deeds to Oregon Road, the Donnelly Survey annexed to the Certified Title Search (Exhibit "D"), the deed from Realis Associates to Seven Springs (Exhibit "M"), and filed map number 22547 (Exhibit "L") more particularly identified above.

In addition, based upon the above facts, and as more particularly set forth in the accompanying Memorandum of Law, the Town of North Castle should be immediately directed to remove the Gate and any obstructions placed and/or maintained by it, on, or across Oregon Road.

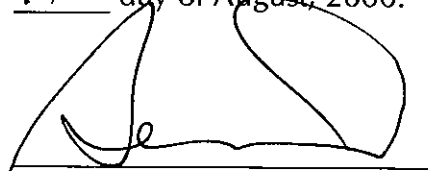
I have examined all the matters set forth in the Complaint in the within action, (a copy of which is annexed hereto as **Exhibit "A"**), and find same true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, or as otherwise set forth in this Affidavit, and that as to those matters I believe them to be true.

The accompanying Memorandum of Law more particularly address the legal issues in opposition to of the Defendants' motions.

WHEREFORE, it is respectfully requested that the Defendants' motions be denied in their entirety, together with costs and disbursements, and such other and further relief as this Court deems just, proper and equitable.

A handwritten signature in black ink, appearing to be "Bernard R. Diamond", written over a horizontal line.

Sworn to before me this
16 day of August, 2006.

A handwritten signature in black ink, written over a horizontal line.

Notary Public

BERNARD R. DIAMOND
Notary Public, State of New York
No. 31-4506337
Qualified in Westchester County
Commission Expires Sept 30, 2008

A

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.

Index No. 9130/06

Date Filed: 5/15/06

SUMMONS

RECEIVED

MAY 15 2006

TIMOTHY G. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

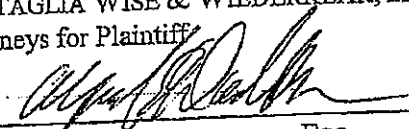
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Westchester County as the place of trial pursuant to CPLR § 507. The basis of venue is the location of real property which is the subject of this action.

Dated: White Plains, New York
May 12, 2006

DELBELLO DONNELLAN WEINGARTEN
TARTAGLIA WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff


By: ALFRED E. DONNELLAN, ESQ.
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

TO: THE NATURE CONSERVANCY
570 Seventh Avenue
New York, New York 10018

REALIS ASSOCIATES
356 Marville Road
Pleasantville, New York 10570

THE TOWN OF NORTH CASTLE
15 Bedford Road
Armonk, New York 10504

ROBERT BURKE
2 Oregon Hollow Road
Armonk, New York 10504

TERI BURKE
2 Oregon Hollow Road
Armonk, New York 10504

NOEL B. DONOHOE
4 Oregon Hollow Road
Armonk, New York 10504

JOANN DONOHOE
4 Oregon Hollow Road
Armonk, New York 10504

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130/06
Date Filed: 5/15/06

-against-

COMPLAINT

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

Defendants.

-----X

RECEIVED

MAY 15 2006

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
DELBELLO

Plaintiff, Seven Springs, LLC, by its attorneys,

WEINGARTEN TARTAGLIA WISE & WIEDERKEHR, LLP, for its 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. Upon information and belief, since at least 1917 and 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.

22. 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.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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 owned by The Nature Conservancy and others to the public portion of Oregon Road in favor of Plaintiff, its successors and assigns.

31. 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.

32. 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.

33. 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.

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

35. 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.

36. 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.

37. 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.

38. 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.

39. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

40. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 39 above as if the same were more fully set forth at length herein.

41. That upon information and belief and in or about May, 1990, defendant Town of North Castle allegedly discontinued and caused 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, the barrier consisting of a gate thereby making the aforesaid

section of Oregon Road, as a roadway, impassable 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 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.

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

43. 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 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 Plaintiff's property as aforesaid.
- (6) That Defendant, Town of North Castle, be directed to remove all obstructions 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.
- (7) 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
May 12, 2006

DELBELLO DONNELLAN WEINGARTEN
TARTAGLIA WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff

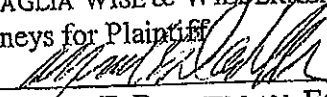
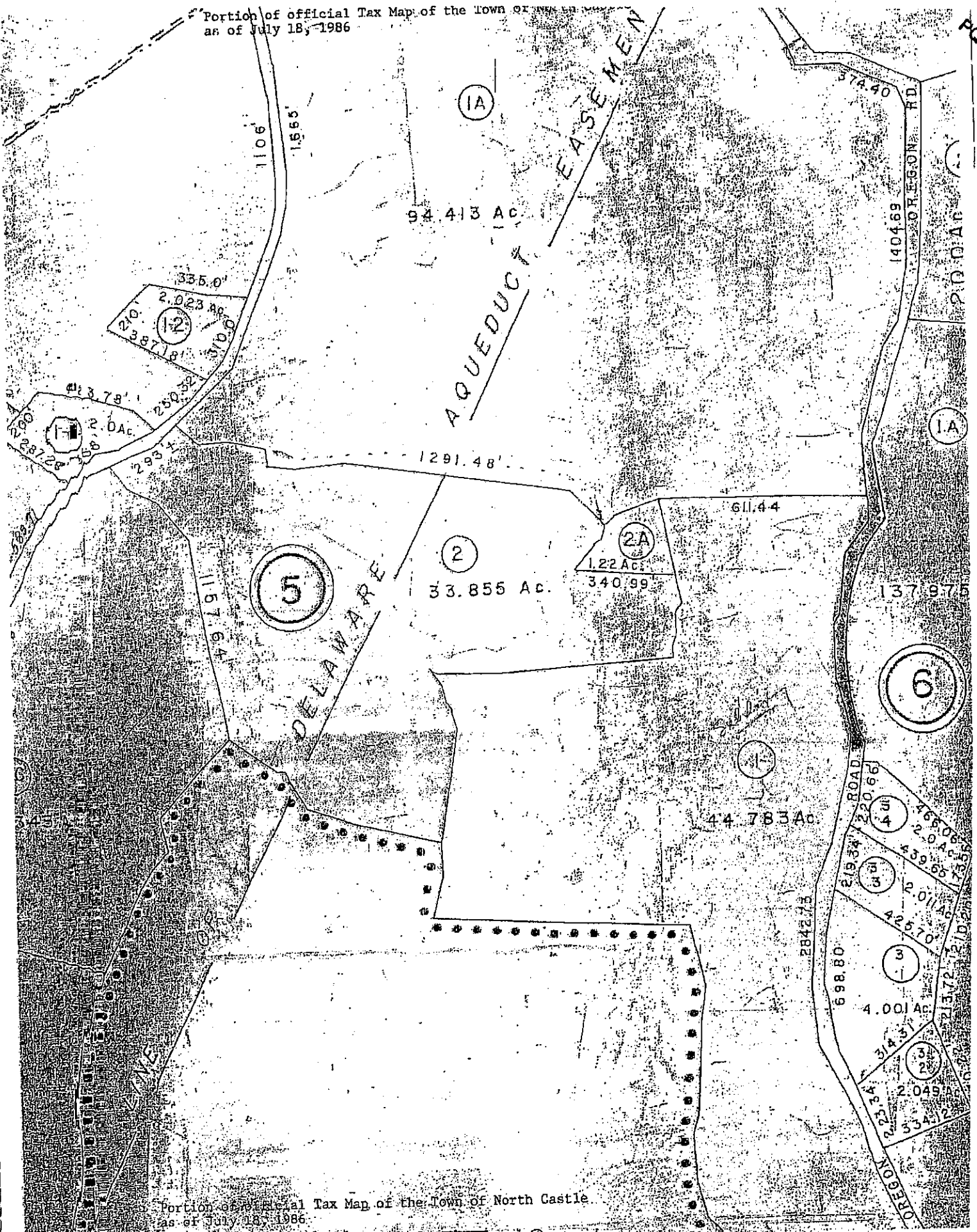
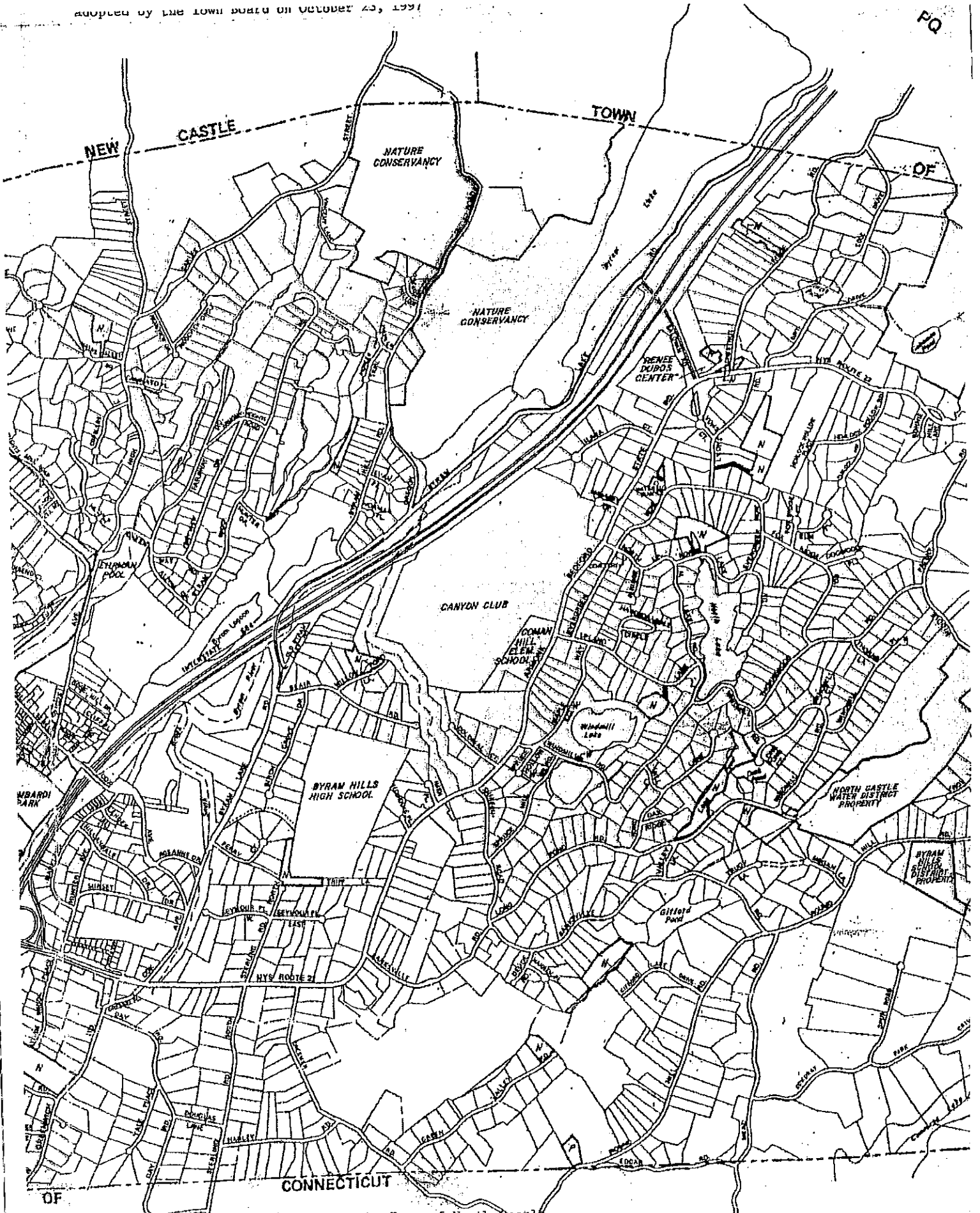

By: ALFRED E. DONNELLAN, ESQ.
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

EXHIBIT A

Portion of official Tax Map of the Town of North Castle
as of July 18, 1986

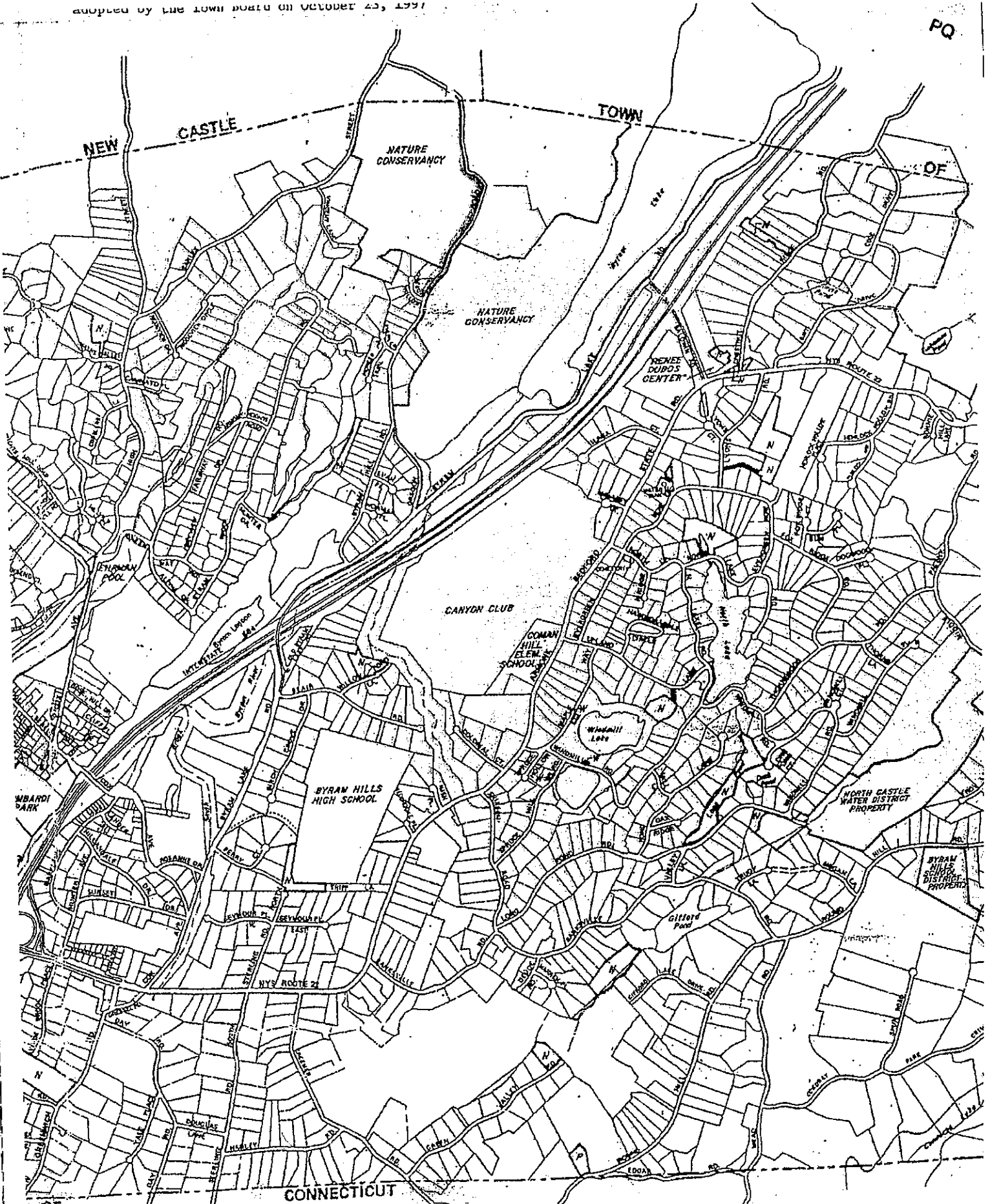


Portion of official Tax Map of the Town of North Castle
as of July 18, 1986



Portion of official Map of the Town of North Castle adopted by the Town Board on October 23, 1997

B



Portion of official Map of the Town of North Castle adopted by the Town Board on October 23, 1997

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3000

T/BEDFORD
T/NEW CASTLE
T/NORTH CASTLE

24P
T-2,221
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THIS INDENTURE, made the 22nd day of December nineteen hundred and ninety-five between THE ROCKEFELLER UNIVERSITY, a New York education corporation having an address at 1230 York Avenue, New York, New York 10021 ("Grantor") and SEVEN SPRINGS, LLC, a New York limited liability company, having an address c/o The Trump Organization 725 Fifth Avenue, New York, New York 10022 ("Grantee");

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W I T N E S S E T H:

WHEREAS, Grantor, in consideration of Ten Dollars and other valuable consideration paid by Grantee, does hereby grant and release unto Grantee, the heirs, successors and assigns of Grantee forever,

ALL that certain parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Towns of New Castle, North Castle and Bedford, Westchester County, New York and more particularly described on Schedule A attached hereto and made a part hereof (the "Premises");

TOGETHER with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Premises to the centerlines thereof;

TOGETHER with the appurtenances and all the estate and rights of Grantor in and to the Premises;

TO HAVE AND TO HOLD the Premises unto Grantee, the heirs, successors and assigns of Grantee forever.

AND Grantor covenants that Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatever.

AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the Grantor has duly executed this Indenture the day and year first above written.

THE ROCKEFELLER UNIVERSITY

By: David J. Lyons
David J. Lyons
Vice President

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

On the 22nd day of December 1995, before me personally came David J. Lyons to me known, who, being by me duly sworn, did depose and say that he resides at 262 Coleridge Street, Brooklyn, New York 11235; that he is a Vice President of THE ROCKEFELLER UNIVERSITY, the education corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

Elliot Arocho
Notary Public

My commission expires: 10/23/97

ELLIOT AROCHO
Notary Public, State of New York
No. 01AR5050948
Qualified in Bronx County
Certificate Filed in Bronx County
Commission Expires October 23, 1997

PQ

DESCRIPTION - SCHEDULE A

PARCEL 1

All that certain plot, piece of parcel of land, situate, lying and being partly in the Town of New Castle and partly in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager;

RUNNING THENCE from said point of beginning along said last mentioned land and continuing along land now or formerly of Roland, the following 42 courses and distances:

- (1) North 55 degrees 16 minutes 30 seconds East 22.12 feet;
- (2) North 62 degrees 03 minutes 30 seconds East 22.90 feet;
- (3) North 71 degrees 09 minutes 30 seconds East 44.68 feet;
- (4) North 71 degrees 52 minutes 50 seconds East 44.31 feet;
- (5) North 75 degrees 45 minutes 30 seconds East 43.08 feet;
- (6) North 63 degrees 31 minutes 30 seconds East 25.86 feet;
- (7) North 62 degrees 51 minutes 10 seconds East 14.99 feet;
- (8) North 70 degrees 41 minutes 20 seconds East 13.43 feet;
- (9) North 48 degrees 17 minutes 10 seconds East 10.11 feet;
- (10) North 66 degrees 42 minutes 50 seconds East 33.24 feet;
- (11) North 89 degrees 04 minutes 40 seconds East 8.70 feet;
- (12) North 68 degrees 33 minutes 00 seconds East 7.57 feet;
- (13) North 76 degrees 29 minutes 50 seconds East 20.56 feet;
- (14) North 61 degrees 28 minutes 10 seconds East 20.85 feet;
- (15) North 65 degrees 24 minutes 00 seconds East 56.31 feet;
- (16) North 75 degrees 50 minutes 50 seconds East 13.25 feet;
- (17) North 65 degrees 01 minutes 10 seconds East 57.73 feet;
- (18) North 77 degrees 18 minutes 25 seconds East 18.93 feet;

- SCHEDULE A

PQ

DESCRIPTION - SCHEDULE A - CONTINUED

- (19) South 80 degrees 49 minutes 50 seconds East 4.83 feet;
- (20) North 79 degrees 19 minutes 30 seconds East 19.81 feet;
- (21) North 84 degrees 50 minutes 45 seconds East 40.07 feet;
- (22) South 80 degrees 19 minutes 00 seconds East 13.20 feet;
- (23) North 81 degrees 21 minutes 50 seconds East 81.65 feet;
- (24) South 75 degrees 39 minutes 50 seconds East 103.31 feet;
- (25) North 33 degrees 43 minutes 10 seconds East 80.29 feet;
- (26) South 89 degrees 41 minutes 15 seconds East 300.86 feet;
- (27) North 73 degrees 00 minutes 05 seconds East 30.75 feet;
- (28) North 78 degrees 02 minutes 10 seconds East 38.46 feet;
- (29) North 70 degrees 54 minutes 15 seconds East 33.00 feet;
- (30) North 66 degrees 36 minutes 55 seconds East 40.80 feet;
- (31) North 78 degrees 30 minutes 45 seconds East 12.56 feet;
- (32) North 59 degrees 02 minutes 00 seconds East 7.62 feet;
- (33) North 79 degrees 58 minutes 00 seconds East 33.38 feet;
- (34) North 51 degrees 31 minutes 45 seconds East 28.46 feet;
- (35) North 56 degrees 01 minutes 00 seconds East 45.90 feet;
- (36) North 39 degrees 16 minutes 00 seconds East 58.93 feet;
- (37) North 36 degrees 20 minutes 20 seconds East 38.63 feet;
- (38) North 42 degrees 27 minutes 40 seconds East 32.51 feet;
- (39) North 43 degrees 19 minutes 10 seconds East 35.59 feet;
- (40) North 48 degrees 55 minutes 15 seconds East 123.19 feet;
- (41) North 47 degrees 22 minutes 00 seconds East 114.00 feet; and
- (42) North 49 degrees 43 minutes 25 seconds East 87.25 feet to the northwesterly corner of land now or formerly of Glueck;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE along said last mentioned land, the following 3 courses and distances:

- (1) South 09 degrees 44 minutes 20 seconds East 70.81 feet;
- (2) South 13 degrees 05 minutes 50 seconds East 28.19 feet; and
- (3) South 08 degrees 58 minutes 00 seconds East 70.24 feet to the northerly side of Oregon Road in the Town of Bedford;

THENCE along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle, southwesterly, northwesterly and southwesterly and partially along a stone wall, the following 24 courses and distances:

- (1) South 56 degrees 56 minutes 00 seconds West 123.00 feet;
- (2) South 50 degrees 48 minutes 00 seconds West 78.00 feet;
- (3) South 27 degrees 44 minutes 10 seconds West 66.55 feet;
- (4) South 34 degrees 12 minutes 20 seconds West 10.46 feet;
- (5) South 24 degrees 31 minutes 10 seconds West 47.98 feet;
- (6) South 18 degrees 32 minutes 15 seconds West 72.38 feet;
- (7) South 16 degrees 08 minutes 00 seconds West 104.40 feet;
- (8) South 18 degrees 35 minutes 45 seconds West 16.90 feet;
- (9) South 18 degrees 59 minutes 20 seconds West 34.70 feet;
- (10) North 70 degrees 35 minutes 00 seconds West 20.01 feet;
- (11) South 19 degrees 25 minutes 00 seconds West 185.02 feet to a point of curve;
- (12) Southwesterly on a curve to the right having a radius of 165.00 feet, a distance of 136.12 feet;
- (13) South 66 degrees 41 minutes 00 seconds West 138.42 feet to a point of curve;
- (14) Southwesterly on a curve to the left having a radius of 110.00 feet, a distance of 66.68 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (15) South 31 degrees 57 minutes 00 seconds West 46.34 feet to a point of curve;
- (16) Northwesterly on a curve to the right having a radius of 35.00 feet, a distance of 76.37 feet;
- (17) North 23 degrees 02 minutes 00 seconds West 29.00 feet;
- (18) North 45 degrees 22 minutes 00 seconds West 70.87 feet to a point of curve;
- (19) Westerly on a curve to the left having a radius of 50.00 feet, a distance of 70.02 feet;
- (20) South 54 degrees 24 minutes 00 seconds West 59.87 feet;
- (21) South 58 degrees 22 minutes 00 seconds West 63.00 feet;
- (22) South 67 degrees 36 minutes 00 seconds West 167.90 feet to a point of curve;
- (23) Southerly on a curve to the left having a radius of 50.00 feet, a distance of 52.71 feet; and
- (24) South 07 degrees 12 minutes 00 seconds West 114.78 feet to a point of curve;

THENCE southwesterly on a curve to the right having a radius of 50.00 feet connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle;

THENCE westerly along the northerly side of Oregon Road in the Town of New Castle, the following 5 courses and distances:

- (1) South 81 degrees 50 minutes 00 seconds West 238.89 feet;
- (2) North 85 degrees 02 minutes 00 seconds West 70.00 feet;
- (3) South 83 degrees 49 minutes 50 seconds West 102.94 feet;
- (4) South 85 degrees 57 minutes 50 seconds West 4.83 feet; and
- (5) North 53 degrees 07 minutes 20 seconds West 15.41 feet to a point on the easterly side of Woodside Road;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE northerly along the easterly side of Woodside Road, the following 23 courses and distances:

- (1) North 16 degrees 04 minutes 10 seconds West 11.34 feet;
- (2) North 03 degrees 30 minutes 10 seconds West 70.19 feet;
- (3) North 01 degrees 13 minutes 40 seconds East 14.92 feet;
- (4) North 24 degrees 21 minutes 30 seconds East 22.31 feet;
- (5) North 09 degrees 59 minutes 20 seconds West 12.85 feet;
- (6) North 17 degrees 23 minutes 30 seconds West 17.20 feet;
- (7) North 32 degrees 53 minutes 50 seconds East 37.34 feet;
- (8) North 17 degrees 46 minutes 50 seconds East 56.16 feet;
- (9) North 13 degrees 36 minutes 50 seconds East 31.95 feet;
- (10) North 02 degrees 31 minutes 10 seconds East 20.02 feet;
- (11) North 17 degrees 43 minutes 50 seconds East 63.97 feet;
- (12) North 02 degrees 26 minutes 30 seconds West 46.26 feet;
- (13) North 06 degrees 35 minutes 30 seconds West 43.99 feet;
- (14) North 17 degrees 56 minutes 30 seconds West 27.92 feet;
- (15) North 08 degrees 59 minutes 05 seconds West 21.90 feet;
- (16) North 27 degrees 02 minutes 20 seconds West 16.19 feet;
- (17) North 09 degrees 58 minutes 35 seconds West 19.05 feet;
- (18) North 18 degrees 21 minutes 00 seconds West 27.57 feet;
- (19) North 26 degrees 49 minutes 10 seconds West 6.05 feet;
- (20) North 37 degrees 06 minutes 00 seconds West 11.42 feet;
- (21) North 45 degrees 59 minutes 40 seconds West 28.51 feet;
- (22) North 48 degrees 25 minutes 05 seconds West 21.23 feet; and
- (23) North 48 degrees 52 minutes 40 seconds West 35.75 feet to the aforesaid land now or formerly of Gallager, the point or place of BEGINNING.

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

EXCEPTING THEREOUT AND THEREFROM the following premises, described as "Parcel II" in Deed made by Seven Springs Farm Center, Inc. to John S. Mazella and E. Patricia Mazella, his wife, dated February 6, 1976, recorded February 9, 1976 in Liber 7312 op 521:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the point on the northerly side of Oregon Road where the same is intersected by the boundary line between the Town of New Castle and the Town of Bedford;

THENCE RUNNING along said boundary line, North 10 degrees 08 minutes 51 seconds West 180.16 feet to lands now or formerly of Rolf R. Roland;

THENCE TURNING AND RUNNING along said lands and along a stone wall, the following 3 courses and distances:

- (1) North 51 degrees 53 minutes 15 seconds East 93.75 feet;
- (2) North 50 degrees 20 minutes 00 seconds East 114.00 feet; and
- (3) North 52 degrees 41 minutes 25 seconds East 87.25 feet to lands now or formerly of Richard M. and Joyce S. Glueck;

THENCE TURNING AND RUNNING along said lands and along a stone wall, the following 3 courses and distances:

- (1) South 06 degrees 46 minutes 20 seconds East 70.81 feet;
- (2) South 10 degrees 07 minutes 50 seconds East 28.19 feet; and
- (3) South 06 degrees 00 minutes 00 seconds East 70.24 feet to the northerly side of Oregon Road;

THENCE TURNING AND RUNNING along said northerly side of Oregon Road, the following 5 courses and distances:

- (1) South 59 degrees 54 minutes 00 seconds West 123.00 feet;
- (2) South 53 degrees 46 minutes 00 seconds West 78.00 feet;
- (3) South 30 degrees 42 minutes 10 seconds West 66.55 feet;
- (4) South 37 degrees 10 minutes 20 seconds West 10.46 feet; and
- (5) South 27 degrees 29 minutes 10 seconds West 22.08 feet to the point and place of BEGINNING.

DESCRIPTION - SCHEDULE A - CONTINUED

PARCEL 2

ALL that certain plot, piece or parcel of land, situate, lying and being partly in the Town of Bedford, partly in the Town of North Castle and partly in the Town of New Castle, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford where the same is intersected by the dividing line between the premises herein described and the northeasterly corner of land now or formerly of Davis;

RUNNING THENCE northeasterly from said point of beginning along the southerly side of Oregon Road in the Town of Bedford, the following 12 courses and distances:

- (1) North 59 degrees 28 minutes 05 seconds East 24.06 feet;
- (2) North 59 degrees 37 minutes 40 seconds East 111.07 feet;
- (3) North 59 degrees 36 minutes 10 seconds East 82.49 feet;
- (4) North 61 degrees 51 minutes 55 seconds East 64.17 feet;
- (5) North 61 degrees 52 minutes 05 seconds East 137.88 feet;
- (6) North 61 degrees 19 minutes 40 seconds East 30.78 feet;
- (7) North 61 degrees 23 minutes 20 seconds East 38.07 feet;
- (8) North 62 degrees 13 minutes 50 seconds East 20.84 feet;
- (9) North 62 degrees 06 minutes 50 seconds East 90.37 feet;
- (10) North 62 degrees 05 minutes 45 seconds East 97.99 feet;
- (11) North 61 degrees 06 minutes 20 seconds East 119.52 feet; and
- (12) North 59 degrees 19 minutes 50 seconds East 101.38 feet to the westerly line of land now or formerly of Heinz;

THENCE along said last mentioned land, South 18 degrees 39 minutes 30 seconds East 571.16 feet to a corner;

THENCE continuing along said last mentioned land, North 77 degrees 21 minutes 20 seconds East 11.51 feet to a monument;

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE continuing along said last mentioned land and partially along a stone wall, the following 9 courses and distances:

- (1) North 77 degrees 21 minutes 20 seconds East 67.72 feet;
- (2) North 78 degrees 48 minutes 30 seconds East 114.31 feet;
- (3) North 77 degrees 52 minutes 30 seconds East 303.46 feet;
- (4) North 78 degrees 37 minutes 30 seconds East 78.59 feet;
- (5) North 76 degrees 48 minutes 50 seconds East 97.84 feet;
- (6) North 79 degrees 12 minutes 50 seconds East 121.08 feet;
- (7) North 80 degrees 35 minutes 50 seconds East 114.21 feet;
- (8) North 83 degrees 52 minutes 40 seconds East 28.40 feet; and
- (9) North 77 degrees 50 minutes 00 seconds East 382.30 feet to the westerly boundary of the Village of Mount Kisco;

THENCE along the westerly boundary of the Village of Mount Kisco, the following 14 courses and distances:

- (1) South 08 degrees 53 minutes 40 seconds East 693.23 feet;
- (2) South 79 degrees 12 minutes 20 seconds West 227.80 feet;
- (3) South 17 degrees 32 minutes 40 seconds East 147.00 feet;
- (4) South 05 degrees 58 minutes 40 seconds East 280.00 feet;
- (5) South 30 degrees 16 minutes 20 seconds West 242.00 feet;
- (6) South 10 degrees 52 minutes 40 seconds East 117.00 feet;
- (7) South 09 degrees 45 minutes 20 seconds West 105.00 feet;
- (8) South 35 degrees 20 minutes 40 seconds East 188.00 feet;
- (9) South 12 degrees 29 minutes 40 seconds East 227.00 feet;
- (10) South 11 degrees 44 minutes 20 seconds West 97.00 feet;
- (11) South 05 degrees 48 minutes 40 seconds East 108.00 feet;
- (12) South 21 degrees 16 minutes 20 seconds West 164.00 feet;
- (13) South 04 degrees 21 minutes 40 seconds East 180.00 feet; and

- SCHEDULE A (

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DESCRIPTION - SCHEDULE A - CONTINUED

14: South 03 degrees 29 minutes 20 seconds West 131.00 feet to a point and other land owned by Eugene and Agnes E. Meyer Foundation;

THENCE along said last mentioned land, the following 12 courses and distances:

- (1) South 89 degrees 33 minutes 30 seconds West 418.17 feet;
- (2) North 84 degrees 02 minutes 25 seconds West 140.33 feet;
- (3) South 70 degrees 48 minutes 05 seconds West 77.82 feet;
- (4) South 57 degrees 03 minutes 20 seconds West 115.72 feet;
- (5) South 18 degrees 21 minutes 20 seconds West 835.19 feet;
- (6) South 82 degrees 27 minutes 20 seconds West 219.14 feet;
- (7) South 57 degrees 47 minutes 30 seconds West 196.34 feet;
- (8) North 84 degrees 08 minutes 25 seconds West 319.91 feet;
- (9) North 81 degrees 37 minutes 15 seconds West 22.17 feet;
- (10) North 83 degrees 39 minutes 35 seconds West 66.92 feet;
- (11) North 86 degrees 37 minutes 10 seconds West 28.66 feet; and
- (12) North 84 degrees 18 minutes 40 seconds West 243.31 feet to the easterly side of Oregon Road in the Town of North Castle;

THENCE northerly and westerly along the easterly and northerly sides of Oregon Road, the following 86 courses and distances:

- (1) North 20 degrees 28 minutes 30 seconds East 9.06 feet;
- (2) North 25 degrees 43 minutes 10 seconds East 18.20 feet;
- (3) North 17 degrees 31 minutes 00 seconds East 37.48 feet;
- (4) North 12 degrees 12 minutes 20 seconds East 41.44 feet;
- (5) North 12 degrees 03 minutes 20 seconds East 49.07 feet;
- (6) North 08 degrees 54 minutes 10 seconds East 24.23 feet;
- (7) North 00 degrees 45 minutes 25 seconds East 53.73 feet;
- (8) North 00 degrees 00 minutes 50 seconds East 37.94 feet;

- SCHEDULE A

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DESCRIPTION - SCHEDULE A - CONTINUED

- (9) North 74 degrees 59 minutes 50 seconds East 2.59 feet;
- (10) North 13 degrees 48 minutes 10 seconds West 24.94 feet;
- (11) North 13 degrees 26 minutes 25 seconds West 29.77 feet;
- (12) North 08 degrees 09 minutes 10 seconds West 38.85 feet;
- (13) North 01 degrees 13 minutes 00 seconds West 16.00 feet;
- (14) North 10 degrees 54 minutes 50 seconds East 128.81 feet;
- (15) North 03 degrees 01 minutes 20 seconds West 12.90 feet;
- (16) North 02 degrees 45 minutes 50 seconds East 102.66 feet;
- (17) North 01 degrees 03 minutes 20 seconds East 72.67 feet;
- (18) North 04 degrees 23 minutes 00 seconds East 50.25 feet;
- (19) North 03 degrees 02 minutes 40 seconds East 39.72 feet;
- (20) North 07 degrees 53 minutes 55 seconds West 9.10 feet;
- (21) North 07 degrees 55 minutes 30 seconds East 13.49 feet;
- (22) North 61 degrees 13 minutes 00 seconds West 36.64 feet;
- (23) North 61 degrees 08 minutes 50 seconds West 80.86 feet;
- (24) North 62 degrees 53 minutes 20 seconds West 41.74 feet;
- (25) North 61 degrees 23 minutes 20 seconds West 54.34 feet;
- (26) North 51 degrees 42 minutes 35 seconds West 4.12 feet;
- (27) North 64 degrees 58 minutes 50 seconds West 47.10 feet;
- (28) North 80 degrees 35 minutes 00 seconds West 34.72 feet;
- (29) North 86 degrees 09 minutes 30 seconds West 54.62 feet;
- (30) North 56 degrees 30 minutes 10 seconds West 3.30 feet;
- (31) South 66 degrees 58 minutes 10 seconds West 5.80 feet;
- (32) South 87 degrees 15 minutes 10 seconds West 23.16 feet;
- (33) North 17 degrees 51 minutes 00 seconds West 22.64 feet;

- SCHEDULE A

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DESCRIPTION - SCHEDULE A - CONTINUED

- (34) North 04 degrees 06 minutes 10 seconds West 15.10 feet;
- (35) North 22 degrees 26 minutes 50 seconds West 30.77 feet;
- (36) North 38 degrees 41 minutes 00 seconds West 7.90 feet;
- (37) North 25 degrees 28 minutes 50 seconds West 13.95 feet;
- (38) North 32 degrees 45 minutes 30 seconds West 38.35 feet;
- (39) North 47 degrees 05 minutes 20 seconds West 21.53 feet;
- (40) North 26 degrees 02 minutes 40 seconds West 39.47 feet;
- (41) North 56 degrees 15 minutes 20 seconds West 11.92 feet;
- (42) North 32 degrees 26 minutes 20 seconds West 23.73 feet;
- (43) North 27 degrees 25 minutes 50 seconds West 57.96 feet;
- (44) North 36 degrees 18 minutes 25 seconds West 114.20 feet;
- (45) North 27 degrees 43 minutes 30 seconds West 45.93 feet;
- (46) North 18 degrees 11 minutes 00 seconds West 74.61 feet;
- (47) North 37 degrees 26 minutes 10 seconds West 12.57 feet;
- (48) North 19 degrees 59 minutes 45 seconds West 22.87 feet;
- (49) North 12 degrees 18 minutes 50 seconds West 14.11 feet;
- (50) North 24 degrees 11 minutes 40 seconds West 20.33 feet;
- (51) North 16 degrees 06 minutes 45 seconds West 16.47 feet;
- (52) North 00 degrees 22 minutes 45 seconds East 18.12 feet;
- (53) North 13 degrees 02 minutes 40 seconds West 27.78 feet;
- (54) North 07 degrees 25 minutes 45 seconds West 45.32 feet;
- (55) North 12 degrees 51 minutes 50 seconds West 24.30 feet;
- (56) North 00 degrees 07 minutes 00 seconds West 14.83 feet;
- (57) North 15 degrees 09 minutes 40 seconds West 49.17 feet;
- (58) North 32 degrees 13 minutes 50 seconds West 39.54 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (59) North 30 degrees 20 minutes 40 seconds West 43.29 feet;
- (60) North 20 degrees 51 minutes 55 seconds West 25.58 feet;
- (61) North 02 degrees 49 minutes 30 seconds West 15.83 feet;
- (62) North 29 degrees 38 minutes 50 seconds West 15.46 feet;
- (63) North 08 degrees 12 minutes 35 seconds West 12.18 feet;
- (64) North 29 degrees 28 minutes 20 seconds West 17.01 feet;
- (65) North 16 degrees 45 minutes 00 seconds West 17.31 feet;
- (66) North 09 degrees 34 minutes 20 seconds West 28.32 feet;
- (67) North 13 degrees 48 minutes 20 seconds West 36.16 feet;
- (68) North 03 degrees 45 minutes 40 seconds East 12.35 feet;
- (69) North 15 degrees 01 minutes 55 seconds West 46.88 feet;
- (70) North 29 degrees 21 minutes 00 seconds West 53.50 feet;
- (71) North 23 degrees 46 minutes 40 seconds West 17.29 feet;
- (72) North 37 degrees 32 minutes 30 seconds West 14.49 feet;
- (73) North 49 degrees 15 minutes 20 seconds West 44.49 feet;
- (74) North 71 degrees 28 minutes 20 seconds West 11.64 feet;
- (75) North 57 degrees 26 minutes 30 seconds West 10.54 feet;
- (76) North 73 degrees 01 minutes 15 seconds West 37.09 feet;
- (77) North 82 degrees 18 minutes 20 seconds West 47.87 feet;
- (78) North 84 degrees 10 minutes 30 seconds West 22.47 feet;
- (79) South 83 degrees 01 minutes 40 seconds West 22.16 feet;
- (80) North 84 degrees 54 minutes 00 seconds West 17.10 feet;
- (81) South 86 degrees 06 minutes 00 seconds West 27.49 feet;
- (82) North 81 degrees 44 minutes 10 seconds West 153.53 feet;
- (83) North 79 degrees 42 minutes 00 seconds West 134.00 feet;

DESCRIPTION - SCHEDULE A - CONTINUED

- (94) North 84 degrees 39 minutes 00 seconds West 43.00 feet;
- (95) North 89 degrees 32 minutes 00 seconds West 114.00 feet; and
- (96) North 71 degrees 22 minutes 00 seconds West 85.00 feet to a point of curve;

THENCE northeasterly on a curve to the right having a radius of 50.00 feet connecting the northeasterly side of Oregon Road and the southeasterly side of Lower Byram Lake Road, a distance of 68.56 feet to a point on the southeasterly side of Lower Byram Lake Road;

THENCE northerly, northeasterly, southeasterly and northeasterly along the easterly and southerly sides of Lower Byram Lake Road in the Town of New Castle and continuing along Oregon Road in the Town of Bedford, the following 20 courses and distances:

- (1) North 07 degrees 12 minutes 00 seconds East 134.10 feet;
- (2) North 67 degrees 36 minutes 00 seconds East 171.94 feet;
- (3) North 58 degrees 22 minutes 00 seconds East 68.77 feet;
- (4) North 54 degrees 24 minutes 00 seconds East 61.60 feet;
- (5) South 45 degrees 22 minutes 00 seconds East 61.00 feet;
- (6) South 23 degrees 02 minutes 00 seconds East 19.13 feet to a point of curve;
- (7) Northeasterly on a curve to the left having a radius of 85.00 feet, a distance of 185.47 feet;
- (8) North 31 degrees 57 minutes 00 seconds East 46.34 feet to a point of curve;
- (9) Easterly on a curve to the right having a radius of 60.00 feet, a distance of 36.37 feet;
- (10) North 66 degrees 41 minutes 00 seconds East 138.42 feet to a point of curve;
- (11) Northerly on a curve to the left having a radius of 215.00 feet, a distance of 170.59 feet;
- (12) North 68 degrees 46 minutes 40 seconds West 10.74 feet;
- (13) North 29 degrees 31 minutes 00 seconds East 13.38 feet;

DESCRIPTION - SCHEDULE A - CONTINUED

- (14) North 25 degrees 41 minutes 40 seconds East 43.31 feet;
- (15) North 19 degrees 05 minutes 15 seconds East 15.26 feet;
- (16) North 16 degrees 07 minutes 45 seconds East 224.55 feet;
- (17) North 18 degrees 19 minutes 50 seconds East 34.60 feet;
- (18) North 26 degrees 10 minutes 25 seconds East 63.52 feet;
- (19) North 22 degrees 47 minutes 50 seconds East 65.76 feet; and
- (20) North 31 degrees 15 minutes 05 seconds East 23.92 feet to the northwesterly corner of the aforesaid land now or formerly of Davis;

THENCE along said last mentioned land, the following 25 courses and distances:

- (1) South 34 degrees 56 minutes 00 seconds East 192.00 feet;
- (2) South 31 degrees 33 minutes 00 seconds East 59.52 feet;
- (3) South 08 degrees 31 minutes 00 seconds East 171.26 feet;
- (4) South 01 degrees 09 minutes 00 seconds East 135.20 feet;
- (5) South 05 degrees 33 minutes 00 seconds West 40.46 feet;
- (6) South 11 degrees 52 minutes 00 seconds West 49.65 feet;
- (7) South 07 degrees 24 minutes 00 seconds West 19.14 feet;
- (8) South 13 degrees 08 minutes 29 seconds West 88.58 feet;
- (9) South 66 degrees 36 minutes 00 seconds East 26.85 feet;
- (10) South 71 degrees 10 minutes 00 seconds East 14.57 feet;
- (11) South 56 degrees 16 minutes 00 seconds East 27.84 feet;
- (12) South 24 degrees 05 minutes 00 seconds East 6.77 feet;
- (13) South 49 degrees 43 minutes 00 seconds East 6.55 feet;
- (14) South 71 degrees 15 minutes 00 seconds East 25.54 feet;
- (15) North 89 degrees 31 minutes 00 seconds East 25.62 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (16) North 28 degrees 36 minutes 00 seconds East 70.39 feet;
- (17) North 69 degrees 20 minutes 00 seconds East 89.16 feet;
- (18) North 76 degrees 50 minutes 00 seconds East 59.96 feet;
- (19) North 86 degrees 51 minutes 00 seconds East 16.51 feet;
- (20) North 81 degrees 27 minutes 00 seconds East 42.48 feet;
- (21) North 78 degrees 13 minutes 52 seconds East 121.74 feet;
- (22) North 10 degrees 45 minutes 22 seconds West 242.59 feet;
- (23) North 14 degrees 47 minutes 20 seconds West 42.12 feet;
- (24) North 10 degrees 37 minutes 41 seconds West 179.17 feet; and
- (25) North 12 degrees 08 minutes 58 seconds West 474.81 feet to the southerly side of Oregon Road in the Town of Bedford, the point or place of BEGINNING.

PQ

DESCRIPTION - SCHEDULE A - CONTINUED

EXCEPTING THEREOUT AND THEREFROM the following premises, described as "Parcel I" in Deed made by Seven Springs Farm Center, Inc. to John S. Mazella and E. Patricia Mazella, his wife, dated February 6, 1976, recorded February 9, 1976 in Liber 7312 cp 521:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the point on the southerly side of Oregon Road where the same is intersected by the boundary line between the Town of New Castle and the Town of Bedford;

THENCE RUNNING along said southerly side of Oregon Road, North 25 degrees 45 minutes 50 seconds East 54.47 feet; and

North 34 degrees 13 minutes 05 seconds East 23.92 feet to land now or formerly of Mazella;

THENCE TURNING AND RUNNING along said land, the following 8 courses and distances:

- (1) South 31 degrees 58 minutes 00 seconds East 192.00 feet;
- (2) South 28 degrees 35 minutes 00 seconds East 59.52 feet;
- (3) South 05 degrees 33 minutes 00 seconds East 171.26 feet;
- (4) South 01 degrees 49 minutes 00 seconds West 135.20 feet;
- (5) South 08 degrees 31 minutes 00 seconds West 40.46 feet;
- (6) South 14 degrees 50 minutes 00 seconds West 49.65 feet;
- (7) South 10 degrees 22 minutes 00 seconds West 19.14 feet; and
- (8) South 16 degrees 06 minutes 29 seconds West 88.58 feet to a point;

THENCE TURNING AND RUNNING North 63 degrees 38 minutes 00 seconds West 21.52 feet to a point in the boundary line between the Town of New Castle and the Town of Bedford; and

THENCE TURNING AND RUNNING along said boundary line, North 10 degrees 08 minutes 51 seconds West 644.36 feet to the point and place of BEGINNING.

DESCRIPTION - SCHEDULE A - CONTINUED

PARCEL 3

All that certain plot, piece or parcel of land, situate, lying and being in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Road where the same is intersected by the southerly line of lands conveyed by H.J. Heinz II to Elizabeth Graham Weymouth by deed dated August 21, 1972, recorded August 29, 1972 in Liber 7077 cp 348;

RUNNING THENCE along said lands now or formerly of Elizabeth Graham Weymouth, the following 12 courses and distances:

- (1) South 71 degrees 40 minutes 20 seconds East 173.64 feet to a point of curve;
- (2) In a southerly direction on a curve to the right with a radius of 250 feet, a distance of 304.81 feet to a point of tangency;
- (3) South 01 degrees 48 minutes 50 seconds East 53.82 feet;
- (4) South 03 degrees 08 minutes 20 seconds West 97.52 feet;
- (5) South 04 degrees 25 minutes 30 seconds West 73.76 feet;
- (6) South 08 degrees 12 minutes 20 seconds West 77.16 feet to a point of curve;
- (7) In a southwesterly direction on a curve to the right with a radius of 300 feet, a distance of 196.17 feet to a point of tangency;
- (8) South 44 degrees 54 minutes 25 seconds West 64.15 feet;
- (9) South 38 degrees 19 minutes 40 seconds West 34.41 feet to a point of curve;
- (10) In a southwesterly direction on a curve to the left with a radius of 130 feet, a distance of 64.42 feet;
- (11) South 73 degrees 24 minutes 59 seconds East 493.65 feet; and
- (12) North 77 degrees 41 minutes 50 seconds East 675.31 feet to lands now or formerly of the City of New York;

THENCE along the same, South 09 degrees 07 minutes 30 seconds East 251.91 feet to lands now or formerly of Eugene Meyer, Jr.;

BQ

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE along said lands now or formerly of Eugene Meyer, Jr., the following 10 courses and distances:

- (1) South 77 degrees 41 minutes 50 seconds West 382.30 feet;
- (2) South 83 degrees 44 minutes 30 seconds West 28.40 feet;
- (3) South 80 degrees 27 minutes 40 seconds West 114.21 feet;
- (4) South 79 degrees 04 minutes 40 seconds West 121.08 feet;
- (5) South 76 degrees 40 minutes 40 seconds West 97.84 feet;
- (6) South 78 degrees 29 minutes 20 seconds West 78.59 feet;
- (7) South 77 degrees 44 minutes 20 seconds West 303.46 feet;
- (8) South 78 degrees 40 minutes 20 seconds West 114.31 feet;
- (9) South 77 degrees 13 minutes 10 seconds West 79.23 feet; and
- (10) North 18 degrees 47 minutes 40 seconds West 616.16 feet to the easterly side of Oregon Road;

THENCE along the easterly side of Oregon Road, part of the way along a stone wall, the following 8 courses and distances:

- (1) North 16 degrees 31 minutes 40 seconds East 53.53 feet;
- (2) North 11 degrees 48 minutes 20 seconds East 173.64 feet;
- (3) North 13 degrees 18 minutes 20 seconds East 101.89 feet;
- (4) North 14 degrees 03 minutes 00 seconds East 31.05 feet;
- (5) North 11 degrees 48 minutes 30 seconds East 101.20 feet;
- (6) North 12 degrees 06 minutes 30 seconds East 184.69 feet;
- (7) North 11 degrees 33 minutes 40 seconds East 115.58 feet; and
- (8) North 10 degrees 46 minutes 50 seconds East 78.07 feet to the point and place of BEGINNING.

PQ

DESCRIPTION - SCHEDULE A

Said land being the same land previously conveyed by the following deeds:

Deed from Seven Springs Center, Inc. to The Rockefeller University dated April 12, 1984 and recorded May 24, 1984 at Liber 7923 Page 639.

Deed from The Eugene & Agnes E. Meyer Foundation to The Rockefeller University dated March 30, 1993 and recorded May 21, 1993 at Liber 10583 Page 47.

D



Fidelity National Title

INSURANCE COMPANY OF NEW YORK

August 15, 2006

Bradley Wank, Esq.
DelBello, Donellan, et al.
One North Lexington Avenue
White Plains, New York 10606

RE: Oregon Road, T/O North Castle
Our Title No.: 552581-W

Dear Mr. Wank:

With reference to the above cited matter, this Company hereby reports and certifies the foregoing information as of April 26, 2006 from the records located at the Westchester County Clerk's Office in the Division of Land Records:

I.

1. The deeds recorded in Liber 1589 cp 75 on October 5, 1901, Liber 1731 cp 358 on December 28, 1905 and in Liber 1786 cp 454 on January 24, 1907, cover a portion of the entire bed of Oregon Road. The deed into Meyer as recorded in Liber 1884 cp 24 on August 3, 1909 mirrors the description into Fox as recorded in Liber 1786 cp 454 on January 24, 1907 as referenced above. These deeds cover the southerly portion of said roadway as shown on the Donnelly survey dated August 9, 2005, "The Donnelly Land Survey" a copy of which is annexed hereto as Exhibit "A" and which is also outlined on the diagram from the 1930 atlas map filed in the Westchester County Clerk's Office annexed hereto as Exhibit "B" and outlined in yellow.
2. The deeds recorded in Liber 2302 cp 462 on August 15, 1921, Liber 2305 cp 189 on April 29, 1921, Liber 2460 cp 221 on October 19, 1923 and in Liber 2703 cp 171 on September 16, 1926 cover a portion of the southerly portion of said roadway, as well as a portion of said roadway north of said southerly portion of the roadway. Said roadway portions are outlined on the 1930 atlas in both yellow and blue.
3. The deeds recorded in Liber 2669 cp 78 on May 14, 1926, Liber 3036 cp 121 on May 16, 1930 and in Liber 5019 cp 218 on September 4, 1951 cover that portion of the roadway immediately north of the southerly portion of the road as outlined in Nos. 1 and 2 above, which are also outlined on the 1930 atlas in both yellow and blue.



Fidelity National Title

INSURANCE COMPANY OF NEW YORK

Page 2

4. The deeds recorded in Liber 1719 cp 418 on September 29, 1905, Liber 1770 cp 321 on September 29, 1906, Liber 2116 cp 269 on May 31, 1916, Liber 2116 cp 315 on June 5, 1916, Liber 1731 cp 345 on December 28, 1905, Liber 1823 cp 312 on November 30, 1907 and Liber 1884 cp 24 on August 3, 1909 cover the balance of the northerly portion of the roadway as shown on the Donnelly Land Survey and the atlas diagram referenced above. Said property is outlined on said atlas in both green and red.

By virtue of the foregoing deeds, Eugene Meyer or Eugene Meyer, Jr. had acquired fee title to the entire bed of Oregon Road as shown on the Donnelly survey. Specifically, those source deeds gave Meyer a fee title interest in and to the bed of Oregon Road. The deed from Fox to Meyer as recorded in Liber 1884 cp 24 on August 3, 1909 has conveyancing language to the center line of said roadway as well as the "together with" streets rights language in that deed.

The deed from Livermore to Meyer as recorded in Liber 2703 cp 171 on September 16, 1926 conveyed the fee title interest in and to the property on both sides of Oregon Road and said deed also contains the "together with" street clause in that deed as well. The deed from Norcast Realty to Meyer as recorded in Liber 5019 cp 218 on September 4, 1951 contains a description of land which encompasses the entire bed of Oregon Road due to the fact that said Schedule A description specifically crosses and identifies Oregon Road. Said deed also contains the streets rights clause.

The deed from Fitzpatrick to Meyer recorded in Liber 2116 cp 315 on June 5, 1916 runs to the center line of the roadway with the addition of the streets rights clause in that deed as well. Finally, the deed from Fox to Meyer recorded in Liber 1884 cp 24 on August 3, 1909 contains the other portion of the centerline of the roadway as well as the streets rights clause in that deed. As such, and based upon the foregoing Meyer had fee title to the entire bed of Oregon Road.

5. By deed dated January 19, 1973, which deed was recorded in Liber 7115 cp 577 on March 27, 1973, The Eugene and Agnes Meyer Foundation (The "Meyer Foundation") conveyed to Yale University. Parcel II in said deed runs along the easterly and northerly side of Oregon Road and this deed also contains the together with the streets clause. This deed is the predecessor to Seven Springs LLC.
6. The next deed conveyance is from Yale University to Seven Springs Farm Center, Inc. as recorded in Liber 7115 cp 592 on March 27, 1973 which contains the same legal description in the deed described in No. 5 above.



Fidelity National Title

INSURANCE COMPANY OF NEW YORK

Page 3

7. Seven Springs then conveyed said property to The Rockefeller University as recorded in Liber 7923 cp 639 on May 24, 1984 with the same legal description as set forth in Nos. 5 and 6 above.
8. Rockefeller University then conveyed to Seven Springs LLC, the current owner with the same language as set forth in Nos. 5 through 7 above. Said deed was recorded in Liber 11325 cp 243 on December 28, 1995.

Therefore, based upon our analysis of the above referenced deeds, the legal descriptions and the "together with the streets" clauses contained therein, this Company concluded that Seven Springs LLC had fee title in and to the ½ portion of Oregon Road, as same street/roadway abuts said property on its westerly side. Also, this Company concluded that Seven Springs enjoys a non-exclusive private easement as it abuts the property it owns as well as over lands owned by the Nature Conservancy and others to the public portion of Oregon Road to the south

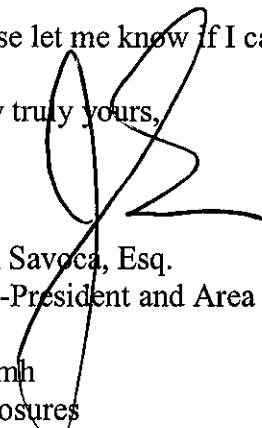
II.

We have also examined the chain of title to the property now owned by the Nature Conservancy. Their source deed came from the Meyer Foundation to the Nature Conservancy by deed recorded in Liber 7127 cp 719 on May 30, 1973. Parcel I in that deed includes the ½ interest of the westerly portion of the roadway, and Parcel II includes that ½ interest of the southerly and easterly portions of said roadway and which deed also contains the together with the streets clause. The Nature Conservancy still currently owns said property.

No searches have been made other than as expressly stated above. The Company's liability under this Certificate shall only be to the party to whom it is certified and such liability shall under no circumstances exceed the amount of Five Thousand Dollars (\$5,000.00) and no policy of title insurance can be issued based upon the information contained in this Certificate.

Please let me know if I can be of any further assistance.

Very truly yours,


John Savoca, Esq.
Vice-President and Area Counsel

JS/gmh
Enclosures

EXHIBIT A

FRAME 1

P.O.

TOWN OF NEW CASTLE
TOWN OF NORTH CASTLE

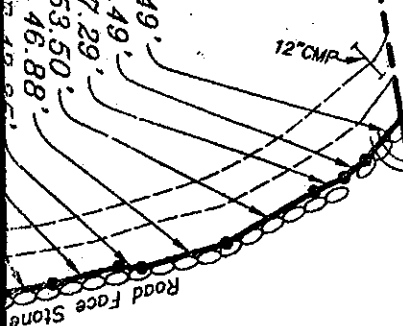
N49°15'20"W 44.49'
N37°32'30"W 14.49'
N23°18'40"W 17.29'
N29°21'00"W 53.50'
N15°01'55"W 46.88'

12" CMP

Road Face Stone

Stone Pile Found

TOWN OF BEDFORD
TOWN OF NEW CASTLE



Stone pile Found

TOWN OF BEDFORD
TOWN OF NEW CASTLE

FRAME 2 pg.

SEE

SHEET

Area = 176.9590 Acres
(Excludes Cemetery)

Macadam Drive

E E T

O N E

FRAME 3

PO

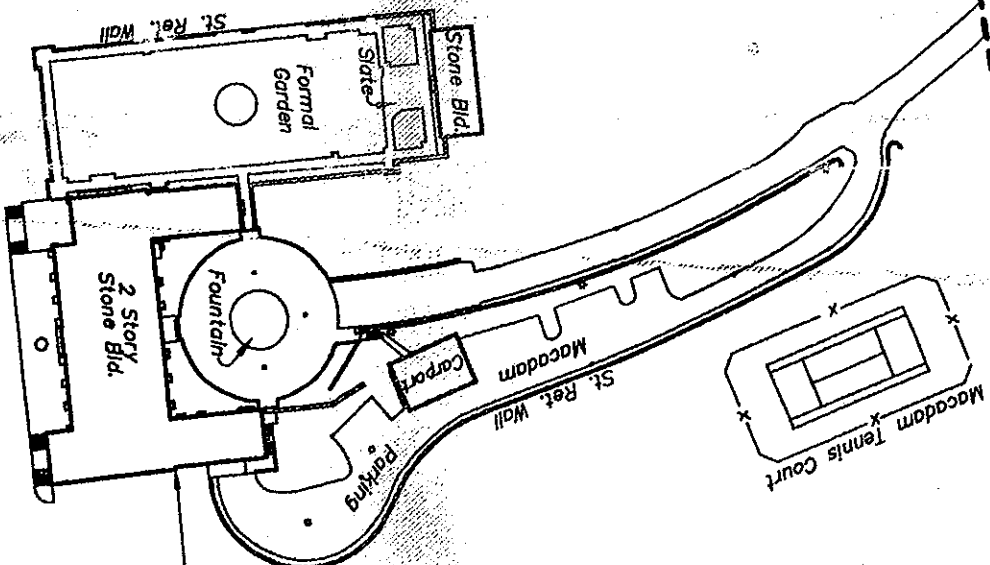
TOWN OF BEDFORD
TOWN OF NORTH CASTLE

9590 Acres
(Cemetery)

Macadam Drive

Dirt Trail

Dirt Trail



138.5'

S83°20'40"E 188.00'

Cross Cut Found

S09°45'20"W

Cross Cut Found

S10°52'40"E

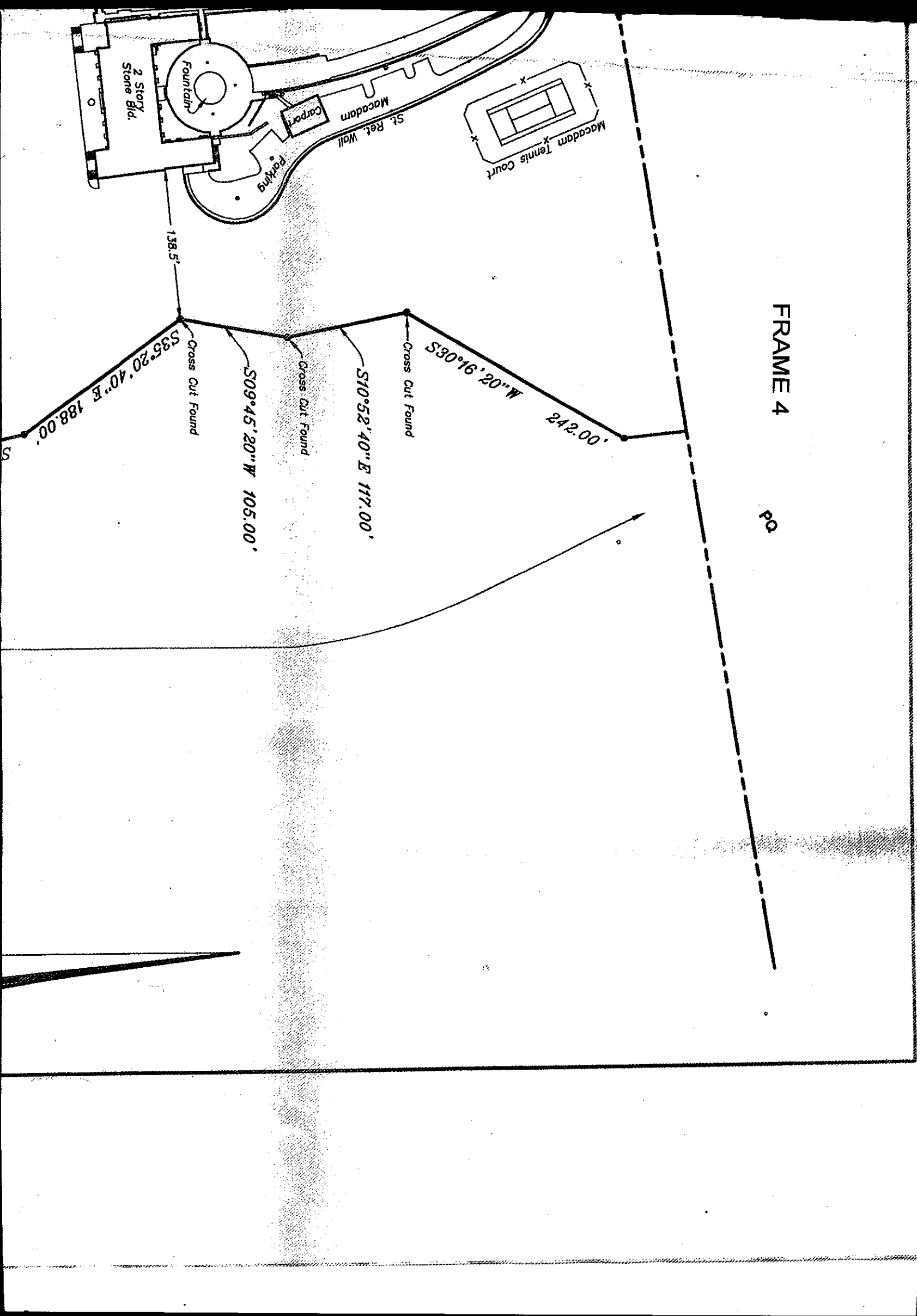
Cross Cut Found

N.02°91'08"S

242.00'

FRAME 4

PO

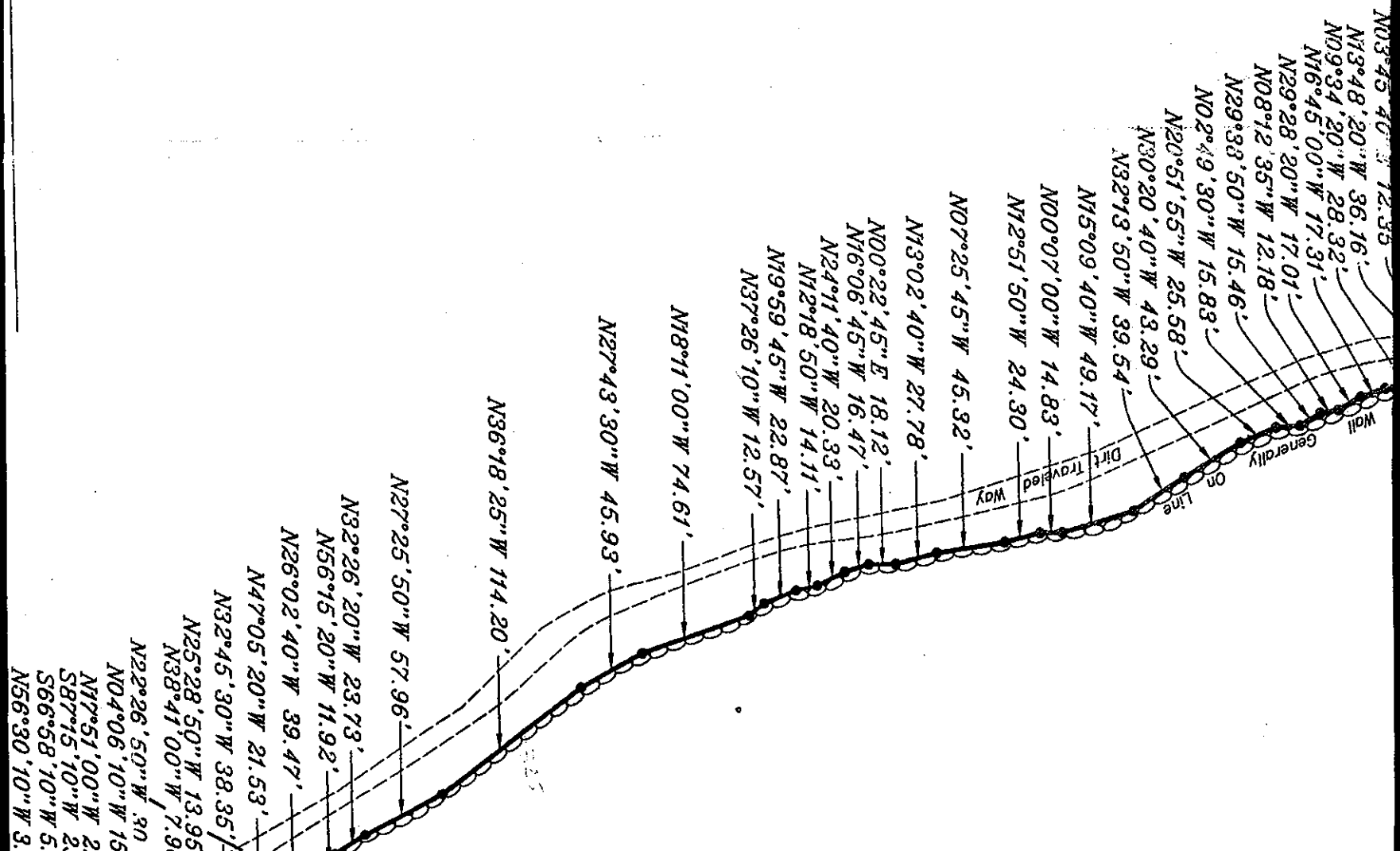


FRAME 5

PQ

M A T C H

L I N E

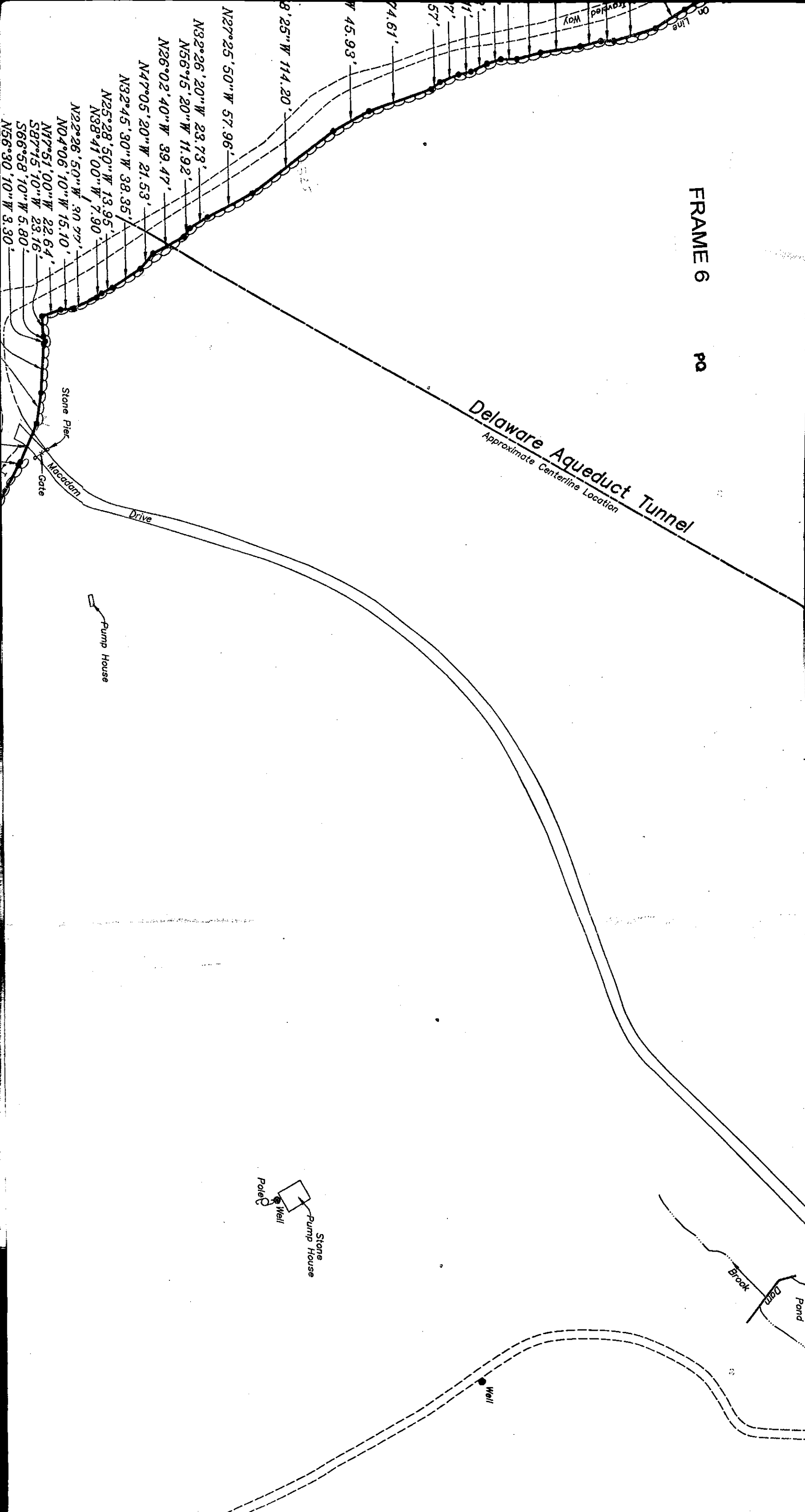


FRAME 6

PA

Delaware Aqueduct Tunnel

Approximate Centerline Location



FRAME 7

PO

Well

Dirt Trail

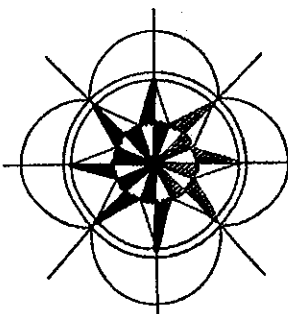
Shut Off Valves
Conn. Cover

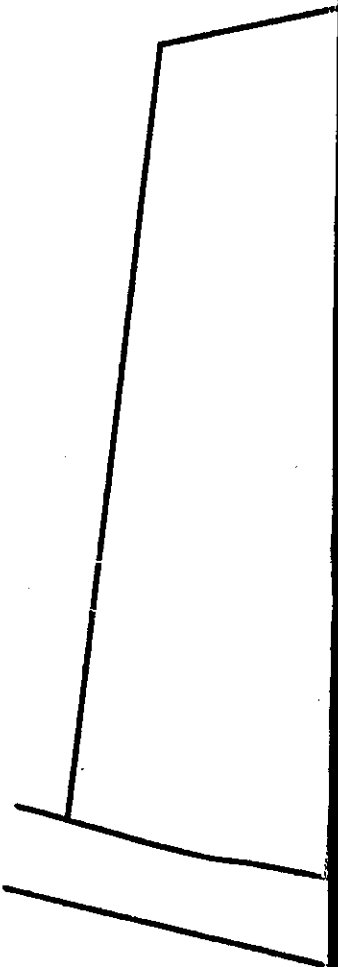
$S70^{\circ}48'05''W$ 77.82'
 $N84^{\circ}02'25''W$ 140.33'
589.33' 30'' W

418.17'
Brook

$S03^{\circ}29'20''W$ 131.00'
 $S04^{\circ}21'40''E$ 180.00'
 $S21^{\circ}16'20''W$ 164.00'
 $S05^{\circ}48'40''E$ 108.00'
 $S11^{\circ}44'20''W$ 97.00'
 $M^{\circ}02'44.11S$ 00.76'
 $M^{\circ}02'44.11S$ 00.801'
227.00'
 E 229'40''

Formerly LANDS OF THE CITY OF NEW YORK
Now or Formerly VILLAGE OF MOUNT KISCO





FRAME 8

PO

NOTES:

1. THE TOWN LINE AS SHOWN HEREON IS FROM A MAP ENTITLED "SURVEY OF TOWN LINE DETERMINATION LOCATED AT SEVEN SPRINGS" PREPARED BY DONALD J. DONNELLY, L.S. (DECEASED) DATED SEPT. 30, 1996.
2. PAVEMENT, TRAVELED WAYS, AND SELECT INTERIOR BUILDINGS ARE DEPICTED BY AERIAL PHOTOGRAMMETRIC METHODS AND NOT FIELD SURVEYED. PHOTOGRAPHY DATED MARCH 24, 1996.

SURVEYORS CERTIFICATION

COPYRIGHT © 2005 DONNELLY LAND SURVEYING, P.C. ALL RIGHTS RESERVED

CERTIFICATIONS INDICATED HEREON SIGNIFY THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYS ADOPTED BY THE N.Y.S. ASSOC. OF PROFESSIONAL LAND SURVEYORS.

CERTIFICATIONS SHALL RUN ONLY TO THE PERSON FOR WHOM THIS SURVEY WAS PREPARED AND ON BEHALF TO THE TITLE CO. AND LENDING INSTITUTIONS LISTED HEREON.

CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SURVEYOR OWNERS.

PRELIMINARY PRINT

UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY IS A VIOLATION OF N.Y.S. EDUC. LAW SECTION NO. 7209.

UNDERGROUND STRUCTURES, IF ANY, NOT SHOWN.

ALL CERTIFICATIONS ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE RED INKED SEAL OF THE SURVEYOR WHOSE SIGNATURE APPEARS HEREON.

DONNELLY LAND SURVEYING, P.C.

1925 COMMERCE STREET
ROCKTOWN HEIGHTS, NY 10592
PHONE (914) 962-2215
FAX (914) 962-2209

WARREN L. SCHMID, L.S., N.Y.S. REG. NO. 50423

Probable Easterly side of Oregon Road
Deed Liber 7127 Page 720, Parcel 1,
has mathematical inaccuracies of 3'

M A T C H

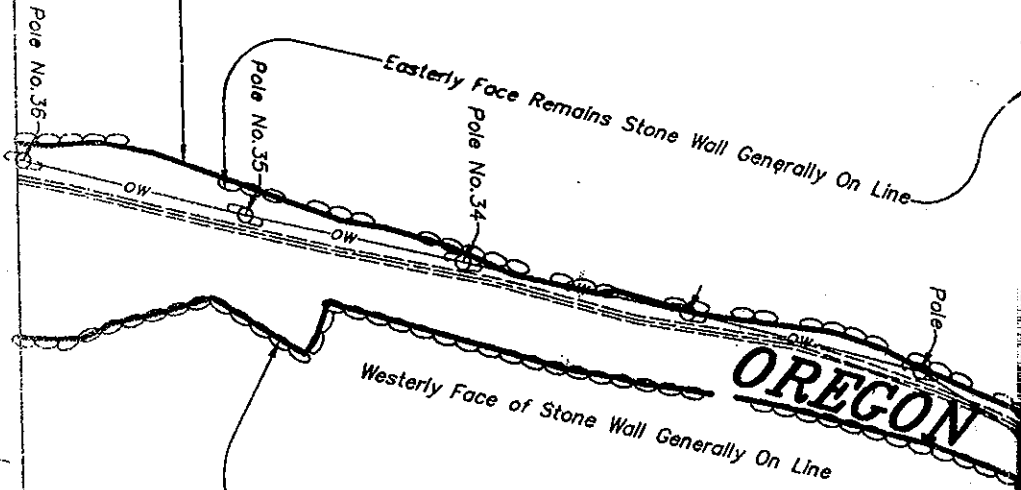
Eugene

M A L C T

M A T C H

Probable Easterly side of Oregon Road as described in Deed Liber 7127 Page 720, Parcel I. Said description has mathematical inaccuracies of 332'±.

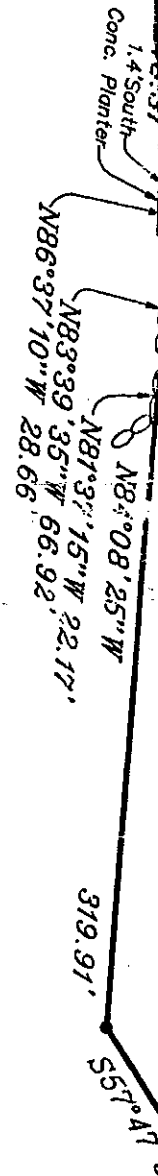
Formerly Eugene and Agnes E. Meyer Foundation
Now or Formerly The Nature Conservancy
(deed Liber 7127 Page 719, Parcel 1)



L I N E

Easterly side of Oregon Road as described in Deed Liber 7127 Page 720, Parcel II. Said Easterly side also shown on "Subdivision of Property Belonging to The Nature Conservancy and John de Saint Phalle" filed in the Westchester County Clerk's Office, Division of Land Records, as map no. 19647 on Aug. 30, 1978.

FRAME 9 &



319.91'

S57°41'

PRINT

SHEET TWO OF TWO
SURVEY OF PROPERTY PREPARED
for

SEVEN SPRINGS LLC

Situate in the
**TOWNS OF BEDFORD, NEW CASTLE & NORTH CASTLE
COUNTY OF WESTCHESTER, NY**

Scale: 1"=100' Aug. 9, 2005

FRAME 10

SHEET 2 OF 2

EXHIBIT B

38

34

ASTLE

2116 or 315

MILICE

BYRAM LAKE

R-14170

Charles Waterbury Jr
2668

Evadne Myers 3230

2128 277

Walter Jessup
5093

Robison T Falk et al
6253

A. V. Woods
5933

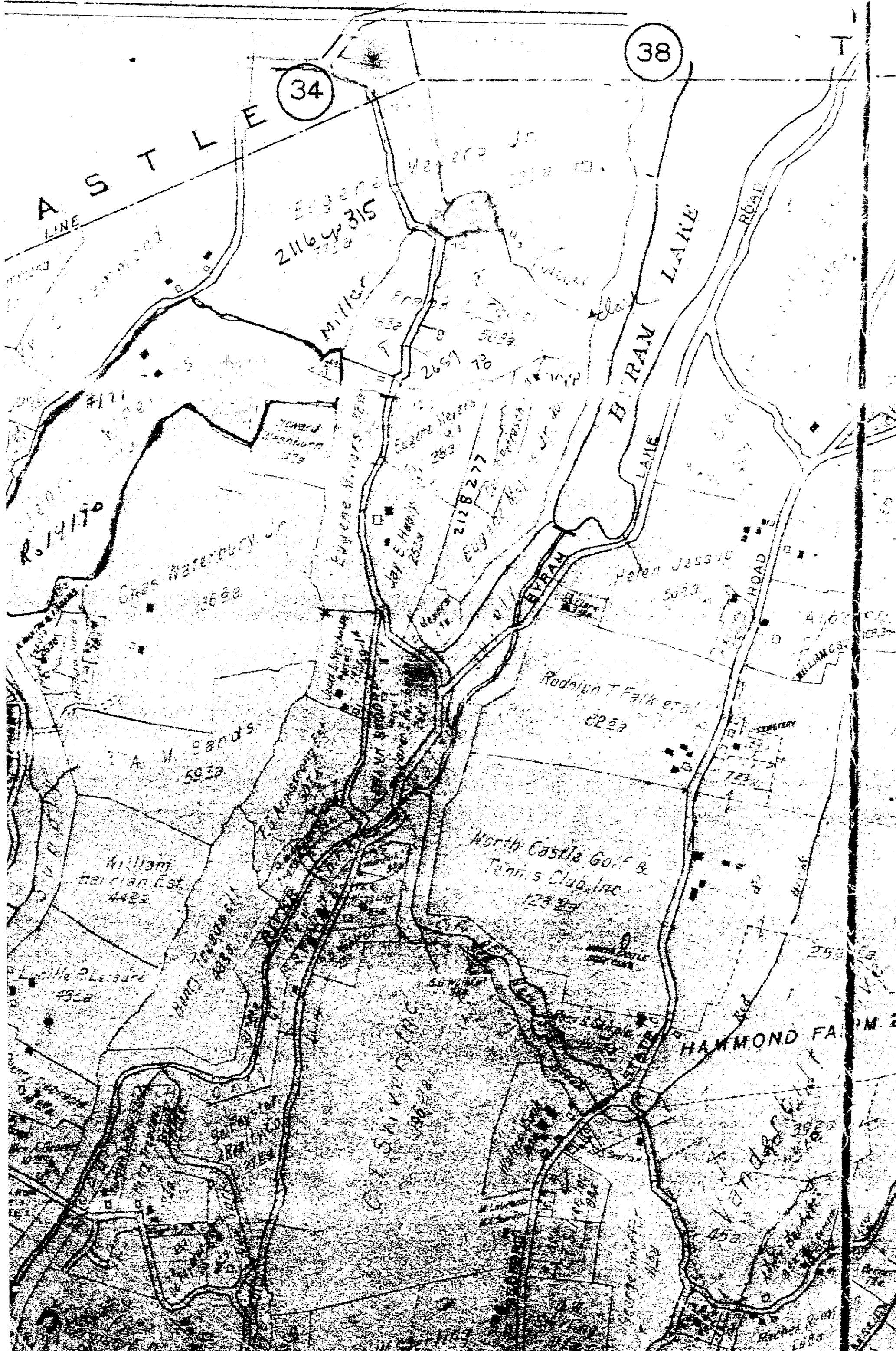
William
Harrigan Est.
4423

North Castle Golf &
Tennis Club, Inc
123 374

HAMMOND FARM 2

CASTLETONS

453



E

004773150

2 TOWNS

LIBER 7127 PAGE 719

07415

TAX STAMPS ATTACHED 3 MAY 30 1973

THIS INDENTURE, made the 25th day of May nineteen hundred and seventy-three, between EUGENE AND AGNES E. MEYER FOUNDATION, a New York corporation having an office at 1730 Rhode Island Avenue, N.W., Washington, D.C. 20036 (the party of the first part) and THE NATURE CONSERVANCY, a District of Columbia corporation having an office at 1800 North Kent Street, Arlington, Virginia (the party of the second part).

WITNESSETH, that the party of the first part, for no consideration and as a gift, does hereby grant and release unto the party of the second part, the successors and assigns of the party of the second part forever.

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being partially in the Towns of New Castle and North Castle, County of Westchester and State of New York, as more particularly described in Schedule A annexed to and made a part of this deed.

SCHEDULE A

PARCEL I

BEGINNING at the corner formed by the intersection of the easterly side of Woodside Road and the southerly side of Oregon Road;

Running thence northeasterly from said point of beginning along the southerly side of Oregon Road and the northerly face of a stone wall the following courses and distances:

North	76°	46'	20"	East	29.59 feet
South	85°	25'	45"	East	78.18 feet
North	82°	40'	20"	East	115.25 feet
South	30°	45'	30"	East	2.39 feet
North	77°	01'	35"	East	62.09 feet
South	52°	03'	00"	East	16.02 feet
South	68°	09'	00"	East	42.10 feet
South	73°	21'	50"	East	18.93 feet
North	72°	37'	05"	East	24.44 feet
North	67°	13'	40"	East	28.60 feet
North	87°	33'	45"	East	12.93 feet
North	62°	00'	40"	East	38.53 feet

To the corner formed by the intersection of the southerly side of Oregon Road and the southern termination point of lower Byram Lake Road thence still along the southerly side of Oregon Road and the north face of a stone wall the following courses and distances:

South	65°	20'	50"	East	32.84 feet
South	60°	41'	50"	East	38.11 feet
South	62°	19'	50"	East	23.43 feet
South	83°	16'	00"	East	22.17 feet
South	66°	52'	20"	East	26.55 feet
South	72°	21'	15"	East	17.91 feet
North	88°	00'	30"	East	25.33 feet
North	89°	40'	00"	East	84.16 feet
North	89°	52'	10"	East	22.06 feet
South	85°	29'	00"	East	22.98 feet
South	79°	52'	25"	East	30.66 feet
South	80°	47'	50"	East	68.91 feet
South	84°	11'	30"	East	40.02 feet
South	84°	28'	45"	East	36.69 feet

South	64°	59'	15"	East	7.76 feet
South	88°	12'	35"	East	28.80 feet
South	87°	03'	30"	East	39.55 feet
South	87°	06'	25"	East	34.08 feet
South	80°	15'	55"	East	23.18 feet
South	72°	42'	40"	East	31.93 feet
South	53°	55'	40"	East	21.42 feet
South	47°	56'	35"	East	31.95 feet
South	36°	16'	35"	East	16.22 feet
South	24°	12'	20"	East	29.76 feet
South	17°	00'	00"	East	39.16 feet

South 12° 43' 10"	East 19.85 feet
South 0° 14' 55"	West 11.53 feet
South 11° 55' 55"	East 29.07 feet
South 27° 18' 15"	East 6.93 feet
South 9° 18' 25"	East 15.21 feet
South 17° 51' 10"	East 21.17 feet
South 12° 48' 40"	East 17.81 feet
South 20° 24' 45"	East 26.58 feet
South 29° 40' 10"	East 30.97 feet
South 21° 54' 30"	East 20.88 feet
South 25° 05' 25"	East 43.11 feet
South 14° 58' 45"	East 70.41 feet
South 17° 48' 00"	East 2.00 feet
South 10° 04' 00"	East 28.20 feet
South 8° 17' 05"	East 47.19 feet
South 14° 55' 55"	East 40.48 feet
South 19° 51' 10"	East 27.47 feet
South 18° 25' 40"	East 47.23 feet
South 16° 53' 35"	East 32.80 feet
South 30° 02' 40"	East 26.52 feet
South 41° 48' 50"	East 25.32 feet
South 8° 09' 05"	East 3.74 feet
South 45° 15' 40"	East 29.42 feet
South 37° 01' 00"	East 45.93 feet
South 34° 46' 00"	East 32.76 feet
South 29° 56' 05"	East 33.41 feet
South 28° 36' 50"	East 101.82 feet
South 31° 46' 35"	East 54.80 feet
South 26° 40' 40"	East 67.86 feet
South 7° 58' 05"	East 37.95 feet
South 0° 33' 35"	East 14.34 feet

Thence along the southerly side of Oregon Road the following course and distance:

South 87° 11' 15" East 201.31 feet

Thence along the southeasterly side of Oregon Road and the northerly face of a stone wall the following courses and distances:

South 66° 00' 10" East 49.72 feet
 South 58° 53' 40" East 28.30 feet

Thence along the southeasterly side of Oregon Road the following courses and distances:

South 60° 30' 20" East 52.69 feet
 South 37° 59' 00" East 42.38 feet
 South 3° 05' 30" West 240.00 feet
 South 86° 54' 30" East 18.36 feet

Thence along the westerly side of Oregon Road and the easterly face of a stone wall the following courses and distances:

South 5° 32' 05" West 59.11 feet
 South 4° 08' 50" West 59.33 feet
 South 65° 05' 55" West 11.71 feet
 South 40° 14' 10" West 7.83 feet
 South 3° 38' 00" West 25.40 feet
 South 24° 41' 40" East 9.45 feet
 South 51° 57' 35" East 11.55 feet
 South 5° 00' 45" West 43.15 feet
 South 2° 13' 10" West 96.30 feet
 South 4° 46' 40" West 75.28 feet
 South 9° 17' 35" West 71.40 feet
 South 15° 06' 20" West 55.49 feet
 South 26° 07' 30" West 36.63 feet
 South 22° 32' 45" West 31.71 feet
 South 24° 34' 40" West 44.77 feet
 South 26° 50' 00" West 16.26 feet
 South 18° 55' 55" West 28.45 feet
 South 8° 02' 45" West 69.07 feet
 South 16° 19' 30" West 46.46 feet
 South 7° 20' 35" East 9.78 feet
 South 12° 46' 05" West 45.47 feet
 South 24° 51' 10" West 36.38 feet
 South 16° 21' 10" West 35.16 feet
 South 9° 49' 16" West 21.34 feet
 South 20° 05' 40" West 105.77 feet
 South 11° 35' 05" West 30.23 feet
 South 3° 16' 15" East 27.16 feet
 South 6° 24' 35" West 35.74 feet

To a point and thence

South 89° 34' 30" West 611.44 feet

To the northeast corner of land now or formerly of the Estate of Jennie A. Peters and continuing along the northerly side of said last mentioned land:

South 63° 54' 00" West 198.08 feet

To a point on the easterly side of a brook and thence crossing said brook in a northwesterly direction along the northerly side of land now or formerly of Vincent Castellucci, the following courses and distances:

North 38° 46' 00" West 165.53 feet
 North 78° 15' 10" West 633.36 feet

Thence continuing along the northerly line of said last mentioned land and the southerly face of a stone wall the following courses and distances:

North 81° 59' 40" West 43.01 feet
 North 79° 47' 40" West 121.22 feet
 South 83° 38' 35" West 141.22 feet
 South 88° 58' 50" West 41.80 feet
 North 81° 50' 50" West 87.78 feet

Thence along the northerly side of said last mentioned land the following course and distance:

North 5° 13' 20" West 63.96 feet

Thence continuing along the northerly side of said last mentioned land and the southerly face of a stone wall the following courses and distances:

North 76° 38' 50" West 146.22 feet
 South 83° 26' 10" West 68.95 feet
 North 56° 59' 35" West 55.86 feet
 North 51° 39' 40" West 47.15 feet
 North 44° 08' 05" West 36.21 feet

To a point on the easterly side of Woodside Road and the westerly face of a stone wall and continuing in a northerly direction along the easterly side of Woodside Road and the westerly face of a stone wall the following courses and distances:

North 54° 54' 30" East 13.60 feet
 North 33° 51' 35" East 4.68 feet
 North 50° 36' 45" East 28.78 feet
 North 71° 20' 55" East 5.85 feet
 North 53° 09' 40" East 21.62 feet
 North 47° 41' 05" East 38.50 feet
 North 48° 21' 10" East 50.05 feet
 North 44° 58' 30" East 48.12 feet
 North 48° 09' 50" East 46.63 feet
 North 45° 13' 40" East 23.12 feet
 North 30° 22' 05" East 22.79 feet
 North 29° 17' 55" East 35.54 feet
 North 23° 31' 55" East 50.32 feet
 North 18° 05' 15" East 8.86 feet
 North 30° 36' 05" East 16.52 feet
 North 15° 29' 55" East 10.74 feet
 North 26° 58' 00" East 50.39 feet
 North 22° 08' 40" East 107.58 feet
 North 23° 34' 05" East 90.84 feet
 North 20° 30' 05" East 38.86 feet
 North 23° 14' 25" East 54.82 feet
 North 13° 04' 25" East 54.73 feet

North	8°	56'	40"	East	39.24	feet
North	9°	13'	55"	West	25.80	feet
North	9°	05'	00"	West	56.57	feet
North	11°	37'	45"	West	39.09	feet
North	8°	27'	00"	West	44.82	feet
North	6°	26'	00"	West	39.27	feet
North	11°	25'	00"	West	16.77	feet
North	13°	07'	25"	West	23.61	feet
North	12°	42'	40"	West	36.59	feet
North	8°	18'	25"	West	31.49	feet
North	6°	47'	55"	West	72.22	feet
North	14°	45'	15"	West	20.69	feet
North	6°	33'	10"	West	45.39	feet
North	5°	33'	30"	West	63.18	feet
North	1°	19'	10"	East	76.87	feet
North	9°	46'	10"	East	61.64	feet
North	6°	59'	30"	East	39.59	feet
North	11°	51'	20"	East	56.80	feet
North	13°	50'	25"	East	86.22	feet
North	18°	21'	35"	East	65.40	feet
North	17°	29'	50"	East	77.69	feet
North	5°	47'	45"	East	10.10	feet
North	14°	23'	55"	East	72.95	feet
North	22°	41'	55"	East	12.93	feet
North	13°	41'	20"	East	43.99	feet
North	23°	31'	35"	East	14.68	feet
North	26°	14'	50"	West	6.44	feet
North	14°	46'	30"	East	22.39	feet
North	36°	14'	20"	East	14.72	feet

To the corner formed by the intersection of the easterly side of Woodside Road and the Southerly side of Oregon Road THE POINT OR PLACE OF BEGINNING.

Also designated as Map No. 14 190 on file in the Westchester County Clerk's Office (and as shown on the survey by ~~Map No. 14 190~~ dated April 8, 1949 which survey is appended hereto as Exhibit A.)

George L. Landon 5/30/73

PARCEL II

BEGINNING at a point on the northerly side of Oregon Road where the same is intersected by the south easterly corner of land now or formerly of Jay E. Healey;

Running thence from said point of beginning / along said last mentioned land in a northerly direction the following courses and distances:

North 15° 04' 50"	East 588.01 feet
North 8° 46' 20"	East 79.03 feet
South 77° 10' 10"	East 62.14 feet
North 5° 58' 50"	East 674.68 feet
North 57° 15' 10"	West 1020.90 feet

To a point on the Easterly side of Oregon Road; thence in a northerly direction the following course and distance:

North 13° 04' 45" East 179.56 feet.

Thence along the west face of a stone wall continuing in a northerly direction, the following courses and distances:

North 19° 20' 25"	East 178.19 feet
North 5° 48' 15"	East 84.05 feet
North 4° 49' 20"	East 86.10 feet
North 2° 28' 30"	East 47.09 feet
North 45° 35"	East 97.87 feet
North 1° 37' 40"	East 86.25 feet
North 4° 29' 30"	East 85.41 feet
North 7° 49' 15"	East 68.35 feet
North 12° 24' 35"	East 77.94 feet
North 1° 54' 10"	East 32.83 feet
North 24° 50' 50"	West 18.49 feet
North 12° 13' 35"	West 28.71 feet
North 15° 36' 45"	West 25.04 feet
North 32° 01' 15"	East 56.92 feet
North 54° 40' 35"	West 9.93 feet
North 70° 14' 05"	West 19.75 feet
North 16° 02' 05"	East 128.16 feet
North 10° 32' 00"	East 28.34 feet
North 14° 15' 55"	East 14.57 feet
North 6° 42' 05"	East 19.62 feet
North 11° 15' 40"	East 16.18 feet
North 7° 26' 55"	East 12.73 feet
North 11° 58' 35"	East 25.64 feet
North 14° 58' 50"	East 38.42 feet
North 14° 24' 15"	East 41.21 feet
North 21° 30' 40"	East 75.60 feet
North 36° 17' 45"	East 6.59 feet

To the southwest corner of land now or formerly of Yale University;

Thence along the said last mentioned land in an easterly direction the following courses and distances:

South 84° 18' 40" East 243.31 feet
 South 86° 37' 10" East 28.66 feet
 South 83° 39' 35" East 66.92 feet
 South 81° 37' 15" East 22.17 feet
 South 84° 08' 25" East 319.91 feet
 North 57° 47' 30" East 196.34 feet
 North 82° 27' 20" East 219.14 feet
 North 18° 21' 20" East 835.19 feet
 North 57° 03' 20" East 115.72 feet
 North 70° 48' 05" East 77.82 feet
 South 84° 02' 25" East 140.33 feet
 North 89° 33' 30" East 418.17 feet

To a point on lands now or formerly owned by the Village of Mount Kisco;

Thence along said last mentioned land the following courses and distances:

South 5° 51' 20" West 223.00 feet
 South 28° 12' 20" West 254.00 feet
 South 1° 25' 40" East 262.00 feet
 South 15° 08' 20" West 200.00 feet
 South 3° 22' 20" West 224.00 feet
 South 6° 29' 40" East 160.00 feet
 South 7° 55' 35" East 238.53 feet
 South 3° 25' 40" East 154.00 feet
 South 23° 07' 20" West 361.00 feet
 South 5° 50' 20" West 92.60 feet
 South 15° 28' 20" West 150.47 feet
 South 15° 09' 50" West 184.00 feet
 South 20° 35' 20" West 207.50 feet
 South 1° 57' 50" West 229.00 feet
 South 26° 26' 50" West 64.50 feet
 South 11° 48' 50" West 110.50 feet
 South 41° 03' 20" West 714.00 feet
 South 28° 18' 20" West 435.00 feet

Thence continuing along the last mentioned land and along the easterly face of a stone wall the following courses and distances:

South 14° 59' 40" East 138.00 feet
 South 9° 56' 20" West 44.00 feet
 South 20° 41' 20" West 90.00 feet
 South 29° 34' 20" West 63.00 feet
 South 37° 32' 20" West 219.00 feet
 South 23° 41' 20" West 59.00 feet
 North 86° 19' 40" West 245.00 feet
 South 17° 51' 40" East 107.60 feet

To a point on the northerly side of Oregon Road and running thence along the northerly side of Oregon Road the following courses and distances:

North 67° 16' 25" West 68.26 feet
North 69° 24' 20" West 8.64 feet
North 67° 33' 40" West 19.89 feet
North 56° 15' 05" West 91.30 feet
North 16° 00' 50" East 51.51 feet

To the corner formed by the intersection of the northerly side of Oregon Road and the southeast corner of land now or formerly of Jay E. Healey THE POINT OR PLACE OF BEGINNING.

Also designated as Map No. 14' 122 on file in the Westchester County Clerk's Office ~~(and as shown on the survey by Healey dated April 13, 1913, which survey is annexed hereto as Exhibit B.)~~

George Healey
5/30/73

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the successors and assigns of the party of the second part forever.

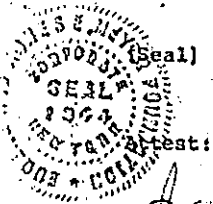
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration

as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

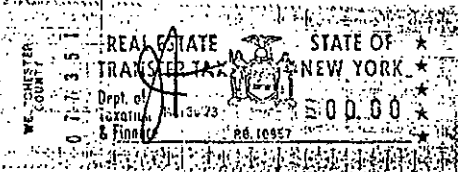
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

EUGENE AND AGNES E. MEYER FOUNDATION,

by David Row Hammer



James E. Meyer
Notary Public



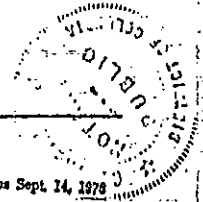
LIBER 7127 PAGE 730

STATE OF)
) ss.:
COUNTY OF)

On the *25th* day of *May* 1973, before me personally came *Davidson Sommers*, to me known, who, being by me duly sworn, did depose and say that he resides at *3900 Watson Pl., N.W., Washington, D.C.*; that he is the *Chairman* of the EUGENE AND AGNES E. MEYER FOUNDATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

L. J. Reynolds
Notary Public

My Commission Expires Sept. 14, 1978



PQ

Serial A 14509

DISTRICT OF COLUMBIA

To ALL WHOM THESE PRESENTS SHALL COME, GREETING,

I CERTIFY THAT C. J. REYNOLDS whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of debts or conveyance of lands, tenements, or hereditaments, and other instruments in writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

In Witness Whereof, the Executive Secretary to Commissioners of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D.C. this 29th day of MAY 1973

(D.C. SEAL)

F. M. Batchelder
 Chief Notary Public Section
 Notary Public Clerk

LIBER 7127 PAGE 732

*Conceded to Swaine & Moore
1 Ch. Manhattan Place
New York 10003
New York N.Y.*

EUGENE AND AGNES E. MEYER
FOUNDATION

-to-

THE NATURE CONSERVANCY

*VLN
VLN*

*2 TOWNS
DEED*

The Property affected by this instrument
is situate in the City of *New Castle*
in the County of Westchester, New York

*Section 27
Block 2, Lot 49*

21.00 B — CPa 00326 5-30-73

1973 MAY 30 PM 2:23
WESTCHESTER COUNTY CLERK

Index No.	
Rec'd No.	1973
Filing No.	1973
Cross Ref.	
Class.	
Comm.	
Notes	
Volume	1
Page	1
No.	23676
Returned	

*Section 2 - Parts - 4
Block 2 - Parts - 4
Lots 1 + 3.
Block 6
Lots 3 + 4 + 5 + 6.
4 Parts of Lots 1 + 2*

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the TOWNS OF NEW CASTLE & NORTH CASTLE County of Westchester, N. Y. A true copy of the original DEED

recorded MAY 30, 1973 at 2:23 PM

EDWARD N. VETRANO, County Clerk.

F

CO#923

[Redacted]

no consideration, no gain, tax
LIBER 1923 PAGE 639
INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

R06584145

THIS INDENTURE, made the 12th day of April, nineteen hundred and eighty-four
BETWEEN Seven Springs Center, Inc., a New York not-for-profit
corporation having an office in Mount Kisco, New York 10549,

party of the first part, and The Rockefeller University, a New York education
corporation having an office at 1230 York Avenue, New York, New
York 10021,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars paid by the party of the second
part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and
assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being ~~partly~~ partially in the towns of Bedford, New Castle and
North Castle, County of Westchester and State of New York, more
particularly described in Exhibit A annexed to and made a part of
this deed.

MAY 24 1984

TAX STAMPS
ATTACHED

TAX MAP
DESIGNATION

Dist.

Sec.

Blk.

Lot(s)

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and
roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances
and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO
HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of
the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, hereby covenants that the party
of the first part will receive the consideration for this conveyance and will hold the right to receive such consid-
eration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply
the same first to the payment of the cost of the improvement before using any part of the total of the same for
any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above
written.

IN PRESENCE OF:

RECEIVED
O'S
REAL ESTATE
MAY 24 1984
TRANSFER TAX
WESTCHESTER
COUNTY

SEVEN SPRINGS CENTER, INC.

SEVEN SPRINGS CENTER, INC.
MAY 24 1984
WESTCHESTER COUNTY, NY

Linda Williams
Witness

By *[Signature]*
Executive Vice President

FILE 18531 OF 021

"Seven Springs Farm"

PARGEL I

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager: running thence from said point of beginning, along said last mentioned land, and continuing along land now or formerly of Roland, the following forty-two courses and distances:

North	55°	16'	30"	East	22.12 feet
North	62°	03'	30"	East	22.90 feet
North	71°	09'	30"	East	44.68 feet
North	71°	52'	50"	East	44.31 feet
North	75°	45'	30"	East	43.08 feet
North	63°	31'	30"	East	25.86 feet
North	62°	51'	10"	East	14.99 feet
North	70°	41'	20"	East	13.43 feet
North	48°	17'	10"	East	10.11 feet
North	66°	42'	50"	East	33.24 feet
North	89°	04'	40"	East	8.70 feet
North	68°	33'	00"	East	7.57 feet
North	76°	29'	50"	East	20.56 feet
North	61°	28'	10"	East	20.85 feet
North	65°	24'	00"	East	56.31 feet
North	75°	50'	50"	East	13.25 feet
North	65°	01'	10"	East	57.73 feet
North	77°	18'	25"	East	18.93 feet
South	80°	49'	50"	East	4.83 feet
North	79°	19'	30"	East	19.81 feet
North	84°	50'	45"	East	40.07 feet
South	80°	19'	00"	East	13.20 feet
North	81°	21'	50"	East	81.65 feet
South	75°	39'	50"	East	103.31 feet
North	33°	43'	10"	East	80.29 feet
South	89°	41'	15"	East	300.86 feet
North	73°	00'	05"	East	30.75 feet
North	78°	02'	10"	East	38.46 feet
North	70°	54'	15"	East	33.00 feet
North	66°	36'	55"	East	40.80 feet
North	78°	30'	45"	East	12.56 feet
North	59°	02'	00"	East	7.62 feet
North	79°	58'	00"	East	33.38 feet
North	51°	31'	45"	East	28.46 feet
North	56°	01'	00"	East	45.90 feet
North	39°	16'	00"	East	58.93 feet
North	36°	20'	20"	East	38.63 feet
North	42°	27'	40"	East	32.51 feet
North	43°	19'	10"	East	35.59 feet
North	48°	55'	15"	East	123.19 feet
North	47°	22'	00"	East	114.00 feet, and
North	49°	43'	25"	East	87.25 feet

to the northwesterly corner of land now or formerly of Glueck;

thence along said last mentioned land the following three courses and distances:

South	09°	44'	20"	East	70.81 feet
South	13°	05'	50"	East	28.19 feet, and
South	08°	58'	00"	East	70.24 feet

to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle southwesterly, northwesterly and southwesterly, and partially along a stone wall, the following twenty-four courses and distances:

South	56°	56'	00"	West	123.00 feet
South	50°	48'	00"	West	78.00 feet
South	27°	44'	10"	West	66.55 feet
South	34°	12'	20"	West	10.46 feet
South	24°	31'	10"	West	47.98 feet
South	18°	32'	15"	West	72.38 feet
South	16°	08'	00"	West	104.40 feet
South	18°	35'	45"	West	16.90 feet
South	18°	59'	20"	West	34.70 feet
North	70°	35'	00"	West	20.01 feet
South	19°	25'	00"	West	185.02 feet

to a point of curve, southwesterly on a curve to the right having a radius of 165.00 feet a distance of 136.12 feet

South	66°	41'	00"	West	138.42 feet
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to a point of curve, southwesterly on a curve to the left having a radius of 110.00 feet a distance of 66.68 feet

South	31°	57'	00"	West	46.34 feet
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to a point of curve, northwesterly on a curve to the right having a radius of 35.00 feet a distance of 76.37 feet

North	23°	02'	00"	West	29.00 feet
North	45°	22'	00"	West	70.87 feet

to a point of curve, westerly on a curve to the left having a radius of 50.00 feet a distance of 70.02 feet

South	54°	24'	00"	West	59.87 feet
South	58°	22'	00"	West	63.00 feet
South	67°	36'	00"	West	167.90 feet

to a point of curve, southerly on a curve to the left having a radius of 50.00 feet a distance of 52.71 feet

South	07°	12'	00"	West	114.78 feet
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to a point of curve;

thence southwesterly on a curve to the right having a radius of 50.00 feet, connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle; thence westerly along the northerly side of Oregon Road in the Town of New Castle, the following five courses and distances:

South	81°	50'	00"	West	238.89 feet
North	85°	02'	00"	West	70.00 feet
South	83°	49'	50"	West	102.94 feet
South	85°	57'	50"	West	4.83 feet, and
North	53°	07'	20"	West	15.41 feet

to a point on the easterly side of Woodside Road;
thence northerly along the easterly side of Woodside Road the
following twenty-three courses and distances:

North	16°	04'	10"	West	11.34 feet
North	03°	30'	10"	West	70.19 feet
North	01°	13'	40"	East	14.92 feet
North	24°	21'	30"	East	22.31 feet
North	09°	59'	20"	West	12.85 feet
North	17°	23'	30"	West	17.20 feet
North	32°	53'	50"	East	37.34 feet
North	17°	46'	50"	East	56.16 feet
North	13°	36'	50"	East	31.95 feet
North	02°	31'	10"	East	20.02 feet
North	17°	43'	50"	East	63.97 feet
North	02°	26'	30"	West	46.26 feet
North	06°	35'	30"	West	43.99 feet
North	17°	56'	30"	West	27.92 feet
North	08°	59'	05"	West	21.90 feet
North	27°	02'	20"	West	16.19 feet
North	09°	58'	35"	West	19.05 feet
North	18°	21'	00"	West	27.57 feet
North	26°	49'	10"	West	6.05 feet
North	37°	06'	00"	West	11.42 feet
North	45°	59'	40"	West	28.51 feet
North	48°	25'	05"	West	21.23 feet, and
North	48°	52'	40"	West	35.75 feet

to the aforesaid land now or formerly of Gallager, the point
or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING at the point on the northerly side of Oregon Road where
the same is intersected by the boundary line between the Town of
New Castle and the Town of Bedford; thence running along said
boundary line North 10° 08' 51" West 180.16 feet to lands
now or formerly of Rolf R. Roland; thence turning and running
along said lands and along a stone wall the following courses
and distances: North 51° 53' 15" East 93.75 feet; North
50° 20' East 114.00 and North 52° 41' 25" East 87.25 feet
to lands now or formerly of Richard M. & Joyce S. Glueck; thence
turning and running along said lands and along a stone wall the
following courses and distances: South 6° 46' 20" East 70.81
feet; South 10° 07' 50" East 28.19 feet and South 6° 00'
East 70.24 feet to the northerly side of Oregon Road; thence
turning and running along said northerly side of Oregon Road the
following courses and distances: South 59° 54' West 123.00
feet; South 53° 46' West 78.00 feet; South 30° 42' 10"
West 66.55 feet; South 37° 10' 20" West 10.46 feet and South
27° 29' 10" West 22.08 feet to the point and place of BEGINNING.

SUBJECT TO state of facts shown on survey prepared by Alexander Bunnéy dated June 23, 1975.

The above-described parcel being also designated as (i) Lot No. A43, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (ii) Lot No. 4A, Section 22 on the Assessment Map of the Town of Bedford.

PARCEL II

BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford where the same is intersected by the dividing line between the premises herein described and the northeasterly corner of land now or formerly of Davis; running thence northeasterly from said point of beginning, along the southerly side of Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	59°	28'	05"	East	24.06 feet
North	59°	37'	40"	East	111.07 feet
North	59°	36'	10"	East	82.49 feet
North	61°	51'	55"	East	64.17 feet
North	61°	52'	05"	East	137.88 feet
North	61°	19'	40"	East	30.78 feet
North	61°	23'	20"	East	38.07 feet
North	62°	13'	50"	East	20.84 feet
North	62°	06'	50"	East	90.37 feet
North	62°	05'	45"	East	97.99 feet
North	61°	06'	20"	East	119.52 feet, and
North	59°	19'	50"	East	101.38

to the westerly line of land now or formerly of Heinz; thence along said last mentioned land, South 18° 39' 30" East 571.16 feet to a corner; thence continuing along said last mentioned land, North 77° 21' 20" East 11.51 feet to a monument; thence continuing along said last mentioned land and partially along a stone wall the following nine courses and distances:

North	77°	21'	20"	East	67.72 feet
North	78°	48'	30"	East	114.31 feet
North	77°	52'	30"	East	303.46 feet
North	78°	37'	30"	East	78.59 feet
North	76°	48'	50"	East	97.84 feet
North	79°	12'	50"	East	121.08 feet
North	80°	35'	50"	East	114.21 feet
North	83°	52'	40"	East	28.40 feet, and
North	77°	50'	00"	East	382.30 feet

to the westerly boundary of the Village of Mount Kisco; thence along the westerly boundary of the Village of Mount Kisco, the following fourteen courses and distances:

South	08°	53'	40"	East	693.23 feet
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"Seven Springs Farm"

LB 7923 PAGE 644

South	79°	12'	20"	West	227.80 feet
South	17°	32'	40"	East	147.00 feet
South	05°	58'	40"	East	280.00 feet
South	30°	16'	20"	West	242.00 feet
South	100°	52'	40"	East	117.00 feet
South	09°	45'	20"	West	105.00 feet
South	35°	20'	40"	East	188.00 feet
South	12°	29'	40"	East	227.00 feet
South	11°	44'	20"	West	97.00 feet
South	05°	48'	40"	East	108.00 feet
South	21°	16'	20"	West	164.00 feet
South	04°	21'	40"	East	180.00 feet, and
South	03°	29'	20"	West	131.00 feet

to a point and other land owned by Eugene and Agnes E. Meyer Foundation; thence along said last mentioned land the following twelve courses and distances:

South	89°	33'	30"	West	418.17 feet
North	84°	02'	25"	West	140.33 feet
South	70°	48'	05"	West	77.82 feet
South	57°	03'	20"	West	115.72 feet
South	18°	21'	20"	West	835.19 feet
South	82°	27'	20"	West	219.14 feet
South	57°	47'	30"	West	196.34 feet
North	84°	08'	25"	West	319.91 feet
North	81°	37'	15"	West	22.17 feet
North	83°	39'	35"	West	66.92 feet
North	86°	37'	10"	West	28.66 feet, and
North	84°	18'	40"	West	243.31 feet

to the easterly side of Oregon Road in the Town of North Castle, thence northerly and westerly, along the easterly and northerly side of Oregon Road, the following eighty-six courses and distances:

North	20°	28'	30"	East	9.06 feet
North	25°	43'	10"	East	18.20 feet
North	17°	31'	00"	East	37.48 feet
North	12°	12'	20"	East	41.44 feet
North	12°	03'	20"	East	49.07 feet
North	08°	54'	10"	East	24.23 feet
North	00°	45'	25"	East	53.73 feet
North	00°	00'	50"	East	37.94 feet
North	74°	59'	50"	East	2.59 feet
North	13°	48'	10"	West	24.94 feet
North	08°	26'	25"	West	29.77 feet
North	08°	09'	10"	West	38.85 feet
North	01°	13'	00"	West	16.00 feet
North	10°	54'	50"	East	128.81 feet
North	03°	01'	20"	West	12.90 feet
North	02°	45'	50"	East	102.66 feet
North	01°	03'	20"	East	72.67 feet
North	04°	23'	00"	East	50.25 feet
North	03°	02'	40"	East	39.72 feet
North	07°	53'	55"	West	9.10 feet
North	07°	55'	30"	East	13.49 feet

"Seven Springs Farm"

LIBER 7923 PAGE 645

PQ

North	61°	13'	00"	West	36.64	feet
North	61°	08'	50"	West	80.86	feet
North	62°	53'	20"	West	41.74	feet
North	61°	23'	20"	West	54.34	feet
North	51°	42'	35"	West	4.12	feet
North	64°	58'	50"	West	47.10	feet
North	80°	35'	00"	West	34.72	feet
North	86°	09'	30"	West	54.62	feet
North	56°	30'	10"	West	3.30	feet
South	66°	58'	10"	West	5.80	feet
South	87°	15'	10"	West	23.16	feet
North	17°	51'	00"	West	22.64	feet
North	04°	06'	10"	West	15.10	feet
North	22°	26'	50"	West	30.77	feet
North	38°	41'	00"	West	7.90	feet
North	25°	28'	50"	West	13.95	feet
North	32°	45'	30"	West	38.35	feet
North	47°	05'	20"	West	21.53	feet
North	26°	02'	40"	West	39.47	feet
North	56°	15'	20"	West	11.92	feet
North	32°	26'	20"	West	23.73	feet
North	27°	25'	50"	West	57.96	feet
North	36°	18'	25"	West	114.20	feet
North	27°	43'	30"	West	45.93	feet
North	18°	11'	00"	West	74.61	feet
North	37°	26'	10"	West	12.57	feet
North	19°	59'	45"	West	22.87	feet
North	12°	18'	50"	West	14.11	feet
North	24°	11'	40"	West	20.33	feet
North	16°	06'	45"	West	16.47	feet
North	00°	22'	45"	East	18.12	feet
North	13°	02'	40"	West	27.78	feet
North	07°	25'	45"	West	45.32	feet
North	12°	51'	50"	West	24.50	feet
North	00°	07'	00"	West	14.83	feet
North	15°	09'	40"	West	49.17	feet
North	32°	13'	50"	West	39.54	feet
North	30°	20'	40"	West	43.29	feet
North	20°	51'	55"	West	25.58	feet
North	02°	49'	30"	West	15.83	feet
North	29°	38'	50"	West	15.46	feet
North	08°	12'	35"	West	12.18	feet
North	29°	28'	20"	West	17.01	feet
North	16°	45'	00"	West	17.31	feet
North	09°	34'	20"	West	28.32	feet
North	13°	48'	20"	West	36.16	feet
North	03°	45'	40"	East	12.35	feet
North	15°	01'	55"	West	46.88	feet
North	29°	21'	00"	West	53.50	feet
North	23°	46'	40"	West	17.29	feet
North	37°	32'	30"	West	14.49	feet
North	49°	15'	20"	West	44.49	feet
North	71°	28'	20"	West	11.64	feet
North	57°	26'	30"	West	10.54	feet
North	73°	01'	15"	West	37.09	feet
North	82°	18'	20"	West	47.87	feet
North	84°	10'	30"	West	22.47	feet
South	83°	01'	40"	West	22.16	feet

North	84°	54'	06"	West	17.10 feet
South	86°	06'	00"	West	27.49 feet
North	81°	44'	10"	West	153.53 feet
North	79°	42'	00"	West	134.00 feet
North	84°	39'	00"	West	43.00 feet
North	89°	32'	00"	West	114.00 feet, and
North	71°	22'	00"	West	85.00 feet

to a point of curve;
 thence northeasterly on a curve to the right having a radius of 50.00 feet, connecting the northeasterly side of Oregon Road and the southeasterly side of Lower Byram Lake Road, a distance of 68.56 feet to a point on the southeasterly side of Lower Byram Lake Road;
 thence northerly, northeasterly, southeasterly and northeasterly along the easterly and southerly side of Lower Byram Lake Road in the Town of New Castle and continuing along Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	07°	12'	00"	East	134.10 feet
North	67°	36'	00"	East	171.94 feet
North	58°	22'	00"	East	68.77 feet
North	54°	24'	00"	East	61.60 feet
South	45°	22'	00"	East	61.00 feet
South	23°	02'	00"	East	19.13 feet

to a point of curve,
 northeasterly on a curve to the left having a radius of 85.00 feet a distance of 185.47 feet,
 North 31° 57' 00" East 46.34 feet to a point of curve,
 easterly on a curve to the right having a radius of 60.00 feet a distance of 36.37 feet,
 North 66° 41' 00" East 138.42 feet to a point of curve,
 northerly on a curve to the left having a radius of 215.00 feet a distance of 170.59 feet
 North 68° 46' 40" West 10.74 feet

North	29°	31'	00"	East	13.38 feet
North	25°	41'	40"	East	43.31 feet
North	19°	05'	15"	East	15.26 feet
North	16°	07'	45"	East	224.55 feet
North	18°	19'	50"	East	34.60 feet
North	26°	10'	25"	East	63.52 feet
North	22°	47'	50"	East	65.76 feet, and
North	31°	15'	05"	East	23.92 feet

to the northwesterly corner of the aforesaid land now or formerly of Davis;
 thence along said last mentioned land the following twenty-five courses and distances:

South	34°	56'	00"	East	192.00 feet
South	31°	33'	00"	East	59.52 feet
South	08°	31'	00"	East	171.26 feet
South	01°	09'	00"	East	135.20 feet
South	05°	33'	00"	West	40.46 feet

Section A
 "Seven Springs Farm"

LIBER 7923 PAGE 647

South	11°	52'	00"	West	49.65 feet
South	07°	24'	00"	West	19.14 feet
South	13°	08'	29"	West	88.58 feet
South	66°	36'	00"	East	26.85 feet
South	71°	10'	00"	East	14.57 feet
South	56°	16'	00"	East	27.84 feet
South	24°	05'	00"	East	6.77 feet
South	49°	43'	00"	East	6.55 feet
South	71°	15'	00"	East	25.54 feet
North	89°	31'	00"	East	25.62 feet
North	28°	36'	00"	East	70.39 feet
North	69°	20'	00"	East	89.16 feet
North	76°	50'	00"	East	59.96 feet
North	86°	51'	00"	East	16.51 feet
North	81°	27'	00"	East	42.48 feet
North	78°	13'	52"	East	121.74 feet
North	10°	45'	22"	West	242.59 feet
North	14°	47'	20"	West	42.12 feet
North	10°	37'	41"	West	179.17 feet, and
North	12°	08'	58"	West	474.81 feet

to the southerly side of Oregon Road in the Town of Bedford; the point or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING a point being the southwesterly corner of the aforesaid land now or formerly of Heinz; running thence from said point of beginning, South 77° 21' 20" West 14.00 feet and South 02° 32' 40" East 162.00 feet to the point of beginning, said point of beginning being the northeasterly corner of the herein described parcel; running thence from said point of beginning, South 02° 17' 40" East 142.32 feet to a corner; thence South 83° 51' 20" West 104.32 feet to a corner; thence North 02° 07' 40" West 142.92 feet to a corner; and thence North 84° 10' 20" East 103.86 feet to the point or place of BEGINNING.

FURTHER EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING at the point on the southerly side of Oregon Road where the same is intersected by the boundary line between the Town of New Castle and the Town of Bedford; thence running along said southerly side of Oregon Road North 25° 45' 50" East 54.47 feet and North 34° 13' 05" East 23.92 feet to lands of the party of the second part; thence turning and running along said lands the following courses and distances:

South	31°	58'	00"	East	192.00 feet
South	28°	35'	00"	East	59.52 feet
South	05°	33'	00"	East	171.26 feet
South	01°	49'	00"	West	135.20 feet
South	08°	31'	00"	West	40.46 feet
South	14°	50'	00"	West	49.65 feet
South	10°	22'	00"	West	19.14 feet, and
South	16°	06'	29"	West	88.58 feet

Seven Sheets 1928 PAGE 648

to the southwesterly corner of said lands of the party of the second part; thence turning and running through lands of the party of the first part North $63^{\circ} 38' 00''$ West 21.52 feet to a point in the boundary line between the Town of New Castle and the Town of Bedford; thence turning and running along said boundary line North $10^{\circ} 08' 51''$ West 644.36 feet to the point and place of BEGINNING.

SUBJECT TO state of facts shown on survey prepared by Alexander Bunnay dated June 23, 1975.

The above-described parcel being also designated as (i) Lots No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot No. A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot No. 4, Section 22 on the Assessment Map of the Town of Bedford.

"Nonsuch"

PARCEL III

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,

lying and being in the Town of Bedford, County of Westchester and State of New York bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Road where the same is intersected by the southerly line of lands conveyed by H. J. Heinz, II to Elizabeth Graham Weymouth by deed dated 8/21/72 recorded 8/29/72 in Liber 7077 cp 348, running thence along said lands of Elizabeth Graham Weymouth the following courses and distances:

South 71° 40' 20" East 173.64 feet

to a point of curve, in a southerly direction, on a curve to the right with a radius of 250 feet a distance of 304.81 feet, to a point of tangency,

South	1°	48'	50"	East	53.82 feet
South	3°	08'	20"	West	97.52 feet
South	4°	25'	30"	West	73.76 feet, and
South	8°	12'	20"	West	77.16 feet

to a point of curve, in a southwesterly direction on a curve to the right with a radius of 300 feet a distance of 196.17 feet to a point of tangency,

South	44°	54'	25"	West	64.15 feet
South	38°	19'	40"	West	34.41 feet

to a point of curve, in a southwesterly direction on a curve to the left with a radius of 130 feet a distance of 64.42 feet,

South	73°	24'	59"	East	493.65 feet
North	77°	41'	50"	East	675.31 feet

to lands now or formerly of the City of New York, thence along the same,

South 9° 07' 30" East 251.91 feet

to lands now or formerly of Eugene Meyer, Jr., thence along said land now or formerly of Eugene Meyer, Jr. the following courses and distances:

South	77°	41'	50"	West	382.30 feet
South	83°	44'	30"	West	28.40 feet
South	80°	27'	40"	West	114.21 feet
South	79°	04'	40"	West	121.08 feet
South	76°	40'	40"	West	97.84 feet
South	78°	29'	20"	West	78.59 feet
South	77°	44'	20"	West	303.46 feet
South	78°	40'	20"	West	114.31 feet
South	77°	13'	10"	West	79.23 feet, and
North	18°	47'	40"	West	616.16 feet

7023 650
Seven Springs, Oregon

PQ

to the easterly side of Oregon Road, thence along the easterly side of Oregon Road part of the way along a stone wall the following courses and distances:

North	16°	31'	40"	East	53.53 feet
North	11°	48'	20"	East	173.64 feet
North	13°	18'	20"	East	101.89 feet
North	14°	03'	00"	East	31.05 feet
North	11°	48'	30"	East	101.20 feet
North	12°	06'	30"	East	184.69 feet
North	11°	33'	40"	East	115.58 feet, and
North	10°	46'	50"	East	78.07 feet

to the point and place of beginning.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

LIBER 7923 PAGE 651.

PQ

Connecticut
STATE OF NEW YORK, COUNTY OF New Haven

On the 12 day of April 1984, before me personally came Henry Chauncey, Jr.

to me known, who, being by me duly sworn, did depose and say that he resides at No. 295 Greene Street, New Haven, Connecticut 06511; that he is the Executive Vice President of Seven Springs Center, Inc.

_____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. _____

that he knows _____

_____ to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed to name as witness thereto.

MARY M. BRAINARD
Notary Public
My Commission Expires March 31, 1988

23 PAGE 652

Quitclaim Deed

TITLE No. Acc-5740

SEVEN SPRINGS CENTER, INC.

TO
THE ROCKEFELLER UNIVERSITY

SECTION
BLOCK
LOT
COUNTY OR TOWN
TAX BILLING ADDRESS

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:



Squire N. Bozorth, Esq.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005
Zip No.

3 Towns

24

29988

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

0096
0096
The Title Guarantee Company

RECEIVED
WESTCHESTER COUNTY CLERK
MAY 24 12 47 PM '84
SEARCHED
INDEXED
SERIALIZED
FILED
46
3
8475 Ro 65
Returned

The foregoing instrument was endorsed for record as follows:
The property affected by this instrument is situate in the
Towns of Bedford, Mt. Kisco, North Castle
County of Westchester, N. Y. A True copy of the original
Deed

recorded in the Division of Land Records of the County Clerk's
Office of Westchester County on **May 24, 1984**
at **12:47 PM** in Liber **7923** Page **639** of Deeds.

Witness my hand and Official Seal
Andrew J. Spano
Andrew J. Spano
County Clerk

PQ

6

[REDACTED]

000873086

PC

LIBER 7115 PAGE 592

04009

TAX STAMPS ATTACHED & MAR 27 1973

THIS INDENTURE, made the 23rd day of March, nineteen hundred and seventy-three, between YALE UNIVERSITY, a Connecticut corporation having an office in New Haven, Connecticut (the party of the first part), and SEVEN SPRINGS FARM CENTER, INC., a New York not-for-profit corporation having an office at Seven Springs Farm, Mount Kisco, New York (the party of the second part).

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the successors and assigns of the party of the second part forever,

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being partially in the Towns of Bedford, New Castle and North Castle, County of Westchester and State of New York, more particularly described in Exhibit A annexed to and made a part of this deed.

EXHIBIT A

Parcel I

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager; running thence from said point of beginning, along said last mentioned land, and continuing along land now or formerly of Roland, the following forty-two courses and distances:

North	55°	16'	30"	East	22.12 feet
North	62°	03'	30"	East	22.90 feet
North	71°	09'	30"	East	44.68 feet
North	71°	52'	50"	East	44.31 feet
North	75°	45'	30"	East	43.08 feet
North	63°	31'	30"	East	25.86 feet
North	62°	51'	10"	East	14.99 feet
North	70°	41'	20"	East	13.43 feet
North	48°	17'	10"	East	10.11 feet
North	66°	42'	50"	East	33.24 feet
North	89°	04'	40"	East	8.70 feet
North	68°	33'	00"	East	7.57 feet
North	76°	29'	50"	East	20.56 feet
North	61°	28'	10"	East	20.85 feet
North	65°	24'	00"	East	56.31 feet
North	75°	50'	50"	East	13.25 feet
North	65°	01'	10"	East	57.73 feet
North	77°	18'	25"	East	18.93 feet
South	80°	49'	50"	East	4.83 feet
North	79°	19'	30"	East	19.81 feet
North	84°	50'	45"	East	40.07 feet
South	80°	19'	00"	East	13.20 feet
North	81°	21'	50"	East	81.65 feet
South	75°	39'	50"	East	103.31 feet
North	33°	43'	10"	East	80.29 feet
South	89°	41'	15"	East	300.86 feet
North	73°	00'	05"	East	30.75 feet
North	78°	02'	10"	East	38.46 feet
North	70°	54'	15"	East	33.00 feet
North	66°	36'	55"	East	40.80 feet
North	78°	30'	45"	East	12.56 feet
North	59°	02'	00"	East	7.62 feet
North	79°	58'	00"	East	33.38 feet
North	51°	31'	45"	East	28.46 feet
North	56°	01'	00"	East	45.90 feet
North	39°	16'	00"	East	58.93 feet
North	36°	20'	20"	East	38.63 feet
North	42°	27'	40"	East	32.51 feet
North	43°	19'	10"	East	35.59 feet
North	48°	55'	15"	East	123.19 feet
North	47°	22'	00"	East	114.00 feet, and
North	49°	43'	25"	East	87.25 feet.

Poor Copy At Time of Recording

to the northwesterly corner of land now or formerly of Glueck; thence along said last mentioned land the following three courses and distances:

South	09°	44'	20"	East	70.81 feet
South	13°	05'	50"	East	28.19 feet, and
South	08°	58'	00"	East	70.24 feet

to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle southwesterly, northwesterly and southwesterly, and partially along a stone wall, the following twenty-four courses and distances:

South	56°	56'	00"	West	123.00 feet
South	50°	48'	00"	West	78.00 feet
South	27°	44'	10"	West	66.55 feet
South	34°	12'	20"	West	10.46 feet
South	24°	31'	10"	West	47.98 feet
South	18°	32'	15"	West	72.38 feet
South	16°	08'	00"	West	104.40 feet
South	18°	35'	45"	West	16.90 feet
South	18°	59'	20"	West	34.70 feet
North	70°	35'	00"	West	20.01 feet
South	19°	25'	00"	West	185.02 feet

to a point of curve, southwesterly on a curve to the right having a radius of 165.00 feet a distance of 136.12 feet

South	66°	41'	00"	West	138.42 feet
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to a point of curve, southwesterly on a curve to the left having a radius of 110.00 feet a distance of 66.68 feet

South	31°	57'	00"	West	46.34 feet
-------	-----	-----	-----	------	------------

to a point of curve, northwesterly on a curve to the right having a radius of 35.00 feet a distance of 76.17 feet

North	23°	02'	00"	West	29.00 feet
North	45°	22'	00"	West	70.87 feet

to a point of curve, westerly on a curve to the left having a radius of 50.00 feet a distance of 70.02 feet

South	54°	24'	00"	West	59.87 feet
South	58°	22'	00"	West	63.00 feet
South	67°	36'	00"	West	167.90 feet

to a point of curve, southerly on a curve to the left having a radius of 50.00 feet a distance of 52.71 feet

South	07°	12'	00"	West	114.78 feet
-------	-----	-----	-----	------	-------------

to a point of curve;

thence southwesterly on a curve to the right having a radius of 50.00 feet, connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle;

thence westerly along the northerly side of Oregon Road in the Town of New Castle, the following five courses and distances:

South	81°	50'	00"	West	238.89 feet
North	85°	02'	00"	West	70.00 feet
South	83°	49'	50"	West	102.94 feet
South	85°	57'	50"	West	4.83 feet, and
North	53°	07'	20"	West	15.41 feet

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to a point on the easterly side of Woodside Road; thence northerly along the easterly side of Woodside Road the following twenty-three courses and distances:

North	16°	04'	10"	West	11.34 feet
North	03°	30'	10"	West	70.19 feet
North	01°	13'	40"	East	14.92 feet
North	24°	21'	30"	East	22.31 feet
North	09°	59'	20"	West	12.85 feet
North	17°	23'	30"	West	17.20 feet
North	32°	53'	50"	East	37.34 feet
North	17°	46'	50"	East	56.16 feet
North	11°	36'	50"	East	51.95 feet
North	02°	31'	10"	East	20.02 feet
North	17°	43'	50"	East	63.97 feet
North	02°	26'	30"	West	46.26 feet
North	06°	35'	30"	West	43.99 feet
North	17°	56'	30"	West	27.92 feet
North	08°	59'	05"	West	21.90 feet
North	27°	02'	20"	West	16.19 feet
North	09°	58'	35"	West	19.05 feet
North	18°	21'	00"	West	27.57 feet
North	26°	49'	10"	West	6.05 feet
North	37°	06'	00"	West	11.42 feet
North	45°	59'	40"	West	28.51 feet
North	48°	25'	05"	West	21.23 feet, and
North	48°	52'	40"	West	35.75 feet

to the aforesaid land now or formerly of Gallager, the point or place of BEGINNING.

The above-described parcel being also designated as (i) Lot No. A43, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (ii) Lot No. 4A, Section 22 on the Assessment Map of the Town of Bedford.

Parcel 11

BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford where the same is intersected by the dividing line between the premises herein described and the northeasterly corner of land now or formerly of Davis; running thence northeasterly from said point of beginning, along the southerly side of Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	59°	28'	05"	East	24.06 feet
North	59°	37'	40"	East	111.07 feet
North	59°	36'	10"	East	82.49 feet
North	61°	51'	55"	East	64.17 feet
North	61°	52'	05"	East	137.88 feet
North	61°	19'	40"	East	30.78 feet
North	61°	23'	20"	East	38.07 feet
North	62°	13'	50"	East	20.84 feet
North	62°	06'	50"	East	90.37 feet
North	62°	05'	45"	East	77.99 feet
North	61°	06'	20"	East	119.52 feet, and
North	59°	19'	50"	East	101.36 feet

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to the westerly line of land now or formerly of Heinz;
thence along said last mentioned land, South 18° 39' 30"
East 571.16 feet to a corner;
thence continuing along said last mentioned land, North 77°
21' 20" East 11.51 feet to a monument;
thence continuing along said last mentioned land and par-
tially along a stone wall the following nine courses and dis-
tances:

North	77°	21'	20"	East	67.72 feet
North	78°	48'	30"	East	114.31 feet
North	77°	52'	30"	East	303.46 feet
North	78°	37'	30"	East	78.59 feet
North	76°	48'	50"	East	97.84 feet
North	79°	12'	50"	East	121.08 feet
North	80°	35'	50"	East	114.21 feet
North	83°	52'	40"	East	28.40 feet, and
North	77°	50'	00"	East	382.30 feet

to the westerly boundary of the Village of Mount Kisco;
thence along the westerly boundary of the Village of Mount
Kisco, the following fourteen courses and distances:

South	08°	53'	40"	East	693.23 feet
South	79°	12'	20"	West	227.80 feet
South	17°	32'	40"	East	147.00 feet
South	05°	58'	40"	East	280.00 feet
South	30°	16'	20"	West	242.00 feet
South	10°	52'	40"	East	117.00 feet
South	09°	45'	20"	West	105.00 feet
South	35°	20'	40"	East	188.00 feet
South	12°	29'	40"	East	227.00 feet
South	11°	44'	20"	West	97.00 feet
South	05°	48'	40"	East	108.00 feet
South	21°	16'	20"	West	164.00 feet
South	04°	21'	40"	East	180.00 feet, and
South	03°	29'	20"	West	131.00 feet

to a point and other land owned by Eugene and Agnes E. Meyer
Foundation;
thence along said last mentioned land the following twelve
courses and distances:

South	89°	33'	30"	West	418.17 feet
North	84°	02'	25"	West	140.33 feet
South	70°	48'	05"	West	77.82 feet
South	57°	03'	20"	West	115.72 feet
South	18°	21'	20"	West	835.19 feet
South	82°	27'	20"	West	219.14 feet
South	57°	47'	30"	West	196.34 feet
North	84°	08'	25"	West	319.91 feet
North	81°	37'	15"	West	22.17 feet
North	83°	39'	35"	West	66.92 feet
North	86°	37'	10"	West	28.66 feet, and
North	84°	18'	40"	West	243.31 feet

to the easterly side of Oregon Road in the Town of North
Castle;
thence northerly and westerly, along the easterly and north-
erly side of Oregon Road, the following eighty-six courses

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and distances:

North	20°	28'	30"	East	9.06 feet
North	25°	43'	10"	East	18.20 feet
North	17°	31'	00"	East	37.48 feet
North	12°	12'	20"	East	41.44 feet
North	12°	03'	20"	East	49.07 feet
North	08°	54'	10"	East	24.23 feet
North	00°	45'	25"	East	53.73 feet
North	00°	00'	50"	East	37.94 feet
North	74°	59'	50"	East	2.59 feet
North	13°	48'	10"	West	24.94 feet
North	08°	26'	25"	West	29.77 feet
North	08°	09'	10"	West	38.85 feet
North	01°	13'	00"	West	16.00 feet
North	10°	54'	50"	East	128.81 feet
North	03°	01'	20"	West	12.90 feet
North	02°	45'	50"	East	102.66 feet
North	01°	03'	20"	East	72.67 feet
North	04°	23'	00"	East	50.25 feet
North	03°	02'	40"	East	39.72 feet
North	07°	53'	55"	West	9.10 feet
North	07°	55'	30"	East	13.49 feet
North	61°	13'	00"	West	36.64 feet
North	61°	08'	50"	West	80.86 feet
North	62°	53'	20"	West	41.74 feet
North	61°	23'	20"	West	54.34 feet
North	51°	42'	35"	West	4.12 feet
North	64°	58'	50"	West	47.10 feet
North	80°	35'	00"	West	34.72 feet
North	86°	09'	30"	West	54.62 feet
North	56°	30'	10"	West	3.30 feet
South	66°	58'	10"	West	5.80 feet
South	87°	15'	10"	West	23.16 feet
North	17°	51'	00"	West	22.64 feet
North	04°	06'	10"	West	15.10 feet
North	22°	26'	50"	West	30.77 feet
North	38°	41'	00"	West	7.90 feet
North	25°	28'	50"	West	13.95 feet
North	32°	45'	30"	West	38.35 feet
North	47°	05'	20"	West	21.53 feet
North	26°	02'	40"	West	39.47 feet
North	56°	15'	20"	West	11.92 feet
North	32°	26'	20"	West	23.73 feet
North	27°	25'	50"	West	57.96 feet
North	36°	18'	25"	West	114.20 feet
North	27°	43'	30"	West	45.93 feet
North	18°	11'	00"	West	74.61 feet
North	37°	26'	10"	West	12.57 feet
North	19°	59'	45"	West	22.87 feet
North	12°	18'	50"	West	14.11 feet
North	24°	11'	40"	West	20.33 feet
North	16°	06'	45"	West	16.47 feet
North	00°	22'	45"	East	18.12 feet
North	13°	02'	40"	West	27.78 feet
North	07°	25'	45"	West	45.32 feet
North	12°	51'	50"	West	24.30 feet
North	00°	07'	00"	West	14.83 feet
North	15°	09'	40"	West	49.17 feet

North	32°	13'	50"	West	39.54 feet
North	30°	20'	40"	West	43.29 feet
North	20°	51'	55"	West	25.58 feet
North	02°	49'	30"	West	15.83 feet
North	29°	38'	50"	West	15.46 feet
North	08°	12'	35"	West	12.18 feet
North	29°	28'	20"	West	17.01 feet
North	16°	45'	00"	West	17.31 feet
North	09°	34'	20"	West	28.32 feet
North	13°	48'	20"	West	36.16 feet
North	03°	45'	40"	East	12.35 feet
North	15°	01'	55"	West	46.88 feet
North	29°	21'	00"	West	53.50 feet
North	23°	46'	40"	West	17.29 feet
North	37°	32'	30"	West	14.49 feet
North	49°	15'	20"	West	44.49 feet
North	71°	28'	20"	West	11.64 feet
North	57°	26'	30"	West	10.54 feet
North	73°	01'	15"	West	37.09 feet
North	82°	18'	20"	West	47.87 feet
North	84°	10'	30"	West	22.47 feet
South	83°	01'	40"	West	22.16 feet
North	84°	54'	00"	West	17.10 feet
South	86°	06'	00"	West	27.49 feet
North	81°	44'	10"	West	153.53 feet
North	79°	42'	00"	West	134.00 feet
North	84°	39'	00"	West	43.00 feet
North	89°	32'	00"	West	114.00 feet, and
North	71°	22'	00"	West	85.00 feet

to a point of curve;
 thence northeasterly on a curve to the right having a radius of 50.00 feet, connecting the northeasterly side of Oregon Road and the southeasterly side of Lower Byram Lake Road, a distance of 68.56 feet to a point on the southeasterly side of Lower Byram Lake Road;
 thence northerly, northeasterly, southeasterly and northeasterly along the easterly and southerly side of Lower Byram Lake Road in the Town of New Castle and continuing along Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	07°	12'	00"	East	134.10 feet
North	67°	36'	00"	East	171.94 feet
North	58°	22'	00"	East	68.77 feet
North	54°	24'	00"	East	61.60 feet
South	45°	22'	00"	East	61.00 feet
South	23°	02'	00"	East	19.13 feet

to a point of curve,
 northeasterly on a curve to the left having a radius of 85.00 feet a distance of 185.47 feet.
 North 31° 57' 00" East 46.34 feet to a point of curve,
 easterly on a curve to the right having a radius of 60.00 feet a distance of 36.37 feet,
 North 66° 41' 00" East 138.42 feet to a point of curve,
 northerly on a curve to the left having a radius of 215.00 feet a distance of 170.59 feet
 North 68° 46' 40" West 10.74 feet

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North	29°	31'	00"	East	13.38 feet
North	25°	41'	40"	East	43.31 feet
North	19°	05'	15"	East	15.26 feet
North	16°	07'	45"	East	224.55 feet
North	18°	19'	50"	East	34.60 feet
North	26°	10'	25"	East	63.52 feet
North	22°	47'	50"	East	65.76 feet, and
North	31°	15'	05"	East	23.92 feet

to the northwesterly corner of the aforesaid land now or formerly of Davis; thence along said last mentioned land the following twenty-five courses and distances:

South	34°	56'	00"	East	192.00 feet
South	31°	33'	00"	East	59.52 feet
South	08°	31'	00"	East	171.26 feet
South	01°	09'	00"	East	135.20 feet
South	05°	33'	00"	West	40.46 feet
South	11°	52'	00"	West	49.65 feet
South	07°	24'	00"	West	19.14 feet
South	13°	08'	29"	West	88.58 feet
South	66°	36'	00"	East	26.85 feet
South	71°	10'	00"	East	14.57 feet
South	56°	16'	00"	East	27.84 feet
South	24°	05'	00"	East	6.77 feet
South	49°	43'	00"	East	6.55 feet
South	71°	15'	00"	East	25.54 feet
North	89°	31'	00"	East	25.62 feet
North	28°	36'	00"	East	70.39 feet
North	69°	20'	00"	East	89.16 feet
North	76°	50'	00"	East	59.96 feet
North	86°	51'	00"	East	16.51 feet
North	81°	27'	00"	East	42.48 feet
North	78°	13'	52"	East	121.74 feet
North	10°	45'	22"	West	242.59 feet
North	14°	47'	20"	West	42.12 feet
North	10°	37'	41"	West	179.17 feet, and
North	12°	08'	58"	West	474.81 feet

to the southerly side of Oregon Road in the Town of Bedford, the point or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING a point being the southwesterly corner of the aforesaid land now or formerly of Heinz; running thence from said point of beginning, South 77° 21' 20" West 14.00 feet and South 02° 32' 40" East 162.00 feet to the point of beginning, said point of beginning being the northeasterly corner of the herein described parcel; running thence from said point of beginning, South 02° 17' 40" East 142.32 feet to a corner; thence South 83° 51' 20" West 104.32 feet to a corner; thence North 02° 07' 40" West 142.92 feet to a corner; and thence North 84° 10' 20" East 103.86 feet to the point or place of BEGINNING.

The above-described parcel being also designated as (1) Lots

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LIBER 7115 PAGE 600

No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot No. A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot No. 4, Section 22 on the Assessment Map of the Town of Bedford.

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a

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INDEXED
MAY 15 1917
STATE OF NEW YORK
COUNTY OF [unclear]
[unclear]
\$38.00
[unclear]

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LIBER 7115 PAGE 601

trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

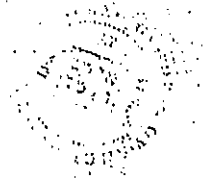
YALE UNIVERSITY,

by

John E. Ecklund
Treasurer

Attest:

Spencer F. Miller



LIBER 7115 PAGE 602

STATE OF Connecticut }
COUNTY OF New Haven } ss.:

On the 13 day of March, 1973, before me personally came John E. Ecklund, to me known, who, being by me duly sworn, did depose and say that he resides at Cedar Road, Woodbridge, Connecticut, that he is Treasurer of YALE UNIVERSITY, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Governing Board of said corporation, and that he signed his name thereto by like order.

George F. Williams
Notary Public



STATE OF CONNECTICUT }
County of New Haven }
Office of County Clerk and }
Clerk of Superior Court }

HAROLD J. IVEY
I, EDWARD HORWITZ, Clerk of said County of New Haven and of the Superior Court in and for said County, the same being a Court of Record, having by law a seal hereby certify

That *George F. Williams*
whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, duly appointed, commissioned and sworn, and authorized by the laws of said State to administer oaths, and take the acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his said official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person, and verily believe that the signature to the attached certificate is his said genuine signature and said certificate is not required to be under seal, and the person signing such certificate is not required by law to file in this office an impression to his said official seal; that I have compared the impression of the seal affixed thereto with the specimen impression thereof, filed or deposited in my office and that I believe the impression of the seal upon the original certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Superior Court, at New Haven, in said County and State, on the 16th day of March, 1973.

84928

Harold J. Ivey Clerk

BARGAIN AND SALE DEED
(Without Covenant Against
Grantor's Acts)

YALE UNIVERSITY

to

SEVEN SPRINGS FARM
CENTER, INC.

30/1/1973

Dated: March 17, 1973

The premises affected by the within instrument are located partially in the Towns of North Castle, New Castle and Bedford, County of Westchester and State of New York, and are also designated as Lots No. A43 and A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle, (ii) Lots No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle and (iii) Lots 4 and 4A, Section 22 on the Assessment Map of the Town of Bedford.

Record and Return to:

WISSIN + DANA
205 CHURCH STREET
NEW HAVEN, CONN. 06508
(ATT: MR. SCHENCK)

2150 B - CPa 00162 3-27-73

MAR 27 1973

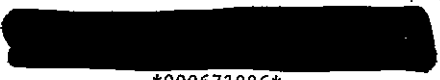
WESTCHESTER COUNTY CLERK'S OFFICE	
DIVISION OF LAND RECORDS	
State, Chk. - 67	Locality
Rec'd. Chk. - 67	Exhibit
Filing St.	
Cross Ref. to	
Cert. Receipt	
Town	
#	13221
Returned	

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the TOWNS OF BEDFORD, NEW CASTLE & NORTH CASTLE County of Westchester, N. Y. A true copy of the original DEED

recorded MARCH 27, 1973 at 2:59 PM

EDWARD N. VETRANO, County Clerk.

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LIBER 7115 PAGE 577

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THIS INDENTURE, made the 19th day of January, nineteen hundred and seventy-three, between EUGENE AND AGNES E. MEYER FOUNDATION, a New York corporation having an office at 1730 Rhode Island Avenue, N.W., Washington, D.C. 20036 (the party of the first part), and YALE UNIVERSITY, a Connecticut corporation having an office in New Haven, Connecticut (the party of the second part).

04007

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the successors and assigns of the party of the second part forever.

MAR 27 1973

TAX STAMPS ATTACHED \$

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being partially in the Towns of Bedford, New Castle and North Castle, County of Westchester and State of New York, more particularly described in Exhibit A annexed to and made a part of this deed.

EXHIBIT A

Parcel I

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager; running thence from said point of beginning, along said last mentioned land, and continuing along land now or formerly of Roland, the following forty-two courses and distances:

North	55°	16'	30"	East	22.12 feet
North	62°	03'	30"	East	22.90 feet
North	71°	09'	30"	East	44.68 feet
North	71°	52'	50"	East	44.31 feet
North	75°	45'	30"	East	43.08 feet
North	63°	31'	30"	East	25.86 feet
North	62°	51'	10"	East	14.99 feet
North	70°	41'	20"	East	13.43 feet
North	48°	17'	10"	East	10.11 feet
North	66°	42'	50"	East	33.24 feet
North	89°	04'	40"	East	8.70 feet
North	68°	33'	00"	East	7.57 feet
North	76°	29'	50"	East	20.56 feet
North	61°	28'	10"	East	20.85 feet
North	65°	24'	00"	East	56.31 feet
North	75°	50'	50"	East	13.25 feet
North	65°	01'	10"	East	57.73 feet
North	77°	18'	25"	East	18.93 feet
South	80°	49'	50"	East	4.83 feet
North	79°	19'	30"	East	19.81 feet
North	84°	50'	45"	East	40.07 feet
South	80°	19'	00"	East	13.20 feet
North	81°	21'	50"	East	81.65 feet
South	75°	39'	50"	East	103.31 feet
North	33°	43'	10"	East	80.29 feet
South	89°	41'	15"	East	300.86 feet
North	73°	00'	05"	East	30.75 feet
North	78°	02'	10"	East	38.46 feet
North	70°	54'	15"	East	33.00 feet
North	66°	36'	55"	East	40.80 feet
North	78°	30'	45"	East	12.56 feet
North	59°	02'	00"	East	7.62 feet
North	79°	58'	00"	East	33.38 feet
North	51°	31'	45"	East	28.46 feet
North	56°	01'	00"	East	45.90 feet
North	39°	16'	00"	East	58.93 feet
North	36°	20'	20"	East	38.63 feet
North	42°	27'	40"	East	32.51 feet
North	43°	19'	10"	East	35.59 feet
North	48°	55'	15"	East	123.19 feet
North	47°	22'	00"	East	114.00 feet, and
North	49°	43'	25"	East	87.25 feet

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to the northwesterly corner of land now or formerly of Glueck; thence along said last mentioned land the following three courses and distances:

South	09°	44'	20"	East	70.81 feet
South	13°	05'	50"	East	28.19 feet, and
South	08°	58'	00"	East	70.24 feet

to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle southwesterly, northwesterly and southwesterly, and partially along a stone wall, the following twenty-four courses and distances:

South	56°	56'	00"	West	123.00 feet
South	50°	48'	00"	West	78.00 feet
South	27°	44'	10"	West	66.55 feet
South	34°	12'	20"	West	10.46 feet
South	24°	31'	10"	West	47.98 feet
South	18°	32'	15"	West	72.38 feet
South	16°	08'	00"	West	104.40 feet
South	18°	35'	45"	West	16.90 feet
South	18°	59'	20"	West	34.70 feet
North	75°	35'	00"	West	20.01 feet
South	19°	25'	00"	West	185.02 feet

to a point of curve, southwesterly on a curve to the right having a radius of 165.00 feet a distance of 136.12 feet

South 66° 41' 00" West 138.42 feet

to a point of curve, southwesterly on a curve to the left having a radius of 110.00 feet a distance of 66.68 feet

South 31° 57' 00" West 46.34 feet

to a point of curve, northwesterly on a curve to the right having a radius of 35.00 feet a distance of 76.37 feet

North 23° 02' 00" West 29.00 feet
North 45° 22' 00" West 70.87 feet

to a point of curve, westerly on a curve to the left having a radius of 50.00 feet a distance of 70.02 feet

South 54° 24' 00" West 59.87 feet
South 58° 22' 00" West 63.00 feet
South 67° 36' 00" West 167.90 feet

to a point of curve, southerly on a curve to the left having a radius of 50.00 feet a distance of 52.71 feet

South 07° 12' 00" West 114.78 feet

to a point of curve;

thence southwesterly on a curve to the right having a radius of 50.00 feet, connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle;

thence westerly along the northerly side of Oregon Road in the Town of New Castle, the following five courses and distances:

South	81°	50'	00"	West	238.89 feet
North	85°	02'	00"	West	70.00 feet
South	83°	49'	50"	West	102.94 feet
South	85°	57'	50"	West	4.83 feet, and
North	53°	07'	20"	West	15.41 feet

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to a point on the easterly side of Woodside Road; thence northerly along the easterly side of Woodside Road the following twenty-three courses and distances:

North	16°	04'	10"	West	11.34 feet
North	03°	30'	10"	West	70.19 feet
North	01°	13'	40"	East	14.92 feet
North	24°	21'	30"	East	22.31 feet
North	09°	59'	20"	West	12.85 feet
North	17°	23'	30"	West	17.20 feet
North	32°	53'	50"	East	37.34 feet
North	17°	46'	50"	East	56.16 feet
North	13°	36'	50"	East	31.95 feet
North	02°	31'	10"	East	20.02 feet
North	17°	43'	50"	East	63.97 feet
North	04°	26'	30"	West	46.26 feet
North	06°	35'	30"	West	43.99 feet
North	17°	56'	30"	West	27.92 feet
North	08°	59'	05"	West	21.90 feet
North	27°	02'	20"	West	16.19 feet
North	09°	58'	35"	West	19.05 feet
North	18°	21'	00"	West	27.57 feet
North	26°	49'	10"	West	6.05 feet
North	37°	06'	00"	West	11.42 feet
North	45°	59'	40"	West	28.51 feet
North	48°	25'	05"	West	21.23 feet, and
North	48°	52'	40"	West	35.75 feet

to the aforesaid land now or formerly of Gallager, the point or place of BEGINNING.

The above-described parcel being also designated as (i) Lot No. A43, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (ii) Lot No. 4A, Section 22 on the Assessment Map of the Town of Bedford.

Parcel II

BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford where the same is intersected by the dividing line between the premises herein described and the northeasterly corner of land now or formerly of Davis; running thence northeasterly from said point of beginning, along the southerly side of Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	59°	28'	05"	East	24.06 feet
North	59°	37'	40"	East	111.07 feet
North	59°	36'	10"	East	82.49 feet
North	61°	51'	55"	East	64.17 feet
North	61°	52'	05"	East	137.88 feet
North	61°	19'	40"	East	30.78 feet
North	61°	23'	20"	East	38.07 feet
North	62°	17'	50"	East	20.84 feet
North	62°	06'	50"	East	90.37 feet
North	62°	05'	45"	East	97.99 feet
North	61°	06'	20"	East	119.52 feet, and
North	59°	19'	50"	East	101.38 feet

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to the westerly line of land now or formerly of Heinz;
 thence along said last mentioned land, South 18° 39' 30"
 East 571.16 feet to a corner;
 thence continuing along said last mentioned land, North 77°
 21' 20" East 11.51 feet to a monument;
 thence continuing along said last mentioned land and par-
 tially along a stone wall the following nine courses and dis-
 tances:

North	77°	21'	20"	East	67.72 feet
North	78°	48'	30"	East	114.31 feet
North	77°	52'	30"	East	303.46 feet
North	78°	37'	30"	East	78.59 feet
North	76°	48'	50"	East	97.84 feet
North	79°	12'	50"	East	121.08 feet
North	80°	35'	50"	East	114.21 feet
North	83°	52'	40"	East	28.40 feet, and
North	77°	50'	00"	East	382.30 feet

to the westerly boundary of the Village of Mount Kisco;
 thence along the westerly boundary of the Village of Mount
 Kisco, the following fourteen courses and distances:

South	08°	53'	40"	East	693.23 feet
South	79°	12'	20"	West	227.80 feet
South	17°	32'	40"	East	147.00 feet
South	05°	58'	40"	East	280.00 feet
South	30°	16'	20"	West	242.00 feet
South	10°	52'	40"	East	117.00 feet
South	09°	45'	20"	West	105.00 feet
South	35°	20'	40"	East	188.00 feet
South	12°	29'	40"	East	227.00 feet
South	11°	44'	20"	West	97.00 feet
South	05°	48'	40"	East	108.00 feet
South	21°	16'	20"	West	164.00 feet
South	04°	21'	40"	East	180.00 feet, and
South	03°	29'	20"	West	131.00 feet

to a point and other land owned by Eugene and Agnes E. Meyer
 Foundation;
 thence along said last mentioned land the following twelve
 courses and distances:

South	89°	33'	30"	West	418.17 feet
North	84°	02'	25"	West	140.33 feet
South	70°	48'	05"	West	77.82 feet
South	57°	03'	20"	West	115.72 feet
South	18°	21'	20"	West	835.19 feet
South	82°	27'	20"	West	219.14 feet
South	57°	47'	30"	West	196.34 feet
North	84°	08'	25"	West	319.91 feet
North	81°	37'	15"	West	22.17 feet
North	83°	39'	35"	West	66.92 feet
North	86°	37'	10"	West	28.66 feet, and
North	84°	18'	40"	West	243.31 feet

to the easterly side of Oregon Road in the Town of North
 Castle;
 thence northerly and westerly, along the easterly and north-
 westerly side of Oregon Road, the following eighty-six courses

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and distances:

North	20°	28'	30"	East	9.06 feet
North	25°	43'	10"	East	18.20 feet
North	17°	31'	00"	East	37.48 feet
North	12°	12'	20"	East	41.44 feet
North	12°	03'	20"	East	49.07 feet
North	08°	54'	10"	East	24.23 feet
North	00°	45'	25"	East	53.73 feet
North	03°	00'	50"	East	37.94 feet
North	74°	59'	50"	East	2.59 feet
North	13°	48'	10"	West	24.94 feet
North	08°	26'	25"	West	29.77 feet
North	08°	09'	10"	West	38.85 feet
North	01°	13'	00"	West	16.00 feet
North	10°	54'	50"	East	128.81 feet
North	03°	01'	20"	West	12.90 feet
North	02°	45'	50"	East	102.66 feet
North	01°	03'	20"	East	72.67 feet
North	04°	23'	00"	East	50.25 feet
North	03°	02'	40"	East	39.72 feet
North	07°	53'	55"	West	9.10 feet
North	07°	55'	30"	East	13.49 feet
North	61°	13'	00"	West	36.64 feet
North	61°	08'	50"	West	80.86 feet
North	62°	53'	20"	West	41.74 feet
North	61°	23'	20"	West	54.34 feet
North	51°	42'	35"	West	4.12 feet
North	64°	58'	50"	West	47.10 feet
North	80°	35'	00"	West	34.72 feet
North	86°	09'	30"	West	54.62 feet
North	56°	30'	10"	West	3.30 feet
South	66°	58'	10"	West	5.80 feet
South	87°	15'	10"	West	23.16 feet
North	17°	51'	00"	West	22.64 feet
North	04°	06'	10"	West	15.10 feet
North	22°	26'	50"	West	30.77 feet
North	38°	41'	00"	West	7.90 feet
North	25°	28'	50"	West	13.95 feet
North	32°	45'	30"	West	38.35 feet
North	47°	05'	20"	West	21.53 feet
North	26°	02'	40"	West	39.47 feet
North	56°	15'	20"	West	11.92 feet
North	32°	26'	20"	West	23.73 feet
North	27°	25'	50"	West	57.96 feet
North	36°	18'	25"	West	114.20 feet
North	27°	43'	30"	West	45.93 feet
North	18°	11'	00"	West	74.61 feet
North	37°	26'	10"	West	12.57 feet
North	19°	59'	45"	West	22.87 feet
North	12°	18'	50"	West	14.11 feet
North	24°	11'	40"	West	20.33 feet
North	16°	06'	45"	West	16.47 feet
North	00°	22'	45"	East	18.12 feet
North	13°	02'	40"	West	27.78 feet
North	07°	25'	45"	West	45.32 feet
North	12°	51'	50"	West	24.30 feet
North	00°	07'	00"	West	14.83 feet
North	15°	09'	40"	West	49.17 feet

North	32°	13'	50"	West	39.54 feet
North	30°	20'	40"	West	43.29 feet
North	20°	51'	55"	West	25.58 feet
North	02°	49'	30"	West	15.83 feet
North	29°	38'	50"	West	15.46 feet
North	08°	12'	35"	West	12.18 feet
North	29°	28'	20"	West	17.01 feet
North	16°	45'	00"	West	17.31 feet
North	09°	34'	20"	West	28.32 feet
North	13°	48'	20"	West	36.16 feet
North	03°	45'	40"	East	12.35 feet
North	15°	01'	55"	West	46.88 feet
North	29°	21'	00"	West	53.50 feet
North	23°	46'	40"	West	17.29 feet
North	37°	32'	30"	West	14.49 feet
North	49°	15'	20"	West	44.49 feet
North	71°	28'	20"	West	11.64 feet
North	57°	26'	30"	West	10.54 feet
North	73°	01'	15"	West	37.09 feet
North	82°	18'	20"	West	47.87 feet
North	84°	10'	30"	West	22.47 feet
South	83°	01'	40"	West	22.16 feet
North	84°	54'	00"	West	17.10 feet
South	86°	06'	00"	West	27.49 feet
North	81°	44'	10"	West	153.53 feet
North	79°	42'	00"	West	134.00 feet
North	84°	39'	00"	West	43.00 feet
North	89°	32'	00"	West	114.00 feet, and
North	71°	22'	00"	West	85.00 feet

to a point of curve;
 thence northeasterly on a curve to the right having a radius of 50.00 feet, connecting the northeasterly side of Oregon Road and the southeasterly side of Lower Byram Lake Road, a distance of 68.56 feet to a point on the southeasterly side of Lower Byram Lake Road;
 thence northerly, northeasterly, southeasterly and northeasterly along the easterly and southerly side of Lower Byram Lake Road in the Town of New Castle and continuing along Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	07°	12'	00"	East	134.10 feet
North	67°	36'	00"	East	171.94 feet
North	58°	22'	00"	East	68.77 feet
North	54°	24'	00"	East	61.60 feet
South	45°	22'	00"	East	61.00 feet
South	23°	02'	00"	East	19.13 feet

to a point of curve,
 northeasterly on a curve to the left having a radius of 85.00 feet a distance of 185.47 feet,
 North 31° 57' 00" East 46.34 feet to a point of curve,
 easterly on a curve to the right having a radius of 60.00 feet a distance of 36.37 feet,
 North 66° 41' 00" East 138.42 feet to a point of curve,
 northerly on a curve to the left having a radius of 215.00 feet a distance of 170.59 feet
 North 68° 46' 40" West 10.74 feet

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North	29°	31'	00"	East	13.38 feet
North	25°	41'	40"	East	43.31 feet
North	19°	05'	15"	East	15.26 feet
North	16°	07'	45"	East	224.55 feet
North	18°	19'	50"	East	34.60 feet
North	26°	10'	25"	East	63.52 feet
North	22°	47'	50"	East	65.76 feet, and
North	31°	15'	05"	East	23.92 feet

to the northwesterly corner of the aforesaid land now or formerly of Davis;
 thence along said last mentioned land the following twenty-five courses and distances:

South	34°	56'	00"	East	192.00 feet
South	31°	33'	00"	East	59.52 feet
South	08°	31'	00"	East	171.26 feet
South	01°	09'	00"	East	135.20 feet
South	05°	33'	00"	West	40.46 feet
South	11°	52'	00"	West	49.65 feet
South	07°	24'	00"	West	19.14 feet
South	13°	08'	29"	West	88.58 feet
South	66°	36'	00"	East	26.85 feet
South	71°	10'	00"	East	14.57 feet
South	56°	16'	00"	East	27.84 feet
South	24°	05'	00"	East	6.77 feet
South	49°	43'	00"	East	6.55 feet
South	71°	15'	00"	East	25.54 feet
North	89°	31'	00"	East	25.62 feet
North	28°	36'	00"	East	70.39 feet
North	69°	20'	00"	East	89.16 feet
North	76°	50'	00"	East	59.96 feet
North	86°	51'	00"	East	16.51 feet
North	81°	27'	00"	East	42.48 feet
North	78°	13'	52"	East	121.74 feet
North	10°	45'	22"	West	242.59 feet
North	14°	47'	20"	West	42.12 feet
North	10°	37'	41"	West	179.17 feet, and
North	12°	08'	58"	West	474.81 feet

to the southerly side of Oregon Road in the Town of Bedford,
 the point or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING a point being the southwesterly corner of the aforesaid land now or formerly of Heinz;
 running thence from said point of beginning, South 77° 21' 20" West 14.00 feet and
 South 02° 32' 40" East 162.00 feet to the point of beginning,
 said point of beginning being the northeasterly corner of the herein described parcel;
 running thence from said point of beginning, South 02° 17' 40" East 142.32 feet to a corner;
 thence South 83° 51' 20" West 104.32 feet to a corner;
 thence North 02° 07' 40" West 142.92 feet to a corner; and
 thence North 84° 10' 20" East 103.86 feet to the point or place of BEGINNING.

The above-described parcel being also designated as (i) Lots

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No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot No. A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot No. 4, Section 22 on the Assessment Map of the Town of Bedford.

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration

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as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

EUGENE AND AGNES E. MEYER
FOUNDATION,

By *Sandra Korman*
Chairman

Attest:

Charles C. Gillan III
Vice-President



~~STATE OF NEW YORK,)~~
~~DISTRICT OF COLUMBIA) ss.:~~
~~COUNTY OF NEW YORK,)~~

On the 17th day of January, 1973, before me personally came *Davidson Saunders*, to me known, who, being by me duly sworn, did depose and say that he resides at 3900 Watson Place, N.W., Washington, D.C.; that he is the *Chairman* of the EUGENE AND AGNES E. MEYER FOUNDATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



Robert W. Carter
Notary Public D.C.

My Commission Expires May 31, 1974

PQ

LIBER 7115 PAGE 588

Serial **A** 13019 DISTRICT OF COLUMBIA

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:



I CERTIFY THAT ROBERT W. CARTER whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of deeds or conveyance of lands, tenements, or hereditaments, and other instruments in writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

In Witness Whereof, the Executive Secretary to Commissioner of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D.C., this 22nd day of JANUARY, 1972.

(D.C. SEAL)

E. M. Batchelder
Chief Notary Public - District

Notary Public Clerk

I

MAR-09-2006 12:54

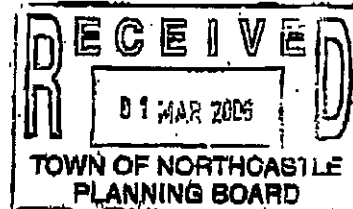
TOWN OF NORTH CASTLE

9142733554

P.02

FIDELITY TITLE LTD.
62 June Road
P. O. Box 512
North Salem, NY 10560-0512
Phone: 914-669-0015 Fax 914-669-0018

Agent For:



February 16, 2006

Stephen, Baroni, Reilly & Lewis, LLP
175 Main Street
White Plains, New York 10601
Attention: Roland A. Baroni, Jr., Esq.

Re: Our Title No.1 FY06-8555W
Title/Easement Search on the abandoned
part of Oregon Road, Town of North Castle

Dear Mr. Baroni:

You have requested that this company search the chain of title to the abandoned portion of Oregon Road, specifically for easement and access rights in favor of Seven Springs, LLC over same. We researched not only the deeds for Oregon Road but also for the abutting owners including the Seven Springs parcel on the easterly side of the abandoned part of Oregon Road.

As a general rule public highways are burdened by both easements of the public which are ordinary and traditional highway uses; and also of private easements held by the abutting owners for access, light and air. A street closing by the municipality does not affect these private easements. (Schonleben v. Swain, 130 App. Div. 521, affd. 198 N.Y. 621). The rule concerning private easements by abutting owners is not universal. Where the street is owned in fee by the municipality, private easements do not exist. (see Warren's Wood New York Real Property, "Streets and Highways" §9.02).

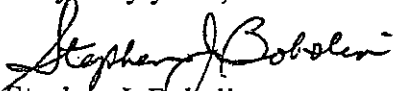
The New York State Courts have held that private easements arise where title to both the land in the bed of the street and abutting parcels derive from a common owner. (Low v. Humble Oil & Ref. Co., 51 Misc 2d 281, 273 N.Y.S. 2d 85, modified 27 A.D. 629, 276 N.Y.S 2d 55). (Dworknik v. State of New York 251 App. Div. 675, affd. 283 N.Y. 597).

My research indicates that fee title to the bed of the abandoned portion of Oregon Road was never held by the Town of North Castle. I found no deed of dedication into the Town of North Castle. It appears that Oregon Road became a Town road by virtue of prescriptive use as it was used in the past as a highway by the public continuously for 10 or more years (see N.Y. Highway Law §189). Accordingly, I searched the title to the bed of the abandoned portion of Oregon Road and the adjoining owners to ascertain whether there was in fact one common owner.

Title was searched back to the early 1900's. By a series of deeds dating from July 30, 1909 through September 4, 1951, Eugene Meyer Jr. acquired an assemblage of over 300 acres of property in the Town of North Castle situated to the west of Byram Lake straddling Oregon Road south of the New Castle Town Line. Title to both the Nature Conservancy parcels and the Seven Springs, LLC parcel was traced back to the common owner, Eugene Meyer, Jr.. Although none of the deeds in the chain of title subsequent to Meyer included the abandoned portion of Oregon Road by metes and bounds, it was not excepted and the deeds all included the appurtenance clause "Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof".

Please note the legal descriptions contained in the deeds into Meyer did not run along the sides of the abandoned portion of Oregon Road but included Oregon Road by metes and bounds. Based upon the state of title that Eugene Meyer, Jr. was the common owner of both the abandoned portion of Oregon Road and the abutting land now owned by the Nature Conservancy and Seven Springs, LLC it is my opinion in accordance with case law, Seven Springs, LLC does have a private easement for access over the abandoned portion of Oregon Road. This letter shall not be construed to be a policy of title insurance. Liability shall be limited to the amount of fees paid for this search and opinion of title.

Very truly yours,



Stephen J. Bobolia
President

SJB/cs

J

08/19/2000 17:08 FAX

APR 20 2000 9:55 AM 1901 AMERICAN TITLE

Patent Rights: From Mar-1994 Joseph and Ade Reed, with closing agent's name indicated in parentheses
CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

9-21-1996

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THIS INSTRUMENT, made the 29th day of APRIL, nineteen hundred and ninety-three
BETWEEN REALIS ASSOCIATES, A New York partnership, with offices at
356 Manville Road, Pleasantville, New York 10570

6/24-
CORTI
L12

party of the first part, and ROBERT BURKE and TERI BURKE, husband and wife, both
residing at 70 Davenport Farms Lane East, Stamford, Connecticut 06903

party of the second part,
WITNESSETH, that the party of the first part, in consideration of TEN and No/100 (\$10.00)

_____ dollars,
lawful money of the United States, paid
by the party of the second part, do hereby grant and release unto the party of the second part, the heirs or
successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the SEE SCHEDULE "A" - DESCRIPTION, ANNEXED HERETO.

SAID PREMISES being known on the Tax Assessment Map of the Town of North Castle
as: Section 2, Block 5, Lot 1.2.

SUBJECT TO and assuming a mortgage made by New York Urban North II, Inc., in
the amount of \$140,000.00 having a principal balance at the time of this con-
veyance of \$140,000.00, which mortgage the grantee hereby assume and agree to
pay.

No right, title and interest in and to the streets are included in this sale,
the same being reserved for dedication to the Town of North Castle.
The party of the second part is hereby granted an easement of ingress and egress
over Oregon Hollow Road, pending dedication of same.

SUBJECT TO a road widening easement for the future widening of Oregon Road ap-
proximately twenty-five (25') feet in width, along the easterly boundary line,
said easement as shown on Subdivision Map of Property known as Oregon Trails,
filed in the Westchester County Clerk's Office on December 9, 1986, as Map
No. 25547.

1000-NFO-010-N

08/19/2000 17:08 FAX

RECEIVED
CHICAGO TITLE INSURANCE COMPANY

PQ

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9310-01806

SCHEDULE A - DESCRIPTION
AMENDED 4/26/93
AMENDED 4/27/93

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 2 on a certain map entitled, "Subdivision of Property known as Oregon Trails situate in the Town of North Castle, Westchester County, New York", made by Thomas G. Merritts, L.S. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547, said lot being bounded and described as follows:

Beginning a point on the northerly side of Oregon Hollow at the westerly end of a curve, having a radius of 25.00 feet which connects the westerly side of Oregon Road with the northerly side of Oregon Hollow;

RUNNING THENCE along the northerly and northeasterly side of Oregon Hollow the following 5 courses and distances:

- 1) North 85° 23' 30" West 14.63 feet to a point of curve,
- 2) Along a curve to the right having a radius of 150.00 feet, a central angle of 67° 13' 26", a distance of 175.99 feet to a point of tangency,
- 3) North 18° 10' 04" West 51.49 feet to a point of curve,
- 4) Along a curve to the right having a radius of 25.00 feet a central angle of 51° 19' 04", a distance of 22.39 feet to a point of reverse curve,
- 5) Along a curve to the left having a radius of 55.00 feet, a central angle of 52° 11' 39", a distance of 50.10 feet to the division line between Lot 1 and Lot 2 as shown on the above mentioned filed Map No. 22547;

THENCE along said division line North 64° 47' 39" East 255.98 feet to the westerly side of Oregon Road;

THENCE along the westerly side of Oregon Road the following 10 courses and distances:

DESCRIPTION

09/18/2000 17:09 FAX

APR 26 2005 4:59PM FIRST AMERICAN TITLE

NO. 0400

PQ

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9210-01806

SCHEDULE A - DESCRIPTION
 AMENDED 8/26/93
 AMENDED 8/27/93

- 1) South 00° 07' West 20.18 feet;
- 2) South 11° 53' 55" West 24.06 feet;
- 3) South 04° 08' 05" West 40.64 feet;
- 4) South 20° 17' 45" West 15.48 feet;
- 5) South 08° 57' 30" West 22.22 feet;
- 6) South 14° 28' 05" West 57.32 feet;
- 7) South 29° 00' 15" West 25.43 feet;
- 8) South 09° 07' West 37.36 feet;
- 9) South 04° 41' 35" West 28.48 feet;
- 10) South 08° 47' 30" West 43.04 feet to a point of curve;

THENCE along a curve to the right having a radius of 25.00 feet a central angle of 93° 49', a distance of 40.93 feet to the northerly side of Oregon Hollow to the point and place of BEGINNING.,

TOGETHER with an easement of ingress and egress over Oregon Hollow to Oregon Road.

08/19/2000 17:09 FAX

APR 26 2000 4:39PM FIRST AMERICAN TITLE

NO. 0-00

PQ

~~TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to~~
~~and premises~~

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or assigns and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this instrument so requires.
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

In presence of:

NOTARY PUBLIC
STATE OF NEW YORK

REALTY ASSOCIATES

SUSAN CAVALIERE, Partner

GEORGE GREEN, JR., Partner

ANDREW J. YOUNG, Partner

06/19/2003 17:10 FAX

APR 26 2003 - 5:00PM-----FIRST AMERICAN TITLE

NY 101430

On the 27th day of APRIL 19 93, before me personally came SUSAN CAVALIERE, GEORGE CROHN, JR. and ANDREW J. FIORE, general partners in REALIS ASSOCIATES and _____ described in and who executed the foregoing instrument, and acknowledged that they executed the same, and that they had authority to sign the same, and acknowledged to me that they executed same as the act and deed of said firm for the use and purposes therein mentioned.

On the _____ day of _____ 19 _____, before me personally came _____ described in and who executed the foregoing instrument, and acknowledged that they executed the same.

PQ

Rita Bracquino
Notary Public

NYA BRACQUINO
NOTARY PUBLIC, State of New York
No. 63-030254
Qualified in Westchester County
Commission Expires Dec. 31, 1997

STATE OF NEW YORK, COUNTY OF _____ SE: STATE OF NEW YORK, COUNTY OF _____ SE:

On the _____ day of _____ 19 _____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he resides at No. _____ that he is the _____ of _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by his order.

On the _____ day of _____ 19 _____, before me personally came _____ the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. _____ that he knows _____ to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Margain and Sale Deed
With COVENANT AGAINST GRANTOR'S ACTS
TITLE NO. 9210-01806
REALIS ASSOCIATES

SECTION 2
BLOCK 5
LOT 1-2
COUNTY or TOWN OF North Castle,
Westchester County, New York
Issued at Request of
CHICAGO TITLE INSURANCE COMPANY

TO
ROBERT BURKE and ZERI M. BURKE

STANDARD FORM OF NEW YORK ISSUED BY TITLE INSURATORS
Distributed by
CHICAGO TITLE
INSURANCE COMPANY

Return by Mail to
BLEAKLEY PLATT & SCHEINOT
ATTY JOSEPH GLATTHAR
ONE NORTH LEXINGTON AVE
PO BOX 5056
WHITE PLAINS NY 10602-5056

RECORDING OFFICE

k

Apr. 26. 2005- 5:00PM FIRST AMERICAN TITLE NO. U43U

Record Form No. 1007
Form 1007 (4-03) is subject to the provisions of the Real Property Law of the State of New York.
COMPLY WITH THE LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

9416-613
F5724

THIS INSTRUMENT, made the 27th day of July, nineteen hundred and ninety-four.

BETWEEN
REALIS ASSOCIATES, a New York Partnership with offices at
356 Marville Road, Pleasantville, NY 10570

party of the first part, and
NOEL B. DONOHUE & JOANN DONOHUE, husband and wife, both residing at
32 Harney Road, Scarsdale, NY 10583

4 Oregon Hollow
Armonk, NY

party of the second part,
WITNESSETH, that the party of the first part, in consideration of \$10.00

_____ dollars,
lawful money of the United States, paid

by the party of the second part, does hereby grant and release unto the party of the first part, the heirs or
successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the Town of North Castle, County of Westchester, State of New York,
as shown on Description annexed hereto, as Exhibit "A".

Also known on the Tax Assessment Map of the town of North Castle as Section 2,
Block S, Lot 1-1.

BEING a portion of the premises acquired by the grantor by deed dated June 28,
1988 and recorded on July 7, 1988 in Liber 9236, cp 287.

The party of the second part is granted an easement to use the roads as shown
on the subdivision map in Schedule A annexed hereto for ingress and egress to
the nearest public road.

No right title or interest into any of the roads abutting the premises herein
are included in this conveyance, the same being reserved for dedication to the
Town of North Castle.

Reserving to the party of the first part for the purpose of dedicating to the
Town of North Castle, a twenty-five foot road widening easement, as shown on
Map No. 22547, the future widening of Oregon Road. Seller retains this ease-
ment for purposes of dedication to the Town of North Castle.

TAX MAP
DESIGNATION
Dk.
Sd. 2
Bl. 5
Lot(s) 1-1

PO

CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A DESCRIPTION

Title No.: 9410-00613

AMENDED

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 1 on a certain map entitled, "Subdivision of Property known as Oregon Trails situate in the Town of North Castle, Westchester County, New York", made by Thomas C. Marxits, L.S. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547 being bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Hollow where the same is intersected by the division line between Lots 1 and 2 on said map;

TRENCHE in a northwesterly direction along the easterly side of Oregon Hollow on a curve to the left having a radius of 55.00 feet a distance of 42.86 feet to the division line between Lots 1 and 20 on said map;

TRENCHE along the division line between Lots 1 and 20,

North 21° 36' 54" East, 331.49 feet to lands now or formerly of Eugene and Agnes E. Meyer Foundation on said map;

TRENCHE along said lands now or formerly of Eugene and Agnes E. Meyer Foundation,

North 89° 34' 30" East, 176.42 feet to the westerly side of Oregon Road on said map;

TRENCHE along the westerly side of Oregon Road,

South 6° 13' 55" West, 37.58 feet;
South 0° 07' 55" West, 13.01 feet;
North 79° 22' 30" West, 20.01 feet;
South 6° 55' 05" West, 32.63 feet;
South 40° 49' 05" West, 12.02 feet;
South 10° 55' 30" West, 13.14 feet;
South 38° 42' 10" East, 24.56 feet;
South 1° 48' 25" West, 20.61 feet;
South 12° 27' 50" West, 73.77 feet; and
South 0° 07' 00" West, 18.96 feet to the division line between Lots 1 and 2 on said map;

TRENCHE along the division line between Lots 1 and 2,

South 64° 47' 39" West, 255.98 feet to the easterly side of Oregon Hollow, the point and place of **BEGINNING**.

Apr. 26. 2005 5:01PM FIRST AMERICAN TITLE

No. U43U

P. 15

PQ

~~THE PARTIES HERETO HAVE AGREED TO CONVEY TO THE SECOND PARTY THE ENTIRE INTEREST IN THE PREMISES DESCRIBED IN THE INSTRUMENT DATED 08/19/2000 AND ALL THE APPURTENANCES AND ALL THE OBLIGATIONS AND LIABILITIES OF THE FIRST PARTY IN AND TO SAID PREMISES.~~

TOGETHER with the appurtenances and all the estate and rights of the first party in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the avails of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

In presence of:

REALTY ASSOCIATES

By: 
ANDREW J. FUREL, REALTOR

APR 26 2005 5:01 PM FIRST AMERICAN TITLE

NO. U4JU P. 10

STATE OF NEW YORK, COUNTY OF

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came _____

On the _____ day of _____ 19____, before me personally came _____

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

PQ

STATE OF NEW YORK, COUNTY OF WESTCHESTER

STATE OF NEW YORK, COUNTY OF

On the 27th day of July 1994, before me personally came ANDREW J. FIORE to me known, who, being by me duly sworn, did depose and say that he resides at No. One Pioneer Trail, Armonk, NY 10504; that he is also a General Partner of REALIS ASSOCIATES, the partnership

On the _____ day of _____ 19____, before me personally came _____ the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. _____ that he knows _____

in and which executed the foregoing instrument; that he also knows the said subscribing witness, that the said officer to said instrument, and that the said officer as affirmed by order of the board of directors of said corporation and that he signed by _____ executed the foregoing instrument in the firm name of REALIS ASSOCIATES; that he had authority to sign same and acknowledged to me that he executed the same as the act and deed of said firm for the uses and purposes therein mentioned.

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness therein.

Abraham J. Ben
Notary Public

56/05/4
Commission Expires _____
Qualified in Westchester County
STATE OF NEW YORK
ATTORNEY AND NOTARY PUBLIC
ABRAHAM J. BEN

ABRAHAM J. BEN
ATTORNEY AND NOTARY PUBLIC
State of New York No. 80-0000745
Qualified in Westchester County
Commission Expires 11/01/95

Repeal with Split Rec'd
WITH COVENANT AGAINST GRANTOR'S ACTS
Title No. 94/10-613

SECTION 2
BLOCK 5
LOT 1-1
MUNICIPALITY TOWN OF NORTH CASTLE
TAX BILLING ADDRESS -
COUNTY - WESTCHESTER

REALIS ASSOCIATES
TO
NOEL B. DONOHUE & JUAN DONOHUE

Recorded At Request of _____
ENTIRE BY MAIL TO:

Guaranteed by

TICOR TITLE GUARANTEE

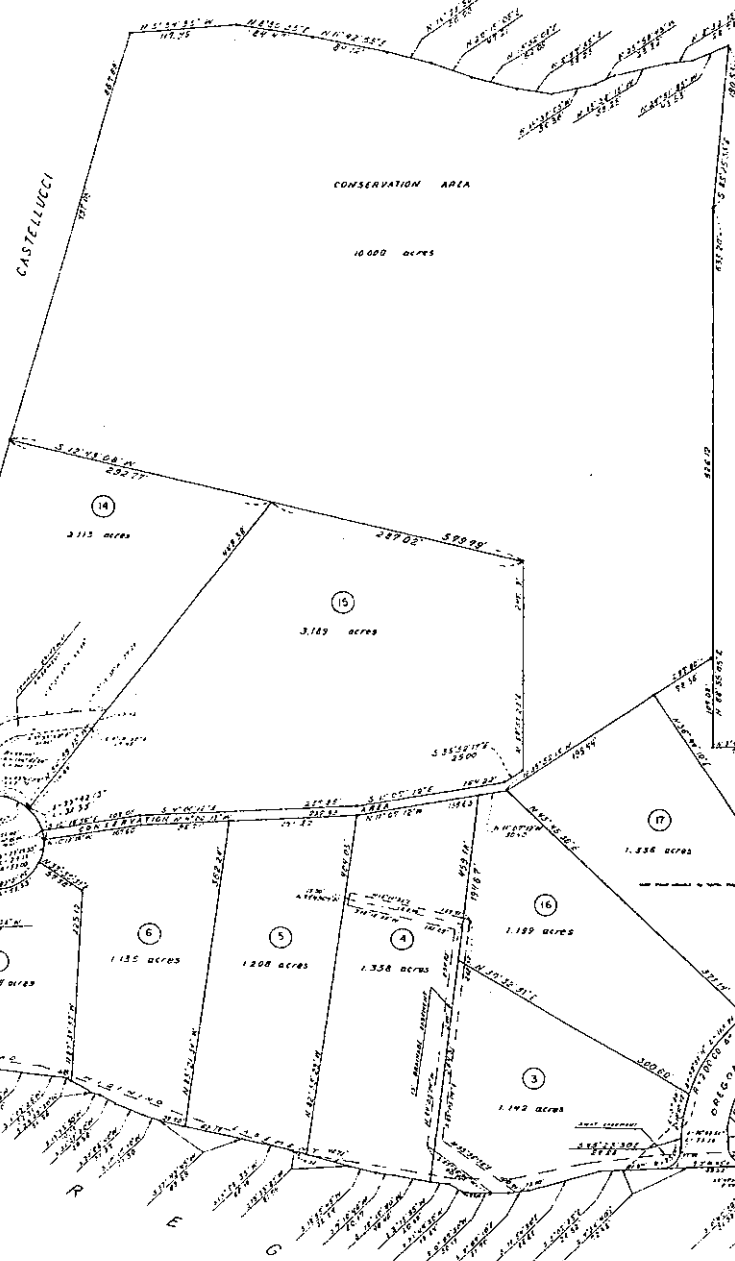
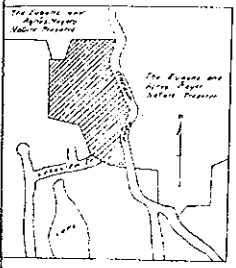
MARCO SCLAFANI, ESQ.
27 TWIX LAKES ROAD
SOUTH SALEM, NY 10590

[Large empty rectangular box]

l

N/F VINCENT CASTELLUCCI

PQ



- NOTES**
1. Premises shown herein located in LA Zone and LA Zone.
 2. Premises shown herein shown and designated as Section 1, Block 1, Zone 1.
 3. Premises shown herein being located in Section 133 Block 100 in Westchester County Block Index Maps.
 4. The construction of common access driveways to lots shown on this map is covered by certificate as per a common driveway plan and specific design conditions and easements prepared by architect, the plan is in the office of the Clerk of the County of Westchester, Division of Land Records, and copies of same shall be furnished to the Planning Board of the Town of North Castle. The Town of North Castle shall have a certificate of occupancy for any lot served by a common driveway, which shall be returned to the Town of North Castle.
 5. The individual lot owners shall comply with the erosion and sedimentation control measures specified in the site development plan for the planning board. The Planning Board's Erosion Control Management Program Manual or other approved erosion control measures shall be approved by the Planning Board of the Town of North Castle when developing their individual lots.
 6. Signs and other structures shall be located within these areas as indicated on this map as "signing area" as shown on the integrated site plan. Any sign shall be approved by the Planning Board. The location of the sign shall be approved by the Planning Board. Any sign shall be approved by the Planning Board. Any sign shall be approved by the Planning Board.
 7. Lots shall be designed on the plat along Oregon Road as "Reserved for Home Occupancy" and shall be measured 25 feet from the centerline of the road.
 8. Building foot elevations shall be set one foot above the 100 year flood level.
 9. Each owner shall be responsible for the maintenance of that portion of the retention drain on the owner's property.
 10. The parcel designated as "conservation area" is to be preserved as a natural area and shall not be developed as a building lot. No construction shall be allowed on any and said area, plain or void lot.

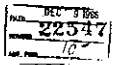
Lot Area = 33,747 Acres
 Block Area = 1,981 Acres
 Conservation Area = 10,000 Acres
 Total Area = 45,728 Acres

WESTCHESTER COUNTY DEPARTMENT OF HEALTH - WHITE PLAINS, NY

Approved subject to provision of separate record with water supply and separate sewage disposal facilities in some full residential building after construction to be installed in accordance with engineering plans on file with the Department and with plans and specifications duly approved and filed in the office prior to the construction of such building.

Any pressure change, addition or alteration of any kind, except the addition of signatures of other approving authority, and the date there-of made on this plan after the date of this approval shall invalidate the approval.

Each subdivision of property shown herein shall be furnished a true copy of map showing this subdivision.



SUBDIVISION OF PROPERTY
 KNOWN AS
OREGON TRAILS
 SITUATE IN THE
 TOWN OF NORTH CASTLE
 WESTCHESTER COUNTY, NEW YORK

SCALE
 1" = 100'

Approved by Resolution of the Planning Board of North Castle on the 15th day of November, 1988.

By: *[Signature]*
 Chairman

Witnessed this 15th day of November, 1988
 by: *[Signature]*
 Notary Public State of New York

GLASLAND and BOCK ENGINEERS, P.C.

By: *[Signature]*
TERRY SUDWEEK

Approved by the Clerk of the Westchester County, Division of Land Records
 on this 15th day of November, 1988.
 By: *[Signature]*
 Clerk

100 South Rock Hill Avenue, NY 10510
 914-353-2222

PLASS

n

DEED

THIS INDENTURE, made the 19th day of JUNE, two thousand and six

BETWEEN

REALIS ASSOCIATES, a New York Partnership, with offices at
356 Marville Road
Pleasantville, New York 10570

party of the first part, and

SEVEN SPRINGS, LLC with offices at
c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, being more particularly bounded and described as follows:

SEE ATTACHED SCHEDULE "A"

SAID premises being known as part of Oregon Road, North Castle, New York.

TOGETHER, with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

The premises being conveyed are, and are intended to be, the same premises retained by the party of the first part as set forth in deed from Realis Associates to Robert Burke and Teri Burke dated April 29, 1993 and recorded on May 12, 1993 in liber 10576 page 243, and as set forth in deed from Realis Associates to Noel B. Donohoe and Joann Donohoe dated July 27, 1994 and recorded August 9, 1994 in liber 10929 page 35.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

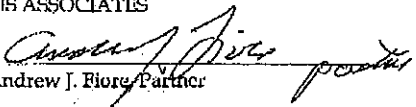
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

REALIS ASSOCIATES

By: 
Andrew J. Fiore, Partner

STATE OF NEW YORK)
)
) SS.:
)
COUNTY OF WESTCHESTER)

On the 12th day of June, in the year 2006 before me, the undersigned, personally appeared ANDREW J. FIORI personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Eileen M. Acosta

Signature and Office of individual taking acknowledgment

EILEEN M. ACOSTA
Notary Public, State of New York
No. 01AC8010118
Qualified in Orange County
Commission Expires July 13, 20 06

DFED

REALIS ASSOCIATES

TO

SEVEN SPRINGS, LLC

TOWN OF NORTH CASTLE
COUNTY OF WESTCHESTER
Tax Map Designation:

Section
Block
Lot

Return by Mail to
DelBello Donnellan Weingarten Tartaglia
Wise & Wiederkehr, LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601

Schedule "A"

All that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, and State of New York adjacent to the easterly boundary line of the parcel identified on the tax assessment map of the Town of North Castle as Section 2, Block 5, Lot 1.2, and more particularly described on Exhibit "1A" annexed hereto, to the center line of the road known as Oregon Road, and adjacent to the easterly boundary line of the parcel identified on the tax assessment map of the Town of North Castle as Section 2, Block 5, Lot 1-1, and more particularly described on Exhibit "1B" annexed hereto, to the center line of the road known as Oregon Road, together with a road widening easement for the future widening of Oregon Road approximately twenty-five (25) feet in width, along the easterly boundary line, said easement as shown on Subdivision Map of Property known as Oregon Trails, filed in the Westchester County Clerk's Office on December 9, 1986, as Map No. 22547.

EXHIBIT 1A

RECORDED - 7/28/93

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9310-01806

SCHEDULE A - DESCRIPTION
AMENDED 4/26/93
AMENDED 4/27/93

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 2 on a certain map entitled, "Subdivision of Property known as Oregon Trails situate in the Town of North Castle, Westchester County, New York", made by Thomas G. Merritts L.S. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547, said lot being bounded and described as follows:

Beginning a point on the northerly side of Oregon Hollow at the westerly end of a curve, having a radius of 25.00 feet which connects the westerly side of Oregon Road with the northerly side of Oregon Hollow;

RUNNING TRENCE along the northerly and northeasterly side of Oregon Hollow the following 5 courses and distances:

- 1) North 85° 23' 30" West 14.63 feet to a point of curve,
- 2) Along a curve to the right having a radius of 150.00 feet, a central angle of 67° 13' 26", a distance of 175.93 feet to a point of tangency,
- 3) North 18° 10' 04" West 51.43 feet to a point of curve,
- 4) Along a curve to the right having a radius of 25.00 feet a central angle of 51° 19' 04", a distance of 22.35 feet to a point of reverse curve,
- 5) Along a curve to the left having a radius of 35.00 feet, a central angle of 52° 11' 39", a distance of 59.10 feet to the division line between Lot 1 and Lot 2 as shown on the above mentioned filed Map No. 22547;

TRENCE along said division line North 64° 47' 39" East 255.93 feet to the westerly side of Oregon Road;

TRENCE along the westerly side of Oregon Road the following 10 courses and distances:

08/19/2006 17:09 FAX

APR. 26, 2005 4:18PM FIRST AMERICAN TITLE

004

PO

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9216-01806

SCHEDULE A DESCRIPTION
AMENDED 1/26/93
AMENDED 1/27/93

- 1) South 00° 07' West 20.18 feet;
- 2) South 11° 53' 55" West 24.06 feet;
- 3) South 04° 08' 05" West 48.64 feet;
- 4) South 20° 17' 45" West 15.48 feet;
- 5) South 08° 57' 30" West 22.22 feet;
- 6) South 16° 28' 05" West 57.32 feet;
- 7) South 29° 00' 15" West 25.43 feet;
- 8) South 59° 07' West 37.36 feet;
- 9) South 04° 41' 35" West 28.48 feet;
- 10) South 00° 47' 30" West 43.04 feet to a point of curve;

THENCE along a curve to the right having a radius of 25.00 feet a central angle of 97° 49', a distance of 40.93 feet to the northerly side of Oregon Hollow to the point and place of BEGINNING.

TOGETHER with an easement of ingress and egress over Oregon Hollow to Oregon Road.

EXHIBIT 1B

CHICAGO TITLE INSURANCE COMPANY SCHEDULE A DESCRIPTION

Title No: 9410-00613

AMENDED

ALL that certain plot, piece or parcel of land, situate, lying and being in the town of North Castle, County of Westchester and State of New York, shown and designated as Lot 1 on a certain map entitled, "Subdivision of Property known as Oregon Hills situate in the town of North Castle, Westchester County, New York", made by Thomas C. Maxvitz, L.S., dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 2, 1986 as Map Number 22547 being bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Hollow where the same is intersected by the division line between Lots 1 and 2 on said map;

THENCE in a northwesterly direction along the easterly side of Oregon Hollow on a curve to the left having a radius of 85.00 feet a distance of 42.86 feet to the division line between Lots 1 and 20 on said map;

THENCE along the division line between Lots 1 and 20,

North 21° 38' 54" East, 331.49 feet to lands now or formerly of Eugene and Agnes E. Meyer Foundation on said map;

THENCE along said lands now or formerly of Eugene and Agnes E. Meyer Foundation,

North 89° 34' 40" East, 176.42 feet to the westerly side of Oregon Road on said map;

THENCE along the westerly side of Oregon Road,

- South 8° 11' 55" West, 27.58 feet;
- South 0° 07' 55" West, 13.61 feet;
- North 79° 22' 40" West, 20.01 feet;
- South 8° 55' 05" West, 22.63 feet;
- South 40° 49' 05" West, 12.02 feet;
- South 10° 55' 30" West, 13.14 feet;
- South 38° 42' 10" East, 24.56 feet;
- South 1° 48' 25" West, 27.62 feet;
- South 12° 27' 50" West, 73.77 feet; and
- South 0° 07' 00" West, 18.96 feet to the division line between Lots 1 and 2 on said map;

THENCE along the division line between Lots 1 and 2;

South 54° 47' 39" West, 258.82 feet to the easterly side of Oregon Hollow, the point and place of BEGINNING.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

FRANCES M. MAGRINO, being sworn says:

I am not a party to the action, am over 18 years of age and reside at Harrison, New York.

On August 18, 2006, I served a true copy of the annexed **AFFIDAVIT IN**

OPPOSITION AND EXHIBITS in the following manner:

by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

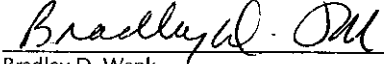
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Lois Rosen, Esq.
Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP
120 Bloomingdale Road
White Plains, NY 10605-1500
Federal Express
Tracking No.: 7900 3947 1170


FRANCES M. MAGRINO

Sworn to before me this
18th day of August, 2006


Bradley D. Wank
Notary Public, State of New York
No. 60-4829597
Qualified in Westchester County
Commission Expires December 31, 2009

DELBELLO DONNELLAN WEINGARTEN TARTAGLIA
WISE & WIEDERKEHR, LLP

ANN FARRISSEY CARLSON^o
BRIAN T. BELOWICH^o
ALFRED B. DELBELLO
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^o MEMBER OF NY & CT BARS
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[†] MEMBER OF NY, NJ & MA BARS
^{*} MEMBER OF NY, NJ, CT & FL BARS

August 31, 2006

Via Hand Delivery

Hon. John R. LaCava
Westchester County Supreme Court
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601


Re: **Seven Springs, LLC v. The Nature Conservancy, et al.**
Supreme Court Westchester County Index No.: 9130-06
Return date of Motions: September 15, 2006

Dear Justice LaCava:

We represent the Plaintiff, Seven Springs, LLC in the above matter.

Please find enclosed Affidavit in Opposition and Memorandum of Law which are submitted on behalf of Plaintiff in opposition to the motion of defendant Town of North Castle, the motion of defendant The Nature Conservancy and the motion of defendants Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe. Please note that there are three separate motions pending before the Court and the enclosed papers are submitted in opposition to each of the motions.

If there are any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

BRADLEY D. WANK

BDW/cw
Enclosure

RECEIVED
AUG 31 2006
CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

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.

**AFFIDAVIT IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS and EXHIBITS**

DEL BELLO DONNELLAN WEINGARTEN TARTAGLIA
WISE & WIEDERKEHR, LLP
COUNSELLORS AT LAW
Plaintiff

Attorneys for

ONE NORTH LEXINGTON AVENUE
WHITE PLAINS, NEW YORK 10601

(914) 681-0200

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

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:

DEL BELLO DONNELLAN WEINGARTEN TARTAGLIA
WISE & WIEDERKEHR, LLP
COUNSELLORS AT LAW

Attorneys for

To:

ONE NORTH LEXINGTON AVENUE
WHITE PLAINS, NEW YORK 10601

Attorney(s) for

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 Verification 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

Check Applicable Box

Individual Verification

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.

the of

Corporate Verification

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.

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:

Check Applicable Box

Service by Mail

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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Personal Service

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

Service by Electronic Means

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney 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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Overnight Delivery Service

by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

Sworn to before me on _____, 20 _____

(Print signer's name below signature)

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.

Index No. 9130-06

JRL
FILED
NOV 03 2006
TIMOTHY C. DEWILL
COUNTY CLERK
COUNTY OF WESTCHESTER

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AUG 31 2006
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WESTCHESTER SUPREME
AND COUNTY COURTS

PLAINTIFF'S MEMORANDUM OF LAW

**DELBELLO DONNELLAN WEINGARTEN
TARTAGLIA WISE & WIEDERKEHR, LLP**
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, NY 10601
(914) 681-0200

6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130-06

-against-

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

Defendants.

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AND COUNTY COURTS

PLAINTIFF'S MEMORANDUM OF LAW

PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted on behalf of Seven Springs, LLC ("Plaintiff" or "Seven Springs") in opposition to the motion of Defendant Town of North Castle ("North Castle"), the motion of Defendant The Nature Conservancy (the "Nature Conservancy"), and the motion of Defendants ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE and JOANN DONOHOE, which seek an Order pursuant to CPLR 3211 (a) (1), (5) and (7) dismissing the instant action.

This is an action brought pursuant to Article 15 of the Real Property Actions and Proceedings Law to compel the determination of claims to real property located in North Castle, New York. Specifically, Plaintiff is seeking judgment (1) declaring that Seven Springs, LLC has a right to access its property by virtue of an easement and/or right of way over a road known as Oregon Road, which is located in the Town of North Castle and more particularly

identified in the Complaint; (2) declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road that abuts Seven Springs, LLC's property on its westerly side; (3) 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; (4) enjoining the Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiffs' property; and (5) that Defendant, Town of North Castle, be directed to remove all obstructions 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 Plaintiff's property.

For the reasons set forth herein, as well as in the Affidavit of Donald J. Trump sworn to August 16, 2006 (the "Trump Aff."), and the documentary evidence attached thereto it is respectfully submitted that the Defendants' motions should be denied because the complaint sets forth valid causes of action that are not time barred.

STATEMENT OF FACTS

The factual allegations in opposition to Defendants' motions are set forth in the Trump Aff., and are incorporated herein by reference¹.

¹ Defined terms used here have the same meaning as set forth in the Trump Aff., unless indicated otherwise.

ARGUMENT

POINT I

THE COMPLAINT SETS FORTH VALID CAUSES OF ACTION AND DEFENDANTS' MOTIONS TO DISMISS SHOULD BE DENIED

"On a CPLR § 3211 motion made against a complaint, a court must take the allegations as true and resolve all inferences which reasonably flow therefrom in favor of the pleader."

Cron v. Hargro Fabrics, Inc., 91 N.Y.2d 362, 366, 670 N.Y.S.2d 973, 975 (1998).

The sole criterion in considering a motion to dismiss is:

"... whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail (see *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65, 248 N.Y.S.2d 121, 125-127; Siegel, Practice Commentaries, McKinney's Cons.Laws of N.Y., Book 7B, CPLR 3211:24; p. 31; 4 Weinstein-Korn-Miller, N.Y.Civ.Prac., par. 3211.36). When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate.

Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 372 N.E.2d 17, 401 N.Y.S.2d 182 (1977).

In order for a defense of failure to state a Cause of Action to be successful the defendant must convince the Court that "nothing the plaintiff can reasonably be expected to prove would help; that the plaintiff just doesn't have a claim". SIEGEL, NY PRACTICE (4th Edition), Sec 265. The criterion used in determining such a motion are that the pleadings will be deemed to allege whatsoever may be implied from its statements by reasonable intendment and the pleader is entitled to every favorable inference that might be drawn. SIEGEL, N.Y. PRACTICE, supra.

An easement may be adjudicated in a statutory action pursuant to Real Property Actions and Proceedings Law Article 15 to compel the determination of a claim to real property. A proceeding under the statute is proper, for example, where the plaintiff seeks a determination that he or she has an easement in particular property. See Rose v. Indiana Park Ass'n., Inc., 3 A.D.2d 274, 160 N.Y.S.2d 353 (2d Dept. 1957).

The Complaint, (a copy of which is annexed to the Trump Aff. as **Exhibit "A"**), alleges, among other things, Plaintiff's ownership of the Seven Springs Parcel, The Nature Conservancy's ownership of adjacent property that was formerly owned by a common grantor, that the December 22, 1995 Deed from the Rockefeller University to Seven Springs, LLC 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, that the Seven Springs Parcel has at all times abutted Oregon Road, and that by virtue of the December 22, 1995 Deed from Rockefeller University to Seven Springs recorded in liber 11325 page 243 and the May 25, 1973 deed recorded in liber 7127 page 719, and the prior deeds thereto, 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.

It is also alleged in the Complaint that Defendant Town of North Castle allegedly discontinued, and caused 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, the barrier consisting of a gate thereby making the aforesaid section of Oregon

Road, as a roadway, impassable to or from Oregon Road to the south by persons in vehicles and depriving Plaintiff of its lawful right to pass over Oregon Road and to have ingress and egress over Oregon Road to and from the Seven Springs Parcel to or from the publicly opened section of Oregon Road.

The criteria for reviewing the within motion requires that the Court take all of the allegations as true and resolve all inferences which reasonably flow therefrom in favor of Plaintiff. As more particularly set forth below the foregoing sets forth valid causes of action. Defendants cannot reasonably in good faith argue otherwise.

Further, the Defendants have raised various issues/defenses in their motions to dismiss. It is claimed that Plaintiff's Complaint is barred by the statute of limitations, that North Castle's alleged discontinuance² of Oregon Road extinguished all public and private easements in Oregon Road, that any easement over Oregon Road was extinguished when the lands owned by Seven Springs and The Nature Conservancy were owned by Eugene Meyer, that Rockefeller University allegedly abandoned the easement, and the easement has been extinguished. (See Nature Conservancy Memo of Law, pages 4 and 5).

It is respectfully submitted that, as more particularly set forth below, these defenses are without merit.

POINT II

PLAINTIFF IS ENTITLED TO AN EASEMENT OVER OREGON ROAD

Easements may be implied in several ways - from an existing use at the time of severance of ownership in land, from necessity, from a contract or lease, from a representation, from a conveyance describing the premises as bounded on a way, or from a

² The Nature Conservancy Memoranda of Law uses the word "abandonment" to refer to the phrases "abandonment" and/or "discontinuance". It is respectfully submitted that these terms have distinct legal meanings, that the attempt to use the word "abandonment" to include both terms is inaccurate and misleading and this attempt to combine the terms should be disregarded by the Court.

conveyance with reference to a plat or map showing ways, streets, or parks. See 49 NY Jur. 2d Easements § 47.

When a grantor owning the fee to a street sells property bounding on the street, the deed creates easements over the street to its full width in favor of the grantee and his or her successors. See, In re Thirty-First (Patterson) Ave., 152 Misc. 849, 273 N.Y.S. 757 (Sup. 1934). Where a deed describing land as bounded by a way indicates that the way extends beyond the land conveyed, or there has been some other indication of the extent of the way, the grantee acquires a right to the way not merely in front of his or her property but to the full extent of the way as indicated. See, In re Sedgwick Avenue and Bailey Avenue in City of New York, 213 N.Y. 438, 108 N.E. 88 (1915). By conveying land with reference to a street, the grantor limits the fee conveyed to the exterior boundary of the street, and by necessity includes in the deed the easements of light and air. See, Trowbridge v. Ehrich, 191 N.Y. 361, 84 N.E. 297 (1908); Lewisohn v. Lansing Co., 119 A.D. 393, 104 N.Y.S. 543 (1st Dept. 1907) (where grantor owned the fee to the center line of a street, which had not yet been laid out, and conveyed property as bounded on the side line of the street, the grantee deed acquired a private easement for street purposes of air, light, and access over land laid out or designated as a street).

Where a street or other way is specified as a boundary in a conveyance of real property, and the grantor owns the fee in the land represented as the way or street, he or she is generally estopped, as against the grantee, to deny that the street or other way exists, and an easement in the way passes to the grantee by implication. See Heim v. Conroy, 211 A.D.2d 868, 621 N.Y.S.2d 210 (3d Dept. 1995); Holloway v. Southmayd, 139 N.Y. 390, 34 N.E. 1047 (1893); Lewisohn v. Lansing Co., supra, 119 A.D. 393, 104 N.Y.S. 543 ; In re Thirty-

First (Patterson) Ave., supra, 152 Misc. 849, 273 N.Y.S. 757 . The grantor's grantees or successors cannot afterward be deprived of the benefit of having the streets kept open, as the purchaser and his or her grantees have an easement in the street for the purpose of access, which is a property right. See Lord v. Atkins, 138 N.Y. 184, 33 N.E. 1035 (1893); In re East 5th St., Borough of Manhattan, City of New York, 1 Misc. 2d 977, 146 N.Y.S.2d 794 (Sup. 1955).

The rule applies even where the street in question has merely been proposed, and does not exist in fact [People v. Underhill, 144 N.Y. 316, 39 N.E. 333 (1895); Tremberger v. Owens, 80 A.D. 594, 80 N.Y.S. 694 (1st Dept. 1903); In re Thirty-First (Patterson) Ave., supra, 152 Misc. 849, 273 N.Y.S. 757 or where the way referred to is not open at the time of the transfer; [Smith v. Smith, 120 A.D. 278, 104 N.Y.S. 1106 (1st Dept. 1907), aff'd without opinion, 193 N.Y. 667, 87 N.E. 1127 (1908)]. Under these circumstances, the grantee and his or her successors have a private easement of right-of-way over the strip described as a street. People ex rel. Washburn v. Common Council, etc., of City of Gloversville, 128 A.D. 44, 112 N.Y.S. 387 (3d Dept. 1908).

A deed describing land being conveyed as bounded by a road owned by the grantor impliedly grants an easement in the road unless the parties' intention is to the contrary. Deeds describing property conveyed as running to or along the side line of a street or way have frequently been held to withhold from the grant a conveyance of the fee to the grantee, but to grant him or her an easement in the street. See Lewisohn v. Lansing Co., supra, 119 A.D. 393, 104 N.Y.S. 543; In re Thirty-First (Patterson) Ave., supra, 152 Misc. 849, 273 N.Y.S. 757 ; Kenyon v. Hookway, 17 Misc. 452, 41 N.Y.S. 230 (Sup. 1896), aff'd without opinion, 21 A.D. 342, 47 N.Y.S. 1138 (4th Dept. 1897).

In a highly instructional decision the Court of Appeals in Holloway v. Southmayd, supra, 139, N.Y. 390, addressed circumstances under which a grantee obtains an implied grant of a private easement when a street or other way is specified as a boundary in a deed and the private easement is retained notwithstanding the subsequent discontinuance of the road. In Holloway, supra, the Court of Appeals stated, in pertinent part, as follows:

“...while the grantor may have retained the fee of the soil in the highway, he has but a naked or barren title, and that, in the event of the discontinuance of the public highway by act of law, the grantee, and his successors in interest nevertheless will still be entitled to the perpetual enjoyment of certain easements, which were impliedly granted, in relation to the open way lying in front of the lands granted, and referred to as their boundary. This view is in accord with authority and with reason. That private easements may be appurtenant to the property abutting upon a public highway must be conceded. These easements of the abutting landowner are in addition to such as he possesses as one of the public, to whose use the property has been subjected. They are independent of the public easement, and, whether arising through express or implied grant, are as indestructible in their nature by the acts of the public authorities or of the grantor of the premises as is the estate which is the subject of the grant...

...’when land is granted bounded on a street or highway, there is an implied covenant that there is such a way; that, so far as the grantor is concerned it shall be continued; and that the grantee, his heirs and assigns, shall have the benefit of it’...

...’It seems reasonable, and quite within the principle of equity, on which this rule is founded, to apply it to the discontinuance of a highway, so that, if a man should grant land bounding expressly on the side of a highway, if the grantor own the soil under the highway, and the highway, by competent authority, should be discontinued, such grantor could not so use the soil of the highway as to defeat his grantor’s right of way, or render it substantially less beneficial. Whether this should be deemed to operate as an implied grant or as an implied warranty covenant and estoppel, binding on the grantor and his heirs, is immaterial. The right itself would be inferred from that great principle of construction that every grant and covenant shall be so construed as to secure to the grantee the benefits intended to be conferred

by the grant, and that the grantor shall do nothing to defeat, or essentially impair his grant.'...

139 N.Y. 390, 402, 403.

The law as set forth in Holloway, supra, is directly applicable to the facts and circumstances in this case.

It is undisputed that ownership of The Nature Conservancy Property and the Seven Springs Parcel can be traced to the Foundation. (See Trump Affidavit, **Exhibit "D"**, and Nature Conservancy Memoranda of Law, page 12, footnote 4). At the time of the conveyance to Seven Springs' predecessors and to date, 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 through the Nature Conservancy Property. (See Trump Aff.).

The unity of title in the Foundation can be traced back to the initial transfers of title to The Nature Conservancy and Seven Springs' predecessor Yale University from the Foundation. The easement was established by reason of the conveyancing language in the deeds in the chain of title, and arose at the time of the transfers from the Foundation to the Nature Conservancy and from the Foundation to Yale University. That Seven Springs may have access to its property from the north is irrelevant. Seven Springs is not seeking an easement by necessity. It is seeking a determination that it has an easement based upon the language describing its premises as bounded on a way, namely Oregon Road, together with the appurtenance clauses contained in the deeds from Seven Springs' predecessors emanating from the common owner, the Foundation, which owned the fee in the land represented as Oregon Road.

CPLR 4523 provides that "a search affecting real property, when made and certified to by a title insurance, abstract or searching company, organized under the laws of this state, may be used in place of, and with the same legal effect as, an official search."

In the instant case the examination of title and certified Title Search prepared by Stewart Title Insurance Company and dated August 15, 2006 establishes that by a series of deeds dating from July 30, 1909 through September 4, 1951, Eugene Meyer, Jr. acquired an assemblage of property in the Town of North Castle situated to the west of Byram Lake straddling Oregon Road south of the New Castle Town Line. Title to both The Nature Conservancy parcels and the Seven Springs, LLC parcel was traced back to the common owner, Eugene Meyer, Jr. By virtue of the foregoing deeds, Meyer had acquired title to the entire bed of Oregon Road. The deeds all included the appurtenance clause "Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof". (See Trump Aff. Exh. "D").

Moreover, the chain of title from the Foundation through to Seven Springs and the chain of title from the Foundation to The Nature Conservancy show that the timing of the conveyances reflect the intention of the Foundation that the Seven Springs Parcel has an easement for ingress and egress over Oregon Road to the south over The Nature Conservancy Property. This intent is evidenced by the fact that the Foundation retained the property which would become the Nature Conservancy Property after it deeded the Seven Springs Parcel to Yale University, Plaintiff's predecessor, in January, 1973. As previously indicated the only means of accessing Oregon Road to the south was, and is, over the Nature Conservancy Property. The Nature Conservancy Property was not conveyed to the Nature Conservancy until May, 1973. Consequently, the only reasonable and logical conclusion is that all subsequent grantees of Yale University would have an easement over Oregon Road to the

south over Oregon Road through The Nature Conservancy Property to reach the paved portion of Oregon Road.

Based upon the foregoing it is respectfully submitted that Plaintiff has stated a valid claim for an easement over Oregon Road.

POINT III

A. SECTION 205 OF THE HIGHWAY LAW DOES NOT APPLY TO OREGON ROAD

The Town of North Castle argues that it properly abandoned Oregon Road in conformance with Highway Law §205. The burden of proving an abandonment of a public highway is upon the party who claims such to have taken place. Prutsmann v. Manchester, 436 N.Y.S.2d 101, 102 (3rd Dept. 1981) (citing Hovey v. Village of Haverstraw, 124 N.Y. 273, 276 (1891)). Section 205(1) provides:

Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been used for said period shall be deemed abandoned as a right-of-way. The town superintendent with the written consent of a majority of the town board shall file, and cause to be recorded in the town clerk's office of the town a written description, signed by him, and by said town board of each highway and public right-of-way so abandoned, and the same shall thereupon be discontinued.

Highway Law §205(1) (Emphasis added). Clearly, for this statute to apply, the road at issue must be a public road that has been dedicated to the use of the public or laid out. No proof or evidence has been submitted that either of these events has occurred.

Under New York Law, a dedication requires an offer of the road by the landowner to the municipality, its relinquishment to the public authorities for public use and an acceptance

by those authorities of the offered dedication. Scarborough Properties Corp. v. Village of Briarcliff Manor, 278 N.Y. 370 (1938). Before a road can be laid out it must be dedicated. See Highway Law § 171. Defendants have proffered no evidence to establish that Oregon Road was “dedicated to the use of the public, or laid out”. Accordingly, Defendants’ reliance on Highway Law § 205 to support their assertion that Oregon Road was properly discontinued is without merit.

B. THE TOWN OF NORTH CASTLE’S ATTEMPT TO DISCONTINUE OREGON ROAD IN 1990 WAS INEFFECTIVE BECAUSE THE ROAD WAS NOT PROPERLY DISCONTINUED UNDER HIGHWAY LAW §205

Even assuming for purposes of this motion that §205(1) applies, and it is submitted otherwise, the Town of North Castle failed to comply with the statutory requirements. Section 205(1) requires the town superintendent, with the written consent of a majority of the Town Board, to record in the Town clerk’s office “a written description, signed by him, and by said town board of each highway and public right-of-way so abandoned.” The “Certificate of Discontinuance” annexed to Defendants’ motion papers does not contain a written description of the highway signed by the town superintendent, nor does the “Certificate” contain the written consent of a majority of the Town Board. Critically, the “Certificate of Discontinuance” does not even identify what portion of Oregon Road it purported to effect. The “Certificate” refers to a “map attached hereto and made a part hereof as ‘Schedule A’”. However, no Schedule “A” is attached. In addition, the Certificate was not recorded. See North Castle’s motion papers Exhibit “E” (stamped “Received”). Consequently, North Castle’s attempt to discontinue Oregon Road was void and ineffective.

**C. NORTH CASTLE'S FAILURE TO COMPLY WITH HIGHWAY LAW §205 PRECLUDES
THE EXPIRATION OF THE STATUTE OF LIMITATIONS**

The Defendants assert that Plaintiff's claims are barred by either the ten year statute of limitations provided in CPLR § 212, the one-year limitation provided in Highway law §205(2), or the four month Statute of Limitations provided in Article 78 of the CPLR. Contrary to the Defendants' contentions, none of these statute of limitations have run because North Castle's resolution was ineffective to discontinue Oregon Road. See Aldous v. Town of Lake Luzerne, 722 N.Y.S.2d 293, 294 (3d Dept. 2001).

In Aldous, the respondent town asserted that a 1935 resolution of the Lake Luzerne Town Board was effective to abandon a segment of a public highway, and therefore an Article 78 proceeding filed in 1999 was barred by the statute of limitations under CPLR 203. The Third Department determined that Highway Law §234 did not authorize town boards to abandon highways by resolution³. Consequently, "the 1935 resolution was totally ineffective to abandon this section of the highway and was therefore ineffective to commence the running of any Statute of Limitations." Id. In the present case, as mentioned above the Town of North Castle failed to comply with the requirements of Highway Law §205, and therefore the purported "discontinuance" was ineffective to trigger the statute of limitations. See, Aldous, 722 N.Y.S.2d at 294.

³ As noted by the Third Department in Aldous, Highway Law §234 was the precursor of Highway Law §205. Aldous, 722 N.Y.S.2d at 295 n.1

**D. SEVEN SPRINGS' PRIVATE EASEMENT OVER OREGON ROAD IS UNAFFECTED BY
THE PURPORTED DISCONTINUANCE OF OREGON ROAD
BY THE TOWN OF NORTH CASTLE**

As set forth above, the Town of North Castle's attempt to discontinue Oregon Road in 1990 was ineffective because the road was not properly discontinued under the Statute.

However, even assuming for purposes of this motion that the discontinuance was effective, and it is submitted otherwise, the private easements held by Seven Springs and its predecessors remain unaffected.

The private easement acquired by grantees through conveyances describing property as bounded by or running along a public highway, the fee in which is owned by the grantor, is retained by the grantees when the public highway is discontinued, and they still have a right of easement over the highway, even if the original grantor retains the fee title to the highway. See Holloway v. Southmayd, *supra*, 139 N.Y. 390.

To extinguish private easements something more is needed than the mere discontinuance in and of itself of the public way. They can be extinguished only by condemnation or conveyance. See Barber v. Woolf, 216 N.Y. 7 (1915). Neither of these contingencies occurred in this case.

Moreover, Defendants' reliance on Barber is misplaced. At issue in Barber was the Street Closing Act of 1895 (the "1895 Act") and the extent to which an abandonment of a public street carried under said Act affected private easements of adjoining lot owners. The Court determined that the purpose of the 1895 Act was to permit the extinguishment of all easements, without reference to their origin. There is nothing in the Barber decision to suggest that it applies beyond the 1895 Act. Barber does not stand for Defendants' broad

proposition that the abandonment of a public road, no matter how carried out and irrespective of the underlying statutory authority, extinguishes all public and private easements.

In Holloway v. Southmayd, *supra*, 139 N.Y. at 410 which involved the abandonment of a public street under a 1867 statute, the Court of Appeals reached a different result than in Barber. Interpreting the 1867 Act, the Court held that although all public easements in the subject highway were extinguished by the highway's abandonment under the 1867 Act, all private easements remained unchanged because the language of the 1867 Act did not evidence a legislative intent to extinguish existing private easements. Indeed, Barber v. Woolf and Holloway v. Southmayd stand for the proposition that the language of the statute authorizing abandonment of a public highway governs what easements, public or private, are extinguished by the abandonment of the highway.

In the present case, Defendants point to no statute which grants North Castle the right to extinguish the existing private easement rights of Plaintiff. There is nothing in the plain language of Highway Law §205 which expresses an intent by the legislature to extinguish private easements rights of adjoining landowners and/or grantees. The Town resolution also fails to express an intent to extinguish private easement rights. Accordingly, the private easements granted to Plaintiff remain unaffected. Holloway v. Southmayd, *supra*, 139 N.Y. at 410.

It is next asserted by Defendants that Oregon Road was discontinued pursuant to Highway Law §205(1), and that where a street is closed and there is appropriate provision for the payment of damages all public and private easements are extinguished. See, Nature Conservancy Memorandum of Law, pages 7 and 8. Barber v. Woolf and Municipal Housing

Authority for The City of Yonkers v. Harlan, 24 A.D.2d 633, 262 N.Y.S.2d 161 (2nd Dept. 1965) are cited to support Defendants' assertion. Neither Barber nor Municipal Housing Authority apply.

In Barber, supra, a specific statute, the 1895 Act provided appropriate provision for the payment of damages. Likewise, in Municipal Housing there was a specific ordinance which addressed the damages. Municipal Housing is further not applicable because it was a condemnation case.

Nonetheless, Defendants, relying on Highway Law § 209, assert that there is an "appropriate provision for the payment of damages". This reliance is also misplaced.

Highway Law § 209 provides, in pertinent part, that:

"Any person or corporation interested as owner or otherwise, in any lands and claiming any loss or damages, legal or equitable, by reason of the discontinuance, abandonment or closing of any street or highway, not within the limits of an incorporated village, under or pursuant to the provisions of the last two sections..." (Underline added).

The two sections prior to Highway Law § 209 are § 208 entitled Description to be Recorded and § 207 entitled Discontinuance of Highway. Prior to those sections are 206, 205-b and 205-a. Simply put, § 209 does not provide for an appropriate provision for the payment of damages which are occasioned by the discontinuance of a road under Highway Law § 205.

POINT IV

PLAINTIFF'S CLAIMS ARE TIMELY AND ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

It is alleged in Defendants' motion papers that this action is time barred pursuant to the 10 year Statute of Limitations contained in CPLR § 214(a). This assertion is without merit. "It

is the law of this State that an easement created by grant, express or implied, can only be extinguished by abandonment, conveyance, condemnation, or adverse possession. (Citations omitted). It is clear that nonuser alone, no matter how long continued, can never in and of itself extinguish an easement created by grant." Gerbig v. Zumpano, 7 N.Y.2d 327, 330, 197 N.Y.S.2d 161, 164 (1960).

The Easement in this case has not been conveyed or condemned, and the Complaint is not time barred based on adverse possession or abandonment.

Plaintiff's Complaint is not time barred based upon Defendants' claim of adverse possession. "Where an easement has been created but no occasion has arisen for its use, the owner of the servient tenement may fence his land and such use will not be deemed adverse to the existence of the easement until such time as (1) the need for the right of way arises, (2) a demand is made by the owner of the dominant tenement that the easement be opened and (3) the owner of the servient tenement refuses to do so." Castle Associates v. Schwartz, 63 A.D.2d 481, 491, 407 N.Y.S.2d 717, 722 (2d Dept. 1978).

Likewise, Plaintiff's Complaint is not time barred based upon Defendants' allegations of abandonment. "'(W)here an abandonment of an easement is relied upon, there must be clear and convincing proof of an intention in the owner to abandon it as such', independent of the mere nonuser, [Hennessy v. Murdock, 137 N.Y. 317, 326, 33 N.E. 330, 332 (1893); see, also Lewishon v. Lansing Co., 119 App. Div. 393, 400]." Castle Associates, supra, 63 A.D.2d at 487. (The issues of abandonment and adverse possession are more thoroughly discussed at pages 19-26 infra).

In the instant case the occasion to use the Easement did not arise until October, 2004, when the issue of secondary access was raised in connection with Plaintiff's development of

the Seven Springs Parcel. The demand to remove the Gate was made at the time of the filing of the Complaint in this action. (See, Trump Aff.) As more particularly set forth in the Trump Aff., Seven Springs never abandoned the Easement, and no proof or evidence has been submitted that Oregon Road was closed for private purposes. Further, no proof or evidence has been submitted to support the allegation that Seven Springs, or any of its predecessors took any action to abandon the Easement, or release their rights to a private Easement over Oregon Road. Accordingly, the Statute of Limitations is no bar to the instant action based on Defendants' claims of extinguishment of the Easement by adverse possession or abandonment.

POINT V

THE UNRECORDED "CERTIFICATE OF DISCONTINUANCE" IS NOT IN SEVEN SPRINGS CHAIN OF TITLE AND IS THUS NOT BINDING ON SEVEN SPRINGS

Furthermore, the Certificate of Discontinuance does not bind Seven Springs, because Seven Springs did not consent to any discontinuance of Oregon Road, and no proof or evidence has been presented to indicate that any of Seven Springs predecessors executed any documents indicating that any of them consented to the discontinuance of Oregon Road. It is well-settled that "[i]n the absence of an affirmative assumption, a grantee is not liable on any covenants or agreements by which the grantor may have bound himself unless the covenant runs with the land." Feinberg Bros. Agency, Inc. v. Schornstein, 134 A.D.2d 235, 520 N.Y.S.2d 580 (2d Dept. 1987). In Schornstein, the Court held that "[s]ince the moving defendants were not parties to the agreement and did not affirmatively assume the obligations contained therein, they have no obligation to the plaintiffs based on the agreement." *Id.*

Second, and more fundamentally, the "Certificate of Discontinuance" does not bind Seven Springs, because it is not in Seven Springs' chain of title. Under New York Law, the failure to record any restriction on the use of property means that the restriction is not enforceable against a bona fide purchaser for value. See, Ioannou v. Southhold Town Planning Board, 304 A.D.2d 578, 758 N.Y.S.2d 358 (2d Dept. 2003) (landowner was not barred by restrictive covenant imposed on prior owner, forbidding further subdivision of the land, where the restrictive covenant was not in landowner's chain of title). The "Certificate of Discontinuance" was not executed by Rockefeller University, does *not* state that it shall be recorded, or that it would run with the land or bind Rockefeller University's successors or assigns. It is undisputed that the "Certificate of Discontinuance" was *not* recorded. In addition, no proof or evidence has been submitted that Seven Springs was aware of the "Certificate" when it purchased the Seven Springs Parcel. Thus, Seven Springs had neither actual nor constructive notice of the Certificate of Discontinuance. It should also be noted that the "Certificate of Discontinuance" does not even identify what portion of Oregon Road it purported to effect. The Certificate refers to "a map attached hereto and made a part hereof as Schedule 'A'". However, no Schedule "A" is attached.

POINT VI

THE EASEMENT WAS NEVER ABANDONED AND DEFENDANTS' CLAIM THAT THE EASEMENT WAS EXTINGUISHED IS WITHOUT MERIT

It is claimed by the Defendants that the easement Plaintiff is seeking to enforce over Oregon Road was abandoned. This claim is without merit.

The owner of a dominant tenement is under no duty to demand use of an easement as a condition to retaining its interest therein. See, Castle Associates v. Schwartz, *supra*, 63

A.D.2d 481, 407 N.Y.S.2d 717. "'(W)here an abandonment of an easement is relied upon, there must be clear and convincing proof of an intention in the owner to abandon it as such', independent of the mere nonuser, [Hennessy v. Murdock, supra, 137 N.Y. at 326, 33 N.E. at 332; see, also Lewishon v. Lansing Co., 119 App. Div. 393, 400]." Castle Associates, supra 63 A.D.2d at 487.

The forfeiture of easements is not favored in the law. Murphy v. Sigalos, 8 Misc.2d 633, 170 N.Y.S.2d 519 (Sup. 1957).

In order to prove abandonment it is necessary to establish both an intention to abandon and also some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the easement. (Citations omitted).

Furthermore, acts evincing an intention to abandon must be unequivocal. They must clearly demonstrate the permanent relinquishment of all right to the easement (Welsh v. Taylor, supra). The mere use of the easement for a purpose not authorized, the excessive use or misuse, or the temporary abandonment therefore, are not of themselves sufficient to constitute an abandonment.

Gerbig v. Zumpano, 7 N.Y.2d 327, supra.

For example, in Josh v. Nobile, 1 Misc. 2d 396, 145 N.Y.S.2d 422 (Sup. 1955), the court refused to find an abandonment although there was a long period of nonuse coupled with obstructions placed on the property. See, also, People v. Common Council, supra, 128 A.D. 44, 112 N.Y.S. 387 (where street was practically impassable and little used did not show an abandonment by the abutting owner of his right of way, acquired by a conveyance of lots described as bounded on the street).

An intention to abandon an easement is not necessarily disclosed by a temporary obstruction that may readily be removed when the easement holder desires to use the

easement. See, Welsh v. Taylor, 134 N.Y. 450, 31 N.E. 896 (1892); Rabinowitz v. Goldstein, 78 N.Y.S.2d 882 (Sup. 1948).

In the instant case the 20 foot long Gate partially blocks access to the Easement Area. It is possible for vehicles and pedestrians to access the Easement Area by going around the Gate. The Gate does not enclose the Easement Area, and can be readily removed. In fact, Con Edison vehicles regularly access the subject portion of Oregon Road from the south in order to service electrical equipment located in the Easement Area, which provides electrical service to property located on the Seven Springs Parcel. (See Trump Aff.).

As part of Nature Conservancy's claim that the Easement was abandoned it is argued that because the Gate was in place since 1990 Plaintiff must have known that Oregon Road had been closed and could not lawfully be used as a road, street or highway. (Nature Conservancy Memorandum of Law, Page 13). As set forth in the Trump Aff. Seven Springs did not know that Oregon Road could not be used to access its property from the south, and no proof or evidence has been submitted to the contrary.

In addition, there is nothing in Plaintiff's chain of title that would have put Plaintiff on notice of the purported discontinuance of Oregon Road. Even assuming for the purposes of this motion that Plaintiff, or its predecessors, were aware that Oregon Road was closed for public purposes, no proof or evidence has been submitted that Oregon Road was closed for private purposes. Defendants' reliance on Holloway, supra, to support the assertion that Plaintiff does not have an easement in this case because it knew or should have known that Oregon Road was closed is misplaced. The court in Holloway was citing King v.

City of New York, 102 N.Y. 172.⁴ King concerned a dispute with respect to an award of damages for closing a public highway. King does not address the situation in this case concerning a private easement.

As more particularly set forth in the Trump Aff., Seven Springs never abandoned the Easement, and no proof or evidence has been submitted that Oregon Road was closed for private purposes. Further, no proof of evidence has been submitted to support the allegation that Seven Springs, or its predecessors, took any action to terminate, convey, abandon or release their rights to a private easement over Oregon Road.

Defendants have failed to provide clear and convincing proof which establishes that Plaintiff, or its predecessors in title, intended to abandon the private easement over Oregon Road.

Defendants' motion papers are devoid of any proof or evidence to support an allegation that Plaintiff, or any of its predecessors, made any demand to use the easement prior to this action, or that Plaintiff, or any of its predecessors, waived the right to claim a private easement over Oregon Road. As set forth in the Trump Aff. Seven Springs did not have the occasion to assert its right in the Easement until October, 2004 when the issue of secondary access was raised in connection with Plaintiff's development of the Seven Springs Parcel.

Indeed, at best Defendants rely upon the "Certificate of Discontinuance" which allegedly includes a second or third-hand account (the source of the information is not provided) of the position of plaintiff's predecessor in title. The "Certificate" fails to indicate

⁴ North Castle's motion papers (at paragraph 24) incorrectly cite Holloway, supra, while quoting the reference from the King case.

exactly what Plaintiff's predecessor in title allegedly did in connection with the purported discontinuance. Such evidence hardly qualifies as "clear and convincing" proof.⁵

Moreover, the cases cited by Nature Conservancy as support for its abandonment argument are misplaced. Tremberger v. Owens, Thyhsen v. Brodsky, Empire Chevrolet, Inc. v. Lantana Holdings, Inc., and Albanese v. Domianni are distinguishable because, unlike in the case at bar, in each case the easement holder itself had performed some physical act that extinguished its easement. See Tremberger v. Owens, *supra*, 80 N.Y.S. 694 (act of easement holder in building a fence over its easement rights in "Avenue B" was sufficient evidence of intention of using the same as her own property, and thus constituted an abandonment of said easement); Thyhsen v. Brodsky, 51 Misc.2d 1623, 274 N.Y.S.2d 832 (Sup. 1966) (easement holder's construction of a building over a Williamette Drive, a right of way in which it had an access easement, constituted abandonment of the easement); Empire Chevrolet v. Lantana Holdings, Co., 82 N.Y.S.2d 131 (Sup. 1948) (construction of houses and retaining wall by easement holder's predecessor in interest over easement area constituted abandonment); Albanese v. Domianni, 118 N.Y.S.2d 347 (2d Dept. 1953) (court found the non-user of the easement by plaintiffs and their predecessor in title plus the construction by plaintiff's predecessor of curbing, wooden fence and garden which prevented the use of the easement area, constituted abandonment). DeCesare v. Feldmeier, 584 N.Y.S.2d 803 (1st Dept. 1992), is also distinguishable, for in that case it was determined, after a trial, that plaintiff's easement was blocked by a garden. Furthermore, the party seeking to enforce the easement in that case

⁵ Defendants' contention that the "Certificate of Discontinuance" is prima facie evidence of the abandonment lacks merit. As indicated above, the Certificate of Discontinuance was ineffective to abandon the Oregon Road, and accordingly, plaintiff's private easement remains unaffected. See Aldous v. Town of Lake Luzerne, *supra*, 722 N.Y.S.2d at 294.

had access to the main street via another easement. In the instant case Plaintiff does not have access to Oregon Road to the south by any other means.

Defendants' assertion that the easement was extinguished by adverse possession is also without merit. As the Court of Appeals recently enunciated in Walling v. Przybylo, 7 N.Y.3d 228; ___ N.Y.S.2d ___, (2006) the five elements required to establish an adverse possession claim are that the possession be:

- (1) hostile and under a claim of right;
- (2) actual;
- (3) open and notorious;
- (4) exclusive; and
- (5) continuous for the required period [10 years under Real Property Actions and Proceedings Law § 511].

These elements are not present in the instant case. In the first instance there was no "actual", "exclusive" or "open and notorious" possession of Oregon Road after its purported discontinuance in 1990 by anyone. No proof or evidence has been submitted to establish that North Castle ever had "possession" of the disputed section of Oregon Road in fee, or otherwise. It appears that Oregon Road became a "road" by public use, not by dedication. In addition, none of the Defendants took any action whatsoever including, but not limited to, by way of cultivation or maintenance, with respect to the disputed section of Oregon Road. No allegation has been made, or evidence submitted, to the contrary.

The presence of the Gate does not alter the analysis. The Gate does not enclose Oregon Road, or prohibit vehicles from traversing Oregon Road. The Gate simply purports to prevent vehicles from obtaining direct access to Oregon Road from the south. As set forth in the Trump Aff., vehicles and pedestrians can access Oregon Road by going around the Gate.

Assuming for purposes of this motion that the Gate was installed with Rockefeller's consent, as alleged by the Defendants, then the element of hostility is necessarily not met⁶. "When...permission can be implied from the beginning, adverse possession will not arise until there is a distinct assertion of a right hostile to the owner". Koudellou v. Sakalis, 29 A.D.3d 640, 814 N.Y.S.2d 730 (2d Dept. 2006) (hostility or possession under claim of right did not exist, for purposes of determining whether easement was extinguished by adverse possession, when purported servient tenement owners erected fence across driveway that blocked purported dominant tenement owners' access, where purported servient owner's daughter stated that her father had erected fence with full knowledge and assistance of purported dominant owners).

Moreover, in the instant case the element of hostility did not exist until May, 2006 when the instant action was commenced and the Town of North Castle was asked to remove the gate. Accordingly, Defendants have failed to prove adverse possession for the requisite ten-year period under this ground also. (See Point IV, supra).

Defendants' reliance on Spiegel v. Ferraro, 73 N.Y.2d 626 (1989) to support the assertion that the easement was extinguished by adverse possession is misplaced. Spiegel involved a situation where an easement was definitely located and developed through use. This is not so in the instant case. In fact, Spiegel more appropriately supports Plaintiff's position in this case. In Spiegel, the court stated in pertinent part that:

"In Smyles v. Hastings, 22 N.Y. 217, 224, the Court of Appeals held that an easement that was not so definitively located through use and which lead to a "wild and unoccupied" parcel, was not extinguished by adverse possession because the owner of the

⁶ Even assuming this to be the case, no proof or evidence has been submitted to establish that Rockefeller consented to the discontinuance of Oregon Road for private purposes.

easement had had no occasion to assert the right of way during part of the prescriptive period. Relying on Smyles, the Appellate Division has held that such "paper" easements may not be extinguished by adverse possession absent a demand by the owner that the easement be opened and a refusal by the party in adverse possession (Castle Assocs. v. Schwartz, 63 A.D.2d 481, 490, 407 N.Y.S.2d 717; see also, Powlowski v. Mohawk Golf Club, 204 App.Div. 200, 198 N.Y.S. 30; Consolidated Rail Corp. v. MASP Equip. Corp., 109 A.D.2d 604, 606, 486 N.Y.S.2d 4, affd. on other grounds 67 N.Y.2d 35, 499 N.Y.S.2d 647, 490 N.E.2d 514). In Castle, the court held that an easement created by grant as the result of a subdivision, but never located, was not extinguished by adverse possession because the owner of the easement had never demanded that the easement be opened.

The theory is that easements not definitively located and developed through use are not yet in functional existence and therefore the owner of the easement could not be expected to have notice of the adverse claim until either the easement is opened or the owner demands that it be opened. It is only at such point, therefore, that the use of the easement by another is deemed to be adverse to the owner and the prescriptive period begins to run (Powlowski v. Mohawk Golf Club, 204 App.Div., at 204, 198 N.Y.S. 30, supra). So understood, the exception is consistent with the general theory of adverse possession "that the real owner may, by unequivocal acts of the usurper, have notice of the hostile claim and be thereby called upon to assert his legal title" (Monnot v. Murphy, 207 N.Y. 240, 245, 100 N.E. 742 [citation omitted]; see also, Hinkley v. State of New York, 234 N.Y. 309, 317, 137 N.E. 599;")

Spiegel v. Ferraro, supra, 73 N.Y.2d at 626.

It is claimed by the Defendants that the easement over Oregon Road was extinguished by merger when the lands owned by Plaintiff and The Nature Conservancy were both owned by Eugene Meyer. This argument attempts to obfuscate the issue, and is without merit.

The easement which Plaintiff seeks to enforce over Oregon Road arose when the Foundation sold the Seven Springs Parcel to Plaintiff's predecessor in January, 1973. When the Seven Springs parcel was conveyed to Plaintiff's predecessor in 1973 the Foundation retained the property that included Oregon Road to the south. The only means by which

access can be had to any public highway, street, road or avenue for the Seven Springs Parcel to the south is, and always has been, over Oregon Road (see Trump Affidavit) and over the property that was retained by the Foundation which was subsequently transferred to The Nature Conservancy in May, 1973.

By virtue of the various deeds pursuant to which Meyer acquired title the parcels comprising The Nature Conservancy Property and Seven Springs Parcel Meyer had acquired the entire bed of Oregon Road. The deeds to Seven Springs and its predecessors all referenced Oregon Road. (See Certified Title Search **Exhibit "D"**).

The Nature Conservancy had notice of the existence of Oregon Road by virtue of, among other things, reference to Oregon Road in the May 25, 1973 deed from the Foundation to The Nature Conservancy. (See Trump Aff., Exhibit "E").

Based upon the foregoing Seven Springs, LLC has a right to an easement over Oregon Road and Defendants' claim that the easement was extinguished by merger is without merit. Moreover, "an easement ceases to exist by virtue of a merger only when there is a unity of title of all the dominant and servient estates, [an easement is 'not extinguished under the doctrine of a merger by the acquisition by the owner of the dominant or servient estate to title to only a fractional part of the other estate']; Restatement of Property § 497, Comment c)". Will v. Gates, 89 N.Y. 2d 778, 785 (1997).

In the instant case the certified examination of title indicates that by a series of deeds dating from July 30, 1909 through September 4, 1951, Eugene Meyer, Jr. acquired an assemblage of property in the Town of North Castle situated to the west of Byram Lake straddling Oregon Road south of the New Castle Town Line. Title to both The Nature Conservancy parcels and the Seven Springs, LLC parcel was traced back to the common

owner, Eugene Meyer, Jr. By virtue of the foregoing deeds, Meyer had acquired title to the entire bed of Oregon Road. Further, the deeds all included the appurtenance clause "Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof". Accordingly, while the grantor (the Foundation) may have retained the fee in the soil in Oregon Road, it had only a "naked or barren title" which would not provide the unity of title sufficient to extinguish an easement by reason of merger. See Holloway, supra, and Will v. Gates, supra.

It is asserted by Nature Conservancy that Plaintiff does not have an easement because the Plaintiff and Nature Conservancy do not share a common grantor, as opposed to a "common source of title". (Nature Conservancy Memo of Law, page 11). This assertion is likewise without merit.

As more particularly set forth, above, (at pages 5 through 9), a grantor's grantees or successors cannot afterward be deprived of the benefit of having the streets kept open, as the purchaser and his or her grantees have an easement in the street for the purpose of access, which is a property right. See, Lord v. Atkins, supra, 138 N.Y. 184, 33 N.E. 1035 ; In re East 5th St., Borough of Manhattan, City of New York, 1 Misc. 2d 977, 146 N.Y.S.2d 794 (Sup. 1955); See also, Holloway, supra.

In the instant case it is undisputed that the Foundation was the common owner of the Seven Springs Parcel and Nature Conservancy Properties and that Seven Springs is a successor in interest of the Foundation. The cases cited by Defendant Nature Conservancy to support the assertion that Plaintiff cannot enforce the easement over Oregon Road are not applicable, do not alter the principle of law set forth above and are distinguishable on their facts.

It is respectfully submitted that based upon the strong policy of this State against the extinguishment of easements, and the facts and circumstances set forth above, the Plaintiff is entitled to an easement over Oregon Road, the Easement Area has not been discontinued, condemned, conveyed or extinguished, and is in full force and effect, and the Town of North Castle should be immediately directed to remove the Gate and any other obstructions placed and/or maintained by it, on, or across Oregon Road.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that Defendant's motions should be denied in their entirety.

Dated: White Plains, New York
August 17, 2006

Yours, etc

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

FRANCES M. MAGRINO, being sworn says:

I am not a party to the action, am over 18 years of age and reside at Harrison, New York.

On August 18, 2006, I served a true copy of the annexed **PLAINTIFF'S MEMORANDUM OF LAW** in the following manner:

by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

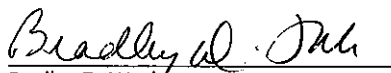
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FRANCES M. MAGRINO

Sworn to before me this
18th day of August, 2006


Bradley D. Wank
Notary Public, State of New York
No. 60-4829597
Qualified in Westchester County
Commission Expires December 31, 2009

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

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Index No.: 9130/06

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WESTCHESTER SUPREME
AND COUNTY COURTS

COMBINED REPLY AFFIRMATION AND MEMORANDUM OF LAW

IN RESPONSE TO PLAINTIFF'S OPPOSITION AND IN FURTHER SUPPORT

OF THE MOTIONS TO DISMISS

Respectfully submitted
Stephens, Baroni, Reilly & Lewis, LLP

By: Roland A. Baroni, Jr.
Attorneys for the Town of North Castle
175 Main Street Suite 800
North Court Building
White Plains, New York 10601
(914) 761-0300

PRELIMINARY STATEMENT

I, Roland A. Baroni, Jr., Esq., am an attorney duly admitted to practice in the Courts of the State of New York. I am a partner in the law firm of Stephens, Baroni, Reilly & Lewis, LLP, the attorneys for the Town of North Castle, a Defendant in the above-captioned matter. As such, I am fully familiar with the facts and circumstances herein, having served as Town attorneys since 1982. This combined Reply Memorandum of Law and Affirmation is submitted in response to the Plaintiff's Opposition to Defendants' motion to dismiss and in further support of the Defendant, Town of North Castle's, motion to dismiss.

I. SECTION 205 OF THE HIGHWAY LAW APPLIES TO OREGON ROAD AND THE ONE-YEAR LIMITATION PERIOD IS A BAR TO PLAINTIFF'S ACTION.

The Plaintiff maintains that Section 205 of the Highway Law cannot apply to Oregon Road because under New York law “a dedication requires an offer of the road by the landowner to the municipality” and “before a road can be laid out it must be dedicated.” (See Plaintiff’s Memorandum of Law at page 11-12). The Court is respectfully referred to the second half of section 205 which the Plaintiff seems to have overlooked. That section provides that in addition to highways dedicated and laid out it applies to “*every* highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway...” (emphasis added). Section 205 of the Highway Law speaks to *all* highways, including those that were laid out and dedicated as well as those that became highways by use.

Furthermore, Section 189 of the Highway Law, entitled “Highways by use,” provides:

All lands which shall have been used by the public as a highway for the period of ten years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least three rods.

Prior to the Town of North Castle’s decision to abandon Oregon Road in or about 1980, and its subsequent closure of same in 1990, Oregon Road was used as a highway by the public since at least 1970. Therefore despite the fact that Oregon Road was never formally “dedicated” or “laid out” it was, nonetheless, a highway and section 205 does apply. Therefore, this arm of the Plaintiff’s argument must fail.

Counsel next claims that because “statutory requirements” were allegedly not complied with, the abandonment of the road was ineffective. Plaintiff alleges that the Town’s Certificate of Discontinuance did not describe the portion of the highway to be closed and that it was not recorded. The Certificate indicates that Oregon Road was to be closed at Pole 40, and makes reference to Schedule A, which purported to be annexed thereto and more particularly describe the portion of the road to be closed. Unfortunately, after a diligent search of the Town’s records, Schedule A could not be located. It is possible that such a Schedule did not exist, and was only inadvertently included by reference in the form of the Certificate as an oversight. Nonetheless, contrary to Plaintiff’s assertion, the Certificate adequately defines the portion of the road to be closed by referencing “Pole 40.” It was clearly the Town’s intent to shut off the entry way to Oregon Road at its last point of intersection and close the balance of the road within the Town of North Castle. This is evident from the exhibits annexed to the Town of North Castle’s motion papers.

Additionally, Plaintiff claims that the certificate was not “recorded,” and thus constituted a fatal error. There is no requirement under Section 205 that the Certificate be recorded with the County Clerk, Division of Land Records. The only reference to recording in Section 205 is that the Certificate be recorded with the *Town Clerk*, which it was, and from whom it is readily available. There is also a litany of cases within the State of New York which hold that the Certificate of Discontinuance is merely a ministerial act and not required: “[i]f the facts constituting an abandonment are present, the road is deemed abandoned by operation of law, not by the filing of the certificate.” *Pless v. Town of Royalton*, 185 A.D.2d 659, 585 N.Y.S.2d 650, 652 (4th Dept. 1992); See also: *Trainer*

v. Lewis, 243 A.D. 630; 277 N.Y.S. 15 (2d Dept. 1935), *Daetsch v. Taber*, 149 A.D.2d 864, 540 N.Y.S.2d 554 (3d Dept. 1989), *Cranson v. Homer*, 132 Misc.2d 824, 505 N.Y.S.2d 348 (Cortland County, 1986), *Graff v. Darien*, 106 Misc. 2d 104, 431 N.Y.S.2d 288 (Genesee County, 1980), *Grosz v. Town of South Bristol*, 182 Misc. 2d 61, 697 N.Y.S.2d 812 (Ontario County, 1999).

In *Grosz*, the town actually sought to repeal its resolution of abandonment and reopen a road it had abandoned due to the fact that the road had been used during the six year period prior to the Town's formal action. The petitioner sought to keep the road closed. The Court found that the town's resolution repealing the resolution which abandoned the road was ineffective and any attempt to "invalidate the certificate or the resolution must be made pursuant to the Highway Law." Accordingly, pursuant to Highway Law §205, the town only had one year from the date of the filing of the certificate to contest the abandonment, and was estopped from challenging it more than a decade later. *Grosz v. Town of South Bristol, supra*.

Additionally, in *Graff v. Darien*, 106 Misc. 2d 104, 431 N.Y.S.2d 288 (Genesee County, 1980) a resident of Darien brought an Article 78 proceeding against the town seeking to have the abandonment of a road voided. The town asserted that the resident's action was time barred by the limitation period in Section 205 as well as other applicable statutes of limitation. In reviewing the town's exhibits, the Court found that the Town Board of Darien

met at regular meetings in 1942, and by vote, passed a resolution to declare the highway in question . . . abandoned. It also appears that petitioner's predecessor in title . . . attended the August, 1942 town board meeting which, by a majority, passed a resolution abandoning the highway in question. At this meeting he signed a waiver

and agreed to have [the road] abandoned. *Graf v. Darien, supra.*

In *Graff*, the town was unable to show that any certificate had ever been filed in accordance with section 205 of the Highway Law. Nonetheless, the Court “presumed that the [town officials] performed their official duty according to law and that the action by the town board was regular and proper in all respects when they resolved that the [highway] be declared abandoned.” *Id.* Ultimately, the Court dismissed the action, finding that the one year statute of limitations contained within the Highway Law served as a bar to the action.

Plaintiff also claims that because the Certificate was not “recorded,” it was not within its chain of title; therefore, since it had no actual or constructive notice of the Certificate, it is not binding against it. First, it bears repeating that the Certificate of Discontinuance was merely a ministerial act. The road was closed by operation of law. Secondly, the Plaintiff has misled the Court in this regard. Seven Springs, LLC has been the owner of the property since 1995 – for approximately eleven years – and all the while it has been attempting to develop the parcel in one form or another. Dating back to 1996, the Plaintiff proposed construction of a championship golf course together with some ancillary structures. Constructive knowledge can be imputed to the Plaintiff by virtue of the fact that there is a very large gate that spans the mouth of Oregon Road. It is clearly visible and blocks access to Oregon Road from North Castle.

More importantly, however, is that *the Plaintiff had actual knowledge of the road closure* in the Town of North Castle dating back to at least 1998.¹ This is evidenced

¹ The undersigned’s office searched archived files relating to the Plaintiff’s projects dating back to 1998. Due to the time constraints of this motion, a more extensive search of records was not possible.

by numerous documents submitted by the Plaintiff's representatives (Saccardi & Schiff, retained by the Plaintiff as planning and development consultants) as well as documentation exchanged by the Co-Lead Agency and the Towns' Planning Consultants. For example, in the Draft Environmental Impact Statement ("DEIS") prepared by Saccardi & Schiff in or about February 1998, there is a discussion regarding "Access from Oregon Road in North Castle." That section, which is annexed hereto as Exhibit A, reads:

2. Access from Oregon Road in North Castle

By eliminating the man-made barricade and improving the existing dirt roadway, it would be possible to extend the existing Oregon Road (south) in North Castle to the north into the Seven Springs site. However, this road connection, absent condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs, and from the Town of North Castle, *which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of this portion of the roadway.* (Emphasis added).

This DEIS was revised in June 1998 (Exhibit B) which retained the language quoted above, and further stated that:

3. Access from Oregon Road in North Castle

Both The Nature Conservancy and the Town of North Castle have indicated their disinclination to approve the opening of this route.

Vehicular access to the dirt road (Old Oregon Road) which continues north is *blocked by a steel barricade.* (Emphasis added).

Furthermore, in two public hearings held in the Towns of North Castle and Bedford Mr. John Saccardi, of Saccardi & Schiff stated on the record that:

Old Oregon Road has been de-mapped by the Town of North Castle and the Town of New Castle, so if that option is pursued, which we are not recommending and we don't think it's necessary, it would require several actions by both towns. (Emphasis added). See excerpt of the record of the public hearing held in the Town of North Castle on December 13, 2000, annexed hereto as Exhibit C.

Mr. Saccardi noted the same thing for the meeting held in the Town of Bedford on December 14, 2000, an excerpt of which is annexed hereto as Exhibit D.

Additionally, in February 2001 Mr. Saccardi (of Saccardi & Schiff) responded to virtually all of the public's concerns that were raised in the public hearings in December of the previous year. In this response, Mr. Saccardi wrote:

The "inactive roads" (Old Oregon Road through North Castle) have all been pursued and discussed as Alternatives in the DEIS and FEIS, and are not found to be viable, and therefore not proposed...As stated in the DEIS this road connection, absent condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of this portion of the roadway. (Emphasis added).

See excerpt from "Responses to FEIS Hearing Comments" dated February 27, 2001 submitted to the Towns by the Plaintiff's planner and consultant, annexed hereto as Exhibit E.

Lastly, the Plaintiff cannot claim that it had no reason to assert its interest to and through Oregon Road until October 2004 when the issue of secondary access was raised by the Planning Boards (See page 22 of Plaintiff's Memorandum of Law), because this issue was raised as early as the year 2000. It is the undersigned's recollection, based upon

a review of my correspondence with the Town Board of the Town of North Castle, that at one joint work session with the Bedford Board of Appeals, the Planning Board and the Wetlands Commission held on January 27, 2000 (which was attended by the Plaintiff's then-attorney Mr. Kass) that one topic repeatedly discussed by the Bedford Boards was vehicular access and emergency access. It was clear that the Town of Bedford objected to having the only access to the Plaintiff's property be through its town. In fact, the Bedford Board suggested that the Nature Conservancy be required to deed the bed of Oregon Road (south) in North Castle to the Plaintiff so that it could control the re-opening of this part of the road. By virtue of this discussion at the meeting, it seems apparent that the Town of Bedford was concerned with a secondary access point as early as the beginning of 2000. Furthermore, in the Co-Lead Agency's findings (adopted April 25, 2002, and annexed hereto as Exhibit F) it was noted that Old Oregon Road had been abandoned as a town road in both the Town of North Castle and the Town of New Castle. It also noted that the Plaintiff had submitted alternatives for emergency access (including through Oregon Road in North Castle) although at that time, this was not proposed by the Plaintiff. Nonetheless, the Co-Lead Agency found that

In order to ensure that adequate emergency service can be provided to the site, additional review of the width and surface treatment of the two emergency access drives proposed by the Applicant should be undertaken.

Again, the Plaintiff was well aware of the Town of Bedford's desire to have access through North Castle. It cannot deny such knowledge now.

Since shortly after the time of Plaintiff's purchase of the property in question, it actually knew (or at the very least should have known) that the portion of Oregon Road in

the Town of North Castle was closed for all purposes and had been for years prior to its purchase, they are bound by that today. In *Holloway v. Southmayd*, 139 N.Y. 390, 409, 34 N.E. 1047, 1050 (1893), the Court of Appeals, citing *King v. City of New York*, 102 N.Y. 171 (1886), held that the grantee

was bound to know, when the grant was made to him, that the public highway no longer existed and that he must be presumed to have bought in view of that fact. With such knowledge, chargeable to [him], he could not be heard to claim that, by bounding the grant upon the highway, his grantors had conveyed any easement in the highway.

As the Plaintiff actually knew that the road had been “officially closed” and “demapped” by the Town of North Castle and because it is chargeable with the knowledge that the road had been closed, as evidenced by a large gate had been erected effectively blocking off Oregon Road, it cannot credibly argue that it did not know the road had been closed.

Due to the fact that the Town of North Castle properly complied with the statutory requirements relating to the preparation and filing of the Certificate², anyone seeking to challenge the abandonment had only until May 10, 1991 (one year from the date of filing the certificate, pursuant to §205). The Plaintiff cites *Aldous v. Town of Lake Luzerne*, 722 N.Y.S.2d 293 (3d Dept. 2001) in support of its proposition that the Town of “North Castle’s resolution was ineffective to abandon Oregon Road” (Plaintiff’s Memorandum p. 13). However, the Town of North Castle, unlike the Town of Lake Luzerne, did not rely upon its Town Board’s resolution to close the road. Rather, as explained above, the road was already abandoned by six years of non-use by operation of law. The resolution and the certificate were formalities. Any discrepancies regarding the certificate, or even

² Even if the Town did fail to comply with the requirements relating to the Certificate, the filing of same is merely a ministerial act and did not effect the abandonment of the road. Furthermore, the Plaintiff’s actual knowledge of the closure discredits its argument that it did not know of the closure.

the resolution, have no bearing on the one-year statute of limitations contained within Section 205 or any other applicable limitation period.

II. ALL POSSIBLE STATUTES OF LIMITATION HAVE EXPIRED

Statutes of Limitation begin to run at the accrual of a cause of action. NY CPLR §203(a). When Oregon Road ceased to be a highway by operation of law, the statute of limitations period was triggered. Section 205 of the Highway Law explicitly provides that:

Any action or proceeding involving the abandonment or qualified abandonment of a highway made pursuant to this section ***must, in the case of abandonment, be commenced within one year from the date of filing*** by the town superintendent as provided in subdivision one of this section (emphasis added).

As explained in further detail in the Town of North Castle's initial motion papers, the Town of North Castle effectively closed Oregon Road for all purposes in May 1990. Once the Certificate of Discontinuance was filed in the Town Clerk's office on May 10, 1990, the one year limitation period was triggered. New York courts have held that "once a road has been abandoned, that determination is not subject to collateral attack," *Grosz v. Town of S. Bristol*, 182 Misc. 2d 61, 63 697 N.Y.S.2d 812, 813 (Ontario County, 1999). Therefore any person wishing to challenge the closure of Oregon Road had until May 10, 1991 to do so.

As explained in detail above, the filing of a certificate is merely a "ministerial" act and therefore has no impact upon the Statute of Limitations period, despite Plaintiff's statements to the contrary. The only case cited by Plaintiff in support of this position is

Aldous v. Town of Lake Luzerne, 722 N.Y.S.2d 293, 294 (3d Dept. 2001) which (as explained above) is not on point. In *Aldous*, the Court found that the statute required the Highway Superintendent to file a certificate with the Town Clerk upon a finding that the road had not been traveled or used for six years, and that because this did not occur, the one-year limitation period in the Highway Law was inapplicable. In fact, despite the town passing a resolution, it was clear that the road was regularly used as a highway, and therefore the mere resolution was ineffective to abandon it.

That is not the case here. In the case at bar, Oregon Road had not been used or traveled as a highway since approximately 1980. The Town Board, in keeping with the formalities of the statute, conducted meetings and passed a resolution to abandon the portion Oregon Road within its boundaries and to cause a Certificate of Discontinuance to be filed in the Town Clerk's office. This was done on May 10, 1990. Due to the fact that the road was closed by operation of law prior to 1990, and the certificate and the resolution were mere formalities, anyone wishing to challenge the abandonment only had one year to do so. Using the filing of the certificate as a specific date reference, the time to challenge expired in May 1991.

In *Cornelison v. Sowles*, 59 A.D.2d 637, 398 N.Y.S.2d 186 (3d Dept. 1977), the Court found that the petitioner's action was time-barred under the one year statute of limitation in the Highway Law, where an action was commenced approximately fifteen years after the Town declared the road abandoned and approximately twelve years after petitioner acquired the property. See also *Grosz v. Town of South Bristol*, *supra* [anyone wishing to challenge abandonment had only one year from the date of the filing of the certificate, and was estopped from doing so more than a decade later]. Similarly, Oregon

Road was closed more than sixteen years ago, and the closure was never challenged. The Plaintiff itself did not challenge the closure until eleven years after it purchased the property. It cannot be permitted to do so now.

Even if it is found that the Town of North Castle improperly closed the road, New York case law provides that as long as the entire width of a highway is blocked, the obstructed section ceases to be a highway. This occurs after six years of nonuse, even if the blocking of the highway may have been a wrongful act. See *Dinkel & Jewell Co. v. Tarrytown*, 177 A.D. 742 (2d Dept. 1917), and *Barnes v. Midland Railroad Terminal Co.*, 218 N.Y. 91, 98, 112 N.E. 926, 928 (1916). As explained in the initial motion papers, the Town caused a gate to be erected across the width of Oregon Road beginning in North Castle, thereby effectively preventing normal use of the road. Plaintiff's statement that "vehicles and pedestrians can still access Oregon Road by going around the gate" is questionable³ and is irrelevant (See Plaintiff's Memorandum of Law p. 24). The blockade (or in our case, the gate) need only block a portion of the length of the highway as long as the gate spans the entire width, making *normal* passage impossible. See *Barnes v. Midland Railroad Terminal Co.*, 218 N.Y. 91, 98, 112 N.E. 926, 928 (1916) (emphasis added), *Wills v. Town of Orleans*, 236 A.D.2d 889, 890 653 N.Y.S.2d

³ In fact, Plaintiff's own statements contradict one another. Earlier in its Memorandum of Law, Plaintiff admits that the gate is sufficient to make Oregon Road "impassable to or from Oregon Road to the south by persons in vehicles." See Plaintiff's Memorandum of Law at pages 4-5. Furthermore, Plaintiff's representatives acknowledged as early as 1998 that "Vehicular access to the dirt road (Old Oregon Road) which continues north is *blocked by a steel barricade*. Exhibit B. (Emphasis added). Additionally, in a November 15, 2000 memo to the Co-Lead Agency Saccardi & Schiff wrote that the area "is currently a walking trail, and has been blocked by vehicular use...it is also possible that substantial improvements may need to be made to the existing abandoned travel-way of Old Oregon Road in North Castle and New Castle since that travel-way is unlikely to be passable by emergency service vehicles in its present condition." See Exhibit G, annexed hereto.

997, 998 (4th Dept. 1997), and *Leray v. New York C. R. Co.*, 226 N.Y. 109, 113, 123 N.E. 145, 146 (1919).

Additionally, even if the road was occasionally used by pedestrians or bikers, this will not defeat the abandonment. As the Court in *Leray* noted, “[t]here may have been a use, but not a use as a highway” *Leray v. New York C. R. Co.*, 226 N.Y. 109, 113, 123 N.E. 145, 146 (1919). See also *O’Leary v. Town of Trenton*, 172 Misc. 2d. 447, 658 N.Y.S.2d 200 (Sup. Ct., Oneida County 1997) (after the road was barricaded to vehicular traffic, it was used for jogging, walking, bicycling, snowmobiling, driving all-terrain vehicles and skiing. Children rode their bikes over the old road to avoid the traffic along Route 365. One resident took his daughter on motorcycle rides up and down the road between the two villages. The Court still found road to be abandoned). Therefore, even if the Court finds that the six year limitation period begins when the Town resolved to close the road and the gate was actually erected (May 10, 1990), the road would have been deemed abandoned after May 10, 1996, and the Plaintiff’s instant action would still be barred.

If the Court determines that the action should qualify as an Article 78 proceeding, (which it could because an action by the Town could qualify as an administrative or “quasi-legislative act” capable of being resolved by an Article 78 proceeding. See CPLR 7803(3), *Van Nostrand v. Town of Denning, et al.*, 132 A.D.2d 93; 521 N.Y.S.2d 896 (3d Dept. 1987), *Schulz et al., v. Town Board of the Town of Queensbury, et al.*, 253 A.D.2d 956; 677 N.Y.S.2d 826 (3d Dept. 1998), *Salvador v. Town Board of the Town of Queensbury, et al.*, 303 A.D.2d 826, 828 (3d Dept. 2003)), then a four month statute of

limitations should be applied, and the present Plaintiff's action is untimely under Article 78 of the CPLR.

Lastly, even if the ten year statute of limitation contained within CPLR §212(a) is applied to this matter, the Plaintiff would still be barred, because his time to file would have expired on May 10, 2006.

III. THE PLAINTIFF DOES NOT HAVE ANY EASEMENT OVER THIS PROPERTY.

Turning now to Plaintiff's assertion that it has a private easement over Oregon Road, it is respectfully submitted that because there is no common grantor, no such easement ever existed. Plaintiff claims that the Nature Conservancy's statement that there is no common grantor (as opposed to a common source of title) is without merit, and leaves it at that. The Town of North Castle joins in the Nature Conservancy's argument on this point. It is well settled that:

A private easement of way may not be expressly or impliedly created by grant over purported streets where the ownership of the land in the streets and of all easement rights therein is vested in a third person or in a municipality not a party to a grant. Rather, such an easement arises only when it is shown that ownership of the land and the bed of the street were once the property of a common grantor. *Kent v. Dutton*, 122 A.D.2d 558, 505 N.Y.S.2d 287, 288 (4th Dept. 1986).

"The terms 'common grantor' and 'common source of title' are not synonymous." *Stupnicki v. Southern New York Fish & Game Assoc.*, 41 Misc. 2d 266, 271, 244 N.Y.S.2d 558, 563 (Columbia County, 1962). It is not enough to show a common source of title. A party must show a common grantor. *Kent v. Dutton*, 122 A.D.2d 558, 559, 505 N.Y.S.2d 287, 288 (4th Dept. 1986). The Plaintiff cannot make such a showing.

In *Stupnicki*, the parties and their predecessors each had two access points over a road to their respective properties. The town abandoned the road pursuant to Highway Law Section 205. The plaintiff brought an action against a defendant who claimed to have a private easement over the closed portion of the road, despite the fact that it had access to the property from another point. The defendant based this argument upon the fact that title for the entire property was originally owned by one person. The Court rejected this argument and found that

grantees of such a common grantor do have a private easement by grant or implication. This is not the case here. The fact that ownership of the respective parcels can be traced back for many years to the one owner of an immense parcel of land, out of which the parcels of the parties hereto were ultimately carved, does not bring this case within the doctrine of an easement by grant or implication, as in the case of the owner of a tract who subdivides it into lots, shown on a map, with streets, etc. and then sells the lots to various parties, who buy in reliance thereon. The terms 'common grantor' and 'common source of title' are not synonymous.

[The Court found that] defendant and its predecessors had no private easement over that portion of the abandoned town highway . . . that such predecessors in title had only the easement of the general public over same until the town officers filed their certificate pursuant to section 205 of the Highway Law, at which time the public easement terminated. *Stupnicki v. Southern New York Fish & Game Assoc.*, 41 Misc. 2d 266, 271, 244 N.Y.S.2d 558, 564 (Columbia County 1962).

This is not unlike the situation at bar. The Plaintiff is claiming a private easement over a piece of property that was carved out of a larger portion, which ultimately can be traced back to The Meyer Foundation. This does not mean that there was a common grantor – merely that there was a common source of title. As *Stupnicki* points out, this is not

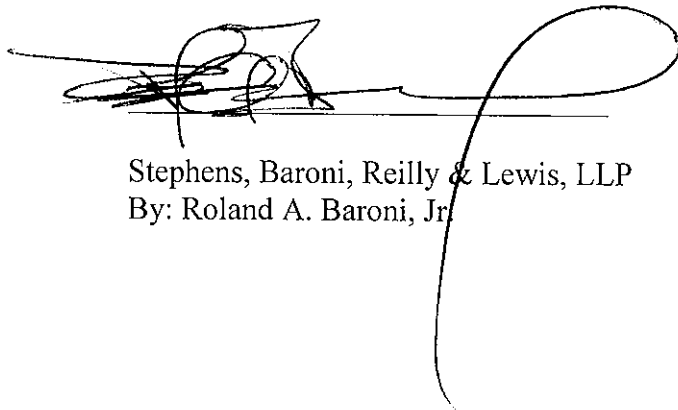
enough to establish a private easement, and there was only a public easement on the property which was extinguished with the abandonment of the road.

Lastly, Plaintiff maintains that its predecessors never took any action to release their rights to Oregon Road. The Plaintiff is incorrect. Throughout the entire process, the Town of North Castle was engaged in discussions with The Nature Conservancy and Rockefeller University (the Plaintiff's predecessor) with regard to this road closure, which culminated with Rockefeller's consenting to the closure, the filing of the Certificate and the erection of the gate. Therefore, although the Plaintiff may have never abandoned the easement, its predecessor did. Once that easement was abandoned, it cannot be revived by anything short of an express grant. See, *Sam Development, LLC v. Dean*, 292 A.D.2d 585, 586, 740 N.Y.S.2d 90, 92 (2d Dept. 2002) citing *Stilbell Realty Corp. v. Cullen*, 43 A.D.2d 966, 967, 352 N.Y.S.2d 656 (2d Dept. 1794). Rockefeller University, Plaintiff's predecessor, could not convey an easement to the Plaintiff that it no longer possessed. Furthermore, Plaintiff's attempt to distinguish cases cited by the Nature Conservancy does not succeed. Despite the fact that Rockefeller University itself did not install the gate, it consented to the Town of North Castle doing so. The installation of a barrier coupled with the University's non-use is sufficient for a finding of abandonment of the private easement. See *Albanese v. Domianni*, 118 N.Y.S.2d 347 (2d Dept. 1953). Based upon the foregoing, the Plaintiff's argument that the easement was not abandoned because it did not have occasion to use the easement until October 2004 is without merit.

CONCLUSION

For all the foregoing reasons, as well as those reasons set forth in the Town of North Castle's Motion to Dismiss and supporting Affirmation, it is respectfully requested that the Court dismiss the Plaintiff's action in its entirety.

Dated: September 13, 2006
White Plains, New York



Stephens, Baroni, Reilly & Lewis, LLP
By: Roland A. Baroni, Jr.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

- against -

**ATTORNEY
CERTIFICATION**

Index No.: 9130/06

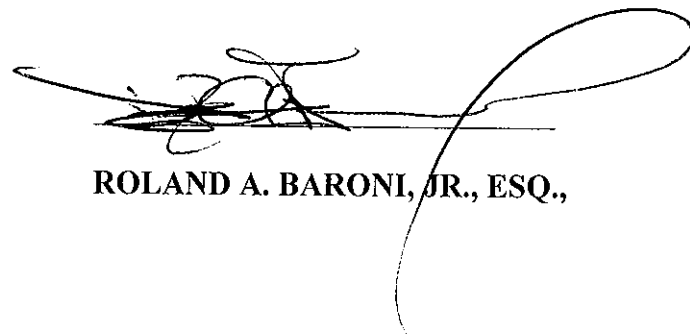
THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Defendants.
-----X

CERTIFICATION:

I, **ROLAND A. BARONI, JR., ESQ.**, am an attorney duly admitted to the practice of law in the State of New York. I hereby certify, pursuant to NYCRR §202.16(e), that I have no knowledge that the substance of any of the factual submissions contained in this document is false, and that all of the papers that I have served, filed or submitted to the Court in the action are not frivolous as defined in Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator of the Courts (22NYCRR).

Dated: White Plains, New York
September 13, 2006


ROLAND A. BARONI, JR., ESQ.,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

AFFIDAVIT OF SERVICE

Plaintiff,

- against -

Index No.: 9130/06

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

Defendants.

-----X
STATE OF NEW YORK)
 : ss.
COUNTY OF WESTCHESTER)

KRISTEN L. HOLT, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age, and reside in Middletown, New York.


On June 30, 2006, I served a true copy of a **COMBINED REPLY AFFIRMATION AND MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S OPPOSITION AND IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS** together with the exhibits annexed thereto by depositing same with an overnight delivery service (Federal Express) in a wrapper properly addressed to the last known address of the addressees. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery to the last known address of the addressees as set forth below:

DelBello, Donnellan, Weingarten, Tartaglia, Wise & Wiederkehr, LLP
ATTN: Mr. Alfred E. Donnellan, Esq.
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601



KRISTEN L. HOLT

Sworn to before me this
13TH day of September, 2006



Notary Public

WENDY FEDERICI
Notary Public, State Of New York
No. 4866147
Qualified in Westchester County
Commission Expires July 28, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

- against -

AFFIDAVIT OF SERVICE

Index No.: 9130/06

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

Defendants.
-----X

STATE OF NEW YORK)

: ss.

COUNTY OF WESTCHESTER)

KRISTEN L. HOLT, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age, and reside in Middletown, New York.

On June 30, 2005, I served a true copy of a **COMBINED REPLY AFFIRMATION AND MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S OPPOSITION AND IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS** together with the exhibits annexed thereto by mailing the same in a sealed envelope, with postage prepaid thereon, in an official depository of the United States Postal Service within the State of New York, addressed to the last known addresses of the addressees as set forth below:

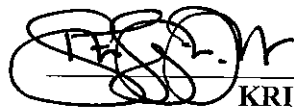
Roosevelt & Benowich, LLP
ATTN: Mr. Christopher Roosevelt, Esq.
Attorneys for the Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604

Oxman, Tulis, Kirkpatrick, Wyatt & Geiger
ATTN: Mr. John Kirkpatrick, Esq.
Attorneys for Mr. & Mrs. Burke
and Mr. & Mrs. Donohoe
120 Bloomingdale Road
White Plains, New York 10601

Realis Associates
356 Manville Road
Pleasantville, New York 10570

Sworn to before me this
13th day of September 2006,

Wendy Federici
Notary Public



KRISTEN L. HOLT

WENDY FEDERICI
Notary Public, State Of New York
No. 4866147
Qualified In Westchester County
Commission Expires July 28, 2010

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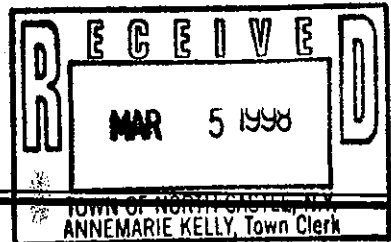
SEVEN SPRINGS



DRAFT ENVIRONMENTAL IMPACT STATEMENT

Volume 2

February 1998



2. Access from Oregon Road in North Castle

By eliminating the man-made barricade and improving the existing dirt roadway, it would be possible to extend the existing Oregon Road (south) in North Castle to the north into the Seven Springs site. However, this road connection, in the absence of condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of this portion of the roadway.

Such a road connection had been suggested as part of the original planning for the Seven Springs project. Hence, it was included in the DEIS scoping document as an alternative. The approximately 1,500 feet of off-site road bed has an average width of 12 feet. It borders steep slopes and wetlands. If it were utilized for site access, widening and grading would be necessary. Retaining walls would be required as part of any proposed construction to minimize excavation and disturbance of steep slopes. The same characteristics would apply regardless of whether the potential road were designed for permanent or emergency access.

3. No Access to Sarles Street

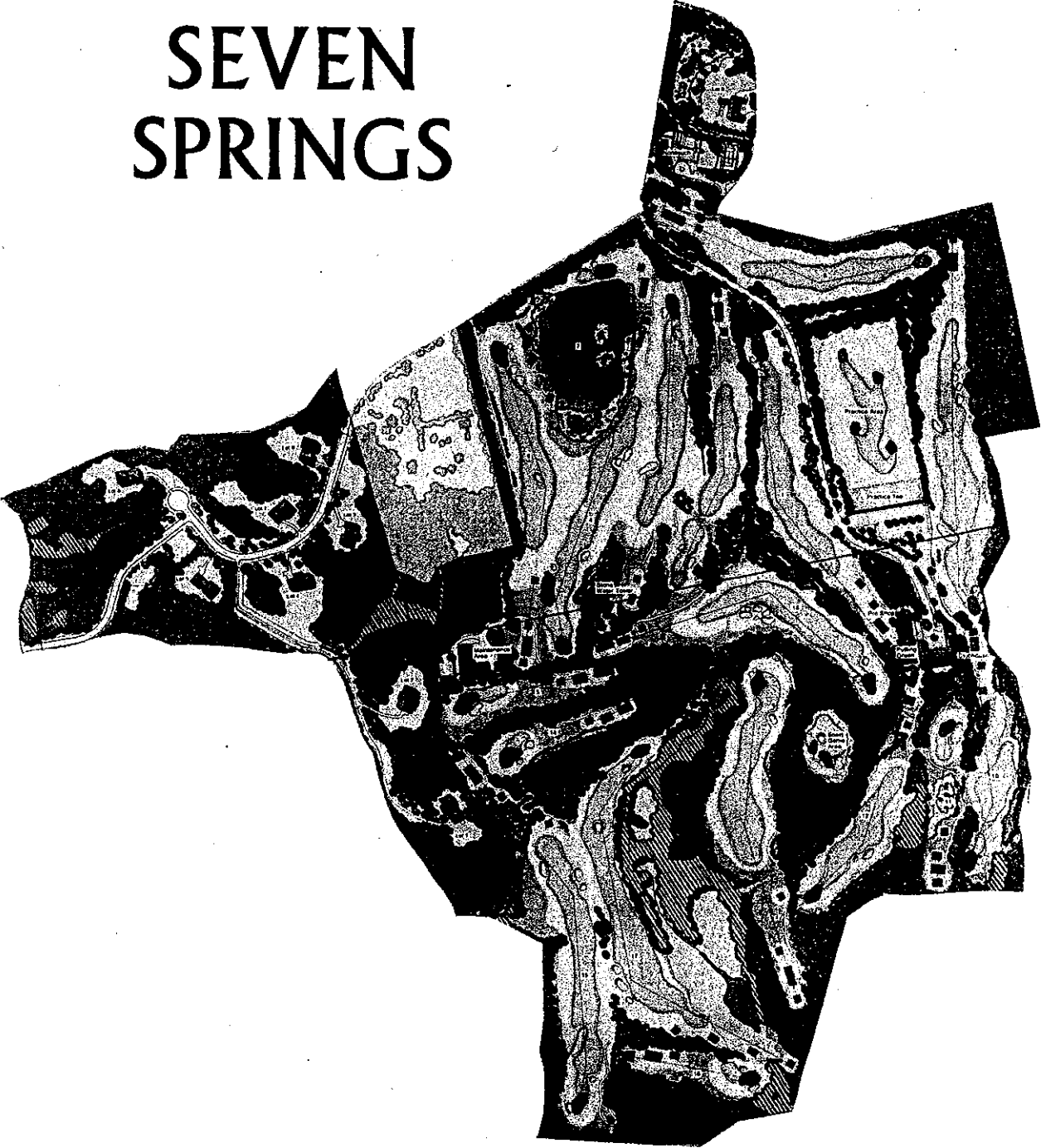
The Seven Springs development could occur with one means of access, rather than two, eliminating the proposed access to Sarles Street. This alternative, shown in Exhibit 5-46 and 5-47, would result in less impact to wetlands, wetland buffers and steep slope areas to the immediate east of Sarles Street. It would also avoid disturbance of the rock wall, regrading, and tree removal required to develop adequate sight distance under the proposed action. The traffic impacts of an alternative with no access to Sarles Street would result in some additional volumes on Oregon Road (north) and at the intersection of Byram Lake Road and Oregon Road.

However, levels of service and recommended improvements would be the same as under the proposed action and the residential alternatives with access to both Sarles Street and Oregon Road (north).

The arrival and departure distributions for the residential development with no access to Sarles Street are shown on Exhibits 5-48 and 5-49. The resulting site generated traffic volumes, illustrated on Exhibits 5-50 to 5-55, were added to the Year 2000 NO-Build Traffic Volumes resulting in the Year 2000 Build Traffic Volumes shown on Exhibit 5-56 to 5-61.

LB

SEVEN SPRINGS



DRAFT ENVIRONMENTAL IMPACT STATEMENT
Revised Pages

June 1998

2. Access from Oregon Road in North Castle

By eliminating the man-made barricade and improving the existing dirt roadway, it would be possible to extend the existing Oregon Road (south) in North Castle to the north into the Seven Springs site. However, this road connection, in the absence of condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs and the western half of the road adjacent to the property, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of this the portion of the roadway located south of the site. Both The Nature Conservancy and the Town of North Castle have indicated their disinclination to approve the opening of this route.

Such a road connection had been suggested as part of the original planning for the Seven Springs project. Hence, it was included in the DEIS scoping document as an alternative. The approximately 1,500 feet of off-site road bed has an average width of 12 feet. The dirt road, which begins approximately 1,500 feet south of the site and extends to Sarles Street, has an average width of 12 feet. It borders steep slopes and wetlands. If it were utilized for site access, widening and grading would be necessary. Retaining walls would be required as part of any proposed construction to minimize excavation and disturbance of steep slopes. The same characteristics would apply regardless of whether the potential road were designed for permanent or emergency access.

The accompanying photographs depict the general character of the existing dirt roadway beginning at the barricade south of the site in North Castle and continuing north to Sarles Street in New Castle. The photographs are keyed on Exhibit 5-45a and are included as Exhibit 5-45b.

The existing paved portion of Oregon Road (south) ends just beyond the entrance to an eight-lot subdivision off of Oregon Hollow Road. Vehicular access to the dirt road (Old Oregon Road) which continues north is blocked by a steel barricade. At this location, grades on the eastern side of the road slope steeply upward into the Agnes Meyer Nature Preserve. Grades on the western side of the road slope very steeply downward towards the subdivision which is located at a significantly lower elevation than the road bed (*Photo 1*). Widening and grading the road adjacent to the subdivision would require earth cut, rock removal and a retaining wall on the eastern side of the road and a guard rail on the western side of the road. Some utility poles, situated on the western side of the road, would most likely need to be relocated and

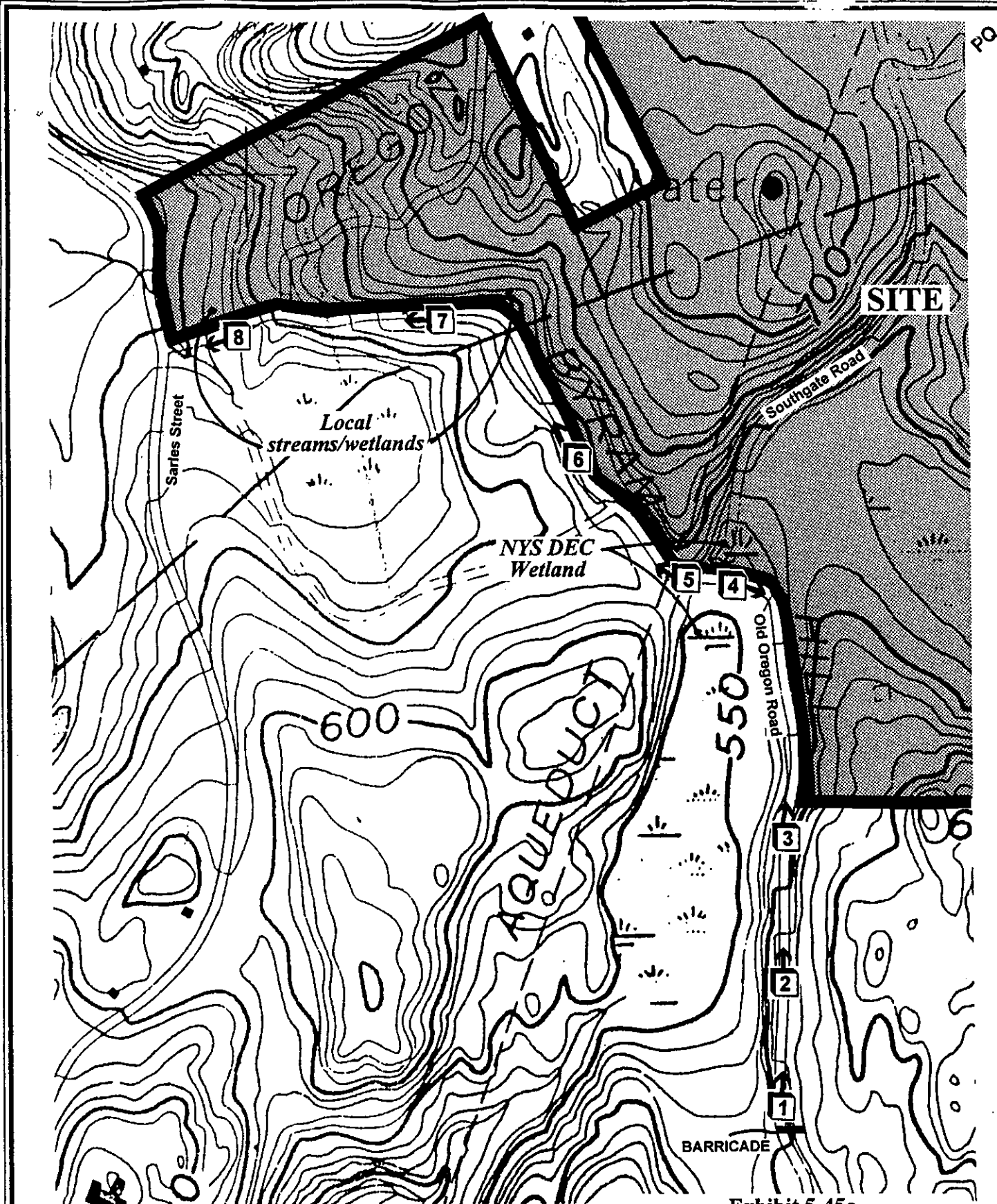


Exhibit 5-45a
**KEY TO PHOTOGRAPHS:
 OLD OREGON ROAD**

SEVEN SPRINGS
 North Castle/Bedford/New Castle, NY

Saccardi & Schiff, Inc. - Planning & Development Consultants



1. At the entrance to Old Oregon Road in North Castle (closed), grades on the eastern side of the road rise up into the Meyer Nature Preserve; grades on the western side of the road slope very steeply downward toward an adjacent residential subdivision.

trees would need to be removed.

As the road continues toward and adjacent to the Seven Springs site, grades on the eastern side of the road slope downward and those on the western side of the road slope upward. The severity of these slopes, however, varies. In some locations, minimal cut and fill would be required (*Photo 2*); in other locations, cut, fill, rock removal, and retaining walls to minimize disturbance would be necessary (*Photo 3*). In any case, trees would need to be removed and some utility poles would need to be relocated to accommodate widening of the road.

Near its intersection with the existing site driveway, known as Southgate Road, Old Oregon Road turns nearly 90 degrees to the west. This portion of the road would require realignment to minimize this curve. Improvements to the road in this location would occur within the 100-foot buffer of the NYS DEC wetland located east and west of the road (*Photo 4*). The wetland may be impacted as well.

Just beyond the existing site driveway, the road takes a sharp turn to the northwest around a large rock outcrop located to the east (*Photo 5*). Again, the road would most likely need to be realigned to minimize the curve. Additionally, rock removal might be required.

As the road continues adjacent to the property toward Sarles Street, grades slope downward into the Meyer Nature Preserve and upward into the site. As with the southern section of the road, the steepness of these slopes varies. In many locations, cut, fill, and retaining walls would be required (*Photo 6*). In some locations rock removal might be required given rock outcrops located adjacent to the road (*Photo 7*). In a few locations minimal grading would be necessary (*Photo 8*). In two locations, at the bend in the road between proposed Lots 2 and 4 and near Sarles Street, road improvements would impact existing streams and associated wetlands. Widening of the road would require the removal of many trees. No utility poles are located along the road north of the existing site driveway.

If Old Oregon Road were improved to the existing Southgate Road only, the total length of the road, from the barricade to the driveway would be approximately 2,500 feet. If the road were improved to Sarles Street, the total length of the road would be approximately 5,200 feet. Although construction of this road would be physically possible, it would not be necessary from a traffic engineering perspective. Moreover, connecting Old Oregon Road with the main access drive to the club house would adversely



2. In some locations along the road, only minimal grading would be required.



3. In some locations, road improvements would require cut and fill and the construction of retaining walls to minimize disturbance.



4. Road improvements near the intersection of the existing site driveway (Southgate Road) would occur within the 100-foot buffer of a NYSDEC wetland located east and west of the road. The wetland may be impacted as well, depending on the extent of improvements required.



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5. Just north of the existing site driveway (Southgate Road), Old Oregon Road takes a sharp turn to the northwest around a large rock outcrop. Road improvements might require rock removal and realignment to minimize the curve.



6. As the road parallels the proposed residential area on Seven Springs, grades slope down toward the Meyer Nature Preserve and up toward the site.



7. In some locations, rock removal may be required, given large rock outcrops located adjacent to the road.



8. As the road approaches Sarles Street, only minimal grading would be required.

affect the golf course design, bringing a roadway through areas currently planned for fairways, greens and tees. There are no plans to utilize Old Oregon Road to provide access to the site from Oregon Road (south) in North Castle.

3. No Access to Sarles Street

The Seven Springs development could occur with one means of access, rather than two, eliminating the proposed access to Sarles Street. This alternative, shown in Exhibit 5-46 and 5-47, would result in less impact to wetlands, wetland buffers and steep slope areas to the immediate east of Sarles Street. It would also avoid disturbance of the rock wall, regrading, and tree removal required to develop adequate sight distance under the proposed action. The traffic impacts of an alternative with no access to Sarles Street would result in some additional volumes on Oregon Road (north) and at the intersection of Byram Lake Road and Oregon Road.

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C

Handwritten: BNU copy

In The Matter Of:

*Seven Springs Meeting of the Co-Lead Agency
Board of N. Castle & Zoning Board of Bedford*

*Hearing Volume Number 1
December 13, 2000*

*Greenhouse Reporting, Inc.
Computerized Litigation Support
363 Seventh Avenue
20th Floor
New York, NY 10001
(212) 279-5108 FAX: (212) 279-5431*

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Min-U-Script® File ID: 0801148641*

Word Index included with this Min-U-Script®

SEVEN SPRINGS MEETING
of the
CO-LEAD AGENCY CONSISTING OF
THE TOWN BOARD OF THE TOWN OF NORTH CASTLE
-and-
ZONING BOARD OF THE TOWN OF BEDFORD
North Castle Public Library
19 Whipoorwill Road East
Armonk, New York
December 13, 2000 - 8:00 p.m.

BEFORE:

HUGH McMILLAN, Chairman,
Zoning Board of Appeals
JOHN LOMBARDI, Supervisor
JOEL SACHS
DAVID OTTO
VIRGINIA BARTON
WILLIAM H. McCLURE
HAZEL W. NOURSE
GERALD GEIST
REBECCA KITTREDGE
WILLIAM R. WEAVER
ROLAND BARONI, Jr.
DAVID PORTMAN

SACCARDI & SCHIFF, INC.
John J. Saccardi, AICP
CARTER, LEDYARD & MILBURN
Attorneys for Seven Springs
2 Wall Street
New York, New York 10005
STEVEN KASS, ESQ.

SEVEN SPRINGS GOLF COURSE

[1] **MR. LOMBARDI:** Good evening ladies
[2] and gentlemen. This is the public hearing
[3] of the SEQRA Co-Lead Agency for the Seven
[4] Springs Golf Course, residential
[5] development of the Towns of Bedford and
[6] North Castle.

[7] I will start by reading the legal
[8] notice. Notice is hereby given that the
[9] Town Board of the Town of North Castle and
[10] the Zoning Board of the Town of Bedford
[11] will hold a public hearing on December 13,
[12] 2000 at 8:00 p.m., or soon thereafter, at
[13] the Town of North Castle public library,
[14] Whipoorwill Hall, 19 Whipoorwill Road
[15] East, Armonk, New York, for the purpose of
[16] soliciting comments on the final
[17] environmental impact statement of Seven
[18] Springs Golf Course residential development
[19] located in the Town of North Castle.

[20] Persons having an interest in the
[21] matter are invited to attend and be heard
[22] by the order of the Town Board dated
[23] November 28, 2000. We will mark that as
[24] part of the minutes and I understand we
[25]

SEVEN SPRINGS GOLF COURSE

[1] have two communications which we will mark
[2] as a part A and B of the communications.

[3] I will begin by asking the chairman
[4] of the Zoning Board of Appeals, first of
[5] all, to introduce his group.

[6] **MR. McMILLAN:** Virginia Barton,
[7] Bedford ZBA; David Otto, Hazel Nourse, Joel
[8] Sachs, our town attorney and I am Hugh
[9] McMillan, chairman.

[10] **MR. LOMBARDI:** I'm Jack Lombardi,
[11] supervisor of the Town of North Castle;
[12] David Portman is our town planner; Rebecca
[13] Kittredge, councilman; Bill McClure,
[14] councilman, Gerald Geist, councilman; Bill
[15] Weaver, councilman and our town counsel
[16] Roland Baroni.

[17] I would like to now introduce our
[18] town planner, David Portman for some
[19] remarks.

[20] **MR. PORTMAN:** Good evening, I just
[21] wanted to summarize where the SEQRA process
[22] is right now, where we have been for the
[23] last couple of years and the purpose of
[24] tonight's hearing. I must say in my
[25]

SEVEN SPRINGS GOLF COURSE

[1] experience this has definitely been the
[2] longest, most complex and most
[3] comprehensive SEQRA process we have ever
[4] been through. The comment period on the
[5] draft environmental impact statement was
[6] closed on November 5, 1998, that's over two
[7] years ago, and at that point the process
[8] had been running quite a while.

[9] In this two-year period the
[10] applicant has been drafting with our review
[11] and the Town of Bedford's review a final
[12] environmental impact statement, attempting
[13] to respond to and address the comments and
[14] questions that were raised at the DEIS, the
[15] draft environmental impact statement public
[16] hearings. Those were submitted in writing
[17] before, during and after those hearings
[18] through the end of that comment period in
[19] November of 1998.

[20] We have received comprehensive
[21] drafts of the FEIS, the final environmental
[22] impact statement, we have reviewed them.
[23] Returned them to the applicant for more
[24] work. It's been resubmitted, returned
[25]

SEVEN SPRINGS GOLF COURSE

[1] again, resubmitted again and it finally got
[2] to the point where last month the Town
[3] Board of the Town of North Castle and the
[4] Zoning Board of the Town of Bedford voted
[5] to accept the final environmental impact
[6] statement.

[7] As a result of the nature of this
[8] application and the concern that's been
[9] expressed and the level of detail that has
[10] been gone into and the changes which have
[11] occurred in response to comments on the
[12] draft environmental impact statement, it
[13] was determined that there would be a public
[14] hearing on the FEIS, the final
[15] environmental impact statement, which is
[16] what we are having tonight.

[17] This is not normally a part of the
[18] state environmental quality review process,
[19] this has been added to give another added
[20] dimension for public participation. In
[21] addition to the hearing tonight, there will
[22] be a hearing tomorrow night in Bedford,
[23] West Patent Elementary School at 8:00 p.m.
[24] to give an equal opportunity to the

SEVEN SPRINGS GOLF COURSE

[1] residents of the Town of Bedford and in
[2] fact, residents of either town can come
[3] either night. It gives you two
[4] opportunities to come. Those who might
[5] have wished to hear anybody speaking on
[6] television this evening may be home, they
[7] can come tomorrow night. Those of us who
[8] will not be hearing it are here tonight.

[9] Finally, what happens now is that
[10] after these two hearings are held tonight
[11] and tomorrow night, there will be an
[12] additional written comment period that will
[13] extend through December 31. All of the
[14] comments that are made this evening,
[15] tomorrow night and during the written
[16] comment period will be taken into
[17] consideration by this Co-Lead Agency before
[18] they adopt an environmental finding
[19] statement, which is the next step in the
[20] process.

[21] We and the other experts serving the
[22] Co-Lead Agency will be drafting that
[23] environmental finding statement and it is
[24] anticipated that it will probably take

SEVEN SPRINGS GOLF COURSE

[1] about 60 days to draft, revise, review and
[2] complete it. So that will give you some
[3] idea of what kind of time frame we are
[4] running into going forward from this point.
[5] In terms of procedure tonight, the
[6] supervisor has indicated that he is going
[7] to call on people from the audience, there
[8] was no sign up list, we are a relatively
[9] small group and he is requesting that you
[10] limit your comments on the initial go
[11] around to five minutes; those needing
[12] longer than five minutes will be given an
[13] opportunity at the end to extend their
[14] comments for as long as necessary, I assume
[15] as long as necessary, within reason. Thank
[16] you.

[17] **MR. KASS:** Thank you Mr. Supervisor,
[18] chairman, ladies and gentlemen. My name is
[19] Stephen Kass, counsel for the applicant. I
[20] wanted to thank you for opening this
[21] hearing this evening and tomorrow evening
[22] and thank you David for that absolutely
[23] accurate and generous summary of the
[24] process that's gone on.

SEVEN SPRINGS GOLF COURSE

[1] There are a number of pages of
[2] material that has gone back and forth and
[3] that all of you have reviewed is subject to
[4] a manual recount at some point, it's many
[5] tens of thousands of pages. I do have the
[6] for your record copies of the notice of
[7] this hearing as public from the
[8] Environmental Notice Bulletin, the Journal
[9] News, the Patent Trader and the Bedford
[10] Record Review. In each case the formal
[11] notice of the FEIS acceptance and the
[12] informal short form notice, if people read
[13] it, that you requested we do. I would like
[14] to submit these to the chairman for the
[15] record.

[16] In order to expedite matters, I
[17] think the wisest course would be to ask
[18] John Saccardi, our principal environmental
[19] consultant, to give you a very, very brief
[20] rundown of the changes that have occurred
[21] in the project since the time of the draft
[22] EIS two years ago. I would mention only
[23] that in addition to meeting with all of you
[24] extensively, we have also had the pleasure

SEVEN SPRINGS GOLF COURSE

[1] of meeting with Bedford Planning Board and
[2] Wetlands Commission, particularly the
[3] Wetlands Commission on five separate
[4] meetings to go over some of the water
[5] quality issues.

[6] In addition to John, we have most of
[7] our environmental consulting team here this
[8] evening to hear the comments, John Collins
[9] is here, all of our principal consultants
[10] are here to hear the public comments.
[11] Thank you again for your attention. We
[12] will turn it over to John for five minutes
[13] or so.

[14] **MR. McMILLAN:** From our Wetlands
[15] Commission we have Andrew Messenger, Felix
[16] Cacciano and Jeff Osterman, our town
[17] planner there in the corner.

[18] **MR. KASS:** We do appreciate the
[19] rigorous going over we have been getting
[20] from all of your professional consultants
[21] and the high degree of professionalism with
[22] which that process was conducted. It
[23] wasn't painful though it was very, very
[24] diligent.

SEVEN SPRINGS GOLF COURSE

[1] **MR. SACCARDI:** Thank you Steve.
[2] Good evening Mr. Supervisor, Mr. Chairman,
[3] members of the board and public. My name
[4] is John Saccardi, I'm principal of Saccardi
[5] and Schiff, planning consultants in White
[6] Plains. We are the environmental planners
[7] on the project and one of several planning
[8] consultants and environmental consultants
[9] that have been involved in the
[10] environmental impact statement for the
[11] project.

[12] What I would like to do, and I will
[13] do it quickly, is present about eight major
[14] changes in the plan, that's the plan that
[15] was included in the draft environmental
[16] impact statement to the plan that's now
[17] included in the final environmental impact
[18] statement. Some of these changes, as the
[19] Board knows, the Co-Lead Agency knows,
[20] relate to physical aspects of the project,
[21] some relate to programmatic, some relate to
[22] monitoring aspects of the proposed
[23] development.

[24] The first change and one of the

SEVEN SPRINGS GOLF COURSE

[1] major changes is the elimination of eight
[2] blocks. That's an eight lot subdivision
[3] that had been proposed in the western
[4] portion of the site in the Town of New
[5] Castle and a portion in the town of North
[6] Castle. Those eight lots have been
[7] eliminated. There were nine lots proposed
[8] in the DEIS and we have one lot in the Town
[9] of Bedford. The eight lots have been
[10] eliminated and 31 acres of land in the Town
[11] of New Castle has been proposed to be
[12] conveyed to the Nature Conservancy. A
[13] major open space addition to the plan and
[14] to the Nature Conservancy land.

[15] A second major open space proposal
[16] in the FEIS plan is in the southeastern
[17] portion of the site in the Town of North
[18] Castle, south of the Meyer Estate building.
[19] There is a valley just south of the
[20] building, it's a very picturesque valley,
[21] some steep slopes, some mature trees and a
[22] wetlands corridor. That valley would have
[23] made a beautiful golf course hole, but it's
[24] now proposed as an open space. What we

SEVEN SPRINGS GOLF COURSE

[1] have done in that area we have shifted
[2] holes 10, 11 and 12 further to the west to
[3] keep that valley as an open space.

[4] In addition, we had a short game
[5] practice area in that same geographic area
[6] that's been relocated to the practice
[7] fairway. We have eliminated one facility
[8] from that area, shifted to the west to
[9] provide additional open space in the
[10] southeastern portion of the site. We have
[11] a major open space that will be the Nature
[12] Conservancy and an additional open space in
[13] the southeastern portion of the site.

[14] Among the benefits of these new open
[15] spaces are 37 percent fewer trees will have
[16] to be removed as part of this development.
[17] The trees in this area include many
[18] specimen trees; the trees in this area that
[19] is also heavily wooded includes some very
[20] important trees but, more importantly, in
[21] this area it's a large contiguous open
[22] space that extends into the Nature
[23] Conservancy lanes. Those are the two first
[24] proposals I would like to highlight, both

SEVEN SPRINGS GOLF COURSE

[1] dealing with open space.
[2] A third proposal that has changed is
[3] the modification of the wetland buffers.
[4] This is an issue that was raised by many
[5] people, the Conservation Board here in
[6] North Castle, the Wetlands Commission in
[7] Bedford and many, many other people.
[8] Additional wetland buffer areas are
[9] protected as part of the plan, with some
[10] very specific details included in the FEIS.
[11] Highlighting just two, a large wetland area
[12] in the Town of North Castle had in our
[13] previous plan hole 17 adjacent to it, we
[14] have pushed 17 further to the west and as
[15] you can see the fairway for 17 and the
[16] fairway for 15 are now combined, there will
[17] be a difference in topography so the golf
[18] course play will work. By pushing it to
[19] the west we can add an additional buffer
[20] area along this major wetland in the Town
[21] of North Castle.
[22] In the Town of Bedford, just south
[23] of Oregon Road, there is three previously
[24] disturbed wetland areas, what we have done

SEVEN SPRINGS GOLF COURSE

[1] there to enhance wetland buffers, we
[2] started by reducing the size and surface
[3] area of the irrigation pond and around the
[4] irrigation pond we have created new
[5] wetlands and additional and enhanced
[6] wetland buffer areas. So a major wetland
[7] treatment area is provided around the
[8] irrigation pond in the Town of Bedford.
[9] We have two new wetland mitigation
[10] areas, one that's around the pond and a
[11] second that's near the North Castle/Bedford
[12] boundary line. The total area of wetland
[13] mitigation is about 1.7 acres, that's new
[14] wetlands that are provided as part of this
[15] site.
[16] That leads to the fourth change, the
[17] fourth change has to do with the non-such
[18] property in the Town of Bedford up in the
[19] northern portion of the site. In the DEIS
[20] we had proposed an additional wetland
[21] mitigation in the northern most portion of
[22] the site. Based upon recommendations from
[23] Bedford's wetland consultant, we have
[24] eliminated that wetland mitigation area, it

SEVEN SPRINGS GOLF COURSE

[1] wasn't in a natural area so that's been
[2] eliminated.
[3] We have made several other changes
[4] to non-such. The non-such building will
[5] remain and provide overnight guest
[6] accommodations, access to non-such will be
[7] from Oregon Road rather than from the rear
[8] of the property as in the DEIS. Access to
[9] one single-family lot on the project, which
[10] is a 4.1 acre lot, will also be from Oregon
[11] Road.
[12] Finally at non-such, we have
[13] included one of the new emergency access
[14] proposals as part of the FEIS plan, this
[15] leads to the fifth change. The road behind
[16] non-such will be extended as an emergency
[17] access into the site across the 8th
[18] fairway, we will provide grass or some
[19] similar material so we maintain the fairway
[20] in the rough area for hole 8, that will
[21] provide emergency access into the site.
[22] That will come into the main access into
[23] the site that leads to the clubhouse.
[24] A second emergency access will be

SEVEN SPRINGS GOLF COURSE

[1] the driveway that leads from Oregon Road
[2] down to the proposed maintenance building
[3] and the maintenance building is in the Town
[4] of North Castle, the access road runs
[5] through Bedford. That access road has a
[6] change in design and a change in function
[7] in the FEIS. The change in design calls
[8] for a gate and that access road would be
[9] used only for major deliveries once or
[10] twice a week.
[11] In order to facilitate that
[12] proposal, we have provided that one of the
[13] golf course paths next to the clubhouse and
[14] maintenance area will be designed to
[15] accommodate smaller vehicles that could
[16] traverse the site and come in through the
[17] main access route.
[18] Finally, with regard to emergency
[19] access we have an option in the plan. An
[20] option in the plan would be to have a third
[21] emergency access connecting the maintenance
[22] building down to Old Oregon Road in North
[23] Castle and eventually out to Sarles Street.
[24] Not a proposal, but an option that could be

SEVEN SPRINGS GOLF COURSE

SEVEN SPRINGS GOLF COURSE

[1] considered. We don't like it as a proposal
[2] because we don't think it's necessary to
[3] have three emergency routes, but moreover,
[4] a lot of that open space we are proposing
[5] will be disturbed because this road has to
[6] snake its way down the hill through some
[7] steep terrain areas to reach Old Oregon
[8] Road. Old Oregon Road has been de-mapped
[9] by the Town of North Castle and the Town of
[10] New Castle, so if that option is pursued,
[11] which we are not recommending and we don't
[12] think it's necessary, it would require
[13] several actions by both towns.

[1] storm event. It includes the provision of
[2] a standby system in case there is a
[3] persistent failure of the LAS and that's
[4] incorporated in the design.
[5] Finally, it includes an erosion
[6] control plan designed during construction
[7] to protect to a hundred year storm and also
[8] includes the timing of the erosion control,
[9] the erosion control measures, again a
[10] comment that was raised by the Conservation
[11] Board in their communications.

[15] After emergency access, which was
[16] No. 5, the 6th change has to do with a
[17] series of water protection measures that
[18] are included in the project. The water
[19] protection measures have all been enhanced
[20] based upon the reviews by all of the
[21] involved agencies and all of the interested
[22] agencies and their professional
[23] consultants. That means we're providing
[24] additional.

[13] 7 and 8 is that we now include a
[14] very detailed construction program. It was
[15] detailed in the DEIS, it's even more
[16] detailed now and it includes now a
[17] construction traffic management program.
[18] Finally, a very important
[19] programmatic aspect of the proposal in the
[20] FEIS, we have eliminated all the
[21] tournaments that have been proposed in the
[22] DEIS or the paid gallery. We would have
[23] typical club events like a club
[24] championship, but no professional
[25] tournaments.

[25] Beyond that and this is something

SEVEN SPRINGS GOLF COURSE

SEVEN SPRINGS GOLF COURSE

[1] that the North Castle Conservation Board
[2] commented on in their letter, third party
[3] monitoring is included in those various
[4] water protection facilities. That includes
[5] the turf management program, which is the
[6] program for fertilizer selection, grass
[7] selection, pest control options and
[8] maintenance, which was designed by Marty
[9] Petrovich from Cornell University. It
[10] includes the fertigation program, the
[11] controlled spray that we are providing on
[12] the site. It includes the best management
[13] practices that would control nutrient
[14] runoff, including a provision for lifetime
[15] monitoring. It includes the improvements
[16] to the Linear Absorption System, the
[17] trenches and activated carbon that would
[18] capture the pesticides along each fairway.

[1] So the changes from DEIS to FEIS
[2] deal with open space, wetland buffers, deal
[3] with access, deal with water resource
[4] protection, a very important aspect of the
[5] proposal and deal with various management
[6] issues, including the professional
[7] tournaments issue, thank you
[8] Mr. Supervisor.

[20] Enhanced and lifetime monitoring
[21] included in the EIS includes the use of a
[22] weather station, as recommended by the
[23] Co-lead Agency's environmental consultant
[24] to make sure that fertilizers and
[25] pesticides are not applied prior to a major

[10] **MR. LOMBARDI:** At this point I would
[11] like to open it to the public, but I first
[12] would like to set some standards and rules.
[13] We will have the representatives from the
[14] Village of Mt. Kisco first and we are going
[15] to allow the professionals and attorneys
[16] for Mt. Kisco five minutes to start with.
[17] Then if there is any need for additional
[18] time I will allow that. I will first
[19] recognize the honorable Mayor Riley from
[20] the Village of Mt. Kisco to speak first.

[21] **MAYOR RILEY:** Thank you Supervisor
[22] Lombardi, I am Patricia M. Riley, mayor of
[23] the Village Town of Mt. Kisco. Although we
[24] are not physically ceded with you tonight,
[25] I and other officials and representatives

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SEVEN SPRINGS PROJECT

1 STATE OF NEW YORK
 2 TOWN OF BEDFORD HILLS
 3 -----X
 4 Minutes of a public Meeting
 in re:
 5 SEVEN SPRINGS PROJECT
 FINAL ENVIRONMENTAL IMPACT STATEMENT
 -----X
 6
 7 West Patent Elementary School
 80 West Patent Road
 Bedford Hills, New York
 December 14, 2000

B E F O R E:

12 Town of Bedford Zoning Board of Appeals
 13 Town of North Castle Town Board

A L S O P R E S E N T:

15 Joanne P. Meder, AICP
 16 SEQR Co-Lead Agency Coordinator

17 Carter, Ledyard & Milburn
 Attorneys for the Applicant
 18 2 Wall Street
 New York, New York 10005
 19 BY: JEAN M. MCCARROLL, ESQ.

21 U.S. LEGAL SERVICES, INC.
 22 175 Main Street
 White Plains, New York 10601
 23 (914) 761-6620

1 Proceedings 2
 2 MR. MCMILLAN: I think we are
 3 about ready to begin.
 4 Welcome to the second installment
 5 of the public hearings on the SEQRA
 6 Co-Lead Agency for the Seven Springs
 7 Golf Course Residential Development
 8 Towns of Bedford and North Castle.
 9 This is the Co-Lead Agency up
 10 here. It is involved in running the
 11 SEQRA process. Let me ask Jack
 12 Lombardi to introduce the members of
 13 his Board, the staff or have them
 14 introduce themselves.
 15 MR. LOMBARDI: Good evening. I am
 16 Jack Lombardi, the supervisor for the
 17 Town of North Castle. To my right is
 18 Joanne Meder, the planner from
 19 Frederick P. Clark Associates.. To her
 20 right is Rebecca Kittredge, Council,
 21 Town Board of the North Castle. Bill
 22 McClure, Councilman, North Castle.
 23 Bill Weaver, Councilman, Town of North
 24 Castle, and Roland Koke, our attorney.
 25 MR. MCMILLAN: The Bedford Zoning

1 Proceedings 3
 2 Board of Appeals, I am Hugh C.
 3 McMillan, Chairman. Hazel Nourse,
 4 David Otto, Virginia Barton and Phil
 5 McGovern, and our counsel down at the
 6 end, Joel Sachs, and where is Jeff

7 Osterman at that end, the Town Planner.
 8 This has been a long process. We
 9 had a very lively meeting last night,
 10 lasted until almost 11 o'clock with a
 11 great many concerns were expressed, and
 12 we will continue with the hearing
 13 tonight.
 14 As you know, this has gone on for
 15 four years, started somewhere around
 16 April of 1996. We completed the DEIS
 17 in '98 and then working on the FEIS
 18 which we are here tonight to discuss.
 19 Since then, it was finally approved on
 20 November 15th.
 21 Now, I am going to ask the
 22 planners for the Co-Lead Agency, Joanne
 23 Meder from Frederick P. Clark to give a
 24 brief introduction.
 25 MS. MEDER: Just to following up

1 Proceedings 4
 2 on what Mr. McMillan said, you probably
 3 will recall that a public hearing was
 4 held on the Draft Environmental Impact
 5 Statement and those hearings were held
 6 in each of the three towns that then
 7 were part of the Co-Lead Agency, and
 8 that included the Town of Bedford, Town
 9 of North Castle and the Town of New
 10 Castle.
 11 In a little while you will hear
 12 from the applicant what some of the
 13 most important changes are to the
 14 project since that Draft Environmental
 15 Impact Statement was discussed, but one
 16 of them includes the exclusion of land
 17 in the Town of New Castle for
 18 development purposes. It is still part
 19 of the project site, so the Town of New
 20 Castle is no longer part of the Co-Lead
 21 Agency and has now been redefined to
 22 include the Town of Bedford and Town of
 23 North Castle.
 24 Since the comment period on the
 25 public hearing or the public hearing

1 Proceedings 5
 2 comment period on the DEIS was closed
 3 on November 5th, 1998, the applicant
 4 has been very busy as has been the
 5 Co-Lead Agency in reviewing proposed
 6 versions of the Final Environmental
 7 Impact Statement.
 8 The first version of that document
 9 was submitted in July of '99, and the
 10 Co-Lead Agency and its consultants
 11 reviewed that very carefully because
 12 the FEIS is actually the Co-Lead
 13 Agency's document, not the applicant's
 14 document, although the applicant
 15 typically will prepare proposed
 16 versions of that for review by the
 17 Co-Lead Agency.
 18 A number of memos and review
 19 documents were prepared on that first
 20 version, and then the applicant revised
 21 it and resubmitted it in December of
 22 1999 and that process repeated itself
 23 with very real diligent review by the
 24 Co-Lead Agency and in the Town of
 25 Bedford a number of the other reviewing

1 Proceedings 6
 2 boards also participated in that
 3 process and that included the Wetlands
 4 Control Commission and the Planning
 5 Board as well as the Zoning Board of

SEVEN SPRINGS PROJECT

6 Appeals.
7 The document needed some
8 additional revision, and it was sent
9 back to the applicant again and they
10 submitted the third draft of it in July
11 of this year 2000, and since that time
12 up until about a month or so ago, that
13 document was undergoing further
14 revision until the Co-Lead Agency felt
15 that it was in acceptable form for it
16 to be distributed to the public for
17 review, so we are now in the process of
18 holding a public hearing on the FEIS.
19 That is not always done. It is an
20 optional requirement. It was felt by
21 the Co-Lead Agency that that was an
22 appropriate step to take in this
23 instance because there were some
24 changes of significance made to the
25 plan that was described in the Draft

1 Proceedings 7
2 Environmental Impact Statement.
3 After tonight's meeting which I
4 expect will be closed at the end of the
5 evening, there will be a comment period
6 established on review comments
7 submitted by the public on this Final
8 Environmental Impact Statement, and
9 that comment period will close on
10 December 31st and those comments can be
11 submitted in writing after tonight's
12 meeting.
13 The steps that will be followed
14 after that would be for the applicant
15 to have an opportunity to respond in
16 writing to those comments. The Co-Lead
17 Agency will take those responses and
18 comments and responses under advisement
19 and will factor those additional
20 comments into its deliberations on a
21 draft findings statement which is the
22 last step in the SEQRA process.
23 There needs to be a finding
24 statement followed by the Co-Lead
25 Agency which really sums up the entire

1 Proceedings 8
2 environmental review and the basis
3 which the process will continue after
4 that which is the processing of
5 individual applications by the
6 different permitting authorities which
7 include town authorities as well as
8 other agencies outside of the town.
9 I think for the purposes of
10 tonight's public hearing, primarily the
11 Co-Lead Agency will hear comments. If
12 there are very simple questions that
13 could be easily answered, a response
14 will be provided tonight, but by and
15 large those responses will be developed
16 as part of the process of preparing the
17 findings statement.
18 And I think now the applicant is
19 going to make a brief presentation on
20 the principal differences between the
21 site plan that was presented in the
22 Draft Environmental Impact Statement
23 and the one that is in the final.
24 MR. MCMILLAN: First I would like
25 to introduce Jean McCarroll of Carter,

1 Proceedings 9
2 Ledyard and Milburn who replaces Steve
3 Kass tonight representing the
4 applicant.

5 MS. MCCARROLL: Good evening,
6 Chairman McMillan, Supervisor Lombardi,
7 members of the Co-Lead Agency, Ms.
8 Meder, members of the public;
9 A VOICE FROM THE AUDIENCE: Can
10 you use the microphone?
11 MS. MCCARROLL: Sure. Is this
12 working? Okay.
13 My name is Jean McCarroll. I am
14 from the law firm of Carter, Ledyard
15 and Milburn, and I am here with my
16 colleagues Steve Brautigam representing
17 the applicant, and also with John
18 Saccardi and Bonnie Von Ohlsen from
19 Saccardi and Schiff, the planning firm,
20 and Dino Bradlee from the Trump
21 Corporation.
22 We have worked long and hard on
23 this project to make the changes that
24 will make it better, and we all have
25 worked extremely hard to try to make it

1 Proceedings 10
2 a better plan as well. We have nothing
3 to say tonight essentially. We are
4 here to listen to you and to hear your
5 comments on the revised project, and
6 before we start that, it would be
7 useful, I think as Chairman McMillan
8 has said, to have a brief outline of
9 the major differences between the DEIS
10 plan and the FEIS plan which is now
11 before you and has been available for
12 public review, so John Saccardi will do
13 that brief outline and then we will, I
14 believe, hear from all of you.
15 MR. MCMILLAN: Open it to the
16 public.
17 MR. SACCARDI: Good evening,
18 everyone. I think you can hear me
19 without a mike. My name is John
20 Saccardi, principal of the planning
21 consultant firm of Saccardi and Schiff
22 from White Plains. We were one of the
23 consultants on the Environmental Impact
24 Statement for the Seven Springs Golf
25 Course. We are the planning

1 Proceedings 11
2 consultants.
3 There are a number of other
4 consultants that deal with some of the
5 detailed aspects of the project, water
6 resources and so forth that are authors
7 of separate sections of the document.
8 As Joanne Meder pointed out, the
9 Draft Environmental Impact Statement of
10 March of 1998 was presented to the
11 Co-Lead Agency and the various other
12 interested agencies and involved
13 agencies and the public. Since then,
14 we have been responding to comments,
15 and many of those responses have taken
16 the form of changes to the plan itself.
17 The changes to the plan we think
18 make it a better plan. We think it is
19 responding to many of the comments of
20 the Co-Lead Agency and of the public,
21 and what I would like to do tonight in
22 about five or ten minutes is highlight
23 those changes in eight separate
24 categories.
25 The first category of changes

1 Proceedings 12
2 deals with the elimination of the eight
3 residential lots in the Town of New

SEVEN SPRINGS PROJECT

4 Castle portion of the site, and those
5 of you that have been to these
6 presentations before know that the site
7 lies in three towns, the Town of New
8 Castle, the Town of Bedford and the
9 Town of North Castle. The largest
10 portion of the site is in the Town of
11 North Castle.
12 The New Castle portion, however,
13 is now proposed as open space. That's
14 the portion between the end of Oregon
15 Road just past Doctor Mazella's house
16 to Sarles Street, that 31 acres
17 previously, and the area just to the
18 south of it previously had eight single
19 family homes proposed. That was in the
20 Draft Environmental Impact Statement.
21 Now that is open space and it's
22 going to be permanent open space
23 because we are proposing to convey that
24 land to the abutting Nature
25 Conservancy. That makes a large

1 Proceedings 13
2 contiguous open space on the western
3 portion of the site.
4 The second change that I would
5 like to highlight is another open space
6 change and that's in the southeastern
7 portion of the site within the Town of
8 North Castle.
9 Just for orientation purposes,
10 those of you from Mount Kisco know this
11 is Byram Lake. Just to the east of the
12 property, this goes down to the lake
13 which is partially on-site and
14 partially off-site. It is the area to
15 the south of the Meyer estate building.
16 That is the second proposed change from
17 DEIS to FEIS.
18 This is a lovely valley area south
19 of the estate building. There is a
20 wetland corridor there, some beautiful
21 specimen trees. There is some steep
22 slopes and rock outcrops.
23 In the DEIS this was proposed as a
24 golf course hole, hole number 10. What
25 we have done is, we shifted hole 10, 11

1 Proceedings 14
2 and 12 to the west and we have removed
3 the short game area, that is a practice
4 area from that area and put it into the
5 on-site driving range area in the Town
6 of Bedford, so we shifted things to the
7 west so we can keep that valley as open
8 space.
9 It is a very important open space
10 feature of the plan. It is a beautiful
11 area and it compliments in a very
12 different way the open space that is
13 the addition in the New Castle portion
14 of the site.
15 One of the highlights of those two
16 changes is, we have been able to reduce
17 the number of trees that have to be
18 removed from the plan by about 37
19 percent by these two open space
20 provisions, and as I mentioned before,
21 there are many specimen trees in this
22 area particularly.
23 The third major change of the plan
24 has to do with the wetland buffers, and
25 this was a major concern of various

1 Proceedings 15
2 members of the involved agencies and

3 the Co-Lead Agency and the Bedford
4 Wetlands Control Commission in
5 particular.
6 We have added additional wetland
7 buffer areas that would be protected
8 and two areas I would like to highlight
9 when we redesigned the golf course to
10 get wetland protection. The first is
11 in the Town of North Castle where there
12 is a major wetland area roughly to the
13 south of the site.
14 What we have done in response to
15 comments is, we shifted hole 17, 17th
16 fairway over to the west and combined
17 it with the 15th fairway. Two fairways
18 now abut. There is a separation in
19 topography. The fairways abut one
20 another rather than being separated
21 with trees in between.
22 That squeezing together of the
23 site plan allows us to provide further
24 protection of that wetland buffer.
25 A second change in terms of

1 Proceedings 16
2 wetlands and wetland buffers is up here
3 just south of Oregon Road in the Town
4 of Bedford. The blue is the irrigation
5 pond. The surface area size of the
6 irrigation pond has been reduced, not
7 the volume but the surface area size so
8 that we can create new wetlands and
9 provide additional wetland buffer
10 protection around that irrigation pond.
11 We have a total of about 1.7 acres
12 of created wetlands on the site, here
13 in the vicinity of the irrigation pond
14 and another one here in the vicinity of
15 the Town of Bedford Town of North
16 Castle town line.
17 A fourth change has to do with the
18 Nonesuch property, and those of you who
19 know the site know that Nonesuch is an
20 existing building just off of Oregon
21 Road fairly close to Byram Lake Road as
22 you come into the site.
23 Now, as part of the seven or eight
24 acres of Nonesuch land area, we
25 regularly had a proposed wetland. The

1 Proceedings 17
2 Town of Bedford and Bedford's wetland
3 consultant did not like the location of
4 the wetland there, so responding to
5 that comment we have eliminated that.
6 There are other changes as well up
7 at Nonesuch as part of this change in
8 the plan. The driveway leading to
9 Nonesuch and the driveway leading to
10 the one remaining single-family lot on
11 the property, our proposal for Oregon
12 Road rather than a private road that
13 goes behind the properties, so we have
14 one house in Bedford. It is on a 4.1
15 acre lot. It is four acre zoning and
16 we have Nonesuch.
17 Now, while I am up here at
18 Nonesuch I will go to the fifth major
19 change and that deals with emergency
20 access.
21 Those of you who have followed the
22 plan know that the access to the site
23 comes in off of Oregon Road with the
24 present access leads down to the Meyer
25 estate building. That road is

SEVEN SPRINGS PROJECT

1 Proceedings 18
 2 redesigned as it comes into the site,
 3 but essentially the same driveway that
 4 you now have, that is primary access
 5 into the site.
 6 We have one emergency access that
 7 comes off of the driveway behind
 8 Nonesuch and actually cuts across the
 9 eighth hole. That emergency access
 10 would be provided in the form of grass
 11 or other material leading to a second
 12 access into our second access drive.
 13 A second emergency access and one
 14 we have been redesigning quite a bit is
 15 the service driveway that leads from
 16 Oregon Road down to the maintenance
 17 building.
 18 Now, what we have done with that
 19 service driveway is, we are proposing a
 20 gate at the top of it at Oregon Road,
 21 so that service driveway would only be
 22 used approximately once or twice a week
 23 for service vehicles that come in for
 24 deliveries to the maintenance building.
 25 In order to realize that, we have to

1 Proceedings 19
 2 have a cart path that leads from the
 3 maintenance building over to the
 4 clubhouse and the main drive that would
 5 accommodate some parking and also
 6 regular deliveries back and forth to
 7 the site.
 8 So our second emergency access,
 9 the maintenance driveway would have a
 10 gate on it and that limits the use of
 11 that access.
 12 Now, a third emergency access that
 13 we include as an option and is not
 14 shown on the map because we don't
 15 propose it, we show it as an option, is
 16 a potential access that would lead from
 17 the maintenance building snaking down
 18 to Old Oregon Road.
 19 Old Oregon Road here in North
 20 Castle is a road that exists. It is
 21 demapped by the Town of North Castle.
 22 It is paved and used for pedestrian
 23 access. People that use it are really
 24 going to the Nature Conservancy land.
 25 The option but not the proposal in

1 Proceedings 20
 2 the plan says you could have that as an
 3 access and could be improved all the
 4 way up to Sarles Street. We don't own
 5 that road, we own a piece of it. It is
 6 owned by the Nature Conservancy, about
 7 half of it, and we don't really think a
 8 third emergency access is necessary,
 9 but upon request by the Co-Lead Agency,
 10 we have included it and shown it as an
 11 option.
 12 While I am down at the maintenance
 13 building I just want to note that we
 14 have been trying our best to move the
 15 maintenance building further and
 16 further away from Doctor Mazella's
 17 property. We have moved it to the
 18 south. We provided some additional
 19 buffering, and upon request at one of
 20 the last meetings, we are now proposing
 21 in the FEIS that we have a nine foot
 22 fence wall separating the driveway of
 23 the maintenance building from the
 24 wooded area that is buffered to the
 25 Mazella property. That is a change

1 Proceedings 21
 2 again in the FEIS. That is five.
 3 Number six is probably the most
 4 important, and that's the enhanced
 5 water quality protection systems, and
 6 there are a whole series of water
 7 quality protection systems that are
 8 included in the Environmental Impact
 9 Statement.
 10 The Bedford Wetlands Control
 11 Commission has worked very extensively
 12 on this as have their consultants,
 13 Environmental Turf Surfaces. To
 14 highlight a couple of points on this.
 15 First, I think each system has
 16 been modified and enhanced based upon
 17 comments from members of the Co-Lead
 18 Agency and their advisors. In
 19 addition, we have added monitoring by
 20 third-party participants, that would be
 21 consultants and people that the Co-Lead
 22 Agency would higher for the life of the
 23 project.
 24 So we have systems, we have back
 25 up systems, all of which have been

1 Proceedings 22
 2 revised and enhanced and we have
 3 third-party monitoring and maintenance
 4 included.
 5 A couple of those systems include
 6 the Integrated Turf Management Program
 7 which has been designed by Doctor
 8 Petrovic who was here last night, that
 9 is pest control options and maintenance
 10 practices. That has been enhanced and
 11 we believe that is state of the art.
 12 We have Best Management Practices
 13 to control nutrient runoff, and we have
 14 the Linear Absorption System which
 15 lines the fairways and provides swales
 16 and carbon filtration systems that
 17 capture the pesticides and purifies
 18 them before they run off, the Best
 19 Management Practices and the LAS
 20 monitoring for the life of the project.
 21 We have included a standby system
 22 that would be a backup to that LAS in
 23 case there were a failure of the LAS,
 24 and that is designed into the
 25 Environmental Impact Statement and we

1 Proceedings 23
 2 have included, of course, an erosion
 3 control plan as part of the
 4 construction phase and management
 5 system of the project.
 6 The erosion control plan is for a
 7 one hundred year storm in its
 8 construction, and it's designed to
 9 specify the timing throughout the
 10 project so that the erosion control
 11 facilities would be in place in the
 12 beginning of the project so that there
 13 would not be any problems as the
 14 project is constructed.
 15 While I am on construction on
 16 number seven, we have included a
 17 construction traffic management
 18 program, again a request of the Co-Lead
 19 Agency and their traffic engineers, how
 20 the construction traffic would operate
 21 and the various roads that service the
 22 site, and finally number eight, we have
 23 eliminated the tournament option.
 24 Tournaments were included in the
 25 Draft Environmental Impact Statement.

E

in the FEIS in response B28. As described in response B41, the anticipated memberships for the Seven Springs Golf Club are broken down by membership type and geographic locations on FEIS Table IV-2A.

Based on the results of the analyses undertaken and implementation of mitigation measures proposed in the DEIS and FEIS, the applicant disagrees with the statement that the post-construction traffic from this project would negatively impact the quality of life on residents on surrounding roads. (See also FEIS responses B9, B38, B39, B40, B41, B65, B124).

9. **EMERGENCY ACCESS**

- a. *Construction of the optional emergency accessway described in the FEIS (which would connect the maintenance area to Old Oregon Road and then Sarles Street) would cause unnecessary impacts through an existing steep, wooded area adjacent to the Meyer Preserve. The Nature Conservancy is opposed to using Old Oregon Road and would not grant permission to use their portion of the roadway, where it is shared, for this purpose. The other three access points as proposed are adequate, and a fourth access point would be destructive and wasteful. Residents to the south do not want Oregon Road re-opened under any circumstances. Any accessway through New Castle would need to comply New Castle standards and regulations and be approved by the Town Engineer.* (Comments made by Chris Harmon of The Nature Conservancy, John Fava, Robert Walton, Dr. Cerrullo, Teri Burke, Barrett Lane, Robert Kirkwood, Robert Walton)

Response:

The applicant has stated its position on this issue, *not* recommending an additional emergency access to Sarles Street. See FEIS pages P-7-9, I-30, I-33, II-2, II-28-30, II-74, III-38, and FEIS responses B15, B90, B119, B120, B121, B123, I7, K18 and K21.

- b. *All of the proposed access points (emergency and main) are from Oregon Road in Bedford, and therefore Bedford has the entire traffic burden. There needs to be another access (through North Castle or New Castle) or the project should not be approved.* (Comments made by Tim Ghirisky, John Mazella)

Response:

The applicant has stated their position on this issue, *not* recommending an additional emergency access to Sarles Street. (See FEIS pages P-7-9, I-2, I-3, I-30, I-32, I-33, II-2, II-28-30, II-74, III-38, and FEIS responses B15, B90, B119, B120, B121, B123, I7, K18 and K21).

- c. *There are now four access roads to Seven Springs, two active and two potentially active. Why has the applicant posed a third active road off an already congested*

Oregon Road in Bedford and not vigorously pursued opening up one or both of the inactive roads?

Why does The Nature Conservancy oppose access, under any circumstances, from Oregon Road, North Castle? Does it also oppose access to Oregon Road from Sarles Street in New Castle? If this access were mandated by fire and emergency code, would The Nature Conservancy then not accept the generous proposal of 31 acres? (Comments made by John Mazella)

Response:

As described in the DEIS and FEIS, the "active" access points to the site include the main entrance and Nonesuch driveways on Oregon Road in Bedford. "Inactive" or former access points to the site which are currently blocked include: Oregon Road in Bedford just past the Mazella property, Southgate Road (leads onto the Meyer Nature Preserve to the south), Old Oregon Road (connecting to Meyer Preserve in North Castle to the south and Sarles Street in New Castle to the north). See FEIS Exhibit 2-5 describing Existing Site Features for locations.

The applicant is proposing to use the existing main entrance for access to the club, and two separate new driveways for access to Lot 1 and Nonesuch. In addition, a gated driveway to serve the maintenance area is proposed on Oregon Road in Bedford east of the Mazella property. The existing Nonesuch driveway is proposed to remain in order to have it available for emergency use only.

The "inactive roads" (Old Oregon Road through North Castle) have all been pursued and discussed as Alternatives in the DEIS and FEIS, and are not found to be viable, and therefore not proposed. The DEIS describes potential access from the south via Old Oregon Road in North Castle in Volume 2, pages V-122 through V-130. This includes written description of that roadway as well as photographs (see DEIS Exhibits 5-45a, 5-45b) and a general discussion of what physical constraints are present, as well as the ownership of this road. As stated in the DEIS (page V-122) "...this road connection, in the absence of condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs and the western half of the road adjacent to the property, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of the portion of the roadway located south of the site. Both The Nature Conservancy and the Town of North Castle have indicated their disinclination to approve the opening of this route." See also FEIS response to comments B119, B120, B121 where this issue is addressed.

The applicant cannot comment on what The Nature Conservancy would do regarding access and/or its objections to allowing an emergency access from Oregon Road, North Castle.

- d. *The emergency access proposed behind Nonesuch is on a shared driveway with joint easement rights, and no one consulted the other parties involved (the Heines) before designating it as emergency access.*

(Comment by Randi Heine)

Response:

As described in the FEIS, the project was modified (from the original DEIS plan) to take the access to Nonesuch and the proposed house on Lot 1 away from the shared driveway and onto new driveways on Oregon Road, in order to minimize new traffic on the existing driveway shared by neighbors. To further minimize potential use, and to address emergency access concerns by the Bedford Planning Board, it is proposed in the FEIS that the shared driveway be designated as emergency access only onto the Seven Springs site. This arrangement complies with the joint easement rights of the shared driveway. (See also FEIS page P-7, P-8, I-2, I-32, I-33, I-34, II-13, II-28, II-29, II-74, II-77, III-37, III-42, and FEIS responses A8, A10, B120, B122, and B123).

10. TREE REMOVAL

Estimated tree removal (5,139 trees) is excessive, and a waste of a valuable resource that cannot be replaced easily. Trees hold the soil to prevent erosion. (Comments made by Stanley Bernstein, Patti Chadwick, Ferd Vetare, Robert Liebman, Henry Cuacillo, Denise Santomero, BOSS, Dorothy Fallon, North Castle Conservation Board)

Response:

As described in the FEIS and DEIS, the proposed plan for a golf course requires the removal of trees in wooded areas where golf holes are proposed. Substantial areas of the site will remain in their natural state (88 acres), much of which is wooded. This includes the 31 acres in New Castle to be conveyed to The Nature Conservancy. A total of 203.6 acres of the 213-acre site (95 percent) will be vegetated when the project is complete. Measures are proposed to minimize the removal of valuable trees on the fringe areas of fairways and in the clubhouse area, as described in the FEIS. A conceptual Landscape Plan and an Erosion and Sediment Control Plan are included in the FEIS, and those plans will continue to be refined and detailed, and reviewed by the towns, as project construction plans progress. (See FEIS pages I-11, I-20-22, I-27-29, II-55-56, II-99-156, III-12-32, FEIS responses H2, H6 - H26, H48, H50, F4, F6, F11, F13, and K2).

11. NONPROFIT CLUB VS. COMMERCIAL USE

The golf club and Nonesuch will be a commercial facility. How will the special permit conditions be enforced if the owner sells the property?

(Comments made by Michael B. Gerrard, Esq., Randi Heine, Jane Pearl, Tim Briski, Dorothy Fallon)

F

EXTRACT FROM THE MINUTES OF A MEETING
OF THE SEVEN SPRINGS CO-LEAD AGENCY
COMPOSED OF THE TOWN OF BEDFORD ZONING BOARD OF APPEALS
AND THE TOWN OF NORTH CASTLE TOWN BOARD
HELD AT H. C. CRITTENDEN MIDDLE SCHOOL, ARMONK, NEW YORK
ON THURSDAY, APRIL 25, 2002 AT 7:30 PM

PRESENT: Hazel Nourse, Acting Chairman, Town of Bedford Zoning Board of Appeals
David Otto, Town of Bedford Zoning Board of Appeals
Virginia Barton, Town of Bedford Zoning Board of Appeals
John Lombardi, Supervisor, Town of North Castle
Rebecca Kittredge, Town of North Castle Town Board
Gerald Geist, Town of North Castle Town Board
William McClure, Town of North Castle Town Board
Reese Berman, Town of North Castle Town Board

ABSENT: Hugh McMillan, Chairman, Town of Bedford Zoning Board of Appeals
Philip McGovern, Town of Bedford Zoning Board of Appeals

ALSO PRESENT: Jeffrey Osterman, Town of Bedford Director of Planning
Joel Sachs, Special Counsel, Town of Bedford
Roland Baroni, Town Attorney, Town of North Castle
Ann Leber, Town Clerk, Town of North Castle
Joanne Meder, SEQRA Co-Lead Agency Coordinator,
Frederick P. Clark Associates, Inc.

**CO-LEAD AGENCY'S FINDINGS STATEMENT
SEVEN SPRINGS GOLF COURSE/RESIDENTIAL DEVELOPMENT
LOCATED IN TOWNS OF BEDFORD, NORTH CASTLE AND NEW CASTLE**

After due discussion and deliberation, on motion by Mr. Geist, seconded by Mr. McClure and carried, the following Findings Statement was adopted by the Town of North Castle Town Board, and on motion by Ms. Nourse, seconded by Mr. Otto and carried, the following Findings Statement was adopted by the Town of Bedford Zoning Board of Appeals:

Co-Lead Agency's Adopted Findings Statement
Seven Springs Golf Course/Residential Development

H. Traffic and Transportation

1. Impacts and Proposed Mitigation – Traffic and Transportation

All access to the site will be from Oregon Road in the Town of Bedford. The proposed development will have its primary access drive on Oregon Road approximately 1,610 feet south of the intersection with Byram Lake Road. In addition, there will be a separate access drive to Nonesuch and another separate gated access drive to the maintenance area (which will also serve as one of two proposed emergency access drives). The maintenance area access drive will be located on Oregon Road approximately 2,450 feet south of the intersection with Byram Lake Road. A second emergency access drive is proposed from an extension of the existing private driveway to Nonesuch, which intersects Oregon Road approximately 750 feet south of Byram Lake Road. That emergency access driveway will traverse the rear of proposed residential Lot #1, the rear of the Nonesuch property and a portion of Golf Hole #8 between the tees and the fairway to intersect with the main club access drive within the site. Both of the proposed emergency access drives intersect Oregon Road within 850 feet of the main entrance to the site. The FEIS also discusses a third emergency access drive connecting to Sarles Street in the Town of New Castle. That alternative, which is not proposed by the Applicant, would involve the construction of a new driveway through a wooded portion of the site between the proposed maintenance area and the former roadbed of Old Oregon Road in North Castle, where it would then follow a northerly course to intersect with Sarles Street in New Castle [FEIS, Exhibit 2-8b, page II-32]. The roadbed of Old Oregon Road has been abandoned as a town road in both the Towns of North Castle and New Castle. The Nature Conservancy now owns portions of it between Byram Lake Road in North Castle and Sarles Street in New Castle.

Owing to the fact that access to the site is proposed to be available from Oregon Road only, multiple options for emergency access were examined in the DEIS and the FEIS. The site is located in three municipalities and the portions of the site to be developed are located in two municipalities. Emergency service to the Bedford portion of the site will be provided by the Town of Bedford Police Department, the Mount Kisco Volunteer Fire Department and the Mount Kisco Volunteer Ambulance Corps. Emergency service to the North Castle portion of the site, which can be accessed only through the Town of Bedford, will be provided by the Town of North Castle Police Department and the Armonk Independent Fire Department and Ambulance Corps.

Co-Lead Agency's Adopted Findings Statement
Seven Springs Golf Course/Residential Development

Each of the emergency service providers was contacted for the purpose of obtaining comment on the Applicant's proposal for the site. All service providers indicated that they would be able to service the site, but several of them expressed concern regarding the remote location of the site, the lack of secondary vehicular access to the site and the variable condition of roads that would need to be traversed to reach the site, all of which could result in a slower response to emergency service calls than for properties elsewhere in the community with better roadway access. The Town of Bedford Police Department noted that the use of the site for special events such as golf outings or tournaments would pose special concerns if they involved a large number of people, particularly spectators. The Town of Bedford Police Department further noted that the use of an alternative route into the site would alleviate the concerns associated with a potential blockage on Oregon Road. The police departments in both Bedford and North Castle identified a number of other strategies that would need to be employed in the event of a blockage on Oregon Road (between Byram Lake Road and the most northerly of the two proposed emergency access drives) that could not be easily cleared by their own personnel. These other strategies might include requesting assistance from a town highway department and/or a utility company, requesting the additional services of a STAT flight helicopter, gaining access on foot or driving over other private property, depending on the nature of the emergency. The fire department serving the Bedford portion of the site supported the creation of an emergency access connection to Sarles Street in New Castle (which would have been part of the Applicant's originally proposed site plan but is no longer part of the FEIS Site Plan) and also recommended that Oregon Road be widened. In addition, it offered other recommendations concerning fire hydrants, building sprinklers, and the width of on-site roads and access driveways. The fire department/ambulance corps serving the North Castle portion of the site also noted the importance of fire hydrants, and generally reiterated the comments of the North Castle Police Department. The ambulance corps serving the Bedford portion of the site indicated that the existence of locked security gates at any of the site's access driveways would delay response time to the site, and noted the importance of signage on the site to clearly identify—both during the day and at night—the location of each of the golf club's facilities. [DEIS, Appendix M; FEIS, Appendix I]

A Traffic Impact Analysis for the proposed golf club was presented in the DEIS and updated in the FEIS. This traffic analysis, which included study of 27 intersections, focused on peak hour conditions for a typical weekday morning, weekday afternoon and Saturday peak periods. The analysis identified base traffic volumes, expanded base volumes to reflect background traffic conditions for a

Co-Lead Agency's Adopted Findings Statement
Seven Springs Golf Course/Residential Development

Emergency access has been identified as an area of concern relating to the Proposed Action. Under the DEIS Site Plan, access to the site was proposed from the main access drive as well as from the maintenance area access drive, both of which intersect Oregon Road in the Town of Bedford. In response to concerns expressed about the potential for blockage on Oregon Road, the Applicant modified the DEIS Site Plan to depict an additional alternative for emergency access using the existing access drive to Nonesuch and an extension to that access drive over a portion of proposed Golf Hole #8. The principal benefit of the new emergency access alternative is that it would shorten the distance between the site and the nearest connection to the larger area road network at the intersection of Oregon Road and Byram Lake Road. Because the potential for blockage along a short segment of Oregon Road would still remain, however, the Co-Lead Agency also examined another alternative for emergency access to the west of the site with a connection to Sarles Street in the Town of New Castle. As discussed in more detail in Section IV.H of this Findings Statement, that alternative is not considered viable owing to legal, operational and environmental considerations. Based on a review of the feasible options for site access with the local emergency service providers, it has been acknowledged by the emergency service providers that it might be necessary to manually remove a fallen tree limb or other obstacle should such a blockage occur along Oregon Road between the existing Nonesuch driveway and Byram Lake Road. As previously noted in this Findings Statement, depending on the type of blockage and the nature of the emergency, the emergency service providers might on occasion need to request the additional assistance of a town highway department and/or a local utility company, and—in the case of a medical emergency—request the additional services of a STAT flight helicopter. If vehicular access over Oregon Road is blocked, consideration would also be given to accessing the site on foot or by driving across other private property if no other options exist. A number of emergency service providers also noted several observations and made recommendations concerning the width of roads providing access to and within the site, fire hydrants, building sprinklers, security gates at the site access drives and on-site directional signage.

As previously noted, all points of vehicular access to the site will be from Oregon Road under the FEIS Site Plan. By contrast, each of the three 46-lot residential subdivision alternatives examined in the DEIS depict additional roadway access to the site from Sarles Street in the Town of New Castle. One of those alternatives (Alternative A-2) shows a new cul-de-sac road intersecting with Sarles Street. The other two alternatives (Alternatives A-1 and A-3) depict a circulation plan for the site that will involve the creation of a through road connection between Sarles Street in New Castle and Oregon Road in Bedford, thereby providing a secondary

Co-Lead Agency's Adopted Findings Statement
Seven Springs Golf Course/Residential Development

means of access to the site for routine and emergency service access purposes. Under Alternatives A-1 and A-3, the subdivision layouts are designed with connecting roads so that a maximum of ten lots would be located on a road with only one access point [DEIS, Exhibit 5-1, page V-3; DEIS, Exhibit 5-3, page V-12]. These plans are designed in accordance with the standard that appears in most municipal subdivision regulations concerning the maximum number of lots on a dead end street. The Town of Bedford regulation specifies a maximum of 15 lots on a permanent dead end street. The Town of North Castle regulation limits the length of permanent dead end streets (exclusive of the turnaround) to not more than six times the minimum lot width requirement for the zoning district in which the property is located, i.e., a maximum of 900 feet.

Due to the elimination of the proposed eight-lot residential subdivision in the Towns of New Castle and North Castle, the proposed golf club and one remaining single-family residence included in the FEIS Site Plan (when completed and occupied) will generate approximately 175.5 pounds of solid waste per year instead of 179.3 tons per year as projected under the DEIS Site Plan. These figures are comparable to those associated with the 46-lot residential subdivision alternatives examined in the DEIS (176.9 pounds per year). Additionally, under the FEIS Site Plan, wells and septic systems that would have been required for the eight residential units in New Castle and North Castle are no longer proposed. Additionally, under the FEIS Site Plan the Applicant will use water-saving fixtures for the clubhouse and Nonesuch, which will reduce the water demand for these facilities to 9,316 gallons per day instead of 11,645 gallons per day as previously projected under the DEIS Site Plan. Compared to the 46-lot residential subdivision alternatives, the Proposed Action will still result in a greater total demand for water (over 25 million gallons per year compared to under 13 million gallons per year for the residential subdivisions). Based on the analysis conducted by the Applicant, however, it has been shown that there will be no off-site impacts associated with this level of water demand. The Proposed Action will generate a smaller amount of sewage than any of the 46-lot residential subdivision alternatives (20,960 gallons per day versus 46,000 gallons per day for each of the residential subdivisions).

Because of the proposed site plan modifications discussed in the FEIS, the site will include open space lands totaling approximately 203.6 acres compared with 178.5 acres under the DEIS Site Plan. While the Proposed Action includes preservation of large areas of open space either in the form of undeveloped land or land that is converted to golf course use, that land will remain private with no current plans for public recreational use of the site during the golf season. However, the

Co-Lead Agency's Adopted Findings Statement
Seven Springs Golf Course/Residential Development

Applicant has offered to permit limited public recreational use of the site for cross-country skiing during the winter months. Under the 46-lot residential subdivision alternatives examined in the DEIS, open space lands totaling between 191.6 acres and 194.5 acres would result depending on the residential subdivision alternative examined.

2. Discussion and Findings - Community Facilities and Services

The Co-Lead Agency finds that:

- a. In order to ensure that adequate emergency service can be provided to the site, additional review of the width and surface treatment of the two alternative emergency access drives proposed by the Applicant should be undertaken. In addition, to ensure that adequate internal circulation is available within the site (e.g., between the maintenance area and the clubhouse), consideration may need to be given to identifying additional internal site drives or cart paths that could be used as part of the emergency access network on the site itself. Furthermore, the design and operation of any proposed security gates at the site access drives and any plan for on-site directional signage will be reviewed in more detail as part of the application for site plan approval in each town.

- b. Several providers of fire and police services have noted that the proposed single access road to the site (Oregon Road) will pose special concerns when special events involving a large number of people are planned for the site. While the Applicant is no longer proposing to hold professional tournaments and other events involving a paid admission spectator gallery at the site, other types of special events involving a large number of participants who are not members of the golf club are still planned. In addition, spectators who will be permitted to attend special golfing events at no extra charge will include members of the golf club and their guests. Because the population on the site will be much higher at these times in comparison to normal conditions, the Applicant will be required to prepare an Emergency Services Plan (as discussed in more detail in Section IV.H.2 of this Findings Statement) for review and approval by the Towns of Bedford and North Castle, and to implement this Plan when special events are scheduled on the site. Prior to the scheduling of any special events involving non-paying spectators (i.e., golf outings and club championships or charity events), the Applicant will also be required to apply for approval

G

Saccardi & Schiff, Inc.

Planning and
Development
Consultants

245 Main Street
White Plains
New York 10601
Tel: 914-761-3582
FAX: 914-761-3759
saccschiff@aol.com

33 Front Street
Hempstead
New York 11550
Tel: 516-486-0610
FAX: 516-486-0615

Memorandum

To: North Castle Town Board
Bedford Zoning Board of Appeals

From: Saccardi & Schiff, Inc.

Re: Seven Springs FEIS

Date: November 15, 2000

Attached please find a copy of the final proposed revisions to the FEIS, as requested by Frederick P. Clark, Inc. as of this afternoon.

cc. Joanne Meder, Christian Miller
Jeff Osterman
Roland Baroni, Esq.
Joel Sachs, Esq.
Stephen Kass
Dino Bradlee

John J. Saccardi, AICP
David B. Schiff, AICP, PP
Syrette Dym, AICP
Anthony Lee, AICP
Amit Prothi, ASLA
Marjorie Samuels, AICP, PP
David B. Smith, AICP
Margaret H. Uhle, AICP
Bonita J. Von Ohlsen, RLA

Csaba Teglas, AICP
Consultant

Land Development
Comprehensive Planning
Zoning
Real Estate Economics
Environmental Studies
Housing
Community Development

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4. Redesign of Hole #17 to increase wetland buffers along the fairway and to reduce wetland and buffer impacts by removing the rear tee on that hole.

5. Provision for a fourth access to the site, for emergency use only, as an option should ***it be a viable option and should*** the Co-Lead Agency require it. This potential accessway would be constructed through North Castle, connecting a maintenance area cart path with Old Oregon Road, which connects to Sarles Street in New Castle. Since the applicant only owns half of the Old Oregon Road right-of-way, permission would be required from the other part owner (The Nature Conservancy). ***In addition, if this option is pursued, approval from the Town of New Castle may be required.*** Potential impacts and further description of this option are described in FEIS Section II.

See FEIS Section II for a description of the above measures and Section III for a discussion of their potential impacts. The Natural Resources Report Supplement and Addendum (in FEIS Appendix F) provide detailed information and a graphic display of the wetland and buffer revisions described in items 3 and 4, above.

described in the DEIS due to the elimination of eight single family homes and the subdivision roadway. The elimination of the connector road from Oregon Road to Sarles Street would result in the emergency service access to the site utilizing the existing club entrance drive, as well as the maintenance area cart path/driveway along Hole #6, access to both of which is on Oregon Road. An additional mitigation measure proposed in this FEIS involves utilizing the existing Nonesuch driveway as a secondary emergency access, in the event that the main entrance were blocked. Emergency service providers would have access to the site via this driveway behind Nonesuch, and across Hole #8 back to the entrance drive that leads to the clubhouse. (See Project Description, Section II for further description). It is noted that this still concentrates all access on one roadway. Another option presented in the FEIS involves construction of a new driveway from the proposed maintenance area to Old Oregon Road and Sarles Street in New Castle. This option may involve obtaining permission from The Nature Conservancy, part owner of Old Oregon Road, as well as the Town of New Castle. It and is presented to the Co-Lead Agency for their its consideration.

The estimated new residential population would be four persons (in one single family home), compared with 39 people in the DEIS plan. Similarly, the potential impact to schools would be one or two students in the Bedford Central School District and none in the Byram Hills district, compared with 6-15 total students in the DEIS plan.

Taxes generated would be less than with the DEIS plan, in that eight single family homes are no longer proposed. The tax generation analysis in the DEIS was computed based on comparable golf courses in the area. Since there are no improvements proposed in the New Castle portion of the site and that area would be owned by The Nature Conservancy, it would likely qualify for exemption from real property taxes in the future.

e. Historic and Archaeological Resources

The area proposed to be disturbed, has decreased with the revised FEIS plan. The result of this change is the reduction of recommended field investigations in the western portion of the site. The applicant has submitted the proposed Data Recovery program to the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) for its review. Representatives from NYSOPRHP have made a visit to the site (May 2000) and are reviewing their findings.

In order to avoid any further consideration of archaeological resources in the vicinity of the tees for Hole 15 (Area 2, Locus 1), three precautionary steps are recommended and would be undertaken by the applicant: (1) on the eastern slope of the approach

Description of Proposed Action

and Sarles Street or between Seven Springs and Oregon Road to the south through North Castle. Although these roads were considered as part of the initial planning process of the project, the applicant's analysis indicates that such roads are not necessary to accommodate traffic from the project. (See Alternatives, Section V. of the DEIS, and Section IV.J of this FEIS for additional information.)

In order to provide another option for the Co-Lead Agency, another potential emergency access route is described in this FEIS (see Exhibit 2-8B). This route would be a new driveway through a wooded portion of the site in North Castle (west of the proposed maintenance building), and would connect the cart path by the maintenance area to Old Oregon Road, which could then be traversed off-site northward to the intersection of Sarles Street in New Castle. The optional driveway would be primarily 20 feet in width, widening to 28 feet at the turns in order to provide for turning movements of emergency vehicles. The maximum grade of 12 percent is required in order to traverse the existing hillside.

Implementing this option may involve obtaining permission from The Nature Conservancy, part owner of Old Oregon Road, as well as approval from the Town of New Castle. It and is presented to the Co-Lead Agency as an option for their its consideration. It is noted that the right-of-way of Old Oregon Road in New Castle was previously abandoned as a mapped street on the Town's Official Map. The Old Oregon Road travel-way in this vicinity would be maintained as a clear pathway for emergency vehicles, including removing obstructions to provide connection to Sarles Street. This area is currently a walking trail, and has been blocked to vehicular use. If the emergency access route were implemented, this portion of Oregon Road could still be used as a walking trail, and a gate could be installed that would be accessible only to emergency service providers.

Potential impacts of this new driveway on the Seven Springs site as described by the applicant would include approximately 1.5 acres of additional clearing of wooded land in North Castle, including removal of approximately 159 trees over 8" dbh. Approximately 0.4 acres of slopes over 25 percent would be impacted to install this driveway. This grading and clearing would occur only on the North Castle portion of the site, and would not affect the proposed conveyance of the 31 acres in New Castle to The Nature Conservancy. However, it is also possible that substantial improvements may need to be made to the existing abandoned travel-way of Old Oregon Road in North Castle and New Castle since that travel-way is unlikely to be passable by emergency service vehicles in its present condition.

Oregon Road. It's opposite the Sutton's driveway right across the street, and it is meant to be the access to the maintenance area.

Now, counting three accesses in Bedford and one in New Castle, it seems to me that there is a problem here. First of all, one of the recent meetings in North Castle, I went on the record saying that road had to be removed. It was unacceptable under any circumstances and I am repeating it now.

The second point I would like to make about this access is that North Castle has the majority of the acreage in this project, 98 plus acres, and there are no access points in North Castle. The other thing is, I would like the southern Oregon Road in Armonk access re-explored. I am not satisfied with the conclusion about that access. Even if it's a limited access, they have to share the burden. They are taking the taxes, so they have to share some of the traffic, as far as I am concerned.

(Dr. Mazella, PH2, p. 95 line 19 - p. 97 line 19)

The disproportionate traffic burden on Bedford must be alleviated. This can be done by having direct access to the golf course from Sarles St. , New Castle, Oregon Road, Armonk, and, of course, Oregon Road, Bedford. As it stands, North Castle has the majority acreage in the project and stands to gain the most in taxes, yet has no direct access into the project.

(John Mazella, Letter NN, Comment NN4)

Response B120

The club access to Sarles Street has been eliminated and all direct access will be through the Town of Bedford. Access to the golf club will be provided by the existing primary access point on Oregon Road via Byram Lake Road and a secondary access driveway for the maintenance facility which will be restricted to infrequent deliveries to the golf club. Another emergency accessway would be provided via the existing driveway to Nonesuch, which will be stabilized with "grasscrete" (to look like lawn) and provide an access way east of Nonesuch across Hole #8 to the club driveway on the interior of the site (See Exhibit 2-8A).

For consideration by the Co-Lead Agency, another potential emergency access route is described in this FEIS. This route would be a new driveway through a wooded portion of North Castle, and would connect the cart path by the maintenance area to Old Oregon Road, which could then be traversed northward to the intersection of Sarles Street in New Castle (see Exhibit 2-8B in Section II.E). Implementing this option would involve obtaining permission from The Nature Conservancy, part owner of Old Oregon Road, and may also require approval from the Town of New Castle. It ~~and~~ is presented to the Co-Lead Agency as an option for their consideration.

(See also responses B119, B121.)

Comment B121

The Nature Conservancy is the southern neighbor of Seven Springs. We own the Eugene and Agnes Meyer Preserve, the gentleman talked about a legacy, all municipalities in the Town of Mount Kisco share in that legacy of the Meyer Preserve which is 250 acres opened to the public for hiking, bird watching and other activities. As such, the Conservancy's interests will be focused on all of the impacts of the developments on our preserve.

I want to start by saying that the applicant has submitted a rather extensive and comprehensive plan. Over two years ago, the Conservancy submitted to all the planning and zoning boards as well as the applicant, some of our major concerns, and I would like to say that most or almost all of our concerns have been addressed by the applicant, such things as our objection to reopening Old Oregon Road which would totally upset the preserve that is open to the public as well as some of the issues of the natural buffer between the golf course and the preserve so that people can still enjoy the preserve as it is.

(Ms. Moser, PH2, p.122 line 2 - p.123 line 8)

Response B121

Comments noted. The access to Sarles Street has been eliminated, although emergency access to Sarles Street (which would require permission from The Nature Conservancy and possibly from the Town of New Castle) is presented as an option for the Co-Lead Agency's consideration. See response B120 and FEIS Section II.E.

Comment B122

We live at 18 Oregon Road which is on the corner of Oregon Road and Byram Lake Road. The existing Nonesuch estate is very beautiful but a highly visible part of the Seven Springs property. It is surrounded by private homes. With this in mind, Nonesuch being used as a major commercial facility including dining and overnight facilities, conference rooms, will require daily maintenance including catering trucks and the like. The DEIS shows the entrance of this facility on a private road which Seven Springs only has an easement to it. Has another entrance been considered?

(Mrs. McCabe, PH2, p. 90 lines 6-22)

Response B122

As described in Section II, Project Description, the access to Nonesuch has been relocated from its existing private driveway, which is shared with neighbors, to an individual entrance from Oregon Road, just north of the main entrance to the club. Nonesuch is not proposed to be a commercial use.

Comment B123

I would like to put this on a personal basis. I am for the golf course. I think the real estate is in play and it would be naive to think that if this doesn't go through, nothing else is going to happen. I just want great care to be taken.

Index No. 9130/06 Year 20

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.

**COMBINED REPLY AFFIRMATION AND MEMORANDUM OF
LAW**

STEPHENS, BARONI, REILLY & LEWIS, LLP
DEFENDANT, TOWN OF NORTH CASTLE

Attorneys for

NORTHCOURT BUILDING
175 MAIN STREET, SUITE 800
WHITE PLAINS, NEW YORK 10601
(914) 761-0300

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

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 20, at M. on

Dated:

STEPHENS, BARONI, REILLY & LEWIS, LLP

Attorneys for

NORTHCOURT BUILDING
175 MAIN STREET, SUITE 800
WHITE PLAINS, NEW YORK 10601

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss:

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

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 Attorney's
Certification

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

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 Attorney's
Verification
by
Affirmation

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

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 Individual
Verification

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.

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 Corporate
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.

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:

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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
within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

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 Personal
Service

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

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 Service by
Electronic
Means

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the
attorney for that purpose. In doing so I received a signal from the equipment of the attorney 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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

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Delivery
Service

by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

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

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

**REPLY AFFIRMATION
IN FURTHER
SUPPORT OF
MOTION TO DISMISS**

LOIS N. ROSEN, an attorney admitted to practice before the Courts of the State of New York, affirms as follows under penalties of perjury:

1. I am of counsel to the law firm Oxman Tulis Kirkpatrick Whyatt & Geiger LLP, attorneys for defendants Robert Burke, Teri Burke, Noel B. Donohoe and JoAnn Donohoe (the "Individual Defendants"), and am fully familiar with the facts set forth herein. This reply affirmation, submitted in further support of the Individual Defendants' motion to dismiss, is provided for three purposes: (a) to adopt and incorporate by reference the arguments set forth in (i) the accompanying reply memorandum of co-defendant The Nature Conservancy ("TNC") dated September 13, 2006 and (ii) the accompanying combined reply affirmation and reply memorandum of co-defendant Town of North Castle (the "Town") dated September 13, 2006; (b) to demonstrate to the Court that, despite Plaintiff's argument to the contrary, the substantial barricade across the closed portion of Oregon Road totally blocks access to the roadway; and (c) to provide the underlying factual predicate for the Individual Defendants' legal argument

that no easement can be implied because Oregon Road had been in existence for many decades before Eugene Meyer, Jr. ("Meyer") assembled his property and conveyed it to The Nature Conservancy ("TNC") and Yale University. The "ancient streets" doctrine does not apply in this circumstance. (*See* Individual Defendants' Reply Mem. p. 7)

2. On page 4 of the affidavit of Donald J. Trump, sworn to August 16, 2006 and submitted in opposition to defendants' various dismissal motions, Mr. Trump makes the following statements:

Access to Oregon Road is currently partially blocked by a 20 foot long gate (the "Gate"). It is possible for vehicles and pedestrians to access the subject portion of Oregon Road by going around the Gate."

3. As shown on the copies of the photographs collectively annexed hereto as Exhibit A, Mr. Trump is wholly in error. The first photograph clearly shows that the "Gate", which is more appropriately denominated a barricade or guardrail, crosses the entire width of Oregon Road. Indeed, as depicted on the second and third photographs set forth on the second page of Exhibit A, one cannot simply go "around the Gate", as Mr. Trump suggests. On one side of the gate, there is a large outcropping of rock; on the other side, there is a steep drop-off. Vehicular access from either side is physically impossible.

4. Accordingly, and as set forth in Defendants' motion papers, where, as here, the entire width of a highway is blocked, the obstructed section ceases to be a highway after six years of nonuse. Plaintiff's argument that Oregon Road was not abandoned because the Gate only partially blocked access to the roadway must be rejected.

5. In addition, as a matter of law, the "ancient streets" doctrine does not apply where, as here, the roadway existed prior to the assemblage of the property and its

subsequent conveyance. Since Oregon Road has been in existence since the mid-nineteenth century and Meyer neither acquired nor conveyed his property until a century later, the “ancient streets” doctrine cannot be relied upon to imply an easement.

6. One of the appendices to Plaintiff’s Draft Environmental Impact Statement dated April 2005 is a “Cultural Resources Survey” dated January 8, 1998 and prepared by Historical Perspectives Inc. As set forth therein, Oregon Road was depicted on maps in 1851 (Sidney and Neff Map); in 1872, (J.B. Beers & Co. Map in the Atlas of Westchester County); in 1905 (the E. Belcher Hyde Map in the Atlas of the Rural Country District North of New York City); and in 1911 (G.W. Bromley Map in the Atlas of Westchester County, New York). For the Court’s convenience, a copy of Addendum A to the Cultural Resources Survey (with attached maps showing Oregon Road) is annexed hereto as Exhibit B.

7. In view of the fact that Oregon Road was in existence for more than a century before Meyer conveyed his property to TNC or Yale, the “ancient streets” doctrine does not apply.

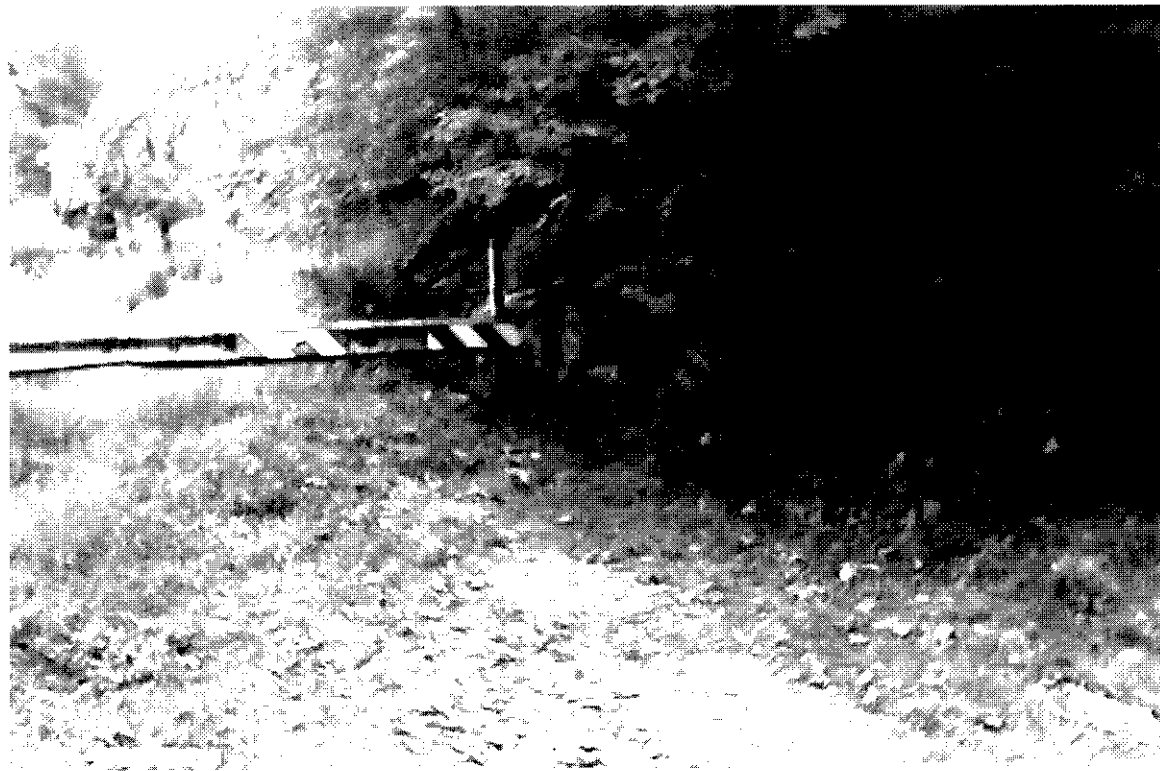
WHEREFORE, and for the reasons previously set forth by the Individual Defendants and by co-defendants TNC and the Town of North Castle, the Individual Defendants respectfully request that the Complaint be dismissed in its entirety.

Dated: White Plains, New York
September 14, 2006


LOIS N. ROSEN

A





DB

**CULTURAL RESOURCES
SURVEY
SEVEN SPRINGS
BEDFORD, NORTH CASTLE,
AND
NEW CASTLE, NEW YORK**

Prepared for:

Seven Springs, LLC
725 Fifth Avenue
New York, NY 10022

January 8, 1998

HISTORICAL
PERSPECTIVES INC.



P.O. Box 3037 • Westport, Connecticut 06880-9998

CULTURAL RESOURCES SURVEY

In order to satisfy the requirements of various interested municipal and state environmental review agencies, Historical Perspectives, Inc. (HPI) completed in 1997 a cultural resources evaluation for the entire Seven Springs parcel. A prior Stage 1A Archaeological and Historical Sensitivity Evaluation for the development parcel was completed by Greenhouse Consultants in December, 1996. Greenhouse Consultants concluded that the property was potentially sensitive for prehistoric and historical archaeological remains and identified specific standing structures as eligible for the National Register. HPI's survey, which included historic and archaeological resources and involved both documentary research and field investigations, complemented the earlier study with a more intensive and geographically inclusive cartographic review and in-depth archival research on farmhouses and a historic cemetery associated with the property. Stage 1B and, where necessary, Stage 2 archaeological field investigations were conducted within the three towns touched by the Seven Springs property: Bedford, New Castle, and North Castle, New York. An inventory of standing structures was also conducted and New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) Building-Structure Inventory Forms were completed for each structure extant on the property.

The Addendum I and Addendum II studies, as completed by HPI, supplement the prior Stage 1A Report. HPI's Architectural Assessment and the Stage 1B and 2 Archaeological Survey represent new phases of evaluation for this project. All four studies are presented in the following sections and a brief introduction to each follows.

Addendum I: Documentary Research, Historical Resources

This additional documentary research was undertaken to supplement a previously completed Stage 1A Archaeological Sensitivity Report. The previous report did not cover the entire project area and further historical research was necessary in order to design and complete comprehensive Stage 1B archaeological field work. Both primary and secondary sources were researched in a variety of local repositories and interviews were conducted. Research identified four areas of historical archaeological interest on the Seven Springs property: the Nonesuch

estate, originally the site of an 18th century farm; the white farm house, built between the late 18th and mid 19th centuries and still standing; foundations of buildings associated with a farm or estate in what is now the northwest corner of the eastern section of the Meyer Nature Preserve; and a house foundation off of Sarles Street documented to the mid 1800s.

Addendum II: Cemetery Removal Verification

A study was conducted to verify the removal and relocation of a historical cemetery [the Banks Cemetery, Byram Hill] which once stood on the property. Deed research and legal agreements from the end of the nineteenth and early twentieth centuries to remove and reinter the cemetery were carefully reviewed. Placement of the historic cemetery on today's landscape was verified, also. An inspection of the reinterred graves and an interview with the caretaker of the reinterred burials was conducted.

Architectural Assessment

An architectural historian inspected and photographed the entire property. Research on the architect associated with the Meyer estate was completed in order to put this particular complex within the context of similar pastoral estate complexes. The property contains a wealth of architectural resources, including residences, barns, service buildings, and utility structures. The buildings represent several building campaigns by different owners, which were unified when the property was purchased by Eugene J. Meyer, Jr. in 1910 and developed as his private country estate which was established, under the guidance of Charles A. Platt with the completion of the main residence in 1919. The Historic Resources Survey includes NYSOPRHP Building-Structure Inventory Forms, or "blue forms," plus photographs and explanatory addenda. An overall assessment of the significance of the complex was completed, as well as a preliminary evaluation of impacts by the proposed development to the estate's main house.

Stage 1B and Stage 2 Archaeological Survey

Greenhouse Consultants Inc., concluded that there were areas on the parcel which may be sensitive for prehistoric cultural deposits. A walkover survey of the property completed by HPI confirmed that there were many areas which are considered potentially archaeologically sensitive for prehistoric cultural resources based on soils, topography, aspect, distance to water, observed lithic outcrops and a number of other factors. Subsequently, Historical Perspectives, Inc., completed Stage 1B and Stage 2 archaeological field investigations with a total of 1,064 50 x 50 cm hand excavated, shovel test pits (STPs). In total, the project site yielded eight loci of potentially significant prehistoric cultural deposits, including three loci with diagnostic projectile points. Ten back-hoe trenches and a series of STPs were excavated around historic structures to search for features and/or other historical deposits. One possible locus of historic-era resources was identified.

Addendum I: Documentary Research, Historical Resources

Introduction

This additional documentary research was undertaken for the Seven Springs project site in Bedford, New Castle, and North Castle, New York, to supplement a previously completed Stage 1A Archaeological Sensitivity Report completed by Greenhouse Consultants, Inc. in December, 1996. Since the previous report did not cover the entire project area, further historical research was necessary in order for Historical Perspectives, Inc. to complete comprehensive Stage 1B archaeological field work.

To this end, additional maps were consulted (see list attached), as were deeds and mortgages in the Westchester County Land Records [WCLR]. Church history, tax and highway records, and census data were extracted from historical records at Bedford Historical Library [BHL], Westchester County Archives [WCA] and from the North Castle/New Castle Historical Records [HR]. The "Master Plan" [MP] for the Agnes and Eugene Meyer Nature Preserve provided valuable information, and ledgers and tombstones in the Oakwood Cemetery in Mount Kisco were also examined. Interviews were conducted with Mrs. Elizabeth Lorentz, the Meyers' daughter and a former resident of the property, and Campbell Muir, a former caretaker of Seven Springs, as well as several local residents familiar with the property.

Historical research identified four areas of historical archaeological interest on the Seven Springs property. First is the Nonesuch estate, which maps and deeds show was originally the site of an 18th century farm. Another is the white farm house, which was built between the late 18th and mid 19th centuries and was still standing at the time of this memo. A third is the most southerly portion of Seven Springs, where there are foundations of buildings that were associated with a farm or estate in what is now the northwest corner of the eastern section of the Meyer Nature Preserve. The fourth area is the most westerly part of the project area, in the southeast corner of New Castle off Sarles Street, where maps show a house in the mid 1800s. The latter was not studied since the applicant proposed a protective conservation easement around it which would ensure that the site remains undisturbed in perpetuity. However, since the initial investigations the proposed plan has changed, and this area may be affected by proposed development for a road connection and wetland mitigation area. Further research and testing will be completed to assess the archaeological significance of this area, and added as a separate addendum.

Nonesuch Property

According to early maps and deeds, the house that once stood on the Nonesuch property could have been built as early as 1763 and probably no later than 1790.

As the earlier 1A report states, this northern portion of the project area was first purchased for use as a farmstead by Caleb Sands, who was deeded 39 acres of land there in 1774 at a cost of £15 12s. Sands owned land in both Bedford and North Castle, but his house appears to have been in Bedford. Five years after purchasing the 39 acres, according to the Historical Records of North Castle/New Castle (HR1975:1:C7) he paid a tax of £24 on real estate valued at £480, but there was no levy on personal estate (livestock, valuable possessions, etc.) such as his neighbor Peter Disco of North Castle paid.

Caleb Sands was a freeholder in Westchester County as early as 1763 (BHR:V254). In 1788 he and his sons were active, with a group of other "sturdy farm folk" from what is now the juncture of the Bedford, North Castle and New Castle town lines, in founding the North Castle Methodist Church. The church was built on land deeded to it by Caleb's brother Samuel (Lander 1962:107, Patent Trader 1962:13).

The 1790 census of Bedford shows Caleb Sands [then ca. age 53] living with his wife Peninah and two males over 16; possibly one was their son Othniel [then ca. 32]. The household also included two other persons, no sex given; possibly one was Othniel's wife (BHL:196(1)). Nearby were households headed by their other sons Samuel and Caleb Jr. Caleb Sands and Plinah (probably a variant spelling of Peninah) were originally buried in the Cemetery across the drive from the old white farm house within the project site, although there are no headstones for them in the Oakwood Cemetery where their bodies were reinterred.

The first cartographic evidence for houses just west of "Byram Pond" is from a 1797 (or 1791) map of North Castle that includes Caleb Sands' house in Bedford (Figure 1). [NOTE: The late Richard N. Lander, North Castle Town Historian, dates this map, in work other than the Historical Records, as 1791, the year New Castle separated from North Castle. He was most accurate, and the old 1 looked much like a 7, so the earlier date is logical.] The bounds of the Bedford lands of Caleb Sands were not clear in the land records, but they are described in an 1808 mortgage on the 170 acre property of the late Peter Discho [sic; there is considerable variety in the spelling in old documents]. They included the southwest corner of the town of Bedford and extend to "Byram Pond", with a parcel along the North Castle line between Sands' orchard and the pond belonging to the

Discho estate. Samuel Sands' property lies to the west by a "bogswamp", and abuts Caleb's land (BHL, WCLR Mortgages Lib.K:185).

Probably the Sands property was passed down through the family to his grandchildren, since no deeds were found until Thorn Sands, Joseph J. Sands and Betsey Sands, "late of the town of Bedford", sold 160 acres to Coales Flewellin and his wife in 1835 for \$5,500 (WCLR Lib.61:214). In 1839, four years after they purchased it, the Flewellins sold the same 160 acre "farm of land" to Edward Banks for \$7,250, \$1,750 more than they paid for it (WCLR Lib. 85:340). This implies that they made improvements to the property, although no buildings are mentioned in any of the deeds.

Both of the above deeds, which are almost identical, have two exceptions. First they bestow:

"a privilege for a Public highway across and over the said land as laid out by the Commissioners of Highways...from near the house of Jonathan Hall to intersect the road near the house of Jonathan Sands".

Second, there is set aside:

"a quarter of an acre for a Burying Ground where the same is now occupied for that purpose in the first instance only a privilege of the right to travel and in the second only a privilege for the neighbors and relatives to inter their dead."

It is not clear whether the public highway noted in the deed is Oregon Road or the lane running south from Oregon Road to the house of Edward Banks (the white farmhouse) and the cemetery that is shown in the 1851 Sidney and Neff map (Figure 2). Since Jonathan Hall lived in what later became New Castle, probably it is the section of Oregon Road that is now closed, which goes in that direction.

Although the Burying Ground was located across the lane from the white farm house (according to survey maps provided by Seven Springs, LLC), its association is strongly with the Sands/Banks house at Nonesuch, whose traces were presumably destroyed in the construction of Nonesuch. Of the 90 bodies interred there, 42 were Sands or Banks, and this does not include 10 whose names were not known but were listed with the family. In contrast, there are only 6 Reynolds, the family associated with the old white farm house (a full discussion of the cemetery is presented in another addendum).

Edward Banks is missing from the 1840 census, although he is listed in 1820, 1830 and 1850. Perhaps he was in the process of moving, or of adding on to his newly acquired

house. In the 1850 Bedford census, he was a 60 year old farmer, head of his household and living with his wife Clarissa 58, son Edward 27 who was also a farmer, sons Jeremiah 21, and Hugh Stocker 14 (BHL:3, household #184,1201). Hugh, in school, was probably a son as well, although Clarissa would have been 44 when he was born. All were buried in the family Burying Ground on the property, and were later moved to Oakwood Cemetery.

Edward Banks died in 1855, and in 1857 his widow Clarissa [and children] sold the 160 acre "farm of land" to their son Joseph Banks for \$9,000 (WCLR Lib.364:442). Joseph sold 56 acres of this to his brother Jeremiah for \$3,360, leaving 104 acres for himself. According to Rosemary Mahoney in the Bedford Historical Library, 40 acres was considered the minimum amount of land for a farm.

The 1901 Bromley Atlas shows J. Banks as still owning the structure, but by 1905 the house was owned by Wm. H. Wheelock (Figure 4). According to the prior 1A report, the 1930 Hopkins Atlas depicted a larger L shaped structure on the site of the earlier structure, and that Wm. Wheelock was still the owner at that time (Greenhouse Consultants, Inc., 1996:16). This 1930 structure is likely the extant building known as Nonesuch. That report further dates the extant structure to two building episodes completed in 1919 and 1925, most likely under the ownership of Wm. Wheelock (Ibid.:21). H.J. Heinz II subsequently took ownership of the property sometime after 1942.

In conclusion, the structure that originally stood where Nonesuch now stands was probably built between 1763 and 1790, and was razed and replaced by 1919. The Sands family owned the property between 1774 and 1835, when the Flewellins purchased it. The Flewellins then sold the property four years later, and the Banks family owned it between 1839 and ca.1901. By 1905 Wm. Wheelock purchased the property, then razed the house, and built Nonesuch between 1919 and 1925. By 1942 the Heinz family took ownership until the house was subsequently purchased by the Meyers.

Cartographic research strongly suggests that the earlier Sands/Flewellin/Banks house was situated in the same location that Nonesuch was subsequently built. Although the footprint of the house is most likely completely destroyed by the construction of Nonesuch, and the installation of subsurface septic tanks, cisterns, and buried oil tanks directly behind Nonesuch (according to early property survey maps and a visual inspection of the yard), there is the potential for subsurface features associated with the earlier structure to exist on the southern and northern side yards of the house. Furthermore, extensive landscaping on the eastern side of the house, now the structure's backyard, and the septic fields and utility lines installed in this area, has undoubtedly disturbed this yard. Landscaping has created formal garden terraces, walkways, gazebos and tennis courts in what was once the back yard.

Old White Farmhouse

The extant white farmhouse is located just south of Nonesuch within the town of Bedford. Architecturally, part of the house appears to date to the 18th century, while other sections are clearly of 19th and 20th century construction.

The earliest cartographic source to possibly show this structure was the ca.1791 (1797?) map of the Town of North Castle (Figure 1). This map shows a house directly south of Caleb Sands' house (discussed above), belonging to Peter Disco. Although the map places the Disco house in North Castle as opposed to Bedford where the white farmhouse stands, deed research did show that Disco owned land in both North Castle and Bedford, and that he was taxed in North Castle for personal property as early as 1779. The house may be incorrectly placed on the map, or it may be another structure south of the project site. However, its placement on the map in relation to the Sands/Banks house suggests that this is the white farmhouse. Disco died in 1808.

Prior to the 1850s, Stephen Reynolds and his wife Ester Ann were living in the house. Research on the Reynolds family is confused by the fact that there were so many of them living in the area throughout the eighteenth and nineteenth centuries, and documents regarding their precise location of residence are scant. A Stephen Reynolds is listed in the Bedford census from 1810 to 1850, but he may not have necessarily lived in the white farmhouse for all of that time. In 1850 Stephen and his wife sold the property and 120 acres, of which some was in Bedford but more was in North Castle, to Isaac Reynolds. The deed, dated March 29, 1850, lists a purchase price of \$2,875. The parcel began in Bedford at "Byram Pond" and ran west along the land of Edward Banks (Nonesuch property), then south to the highway [Oregon Road], easterly by "said highway", then northeasterly "including the carriage way that is now in use", east to a brook, southerly "to an old ditch", north across Bedford line, up the pond to point of beginning (WCLR Lib.146:473).

The house clearly appeared on the 1851 Sydney and Neff map, with the name I. (possibly L.) Reynolds (Figure 2). The Bedford census of 1860 records four Isaac Reynolds, the most likely Isaac to own the house is 60, a farmer married to Eliza 58 (BHR:49-50). His son Isaac 16 lived in the same household.

It is clear from the Highway Assessments listed in the Bedford Town Minutes that Joseph Banks remained the major property owner in the area despite the Reynolds presence. From 1862 through 1876, Bank's assessment was 8½ (dollars? or shares of upkeep?) and he was Path Master three times. Banks was in Road District No. 25, which encompassed Byram Lake Road and Oregon Road (BHR:VI:280-81). His house and 113

acres however, were on the west side of Oregon Road out of the project site, according to the 1872 Beers atlas. The J. [Jeremiah] Banks house with 50 acres appears on this map east of Oregon Road. Jeremiah's assessment was consistently 4½, and he served as Path Master five times. It can be assumed that since the assessment did not change during those years, neither did the property acreage.

Isaac Reynolds also resided in Road District No. 25. His assessment of 5½ implies a larger acreage than Jeremiah. His house, the white farmhouse, appears on the 1872 Beers map with 120 acres, again at the end of the lane running south off Oregon Road (Figure 3). Although his acreage was larger than Joseph Banks' his assessment was lower, perhaps because his road was shorter and there were more houses to share the burden. In 1874, his assessment was marked "est.", so presumably he had died by that time (an Isaac Reynolds was in fact once buried in the Burying Ground on the property, but his body was reinterred when the cemetery was moved). The same year, Isaac Reynolds, Jr. had an assessment of 1.

By the 1880 Bedford census, Eliza Reynolds was listed as a "widow carrying on the farm" (BHL). (There is an Elizabeth Reynolds buried with Isaac, and possibly this was Eliza.). Isaac Reynolds (jr.) then sold 120 acres, including the white farmhouse, to Emil Weber in 1895 (WCLR Lib.1383:260). In 1905, Emil Weber and his wife Marie sold 115 acres of the parcel to Rector K. Fox of New York City for \$1 and other valuable considerations:

SUBJECT however to the rights of any of the public or of the adjoining land owners to travel along and over the lane or Old road passing through the above described premises, RESERVING to ...[the Webers] use and occupancy of the buildings and door yard surrounding the same, ...until the first day of April 1906 free of rent should however ...[Fox] build a house for the occupancy of...[the Webers]...[the Webers] agree to move into the same when finished and to vacate the one they are occupying at present (WCLR Lib.1731:371).

Presumably the Webers remained living in the old white farmhouse. The 1905 atlas confirms that Rector K. Fox owned the house and 125 acres of this land by that time (Figure 4). Rector Fox then sold the property to Eugene Meyer, Jr. in 1909. The 1911 Bromley Atlas of Westchester County (Figure 5) shows the property where Meyer built his Seven Springs mansion.

In summary, the white farmhouse was possibly built by Peter Disco by 1791, but had definitely been constructed prior to 1851 (Figures 1, 2). By the 1850s, it was clearly

owned by the Reynolds family, and remained in their possession until 1895. The property was then bought by the Webers, who sold it in 1905, but remained living in the house. By 1909 Eugene Meyer had purchased the property. His family lived in the house temporarily until his mansion was completed.

The yard areas surrounding the house are considered potentially archaeologically sensitive for cultural material associated with the early Disco's occupation (possibly), the longer Reynolds family occupation, and to a lesser extent, the shorter occupation of the Weber family.

Foundations at South End of Seven Springs

Two foundations were observed on a hillside in the woods at the very southern end of the project site. These were identified as a barn and a root cellar during an inventory of resources on the Eugene and Agnes Meyer Nature Preserve, completed in 1979 for the parcel just south of the Seven Springs project site. Additional research was completed in an attempt to arrive at a date for these structures, and possibly the former owners of these.

According to deed research done by the late Richard N. Lander, Town of North Castle Historian, and published in the "Master Plan" for the Agnes and Eugene Meyer Nature Preserve, the land here and south into the preserve was primarily woodland at the time of first European occupation. There was a saw mill ca. 1737 on Wampus Brook west of the project area, and two others on the Byram River that were probably there well before 1872 when they appear on the Beers map, so it is logical that the area would be exploited for its timber.

William and John Carpenter, grandsons of Timothy Carpenter (born 1680-90; died 1769), "the first white child born in the Byram Valley" owned much of the land in this area. Elizabeth Carpenter and Purdy Carpenter were both buried in the Burying Ground on the property before they were reinterred. This section of the project area was later owned by Robert Flewellin. The Flewellins, with at least five variations in spelling, were large landholders in North Castle and adjacent Bedford in the first half of the 19th century. Four of them were also in the Burying Ground on the property.

The property had passed to Isaac W. Moseman by 1847, at which time he was a highway overseer in District No. 24 (HR1986:2:242). His house was on the west side of Oregon Road, according to the 1851 Sidney and Neff map, south of the project site (Figure 2). The house remained in Moseman's name in the same location through 1881, but by 1901 the house was gone (Hyde 1901). Moseman died in 1892, leaving \$600 and half of

all his estate to his son Wright. The other half, both real and personal, went to Jane A., wife of his son Philander. His executors were to:

manage and improve [it]...without the signature or consent of her said husband and in the same manner and with the like effect as if she was sole and unmarried (WCA File No. 383-1892, Wills Vol. 116:188-89).

Beginning ca. 1867 and into the 20th century, maps show that residents in this area began to give their properties names. There was "Rock Valley Farm" in New Castle, "Prospect Hill Farm" and "Combs View" in Bedford, and "Lake View" and "Pleasant View" in North Castle. Like Meyer, these residents delighted in living the rural life although they may have had residences elsewhere, and the coming of the railroad had made these country places easily accessible from the city. Meyer himself kept pigs, chickens, horses and cows, and also cultivated an extensive apple orchard and hay fields. He was the typical "gentlemen farmer."

The foundations at the southern end of the Seven Springs property appear to be contemporary with this type of estate and are probably of late 19th or early 20th century construction. They include the remains of a wooden barn and a large stone and cement root cellar, as well as traces of old roads, all within the project area. Just south of the property line are a 25 foot deep cement and stone well and a 30 foot long cement trough, possibly a cold frame. There are also a greenhouse foundation and stone steps to a cement and flagstone foundation, flanked by debris from white wooden columns and trellis that have since disappeared. Yet another foundation, 40x100 feet, may also have been a greenhouse, since it contained debris of tiles and piping in 1979. There are also decorative plantings such as privet, pachysandra and forsythia (MP1979:27). The barn and root cellar were probably associated with this historical complex, off of the project site.

It is possible that Moseman built the estate on the east side of Oregon Road, south of the project site, although the construction implies at least a late 19th century date. He was a prosperous young man, and he probably owned the property until his death in 1892. The 1850 North Castle Census shows him with a farm worth \$5,000, well above the median evaluation for the town. The census says he was 28 years old at that time, but this is probably an error; more likely he was about 40. Other Mosemans included Tamer [female, 38], Prudence [female, 17], sons Philander 17 and Wright 6, plus Milton Sarles [6 months] and Patty Angevine 42 (HR1986:339-40).

The other candidate for construction of the historical complex and associated barn is Rector K. Fox, who along with his wife Hilda, sold the Meyers the original land for Seven Springs Farm in 1909 (WCLR [from Hilda S. Fox] Lib.1884:20 and [from Rector K. Fox] Lib.

1884:24). However, he seems to have bought and sold properties throughout the area in a short time without developing them. A house in his name is shown on the 1905 Hyde atlas, on the east side of Oregon Road south of the project site. He purchased the land from Carl S. Petrasch in 1904 (WCLR Lib. 1496:454).

Carl S. Petrasch is shown as the owner of the northern segment of this property, abutting the Meyer estate, on both the 1905 and 1911 maps (Figures 3, 5). His house, built between 1872 and 1905, is on a 600 foot knoll near Oregon Road, and may very well be the structure which stood where the historical complex is now observed (Figures 3, 4). No acreage is shown on these maps, nor are any outbuildings. Petrasch may have built the barn and root cellar, but that is not certain.

Neither Elizabeth Lorentz, the Meyers' daughter, nor Campbell Muir, Seven Springs caretaker from 1971 to 1996, was able to identify the barn and root cellar foundations, although both remember that they were there. Mrs. Lorentz remembers the Petrasches as friends of her parents, living in a largish house next door, just south of their property.

Several interviewees reported that the house and outbuildings just south of the project site burned down sometime in the twentieth century, and Mrs. Lorentz says her father bought the property after the fire. However, Mrs. Lorentz further states that she does not recall that the fire burned the Petrasch house. Anthony Palamarczuk, former North Castle Building Inspector, was born and raised in Armonk and was a volunteer fireman beginning in 1937. He stated that none of these buildings were standing in 1930, with one exception. The last building to burn was the barn "on the bend of the road" in what is now part of the Seven Springs project site. The barn was used for storage, possibly hay, for the Meyer estate, and he helped fight the fire there "about 35 years ago", which would make the date 1962. "Remains" of this wooden barn were still standing in 1979 when the Meyer Preserve Master Plan was done, so perhaps the firemen arrived in time to save some of the structure. It is unclear if the barn was still standing at that time or not.

Further research of deeds and wills might shed more light on the builder of the historical complex foundations off of the property, including the barn and root cellar on the project site. However, the near turn-of-the-century date is clear, and the name of the owner would not add measurably to the findings of this investigation. Most likely, the Petrasches built the barn and root cellar in conjunction with the creation of their estate between 1872 and 1905. When their house burned, Meyer bought the property, and reportedly continued to use the barn for some time.

The barn and root cellar are not considered potentially archaeologically sensitive due to their late date and anticipated limited archaeological potential. Field testing around the barn and root cellar confirmed this assumption.

ADDITIONAL MAPS*

Adams, William

1797 "Map of the Town of North Castle in Westchester County", Wm. Adams.
North Castle/New Castle Historical Records, 1975. Following p. 97.

Beers, J.B. & Co.

1872 "Town of North Castle". Atlas of Westchester County, Plate 72. Repository:
Westchester County Historical Society, Elmsford, N.Y.

Bromley, G. W.

1911 "Map of Part of the Towns of Yorktown, Somers, New Castle and Bedford."
Atlas of Westchester County, New York, Vol. II, Plate 38. Repository:
Bedford Historical Library.

Hopkins, G.M.

1930 "Town of North Castle." Atlas of Westchester County, Vol. 4, Plate 46.
Repository: Westchester County Archives, Elmsford, N.Y.

Hyde, E. Belcher

1905 "New Castle and Adjacent Towns". Atlas of the Rural Country District North
of New York City, Plate 10. Repository: Chappaqua, N.Y. Library.

Master Plan for the Agnes and Eugene Nature Preserve

1979 "Field Map of Old Estate/Farm Complex." Master Plan for the Agnes and
Eugene Meyer Nature Preserve of the Nature Conservancy, Lower Hudson
Chapter, Towns of North and New Castle, Westchester County, New York.

* The other maps cited in the text of this memo are included the Greenhouse
Consultants, Inc., Archaeological and Historical Sensitivity Evaluation, Seven Springs
Farm, Westchester County, New York. Prepared for Seven Springs, LLC, New York,
December 1996.

INTERVIEWS

Joseph (Jerry) N. Green
Former Director of the Seven Springs Conference Center
(860) 434-2826

John A. Lombardi
North Castle Supervisor
(914) 273-3001

Elizabeth Meyer Lorentz (Mrs. Pare)
(914) 273-3434

Campbell Muir
Former Seven Springs Caretaker
(914) 246-0751

Anthony Palamarczuk
Former North Castle Building Inspector and volunteer fireman
(914) 273-3613

Elizabeth Sluder
North Castle Conservation Board
(914) 273-3127

Connie Quarry
President, North Castle Historical Society
Office (914) 273-4510, Home (914) 273-8085

Doris Finch Watson
Historian knowledgeable about Banksville and North Castle
(914) 234-7845

REFERENCES

Town of Bedford

1976 Bedford Historical Records [BHR], Vols. V, VI, IX, Town of 1978 Bedford, Westchester County, N.Y.

Town of Bedford Census Index

Bedford Historical Library, Town House, Bedford Hills, N.Y.

Town of North Castle/New Castle

1975 Historical Records. Jointly published by the Town of North Castle, Armonk, N.Y. and the Town of New Castle, Chappaqua, N.Y.

1986 Historical Records. Town of North Castle, Armonk, N.Y.

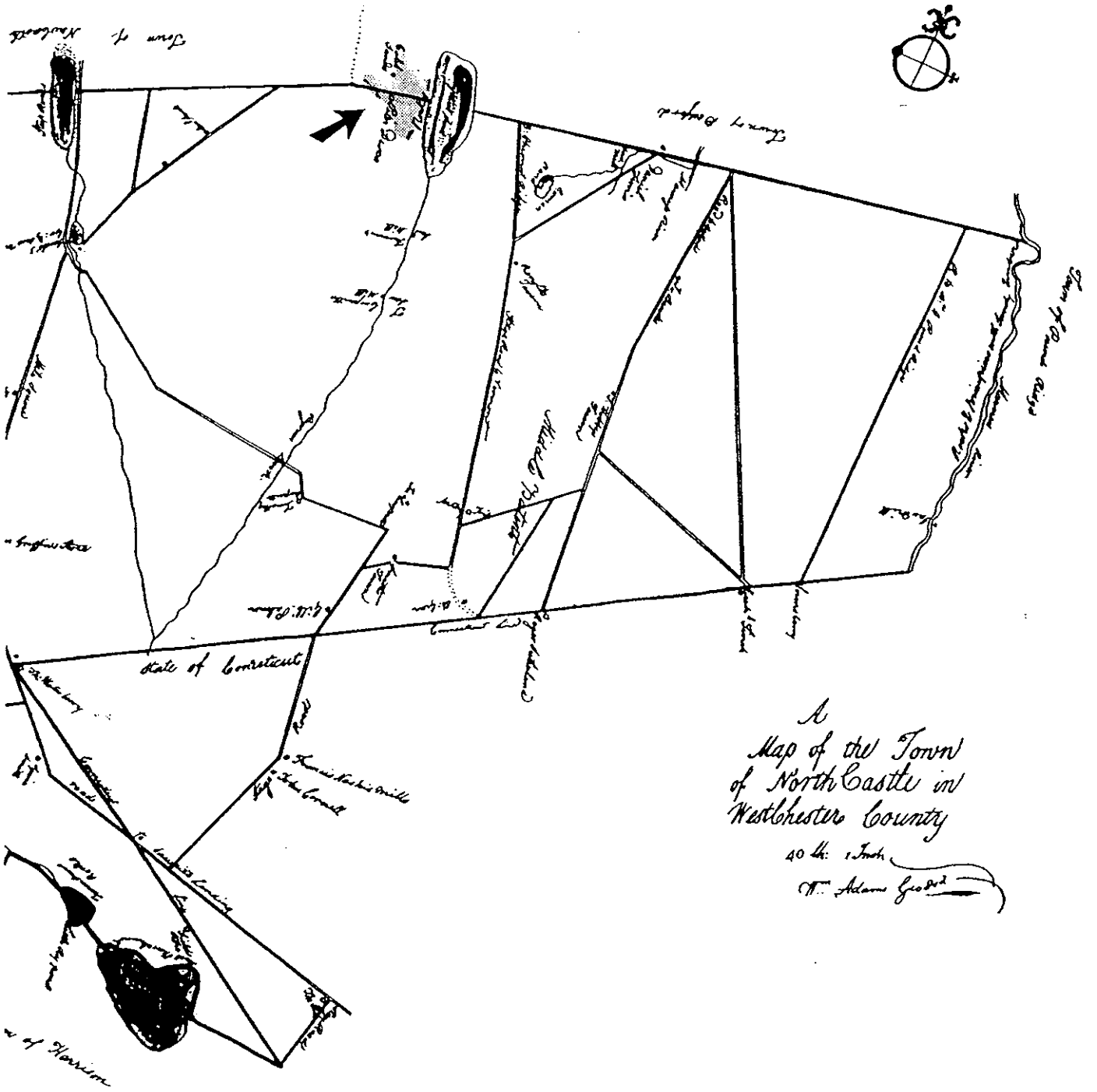


FIGURE 1

"Map of the Town of North Castle in Westchester County"
 William Adams, 1797 (1791?).

Shading Demarcates Approximate Site Boundaries
 No Scale

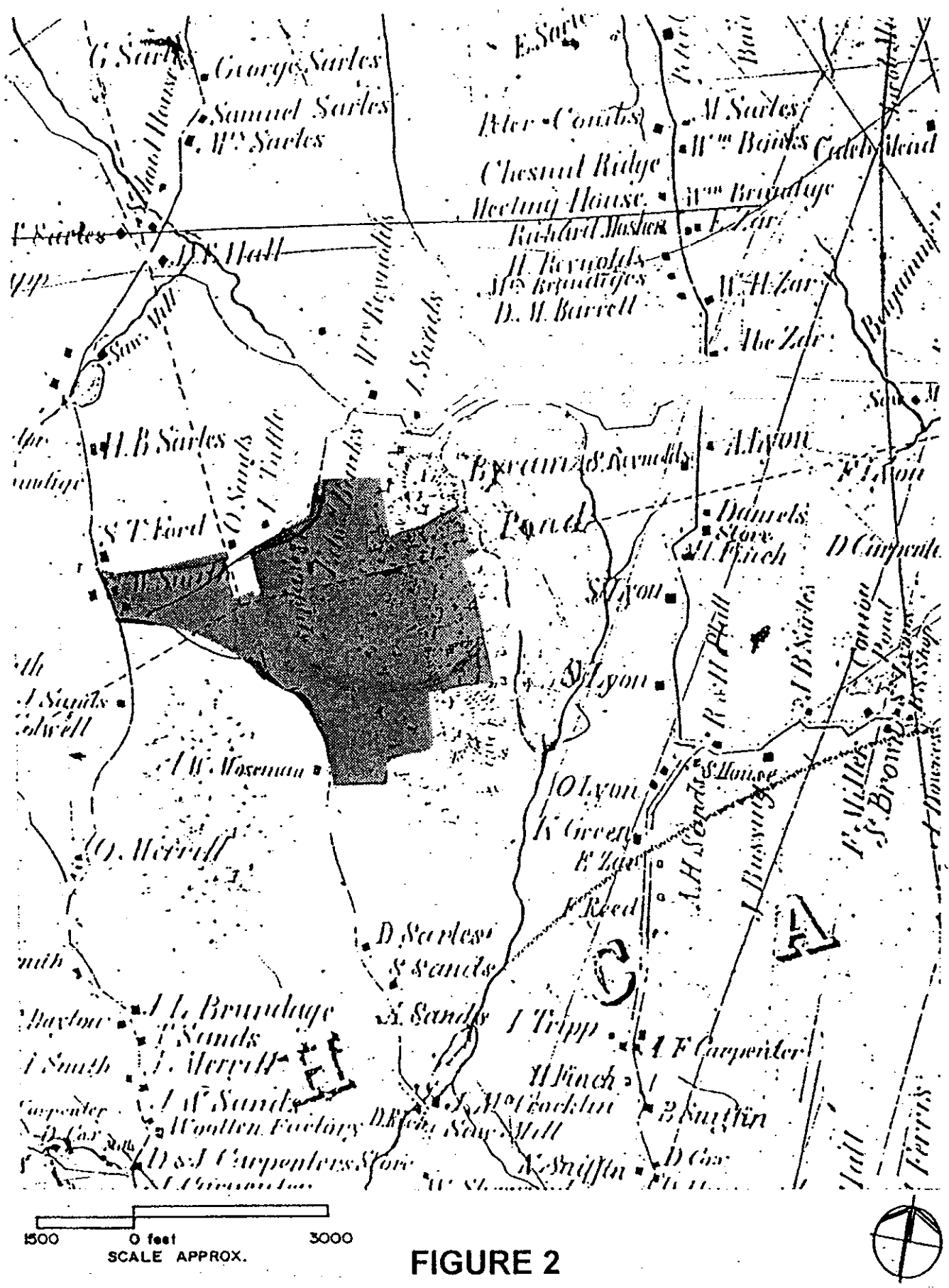


FIGURE 2

Map of Westchester County, New York from Actual Surveys.
Sidney and Neff, 1851.

Shading Demarcates Approximate Site Boundaries

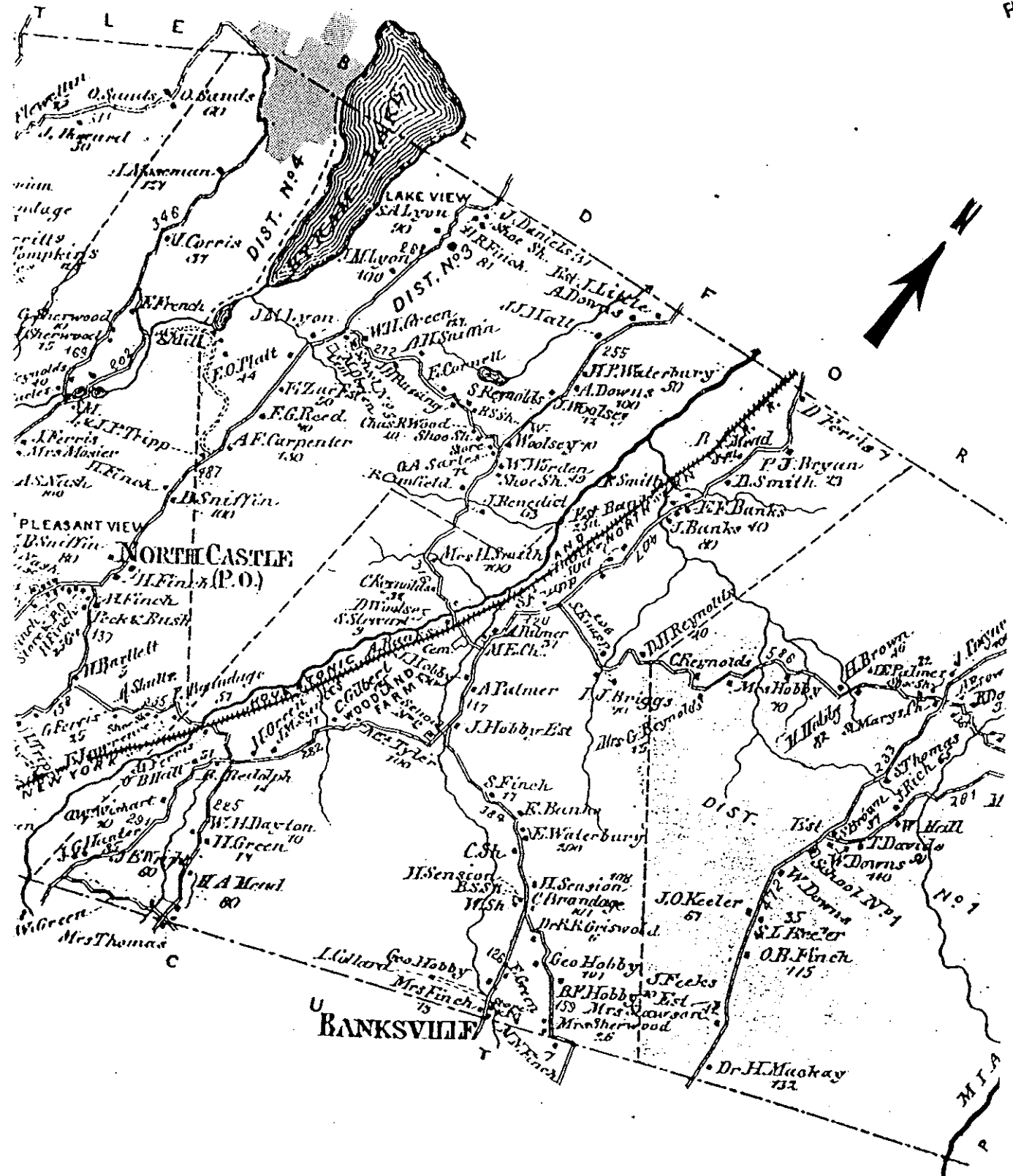


FIGURE 3

Atlas of Westchester County. Plate 72
J.B. Beers & Co., 1872.

Shading Demarcates Approximate Site Boundaries
No Scale

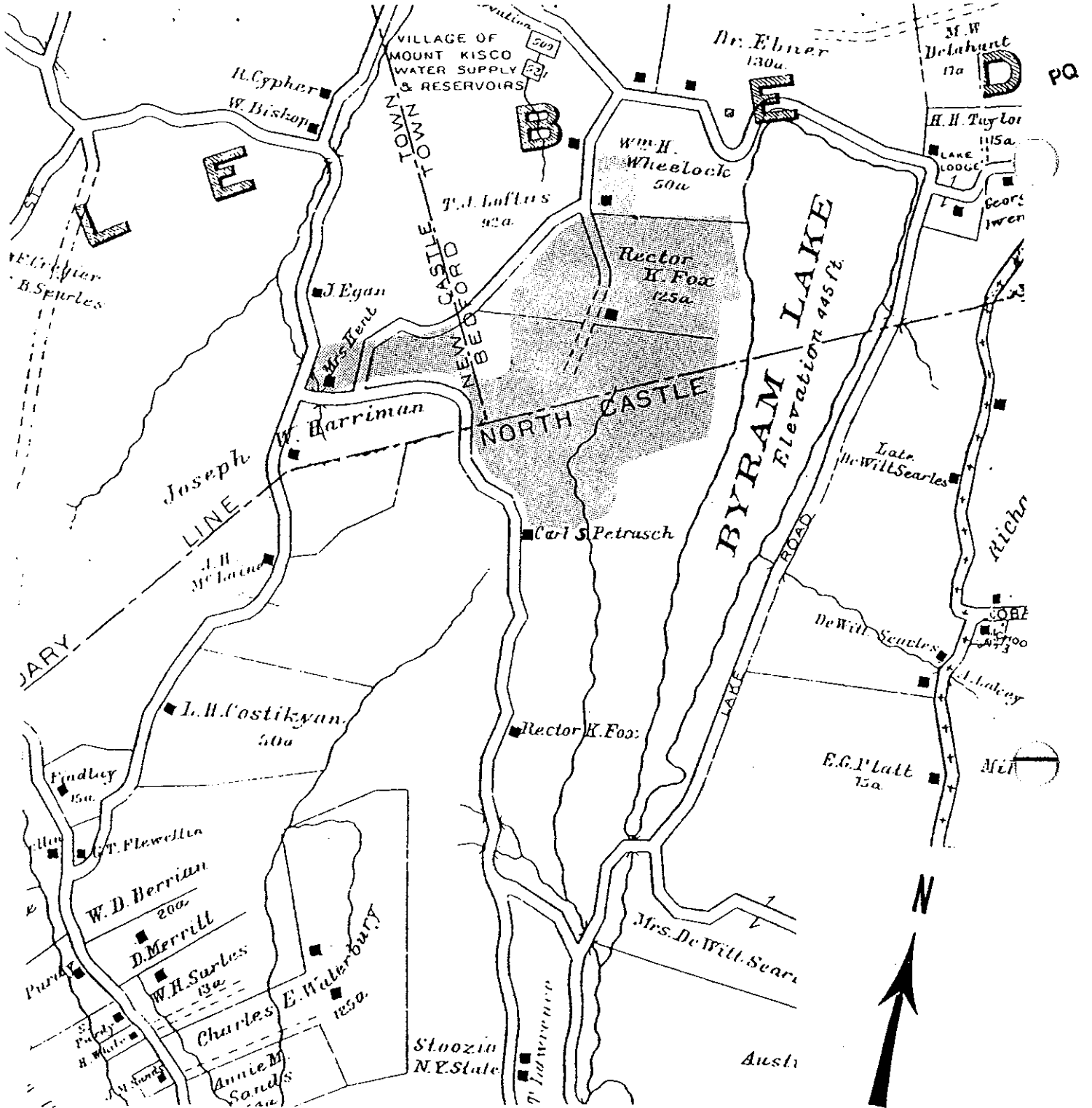


FIGURE 4

Atlas of the Rural Country District North of New York City. Plate 10
 E. Belcher Hyde, 1905.

Shading Demarcates Approximate Site Boundaries
 No Scale

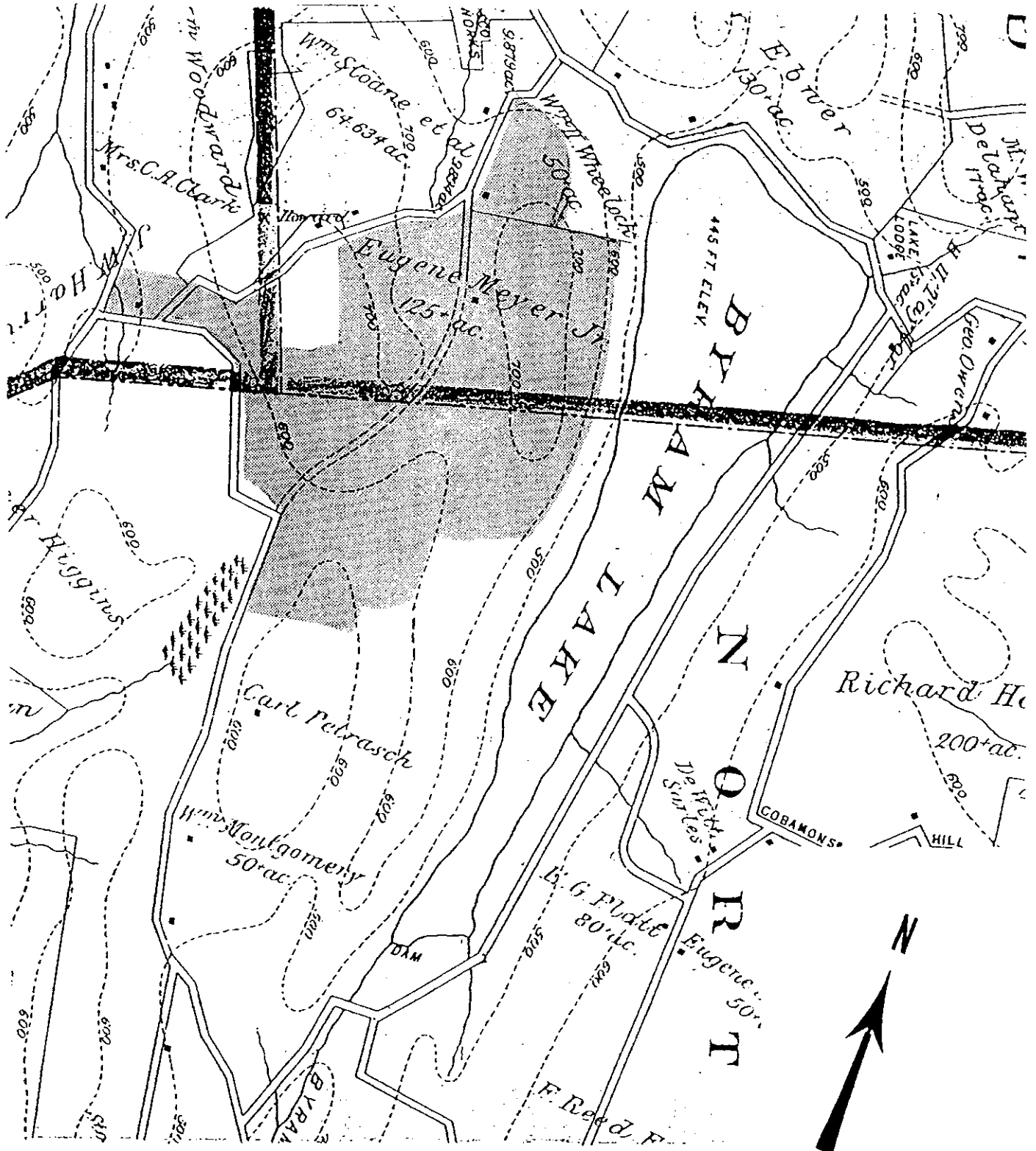


FIGURE 5

Atlas of Westchester County, New York. Plate 38
G.W. Bromley, 1911.

Shading Demarcates Approximate Site Boundaries
No Scale

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PAULA CHABLAL, being duly sworn, deposes and says: I am not a party to this action; I am over 18 years of age and I reside in Westchester, New York.

On September 14, 2006, I served the within **REPLY AFFIRMATION IN FURTHER SUPPORT OF MOTION TO DISMISS** upon:

DelBello, Donnellan, Weingarten, et al.
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601


Roosevelt & Benowich, LLP
Attorneys for Defendant The Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604

Stephens, Baroni, Reilly, et al.
Attorneys for Defendant Town of North Castle
175 Main Street - Ste. 800
North Court Building
White Plains, New York 10601

by depositing a true copy of the same enclosed in a first-class, postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Paula Chablal

Sworn to before me this
14th day of September, 2006


Notary Public

GREGORY J. SPAUN
NOTARY PUBLIC, State of New York
No. 02SP6054146
Qualified in Westchester County
Commission Expires 1/29/20 07



Index No.

Year 20

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

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

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

Defendants.

REPLY AFFIRMATION IN FURTHER SUPPORT OF MOTION TO DISMISS

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP

Attorneys for **Defendants - Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe**

120 BLOOMINGDALE ROAD
WHITE PLAINS, NY 10605
(914) 422-3900

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

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 *20* *, at* *M.*

Dated:

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP

Attorneys for

120 BLOOMINGDALE ROAD
WHITE PLAINS, NY 10605

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss:

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

Check Applicable Box

Attorney's Certification

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

Attorney's Verification by Affirmation

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

Check Applicable Box

Individual Verification

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.

Corporate 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.

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:

Check Applicable Box

Service by Mail

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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Personal Service

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

Service by Electronic Means

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney 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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Overnight Delivery Service

by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

Sworn to before me on _____, 20 _____

(Print signer's name below signature)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

JUL 10 2006

WESTCHESTER SUPREME
AND COUNTY COURTS

AFFIDAVIT OF SERVICE

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

- against -

Index No.: 9130/06

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

Defendants.

-----X
STATE OF NEW YORK)
 : ss.
COUNTY OF WESTCHESTER)

FILED
NOV -3 2006
TIMOTHY
COURT CLERK
COUNTY OF WESTCHESTER

KRISTEN L. HOLT, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age, and reside in Middletown, New York.

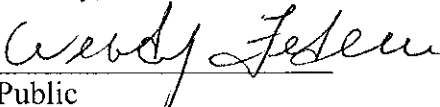
On June 30, 2006, I served a true copy of a **NOTICE OF MOTION WITH SUPPORTING AFFIRMATION AND EXHIBITS** via personal service on the Law Offices of DelBello, Donnellan, Weingarten, Tartaglia, Wise & Wiederkehr, LLP, by hand delivering a copy of the documents in a sealed envelope addressed to the party as indicated below. I delivered the envelope at approximately 2:00 p.m. on June 30, 2006, at the address listed below:

DelBello, Donnellan, Weingarten, Tartaglia, Wise & Wiederkehr,
LLP
ATTN: Mr. Alfred E. Donnellan, Esq.
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601



KRISTEN L. HOLT

Sworn to before me this
5TH day of July, 2006



Notary Public

WENDY FEDERICI
Notary Public, State Of New York
No. 4866147
Qualified In Westchester County
Commission Expires July 28, 2006

RECEIVED

JUL 11 2006

HON. JOHN R. LACAVA
J.S.C.

Index No. 9130/06 Year 20

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.

AFFIDAVIT OF SERVICE

STEPHENS, BARONI, REILLY & LEWIS, LLP

Attorneys for

DEFENDANT, TOWN OF NORTH CASTLE

NORTHCOURT BUILDING
175 MAIN STREET, SUITE 800
WHITE PLAINS, NEW YORK 10601
(914) 761-0300

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

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

that the within is a (certified) true copy of a
NOTICE OF entered in the office of the clerk of the within named Court on 20
ENTRY

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

Dated:

STEPHENS, BARONI, REILLY & LEWIS, LLP

Attorneys for

NORTHCOURT BUILDING
175 MAIN STREET, SUITE 800
WHITE PLAINS, NEW YORK 10601

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

SS:

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

Check Applicable Box
 Attorney's Certification
 Attorney's Verification by Affirmation

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

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

. 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. 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

Check Applicable Box
 Individual Verification
 Corporate Verification

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.

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.

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:

Check Applicable Box
 Service by Mail
 Personal Service
 Service by Electronic Means
 Overnight Delivery Service

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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

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

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney 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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

Sworn to before me on , 20

.....
(Print signer's name below signature)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

AFFIDAVIT OF SERVICE

- against -

Index No.: 9130/06

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

Defendants.

-----X
STATE OF NEW YORK)
 : ss.
COUNTY OF WESTCHESTER)

FILED
NGV CC 2006
JUL 11 2006
CLERK OF COURT

KRISTEN L. HOLT, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age, and reside in Middletown, New York.

On June 30, 2005, I served a true copy of a **NOTICE OF MOTION WITH SUPPORTING AFFIRMATION AND EXHIBITS** by mailing the same in a sealed envelope, with postage prepaid thereon, in an official depository of the United States Postal Service within the State of New York, addressed to the last known addresses of the addressees as set forth below:

Roosevelt & Benowich, LLP
ATTN: Mr. Christopher Roosevelt, Esq.
Attorneys for the Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604

Oxman, Tulis, Kirkpatrick, Whyatt & Geiger
ATTN: Mr. John Kirkpatrick, Esq.
Attorneys for Mr. & Mrs. Burke
and Mr. & Mrs. Donohoe
120 Bloomingdale Road
White Plains, New York 10601

Realis Associates
356 Marville Road
Pleasantville, New York 10570

RECEIVED
JUL 11 2006
HON. JOHN R. LACAVA
J.S.C.

Sworn to before me this
5th day of July, 2006

Wendy Federici

Notary Public

Kristen L. Holt

KRISTEN L. HOLT

WENDY FEDERICI
Notary Public, State Of New York
No. 4866147
Qualified In Westchester County
Commission Expires July 28, 2006

Index No. 9130/06 Year 20

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.

AFFIDAVIT OF SERVICE

STEPHENS, BARONI, REILLY & LEWIS, LLP

Attorneys for

DEFENDANT, TOWN OF NORTH CASTLE

NORTHCOURT BUILDING
175 MAIN STREET, SUITE 800
WHITE PLAINS, NEW YORK 10601
(914) 761-0300

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

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 20, at M.

Dated:

STEPHENS, BARONI, REILLY & LEWIS, LLP

Attorneys for

NORTHCOURT BUILDING
175 MAIN STREET, SUITE 800
WHITE PLAINS, NEW YORK 10601

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss:

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

Check Applicable Box

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

Attorney's Verification by Affirmation say that: I am the attorney of record, or of counsel with the attorney(s) of record, for . 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. 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

Check Applicable Box

Individual Verification 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.

Corporate 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.

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:

Check Applicable Box

Service by Mail 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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

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

Service by Electronic Means by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney 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 within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Overnight Delivery Service by depositing the same with an overnight delivery service in a wrapper properly addressed. 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:

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ORIGINAL
10/13/06
10/13/06

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130/06

- against -

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

Defendants.
-----X

**REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN
DONOHOE'S MOTION TO DISMISS THE COMPLAINT**

**OXMAN TULIS KIRKPATRICK WHYATT
& GEIGER LLP**
*Attorneys for defendants Robert Burke, Teri Burke,
Noel B. Donohoe and JoAnn Donohoe*
120 Bloomingdale Road
White Plains, New York 10605
(914) 422-3900

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130/06

- against -

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

Defendants.
-----X

**REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN
DONOHOE'S MOTION TO DISMISS THE COMPLAINT**

PRELIMINARY STATEMENT

This reply memorandum of law is submitted on behalf of defendants Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe (the "Individual Defendants") in further support of their motion to dismiss the Complaint. The purpose of this memorandum is two-fold: (1) to adopt and incorporate by reference the arguments set forth in the accompanying reply memorandum of co-defendant The Nature Conservancy ("TNC") dated September 13, 2006 ("TNC Reply Mem.") and the combined reply affirmation and memorandum of law of co-defendant Town of North Castle (the "Town") dated September 13, 2006 ("Town Reply Mem."); and (2) to refute – point-by-point – the legal arguments set forth in Plaintiff's Memorandum of Law dated August 17, 2006 ("Plaintiff's Mem.") so that the Court can determine for itself the extent to which Plaintiff misstated the facts and contorted the applicable law in an heroic – but

flawed – attempt to breathe some life into its fatally defective pleading. For ease of Court review, the Individual Defendants will present their refutation of each point in Plaintiff's Memorandum in the same order as initially set forth in Plaintiff's Memorandum.

Upon review of this memorandum, together with the accompanying reply papers submitted by co-defendants TNC and the Town, the Court will surely conclude that the Complaint must be dismissed. Not only has Plaintiff wholly failed to demonstrate why its action is not barred by the statute of limitations, but it also has been unable to credibly argue that Oregon Road was not properly abandoned some sixteen years ago. Furthermore, Plaintiff does not even attempt to respond to the substance of TNC's argument that any easement was extinguished by merger when the title in fee to both the properties now owned by Plaintiff and TNC were commonly owned by Eugene Meyer, Jr. ("Meyer"). Instead, Plaintiff buries its response in a few scant paragraphs in a penultimate page of its memorandum, stating only that TNC's argument "attempts to obfuscate the issue, and is without merit". (Plaintiff's Mem. p. 26) Plaintiff cites to no case that supports its position, and nowhere expounds on any possible "obfuscation" by TNC.

In fact, if any party can correctly be accused of obfuscation, it would be Plaintiff. In Point II of its memorandum, for example, Plaintiff makes the legal argument that it is entitled to an easement over Oregon Road because an access easement is implied from the conveyancing language in the deeds in the chain of title describing its premises as being bounded by a street. (Plaintiff's Mem. pp. 5-11) While this statement is accurate insofar as it goes, Plaintiff tells only part of the story. It neglects to inform the Court that the mentioning of a boundary in a deed is only one of various factors that a court is to consider when determining whether an easement can be implied. As set forth in Point II herein, implied easements are disfavored, and Plaintiff bears

a heavy burden of trying to establish all of the factors necessary to support its claim. Courts must look at the intent of the parties in light of all circumstances, and consider whether reference to a street was intended to be merely descriptive or to convey an access right. In the instant case, the circumstances compel the conclusion that the reference to Oregon Road was descriptive, and no implied easement was created by the conveyancing language in the deeds.

STATEMENT OF FACTS

The relevant facts are set forth in the accompanying reply affirmation of Lois N. Rosen dated September 14, 2006 (“Rosen Reply Aff.”) and in the prior papers submitted in support of the instant dismissal motions and will not be repeated herein.

ARGUMENT

POINT I

THE COMPLAINT MUST BE DISMISSED BECAUSE IT FAILS TO STATE ANY VALID CAUSE OF ACTION

All parties agree that a motion to dismiss pursuant to CPLR 3211(a)(7) looks to the complaint and tests the four corners thereof to determine whether the allegations can sustain any cause of action cognizable at law (*see Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46 [2001]; *Guggenheimer v Ginsburg*, 43 NY2d 268 [1977]). While a court is to construe the pleadings in the light most favorable to the plaintiff and deem all factual allegations therein to be true (*Held v Kaurman*, 91 NY2d 425 [1998]), “bare legal conclusions as well as factual claims contradicted by the record are not entitled to any such consideration” (*Doria v Mascucci*, 230 AD2d 764, 765 [2d Dep’t 1996]). In accordance with this well-settled standard, both causes of action asserted by Plaintiff must be dismissed.

In its first cause of action, Plaintiff alleges, in substance, that it possesses a 50-foot wide easement to use that portion of Oregon Road abutting its parcel and proceeding southerly from

its parcel across TNC's parcel to the public portion of Oregon Road. As set forth herein, Plaintiff's "bare legal claim" that it possesses an access easement simply is not supported by applicable law. Furthermore, even if such an easement could ever have been correctly implied, such easement was extinguished by the abandonment of the easement by Plaintiff's predecessor-in-interest Rockefeller University ("Rockefeller").

In its second cause of action, Plaintiff asserts that the Town, by erecting and maintaining a barrier on Oregon Road, improperly deprived Plaintiff of its "lawful right to pass over the road and to have ingress and egress over the road". (Complaint ¶41) As discussed hereinafter, Plaintiff has no "lawful right" to pass over the roadway. Further, Plaintiff cannot correctly request that the Town "be directed to remove all obstructions placed and/or maintained by it on, or across Oregon Road". (Complaint, Wherefore Clause ¶6) Not only has the time to seek such relief long since expired, but Plaintiff's claim that the Town's action in closing the roadway was in any way improper is unsupportable as a matter of law. (See Point III *infra*.)

POINT II

PLAINTIFF HAS NO EASEMENT OVER OREGON ROAD

In an effort to buttress its frail claim that it has an implied easement over Oregon Road based upon the conveyancing language in the deeds in the chain of title, Plaintiff provides the court with a five page legal treatise as to the derivation of this type of easement. (Plaintiff's Mem. pp. 5-9) Citing some thirteen different cases (nine of which date back almost a century or more to a time when municipalities were first laying out their roadways), Plaintiff argues, in substance, that where a roadway is specified as a boundary in a conveyance of real property, and the grantor owns the fee in the land beneath the roadway, an easement in the road passes to the grantee by implication. (Plaintiff's Mem. p. 6) While this restatement of the "ancient streets"

doctrine is correct on its face, it omits key critical components of the law regarding implied easements.

“Implied easements are not favored in the law and the burden of proof rests with the party asserting the existence of facts necessary to create an easement by implication to prove such entitlement by clear and convincing evidence” (*Abbott v Herring*, 97 AD2d 870 [3d Dept 1983, *affd* 62 NY2d 1028 [1984]]; *see also Fennica Builders, Inc v Hersh*, 159 AD2d 679 [2d Dept 1990][one who claims implied easement has burden to establish all facts necessary to support it]). In *Tarolli v Westvale Genesee, Inc.*, 6 NY2d 32 [1959], the Court of Appeals held that where, as here, a party claims a right of implied easement because of its conveyance described the boundary of the land conveyed as bounded on one side by a private road owned by grantor, “this language of description did not require the implication of such an easement”.

The claim of an easement solely by implication usually raises a question of intent to be determined in the light of all the circumstances, and that running a boundary along a road is one such circumstance only. *Id.* at 34.

The *Tarolli* Court set forth two types of circumstances in which easements would be implied: (1) those cases in which a grantor subdivides his property and sells lots bounding on a street shown on a subdivision map; and (2) those cases in which private right of way has been in use for many years and the surrounding circumstances indicate that the parties must have intended to give the grantee continued use of the passageway. Neither of these circumstances is present in this case.

In contrast, the *Tarolli* Court expressly determined that no easement would be implied by merely describing the property as being bordered by a roadway. The Court of Appeals quoted from its earlier opinion in *King v City of NY*, 102 NY 171, 176 (1886):

Merely bounding premises by a road (for purposes of description like using any other mark or monument) “is very different from selling by reference to a map or plat on which the grantor has laid out streets.”

Thus, the “question in each case is whether the reference to the street or avenue was made only for purposes of identification and location, or with the design to include street easements in the conveyance” (*Schonleben v Swain*, 130 AD 521, 527 [1st Dept 1909], *aff’d* 198 NY 621[1910]). In *Fennica Builders v Hersh*, *supra*, for example, the Second Department held that the plaintiff had no implied easement because the reference to an abandoned street in plaintiff’s deed “was merely descriptive of the boundaries”. In reaching this conclusion, the court found it pertinent that the lot had “frontage on another existing public way”. *Id.* Similarly, in *Waldron v Wagner Hill Ltd*, 292 AD2d 770 (4th Dept 2002), the court denied plaintiffs’ claim for an easement. “Even assuming, arguendo, that plaintiffs have established a common grantor, we conclude that plaintiffs do not have an easement by implication or necessity where, as here, they admit that they have access to their land from that portion of Wagner Hill Road not abandoned by the Town of Bath.” *Id.* at 771 (citations omitted). Plaintiff herein likewise has access to its property from another public roadway.

In *Stupnicki v Southern New York Fish and Game Association, Inc.*, 41 Misc2d 266 (Sup Ct Columbia Co 1962), *aff’d on opinion below*, 19 AD2d 921 (3d Dept 1963), a case factually analogous to the instant case, the court refused to imply a private easement over a portion of an abandoned town highway, even though both parties’ title derived from the same source, one Robert Livingston. Livingston, like Meyer, had a large parcel of land out of which he created certain “great lots, which went to his sons, out of which there were ultimately carved the parcels finally conveyed to the parties” to the action. The court’s rejection of the easement claim is particularly elucidating:

[T]his is not the situation where the owner of a tract subdivides the tract into lots and makes a map of the subdivision, on which are laid out lots and streets and then sells lots, with reference to such map. In such a case, the lot purchasers, of course, have a private easement, over the streets shown on such map, whether

such streets are ever dedicated or not and whether improved or not. The grantees of such a common grantor do have a private easement by grant or implication. This is not the case here. *The fact that ownership of the respective parcels can be traced back for many years to the one owner of an immense parcel of land, out of which the parcels of the parties hereto were ultimately carved, does not bring this case within the doctrine of an easement by grant or implication, as in the case of the owner of a tract who subdivides it into lots, shown on a map, with streets, etc. and then sells the lots to various parties, who buy in reliance thereon. The terms 'common grantor' and 'common source of title' are not synonymous.*

I find and conclude that defendant and its predecessors had no private easement over that portion of the abandoned town highway, which was within the bounds of plaintiffs' lands; that such predecessors in title had only the easement of the general public over same until the town officers filed their certificate pursuant to Section 205 of the Highway Law, at which time the public easement terminated and such termination is final, unless and until, successfully attacked in an appropriate action or proceeding against the town officials.(Stupnicki, supra at 271)(emphasis added).

See also, Kent v Dutton, 122 AD2d 558 (4th Dept 1986)(no implied private easement of access arises to adjoining owner over land of another following abandonment of highway unless there is showing of common grantor).

Using a similar rationale, the Third Department, in *Low v Humble Oil & Refining Company, 31 AD2d 676 (3d Dept 1968), app denied, 24 NY2d 740 (1969)*, concluded that the doctrine of "ancient streets" does not apply if the road was already in existence prior to the conveyance of property by a common grantor to two abutting landowners. The court distinguished the case in which "both the lot and street were owned and laid out by a common grantor, and the lot is then sold with reference to the street" (in which a private easement could be implied) with the case in which the lots and street in question were already in existence prior to ownership by the common grantor (in which case the "ancient streets" doctrine would be "inapplicable"). As applied herein, inasmuch as Oregon Road likewise existed for more than a century prior to the assemblage by Meyer and conveyance to TNC and Yale (Rosen Reply Aff. ¶6), and the roadway clearly was not "laid out" by Meyer as part of any subdivision, the holding

in *Low* likewise would render the “ancient streets” doctrine inapplicable in this case.

Modern case law often touts the importance of the lots being conveyed as part of a subdivision in finding an implied easement. In *Fischer v Liebman*, 137 AD2d 485 (2d Dept 1988), for example, the Court implied an easement because the original filed subdivision map depicted a residential development comprised of 10 lots with three private access roads leading to the public road. The court reasoned as follows:

Although the intention of the grantor is to be determined in light of all the circumstances, *the most important indicators of the grantor's intent are the appearance of the subdivision map and the language of the original deeds.* Here it may reasonably be inferred from the appearance of the subdivision map and the manner in which the conveyances were effected after its filing that the grantor intended to create an easement over Lot Avenue in favor of lot 5. The fact that at the time of the subdivision the grantor created three private roads providing prospective lot owners with access to and from their property and to the nearest public road is a clear indication that all lots in the development were to be benefitted by easements over the abutting private roads. Moreover, the deeds effecting the original conveyances of lots 5 and 6 referred to the lots by number, described them as bounded by Lot Avenue, and specifically referred to the filed subdivision map. Also indicative of the grantor's intent to create an easement is the fact that Lot Avenue was sold as a separate parcel to the owner of lot 5 subject to “the right of way” of the owner of lot 6. Similarly, when Lot Avenue was subsequently sold to the owner of lot 6, the deed recognized the right of owners of lot 5 to use Lot Avenue as a roadway. In view of the foregoing, it is manifest that the grantor intended to create an easement by grant over Lot Avenue in favor of the abutting lots. *Id.* at 487-88. (citations omitted)(emphasis added)

Similarly, in *Iovine v Caldwell*, 256 AD2d 974 (3d Dept 1998), the court was persuaded to imply an easement when the deed of conveyance described property by reference to a subdivision map showing streets abutting the lot or lots conveyed.

The cases upon which Plaintiff relies do not mandate a contrary result. In *Trowbridge v Ehrich*, 191 NY 361 (1908), for example, the grantee, whose deed bounded the property on the exterior line of the street, was held to be entitled to an access easement where the grantor previously had filed a “map of her property ... showing the location of the streets existing and

proposed with which her property was bounded and intersected”. *See also, Heim v Conroy*, 211 AD2d 868 (3d Dept 1995)(plaintiff held to “have an implied easement based on a common scheme or plan”); *People v Common Council, etc., of City of Gloversville*, 128 AD 44 (3d Dept 1908)(where lots, described as bounded on a street as shown by a map of a tract divided into lots and streets, are sold, the purchasers acquire a right of way over the land described as a street, especially where a lot has no means of approach, except by such street).

In sum, Plaintiff would have the Court believe that it states a valid claim for an easement by simply providing the Court with a certified title search¹ establishing that by a series of deeds Meyer acquired title to an assemblage of property in the Town, including the entire bed of the abandoned portion of Oregon Road and that those deeds all included an appurtenance clause. Respectfully, this showing is insufficient to state a valid claim. Where, as here, the original grantor clearly referenced Oregon Road solely for purposes of description, Plaintiff’s claim of an implied easement must fail.²

POINT III

A. SECTION 205 OF THE HIGHWAY LAW CLEARLY APPLIES TO OREGON ROAD

Plaintiff asserts that the Town cannot correctly argue that it properly abandoned Oregon Road in conformance with Highway Law §205 because this provision of law applies only to public roads that have been “dedicated to the use of the public or laid out.” (Plaintiff’s Mem. p. 11) In Plaintiff’s view, since no evidence was submitted that Oregon Road was ever dedicated or laid out, Section 205 does not apply. However, Plaintiff incorrectly construes Highway Law

¹ In its memorandum, Plaintiff inexplicably indicates that its title search dated August 15, 2006 was prepared by Stewart Title Insurance Company. However, the exhibit annexed as Exhibit D to the affidavit of Donald J. Trump sworn to August 16, 2006 (“Trump Aff.”) was prepared by Fidelity National Title.

² In one of its more extreme flights of fancy, Plaintiff asserts that the Meyer Foundation conveyed title to Plaintiff’s predecessor Yale University several months prior to conveying title to TNC because it must have intended to convey an easement to Yale. (Plaintiff’s Mem. p. 10) This argument, based upon nothing but conjecture and Plaintiff’s wishful thinking, should not be credited by this Court.

§205. The statute not only applies to dedicated highways and those public roads that have been “laid out”, it also applies to all highways that have not been used as a highway for six years (whether or not said highway was dedicated or laid out). The language of the statute is clear:

Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; *and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway*, and every public right of way that shall not have been used for said period shall be deemed abandoned as a right-of-way.

As set forth in paragraph 10 of the affirmation of Roland A. Baroni, Jr. dated June 23, 2006 (“Baroni Aff.”) and submitted in support of the Town’s motion to dismiss, this portion of Oregon Road “had not been used as a highway since approximately 1980”, well more than the six years required for a road to “cease to be a highway” under Highway Law §205. Thus, the closure of Oregon Road falls squarely within the statutory definition.

Furthermore, as set forth in Point I of the Town’s Reply Memorandum, Highway Law §205 applies to Oregon Road inasmuch as it was a “highway by use” under Highway Law §189.

**B. THE TOWN’S DISCONTINUANCE OF
OREGON ROAD WAS VALID AND EFFECTIVE**

Plaintiff argues that the Town’s discontinuance of Oregon Road under Highway Law §205 was ineffective because the Town failed to comply with statutory requirements. Specifically, Plaintiff complains that the Town’s Certificate of Discontinuance is flawed because it does not contain the written description of the highway or the written consent of the majority of the Town Board. It also does not contain any map referenced on the Certificate as “Schedule A”; nor is the Certificate “recorded”. (Plaintiff’s Mem. p. 12) As ably discussed by the Town in Point I of its Reply Memorandum, Plaintiff is in error. First, as a matter of law, the filing of a

certificate of abandonment as required by Highway Law §205(1) is a ministerial act, and any defects in the certificate are of no legal consequence. In *Wills v Orleans*, 236 AD2d 889 (4th Dept)(1997), for example, the court held that a town board resolution declaring a certain road to be abandoned was sufficient even though the town highway superintendent never filed or caused to be recorded in the town clerk's office a written description of the abandoned roadway as required by Highway Law §205(1).

So long as the evidence establishes that a road has not been traveled or used as a highway for six years, it will be deemed abandoned by operation of law and not by the filing of a certificate. A road will be deemed abandoned by operation of law if there is no evidence that “[t]ravel [has] proceed[ed], in forms reasonably normal, along the lines of an existing street”. *Id.* at 890. (citations omitted)

Second, Plaintiff's complaints about the filed Certificate are either incorrect or elevate form over substance to an impermissible degree. Despite Plaintiff's argument to the contrary, the Certificate of Discontinuance contains a written description of the highway. The face of the certificate states that Oregon Road was to “be closed at the point designated as ‘Pole 40’”. In addition, while Plaintiff may be correct that the Certificate itself does not “contain the written consent of a majority of the Town Board”, the Town Board's unanimous consent was clearly granted as evidenced by the separate resolution annexed to the Baroni Affirmation as Exhibit D. While no Schedule “A” is now attached to the Certificate, there is no way to know after this lengthy period of time whether it was in some way misplaced or never actually attached. The fact that the Town barricaded that portion of the abandoned roadway in 1990 was sufficient notice for all interested parties in determining which portion of Oregon Road had been discontinued. Finally, Plaintiff errs when it argues that “the Certificate was not recorded”. As evidenced by the Town's “Received” Stamp on the Certificate itself, it was in fact recorded with the Town as required by Highway Law §205(1).

**C. THE TOWN'S COMPLIANCE WITH HIGHWAY LAW §205
SERVED TO TRIGGER THE STATUTE OF LIMITATIONS**

Plaintiff argues broadly that neither the ten-year statute of limitations provided in CPLR §212, the one-year limitations period provided in Highway Law §205(2), nor the four month limitations period provided for in CPLR Article 78 has run because “North Castle’s resolution was ineffective to discontinue Oregon Road”. (Plaintiff’s Mem. p. 13) As discussed above, Plaintiff is incorrect – the Certificate of Discontinuance is valid, and Oregon Road was abandoned as a matter of law.

Moreover, *Aldous v Town of Lake Luzerne*, 281 AD2d 807 (3d Dept 2001), the sole case cited by Plaintiff in support of its argument, is wholly distinguishable on its facts from the circumstances present herein. In *Aldous*, the court rejected the Respondent town’s argument that a 1935 resolution from its town board abandoning a certain section of highway was effective. The court held that the highway law then in effect “did not authorize town boards to abandon highways by resolution”. The court also held that the Town’s “[f]ailure to file Highway Superintendent’s certificate renders respondents’ reliance on the one-year statute of limitations found in Highway Law §205 ... equally unavailing.” *Id.* at 807-08. In contrast, in the instant case, the Town Highway Foreman filed a Certificate of Discontinuance with the Town upon being directed to do so by a unanimous resolution of the Town Council. (Baroni Aff. Exhibits D and E) Furthermore, the Court in *Aldous* went on to rule on the merits, based upon uncontroverted evidence, that the portion of the road in question “has been and continued to be regularly used and traveled as a highway”. *Id.* at 809. Since this portion of Oregon Road has been barricaded for some sixteen years, this court clearly could not reach this same conclusion. In short, the facts in *Aldous* are wholly dissimilar from those present herein; accordingly, *Aldous* does not serve as appropriate precedent. (*See also*, Town Reply Mem. pp. 10, 12)

In concluding that the Town's Certificate was valid and effectively closed Oregon Road for all purposes on May 10, 1990, any action challenging the closure of the roadway was required to have been commenced within one year, or by May 10, 1991. Even if the 10 year limitations set forth in CPLR §212(a) were held to apply, this action would still not be timely since this action was not commenced until May 15, 2006. (*See Point IV, infra*) Moreover, since the Town's actions with respect to closing a portion of Oregon Road likewise constitute an administrative or "quasi-administrative" act, this action is also time-barred pursuant to the four month limitations period set forth in CPLR Article 78. (*See also, TNC Reply Mem. Point I; Town Reply Mem. Point II.*)

D. EVEN IF SEVEN SPRINGS HAD A PRIVATE EASEMENT UNDER THE "ANCIENT STREETS" DOCTRINE, THAT EASEMENT WAS EXTINGUISHED BY THE TOWN'S CLOSURE OF OREGON ROAD

In pages 14 through 16 of its memorandum, Plaintiff argues that Defendants improperly rely upon *Barber v Woolf*, 216 NY 7 (1915), a Court of Appeals decision decided some 22 years **after** *Holloway v. Southmayd*, 139 NY 390 (1893), the case which Plaintiff found to be "highly instructional". (Plaintiff's Mem. p. 8) *Barber* held that the discontinuance of a road serves to extinguish all easements, both public and private (*see also, Crossin v Woolf*, 220 NY 586 [1917]; *Municipal Housing Authority for the City of Yonkers v Harlan*, 24 AD2d 633 [2d Dept 1965][enactment of ordinance discontinuing street served to extinguish all easements, public and private, in thoroughfare closed]; *Wells & River Holding Corp. v Otis Elevator Company*, 5 AD2d 883 [2d Dept 1958][any and all easements, both public and private, were extinguished by the discontinuance of the road]). In Plaintiff's view, *Barber* should be limited to the Street Closing Act of 1895. (Plaintiff's Mem. p. 14) The Individual Defendants respectfully disagree.

In *Holloway*, which Plaintiff cites at least 11 times in its memorandum, the Court of Appeals held that, under an 1867 street closing act, private easements were not extinguished after the discontinuance of a highway. Thereafter, the New York State legislature, “[t]o remedy the confusion” engendered by *Holloway*, enacted chapter 1006 of the Law of 1895 (the “1895 Act”).³ In *Barber*, the Court of Appeals interpreted this statute, which provided, *inter alia*, for the payment of compensation to abutting landowners. Quoting from *Schonleben v Swain, supra*, the Court concluded that when a street was discontinued under the provisions of that statute, “all easements, both public and private, are destroyed, the abutting owner being compensated for the loss of his private easements”.

In the Individual Defendants’ view, Highway Law §209 is analogous to the 1895 Act inasmuch as it likewise is intended to provide compensation to abutting owners for the loss of any property interest upon the closing of a roadway by a town. Section 209 authorizes *any* person or corporation claiming any loss or damages “by reason of the discontinuance, abandonment or closing of any street or roadway” to seek compensation for their loss. Such loss *a fortiori* would have included the extinguishment of any private easements inasmuch as the Town has the statutory right to close a roadway – especially where, as here, the road was being “used illegally to dump litter, fill and other undesirable material in violation of local and state laws” and the “maintenance of the road is a waste of public funds”. (Baroni Aff. Exhibit E) This was the conclusion reached by the court in *In re East 5th Street, Borough of Manhattan, City of New York*, 1 Misc2d 977, 985-86, to wit: “[W]hen a street is legally closed, while all easements are extinguished, the abutting owner is entitled to compensation for the loss of his private easement.”

³ It is likely (although unclear from the case law) that the 1867 statute was modified in 1895 to include a provision compensating abutting landowners for the loss of their private easements upon closure of a roadway.

Barber and *Municipal Housing*, far from being distinguishable as Plaintiff avers, are directly on point. In both cases, municipalities closed roadways to effectuate a valid purpose under a specific statute. The discontinuance or abandonment of a roadway by a town under the Highway Law because the road is no longer needed or because it is being used as a trash dump is no less of a valid purpose than the condemnation of a highway to provide for an orderly laying out of streets (as in *Barber*) or for the purposes of eminent domain (as in *Municipal Housing*).

Plaintiff argues that Section 209 does not apply because it states that it is applicable only to losses claimed pursuant to Sections 207, entitled “Discontinuance of Highway”, and 208, entitled “Description to be Recorded”. However, if one looks to the substance of Section 207 rather than to its caption, whenever the town superintendent determines that any portion of a roadway is “unnecessary for highway purposes” (as was the case here), he may “direct such highway to be discontinued and abandoned for public purposes”. Thus, since Section 207 contemplates both the discontinuance and abandonment of the roadway, Section 209 would apply to an adjacent landowner claiming loss as a result of the discontinuance, abandonment or closing of a street.

POINT IV

PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

Plaintiff argues that its claims are not “barred pursuant to the 10 year Statute of Limitations contained in CPLR §214(a)”.⁴ (Plaintiff’s Mem. p. 16) Relying upon the Second Department decision in *Castle Associates v Schwartz*, 63 AD2d 481 (2d Dept 1978), Plaintiff avers that, for a claim arising under the doctrine of adverse possession, the statute of limitations

⁴ Presumably, Plaintiff intends to rely upon **CPLR §212(a)**, which provides for a ten year limitations period for actions to recover real property rather than **CPLR §214(a)**, which provides for a three year limitations period for other types of actions.

does not begin to run until “(1) the need for the right of way arises, (2) a demand is made by the owner of the dominant tenement that the easement be opened, and (3) the owner of the servient tenement refuses to do so” (Plaintiff’s Mem. p. 17, quoting *Castle Associates v Harlan*, supra at 491). Under this theory, the limitations period in this case would not have arisen until May 2006, when Plaintiff commenced this action and asked the Town to remove the gate.⁵ As well expressed by TNC in Point I of its Reply Memorandum, Plaintiff cannot correctly rely upon *Castle Associates*. It provides a limited exception to the general rule espoused some eleven years later by the Court of Appeals in *Spiegel v Ferraro*, 73 NY2d 622 (1989). In *Spiegel*, the Court concluded as follows:

Where an easement has been definitively located and developed through use, there is no requirement that its owner demand the removal of obstructions blocking the easement before it may be extinguished by adverse possession. A use of an easement which is exclusive, open and notoriously hostile to the interests of the owner commences the running of the prescriptive period and the user may extinguish the easement if that use continues uninterrupted for a period of 10 years.

As applied herein, any purported easement over Oregon Road was “definitively located” by Plaintiff and “developed through use” – Oregon Road was in use as a street from the mid-nineteenth century until approximately 1980. Thus, as set forth in greater detail in TNC’s Reply Memorandum, CPLR §212(a) serves as a bar.

Plaintiff also contends that its “Complaint is not time barred based upon Defendants’ allegations of abandonment”. (Plaintiff’s Mem. p. 17) However, as set forth in the Town’s motion papers, the latest date that Oregon Road could have been deemed abandoned was six years from the date that the gate was initially erected, or May 10, 1996. (Town Reply Mem. p.

⁵ Plaintiff incorrectly avers that the statute of limitations accrued in October 2004 when “the issue of secondary access was raised in connection with Plaintiff’s development of the Seven Springs Parcel.” (Trump Aff. p. 8) However, even if the rule set forth in *Castle Associates* were deemed to apply, the accrual date would not be the date upon which a party first learns of the need for a right of way, but upon the date that demand is made that the easement be opened and the owner of the servient tenement refuses to do so (*Castle Associates*, supra at 491).

14) Plaintiff's action would still be time barred – under all conceivable periods of limitation – as this action was not commenced until May 15, 2006, more than ten years later.

POINT V

**THE CERTIFICATE OF
DISCONTINUANCE IS BINDING UPON PLAINTIFF**

Plaintiff mixes apples and oranges when it argues that the Certificate of Discontinuance is not binding upon it because the Certificate does not appear in its chain of title. (Plaintiff's Mem. pp. 18-19) First, as discussed above, there was no requirement that the Certificate be "recorded" in the County Clerk's office in order for it to become effective. Highway Law §205 only requires that the Certificate be recorded with the Town, and in this case that occurred in May 1990. Plaintiff's citation to *Feinberg Bros. Agency, Inc. v Schornstein*, 134 AD2d 235 (2d Dept 1987) is wholly inapposite. Plaintiff quotes from *Feinberg* as follows: "a grantee is not liable on any covenants or agreements by which the grantor may have bound himself *unless the covenant runs with the land.*" (emphasis added) Since any right of way reserved to Plaintiff herein clearly would have been a covenant that "runs with the land", *Feinberg* does not apply. (See also, TNC Reply Mem. pp. 17-18)

Second, Plaintiff cannot credibly argue that the Certificate does not bind it because it was not recorded. In truth, the Certificate *was* recorded with the Town, as required by the Highway Law. If Plaintiff had diligently performed its title search in the municipalities in which its land was located, it would have located the certificate. It cannot now seek to hold Defendants responsible for its title insurance company's lack of thoroughness.

Third, in a transparent effort to convey the impression that it did not know the road was closed, Plaintiff craftily argues that it "had neither actual nor constructive notice of the Certificate of Discontinuance". This argument clearly strains credulity. As stated in *King v City*

of *NY, supra*, the grantee “was bound to know, when the grant was made to him, that the public highway no longer existed and that he must be presumed to have bought in view of that fact ... and could not be heard to claim that, by bounding the grant upon the highway, his grantors had conveyed any easement to the highway”. Indeed, if Mr. Trump can claim personal knowledge of Con Edison vehicles “regularly” accessing the closed portion of Oregon Road in order to service electrical equipment (Trump Aff. p. 4), he surely likewise must claim knowledge of the gate which blocks Oregon Road and which has been in place for some sixteen years. In fact, Plaintiff’s various submissions to the Town of Bedford in connection with its plan to construct a championship golf course on this property directly contradict Plaintiff’s position herein. These documents are replete with references to the “officially closed” Oregon Road to which “the owners of the Seven Springs site have no rights” (Town Reply Mem. pp. 6-9)

POINT VI

ANY IMPLIED EASEMENT OVER OREGON ROAD WAS CLEARLY ABANDONED AND EXTINGUISHED

In their initial motions to dismiss, Defendants set forth in exhaustive detail the various reasons that compel the conclusion that any easement over Oregon Road was abandoned. In opposition, Plaintiff avers that there was no abandonment because: (1) the Gate only partially blocked access to the road and can be readily removed; (2) Plaintiff did not know that Oregon Road could not be used to access its property from the south; (3) nothing in Plaintiff’s chain of title would put it on notice of the purported discontinuance of Oregon Road; (4) Plaintiff never abandoned the easement and no proof was submitted to indicate that any of its predecessors “released their rights to a private easement over Oregon Road”; and (5) the cases upon which TNC relied as support of its abandonment argument are distinguishable. (Plaintiff’s Mem. pp. 21-24) Plaintiff’s opposition cannot be credited.

First, as shown by the photographs annexed to the Rosen Reply Affirmation as Exhibit A, the Gate blocks all access to Oregon Road. Plaintiff errs in suggesting that vehicles and pedestrians can “access the Easement Area by going around the Gate”. (Plaintiff’s Mem. p. 21)⁶ Second, Plaintiff clearly has known for many years that Oregon Road could not be used to access its property from the south (as its prior submissions to the Town of Bedford make clear). Third, as to Plaintiff’s argument based upon its chain of title, the Individual Defendants have already refuted this argument and need not restate their position here. Fourth, while Plaintiff argues that “Seven Springs never abandoned the Easement”, defendants never claimed that it did. To the contrary, and as set forth in defendants’ original motion papers, the easement was abandoned in accordance with applicable law, and the abandonment was consented to by Plaintiff’s predecessor Rockefeller. Although Plaintiff posits that there is no evidence of Rockefeller’s consent, such consent is evidenced by the language of the Certificate. Plaintiff provides nothing that indicates that Rockefeller did not so consent.

Finally, Plaintiff argues that the case law upon which TNC relied in support of the abandonment claim is misplaced because “in each case the easement holder itself had performed some physical act that extinguished its easements”. (Plaintiff’s Mem. p. 23) Despite Plaintiff’s argument to the contrary, these cases are premised upon the theory that where a physical impediment (such as a gate or barricade) is maintained that is inconsistent with the exercise of an easement, and such impediment is placed with the acquiescence of the party benefited by the easement (in this case, Rockefeller), the easement is abandoned as a matter of law. The fact that the gate or barricade may have been placed by the holders of the easement is not the key factor;

⁶ This argument contradicts Plaintiff’s earlier submission to the Town of Bedford in which it said that access to Oregon Road was “blocked by a steel barricade”. (Town Reply Mem. p. 7)

the key factor is whether or not the barricade was placed with the consent of the easement holder, which in this case it was.

Plaintiff next argues that any implied easement was not extinguished by adverse possession. As set forth in TNC's initial memorandum in support of its dismissal motion, Plaintiff's argument cannot be credited. The Gate has been actual and adverse to Plaintiff, and its predecessor Rockefeller, continuously since 1990 (well more than ten years). It has been an open, notorious and exclusive barrier to access. As to the requirement that possession be hostile and under a claim of right, generally such an inference will be drawn where, as here, the other elements of adverse possession are met. (*See* TNC Mem. p. 19 and cases cited therein.)

Finally, Plaintiff argues that the doctrine of merger does not apply as it "attempts to obfuscate the issue, and is without merit". (Plaintiff's Mem. p. 26) The Individual Defendants respectfully disagree. As discussed in detail in Point II of TNC's Reply Memorandum (and Point III(A) of its initial memorandum), the doctrine of merger operates to extinguish any and all easements as a matter of law when the dominant and servient estates are united in the same owner. Once extinguished, an easement cannot be revived by anything short of an express grant. In this case, Plaintiff concedes that the Foundation was the common owner of the Seven Springs Parcel and Nature Conservancy Properties". (Plaintiff's Mem. p. 28) When the Foundation became the common owner of all properties, any implied easement was extinguished. In order to re-establish any access easement, the Foundation would have been required to convey the easement by express grant in the deeds to TNC and to Yale. No such easement is set forth on either deed. (*See* Trump Aff. Exhibits E and H.) Plaintiff points to no case that mandates – or even permits – a contrary result.

CONCLUSION

For the reasons set forth herein and in the prior papers submitted on behalf of the defendants, the Individual Defendants respectfully request that the Complaint be dismissed in its entirety.

Dated: White Plains, New York
September 14, 2006



Lois N. Rosen

OXMAN TULIS KIRKPATRICK WHYATT &
GEIGER, LLP

Attorneys for Defendants Robert Burke, Teri Burke,
Noel B. Donohoe and Joann Donohoe
120 Bloomingdale Road
White Plains, New York 10605
(914) 422-3900

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

PAULA CHABLAL, being duly sworn, deposes and says: I am not a party to this action; I am over 18 years of age and I reside in Westchester, New York.

On September 14, 2006, I served the within **REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE and JOANN DONOHOE'S MOTION TO DISMISS THE COMPLAINT** upon:

DelBello, Donnellan, Weingarten, et al.
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601

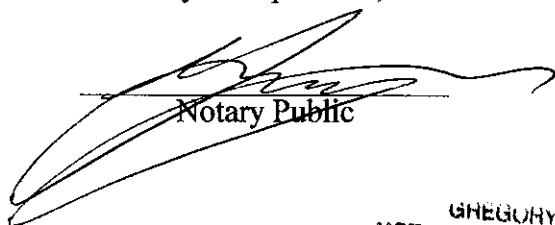
Roosevelt & Benowich, LLP
Attorneys for Defendant The Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604

Stephens, Baroni, Reilly, et al.
Attorneys for Defendant Town of North Castle
175 Main Street - Ste. 800
North Court Building
White Plains, New York 10601

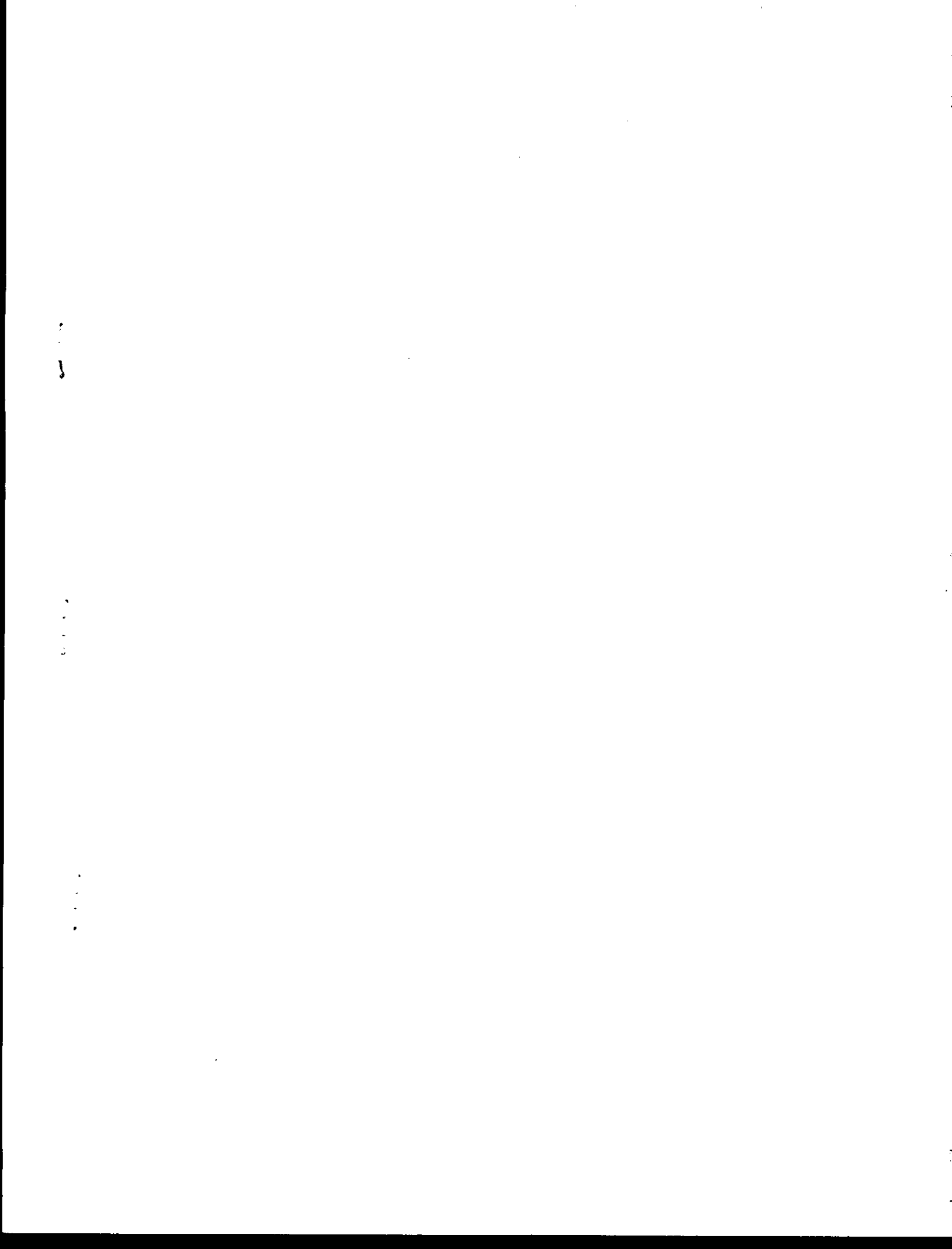
by depositing a true copy of the same enclosed in a first-class, postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Paula Chablal

Sworn to before me this
14th day of September, 2006


Notary Public

GREGORY J. SPAUN
NOTARY PUBLIC, State of New York
No. 02SP8054146
Qualified in Westchester County
Commission Expires 1/29/20
7



SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

JRC
FILED
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-----x
SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

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

Defendants.

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CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

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**THE NATURE CONSERVANCY'S REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT**

ROOSEVELT & BENOWICH, LLP
1025 Westchester Avenue
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(914) 946-2400
Attorneys for Defendant
The Nature Conservancy

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

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

Assigned Justice
John R. LaCava

Defendants.

-----x

**THE NATURE CONSERVANCY'S REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT**

Preliminary Statement

TNC will not repeat the arguments made in its Moving Memorandum, or in the memoranda submitted by the other defendants.

Instead, we analyze the admissions, concessions, facts established and points of law conceded (or evaded) in Plaintiff's Memorandum and the documentary evidence submitted by Plaintiff in opposition to the motions to dismiss the Complaint.

Simply stated, Plaintiff's papers compel the conclusion that there are at least three reasons why its Complaint should be dismissed:

First, Plaintiff's claims are time-barred. Under settled Court of Appeals authority - which Plaintiff ignores -

its claims accrued when the Gate was installed in May 1990, and they expired ten years later. CPLR §212(a). See *Point I*.

Second, any claimed easement over Oregon Road was extinguished by merger, as a matter of law. Plaintiff concedes that Meyer acquired all of the land to the east and west, and the bed, of Oregon Road. Seven Springs Mem., at 27. Plaintiff's title company (whose examination is dated August 15, 2006 and was obviously prepared in response to defendants' motions) does not identify a single owner of any interest that would defeat such a merger. Under settled law, an easement extinguished by merger cannot be re-created in the absence of express language granting an easement, and certainly not by an appurtenance clause. In addition, Plaintiff itself asserts that an easement cannot arise unless notice thereof is in the deed to the holder of the servient estate; there is no such notice in the deed to TNC. See *Point II*.

Third, if there was any easement when Rockefeller owned the Seven Springs Parcel, Rockefeller abandoned that easement when it consented to the Town's closing of Oregon Road and installation of the Gate that has made access to and from Oregon Road impossible. The only evidence is that Rockefeller consented to that closing; there is no contrary evidence. See *Point III*.

Finally, although this point is addressed in detail in the Town's Reply Memorandum, and in the Town's Reply Exhibits, it

bears repeating: Contrary to Trump's statements that he was not aware of the Gate or the Closing of Oregon Road, that the Gate does not prevent traffic onto Oregon Road,¹ and that he was not aware of Seven Springs's rights, if any, over Oregon Road, documentary evidence reveals that just the opposite is true. As long ago as February 1998, Seven Springs publicly acknowledged that Oregon Road had been "officially closed. . .in 1990" and Seven Springs has "no rights to utilize any part of" the portion of Oregon Road over which it now claims an easement. (Town Reply Ex. A; see note 2, *infra*)

Seven Springs did not change the facts when it changed its advisors. The Complaint should be dismissed in all respects.

Point I

PLAINTIFF'S CLAIM IS TIME-BARRED

In Point I of TNC's Moving Memorandum, we demonstrated that Plaintiff's claims under RPAPL, Article 15 are time-barred under the ten-year statute of limitations contained in CPLR §212(a). TNC Moving Mem., at 6-7.

In response, Plaintiff argues that it is not subject to that statute because it claims, albeit implicitly, that its purported easement over Oregon Road is not "definitely located."

¹ Seven Springs cannot create a question of fact simply by having Trump make statements in his affidavit which contradict Seven Springs's own Complaint. See e.g. Daisernia v. Thomas, 12 A.D.3d 998, 785 N.Y.S.2d 162 (3rd Dep't 2004).

Seven Springs Mem., at 25. Seven Springs's argument is misplaced, flawed and inaccurate as a matter of fact and law.²

Seven Springs mistakenly relies on Castle Associates v. Schwartz, 63 A.D.2d 481, 407 N.Y.S.2d 717 (2nd Dep't 1978), to argue that the statute of limitations did not begin to run when the Gate was installed (which Seven Springs admits was in May 1990, Cplt., ¶41) but in May 2006, when it commenced this action and first asked the Town to remove the Gate. Seven Springs Mem., at 17, 25.

Seven Springs's argument relies on the wrong rule of law - it mistakenly applies the exception to the rule, when the rule itself is applicable.

In Spiegel v. Ferraro, 73 N.Y.2d 622, 543 N.Y.S.2d 15 (1989), the Court of Appeals articulated the applicable rule in the very first sentence of its opinion:

² Seven Springs's evasion is necessitated by its equivocation with the facts. Although Trump states in his affidavit that Seven Springs never considered Oregon Road as a means of access to the Seven Springs Parcel until 2004, Seven Springs's own Draft Environmental Impact Statement dated February 1998 ("DEIS") belies that assertion. On page V-94 of the DEIS, Seven Spring plainly considered "eliminating the man-made barricade and improving the existing dirt roadway," but observed that among the difficulties with that option was that "the owners of the Seven Springs site have no rights to utilize any part of this roadway." (*Id.*, item 2)

This DEIS plainly reveals that, contrary to Trump's affidavit, Seven Springs did, in fact, consider "Access from Oregon Road in North Castle," *id.*, and rejected it at least as early as 1998.

Where an easement has been definitively located and developed through use, there is no requirement that its owner demand the removal of obstructions blocking the easement before it may be extinguished by adverse possession.

73 N.Y.2d at 623 (emphasis added).

The Court of Appeals also identified that there is a "narrow exception" to this rule, which is applicable only to "easements that have not been definitively located through use." *Id.*, at 626.

A narrow exception to this general rule has evolved with regard to the extinguishment of easements that have not been definitively located through use. In Smyles v. Hastings, 22 N.Y. 217, 224 [1860], we held that an easement that was not so definitively located through use and which lead to a "wild and unoccupied" parcel, was not extinguished by adverse possession because the owner of the easement had had no occasion to assert the right of way during part of the prescriptive period. Relying on Smyles, the Appellate Division has held that such "paper" easements may not be extinguished by adverse possession absent a demand by the owner that the easement be opened and a refusal by the party in adverse possession (Castle Assocs. v. Schwartz, 63 A.D.2d 481, 490, 407 N.Y.S.2d 717 [2nd Dep't 1978]; additional citations omitted). In Castle, the court held that an easement created by grant as the result of a subdivision, but never located, was not extinguished by adverse possession because the owner of the easement had never demanded that the easement be opened. [Emphasis added.]

The Court of Appeals explained the reason for this exception for so-called paper - or unlocated - easements:

"easements not definitively located and developed through use are not yet in functional existence." *Id.*, at 626.

In this case, Plaintiff argues that the "narrow exception" to the rule, and not the "general rule," should be applied in this case. Seven Springs Mem., at 17.³

This Court must reject Plaintiff's argument precisely because the claimed easement (a) is definitively located, and (b) had been in use, as plaintiff admits in its Complaint, since at least 1917. (Cplt., ¶21)

The easement is definitively located. The very first page of Plaintiff's Memorandum acknowledges that the easement is definitively located.⁴ Seven Springs also claims that the easement is over that portion of Oregon Road which lies entirely within lands owned by TNC. (Cplt., ¶¶22, 25, 30; Cplt. Ex. A; Trump Aff., at pp. 2, 3-4, 11) The location of Oregon Road, and the location of Plaintiff's purported easement thereon, is shown on the very maps and surveys that are attached to Plaintiff's Complaint (Cplt., Exs. A and B) and to the Trump Affidavit.

Exhibit D to the Trump Affidavit, for example - the title

³ Plaintiff does not (because it cannot) expressly state that its easement is not definitively located. Plaintiff simply argues that Castle, not Spiegel, is applicable. Plaintiff is wrong.

⁴ "...[A]n easement and/or right of way over a road known as Oregon Road, which is located in the Town of North Castle and *more particularly identified in the Complaint*". (Seven Springs Mem., at 1-2; emphasis added)

examination certified by Plaintiff's title company - refers to various deeds which identify the location of Oregon Road (Ex. D, at 3), and also to the Survey Map annexed thereto as Ex. A (Survey of Property Prepared for Seven Springs LLC). That Survey Map, commissioned by Plaintiff: (1) specifically locates Oregon Road, (2) describes Oregon Road as a "Dirt Traveled Way," (3) shows the length of Oregon Road from north to south, (4) shows the location of the easterly and westerly sides of Oregon Road, as well as the centerline of Oregon Road, (5) shows the metal posts that support the Gate, and (6) shows the Gate and identifies the "Metal Guide Rail" (*i.e.* the Gate) - which is depicted on that Survey Map as crossing Oregon Road at Pole 40, precisely where Plaintiff asserts the Gate was installed in 1990.

Plaintiff has definitively located Oregon Road and, thus, the location of Plaintiff's easement over it. Plaintiff also asserts that Oregon Road had been in use as a street since 1917 (Cplt., ¶21), and that the Gate has made the portion of Oregon Road on which Plaintiff claims an easement "impassable to or from Oregon Road to the south by persons in vehicles. . . ." Seven Springs Mem., at 5.

The easement involved in Spiegel was definitively located and in use long before the obstruction was interposed. The Court of Appeals wrote, in language particularly appropriate to this case:

Since the easement was definitively and functionally in existence both before Ernie's closed it off in 1966 and during the period of Ernie's use, the exception of Smyles and Castle has no application here. Indeed, to impose a demand requirement for the extinguishment of a definitively located and useable easement would be to allow the exception to swallow the general rule that the period of prescription begins to run when a party acting under a claim of right commences a use of the easement that is adverse to its owner. (Citations omitted).

73 N.Y.2d at 627. By contrast, the easement in Castle "has never been located." 63 A.D.2d at 487.

This Court must apply the "general rule" of Spiegel, and not the "narrow exception" of Castle, to find that Plaintiff's Complaint is time-barred under CPLR §212(a).

Point II

**PLAINTIFF ADMITS FACTS WHICH ESTABLISH
THAT ANY EASEMENT WAS EXTINGUISHED BY MERGER
AND THAT NO EASEMENT WAS, NOR COULD HAVE BEEN, RENEWED**

In Point III(A) of TNC's Moving Memorandum, we demonstrated that, under settled New York law, an easement is extinguished by merger when the dominant and servient estates are united in the same owner. TNC Moving Mem., at 9-10. The merger doctrine proceeds from a recognition that a person cannot have an easement in his or her own land because all the uses of an easement are fully comprehended in the general right of ownership. *Id.*, Beekwill Realty Corporation v. City of New York, 254 N.Y. 423 (1930).

Plaintiff does not dispute that this is an accurate statement of New York law. Rather, Plaintiff appears to argue that although Meyer acquired fee title to all of the lands on the west and east, as well as to the bed, of Oregon Road, his title was somehow "naked or barren" (Seven Springs Mem., at 28), and insufficient to allow application of the merger doctrine.

Plaintiff's argument is flawed, and it cites no authority for its proposition. Plaintiff simply cites generally to Holloway v. Southmayd, 139 N.Y. 390 (1893) and Will v. Gates, 89 N.Y.2d 778, 658 N.Y.S.2d 900 (1997), without offering any specific page citation, quotation or discussion. Seven Springs Mem., at 28. Neither of these case is support for Seven Springs's argument. In Holloway, 139 N.Y. at 400, for example (which was not a "merger" case), there was not a complete merger because the record showed at least one other party had a 1/28th interest in the fee. And, in Will, the Court of Appeals found "no proof that all of the dominant and servient estates had vested in one owner." 89 N.Y.2d at 785.

Plaintiff (and the exhibits annexed to the Trump Affidavit) establishes that Meyer alone owned all of the land along the east side of Oregon Road, "title to the entire bed of Oregon Road" (Seven Springs Mem., at 28), and all of the land along the west side of Oregon Road. See Trump Aff., Ex. D, Ex. D(A).

This is not a case where Meyer owned only a fractional interest in the fee, or less than all of the interests in the fee of Oregon Road. Certainly Plaintiff has offered no evidence that, at the time of Meyer's ownership, anyone other than Meyer had any interest in or to any of the dominant or servient interests affecting that land. Plaintiff's own Survey Map demonstrates that precisely the opposite is true (Trump Aff., Ex. D), Plaintiff concedes such common ownership in its Memorandum (Seven Springs Mem., at 27), and the title examination it relies on shows no interest held by any other person or entity. (Trump Aff., Ex. D)

Plaintiff's characterization of Meyer's title as "naked or barren," Seven Springs Mem., at 28, is simply contradicted by its own documentary evidence, and by New York law.

Plaintiff having established that Meyer acquired all of the interests in and to the land under and abutting Oregon Road, New York law is clear: any easement was extinguished, and once an easement is extinguished by merger, it "is gone forever and cannot be revived." Sam Development, LLC v. Dean, 292 A.D.2d 585, 740 N.Y.S.2d 90 (2nd Dep't 2002), quoting Stilbell Realty Corp. v. Cullen, 43 A.D.2d 966, 967, 352 N.Y.S.2d 656 (2nd Dep't 1974).

Plaintiff, in fact, acknowledges that there has been an extinguishment by merger! On page 26 of its Memorandum,

Plaintiff states that "the easement which Plaintiff seeks to enforce over Oregon Road arose when the Foundation sold the Seven Springs Parcel to Plaintiff's predecessor in January 1973."⁵ Plaintiff, thus, concedes that (1) there was a merger when Meyer acquired the various parcels, and (2) it is not relying on any easement that may or may not have been conveyed to Meyer.

Once extinguished, an easement may only be "renewed in a subsequent conveyance. . .if sufficient language is used in the conveyance making clear an intent to recreate the easement *de novo*." Seebaugh v. Borruso, 220 A.D.2d 573, 632 N.Y.S.2d 800 (2nd Dep't 1995), *citing* Parsons v. Johnson, 68 N.Y. 62 (1877) ("when the ownership is again severed by a conveyance of the dominant tenement, the way will not pass by the general word 'appurtenances' merely, but there must be particular or general words indicating an intention to grant the way"). The language purportedly re-establishing the easement must be "clearly noted in each deed conveying the dominant estate." Simone v. Heidelberg, 27 A.D.3d 639, 640, 812 N.Y.S.2d 608 (2nd Dep't 2006). There is no such language in any of the deeds.⁶

Plaintiff apparently claims that an easement was

⁵ As a matter of fact and law, this statement is inaccurate. See note 7, *infra*.

⁶ Consistent with this rule, we are aware of no case which holds that an easement, once extinguished, may be revived by implication rather than by express grant.

recreated or renewed by the 1973 conveyance from the Foundation to Yale.⁷ But there is no express grant of an easement to Yale (nor was there any such grant of an easement to Rockefeller or even to Seven Springs Farm) in that deed. At most, there is a boilerplate statement that the deed includes: "all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Premises to the centerlines thereof." (See Trump Aff., Ex. H [Foundation to Yale], Ex. F [Seven Springs Farm Center to Rockefeller], and Ex. C [Rockefeller to Plaintiff].)

But this clause is insufficient to re-create an extinguished easement, especially over the lands of a prior grantee - TNC. Despite Plaintiff's reliance on the appurtenance clause in the deed from Rockefeller to Plaintiff, Seven Springs Mem., at 9, such a clause is legally insufficient to constitute the grant of an easement, see e.g. Strand v. Brudnicki, 200 A.D.2d 735, 606 N.Y.S.2d 913 (2nd Dep't 1994); it is only effective to convey to a grantee any express easement that previously had been granted to the grantor, as shown by prior deeds. Sam Development, LLC, *supra*. Plaintiff admits that it is not relying on any easement that had been created prior to the

⁷ Plaintiff conveniently ignores the fact that Yale conveyed the property back in March 1973 (Trump Ex. G); consequently Yale was not seized in fee when TNC's deed was conveyed in May 1973. Plaintiff's grantor, Rockefeller, did not acquire its property until 1984, 11 years later, and it did not convey the property to Plaintiff until 1995 - 22 years later.

subject conveyance.

Plaintiff admits that the "easement [it] seeks to enforce. . .arose. . .in 1973" (Seven Springs Mem., at 26), and there is no evidence that any easement was created anew in the 1973 conveyance from Foundation to Yale, and certainly none in Rockefeller's subsequent quitclaim conveyance to Plaintiff.

There simply is no clear statement in any of the deeds that Meyer, the Foundation, Seven Springs Farm Center or even Rockefeller intended to (or could) create an easement over that portion of Oregon Road which was owned by the Foundation at the time of the conveyance to Yale, and which was owned by TNC at all times after May 1973.

Nor is there any mention in the Foundation's deed to TNC that TNC's title is subject to an easement in favor of Foundation or Seven Springs Farm. (At the time of Foundation's conveyance to TNC (May 25, 1973) (Trump Ex. E), Yale had already re-granted the property back (March 23, 1973) (Trump Ex. G). Thus, at the time of the conveyance from Foundation to TNC, Yale's reconveyance meant that title to the dominant and servient estates had merged, once again.

In addition, as Plaintiff itself argues (Seven Springs Mem., at 18-19), absent notice to TNC in its deed from the Foundation, there simply is not, and cannot be, an easement over TNC's lands. Simone, supra, citing Witter v. Taggart, 78 N.Y.2d

234, 573 N.Y.S.2d 146 (1991); Puchalski v. Wedemeyer, 185 A.D.2d 563, 586 N.Y.S.2d 387 (3rd Dep't 1992) ("In determining the ultimate effect of an easement or restriction on the land of another, the general rule is that "[i]n the absence of actual notice before or at the time of . . . purchase or of other exceptional circumstances, an owner of land is only bound by restrictions if they appear in some deed of record in the conveyance to [that owner] or [that owner's] direct predecessors in title'," "[i]t is not enough if the encumbrance is recorded in the chain of title of the dominant estate; it must be found in the servient estate's chain of title for that landowner to be bound") (brackets in original)(emphasis added).

TNC acquired its land from the Foundation, without any notice that there was an easement in favor of Foundation or any other person. There simply is no express easement over TNC's lands that was reserved in favor of its grantor. When Seven Springs Farm Center subsequently (11 years later, in April 1984) (Trump Aff., Ex. F)) conveyed its property (now referred to as the Seven Springs Parcel) to Rockefeller, it did not have an easement over the lands then owned by TNC! Neither Seven Springs Farm Center nor Rockefeller could convey an easement it had never acquired. See TNC Mem., at 13.

Accordingly, any easement was extinguished when Meyer acquired title to all of his lands, and it was not subsequently

renewed or recreated. Plaintiff, thus, has no easement over that portion of Oregon Road which lies entirely within TNC's lands.

Point III

ROCKEFELLER ABANDONED ANY EASEMENT

We demonstrated in Point III(B) of TNC's Moving Memorandum that even if there had been an easement, Rockefeller abandoned that easement when it consented to the Town's closing of Oregon Road and installation of the Gate. TNC demonstrated that Rockefeller had, in fact, consented to the closing. That evidence is contained in the Town's Certificate, and it is uncontroverted.

As we demonstrated in TNC's Moving Memorandum, the Certificate is *prima facie* evidence of the facts contained therein, which includes the statements that Rockefeller "has consented" to the closing and "has adequate ingress and egress to its property by alternative means." CPLR §§4518(c), 4540, 2307. TNC Moving Mem., at 12-13.

Plaintiff, however, offers no evidence to counter the Certificate or its effect as a matter of law. Rather, Plaintiff argues that the Certificate should not be given any weight because (a) the information in the Certificate is hearsay, Seven Springs Mem., at 22-23, and (b) the Town did not properly act to close Oregon Road. *Id.*, at 23, n.5.

Neither of these arguments has any merit. First,

§4518(c) is a statutory exception to the hearsay rule. Second, nothing in §4518(c) states that the facts contained in the Certificate are not *prima facie* evidence, even if the Town is found to have closed Oregon Road improperly. The Certificate is admissible, it is *prima facie* evidence of the facts contained therein, and it is uncontroverted by Plaintiff.⁸ Cf. Blumenfeld v. DeLuca, 24 A.D.3d 405, 807 N.Y.S.2d 99 (2nd Dep't 2005) (*prima facie* showing shifts burden of proof).

Plaintiff next argues that even if the Certificate is admissible, Plaintiff is not bound by the Certificate because it was not "recorded" and was not in Plaintiff's chain of title. Seven Springs Mem., at 18-19. Plaintiff's argument is based on a flawed predicate: Rockefeller's consent and abandonment is not a restriction such as would have to be recorded in the County Clerk's office or in Plaintiff's chain of title. Feinberg Bros. Agency, Inc. v. Schornstein, 134 A.D.2d 235, 520 N.Y.S.2d 580 (2nd Dep't 1987) is inapposite. That case involved an attempt by a broker to hold assignees of its customer liable for the commission its customer had agreed to pay.

⁸ Plaintiff's argument ignores the "presumption that public officers have performed their duties. And the burden to establish otherwise is on the one attacking their actions." Stupnicki v. Southern N.Y. Fish & Game Assn., 41 Misc. 2d 266, 269, 244 N.Y.S.2d 558, 562 (Sup. Ct. Columbia Co. 1962), *aff'd*, 19 A.D.2d 921, 245 N.Y.S.2d 333 (3rd Dep't 1963). Plaintiff makes no effort to satisfy this burden.

Plaintiff's reliance on Ioannou v. Southhold Town Planning Board, 304 A.D.2d 578, 758 N.Y.S.2d 358 (2nd Dep't 2003), is also misplaced. In that case, the Second Department held that the owner of land was not subject to a negative restriction (which would have precluded him from making certain use of his property) since it was not recorded and was not in his chain of title. That is not this case. Here, the most that could be said, *arguendo*, is that Rockefeller abandoned a right that it had over TNC's lands. That is not a restriction imposed on the Seven Springs Parcel by another. See Nature Conservancy v. Congel, 253 A.D.2d 248, 689 N.Y.S.2d 317 (4th Dep't 1999) (*dissent*).

The establishment of an easement - which gives the holder the right over another's land - is not the same as a voluntary abandonment of one's own rights. An easement is a right of one owner over the lands of another. It is because of this cross-over, that recording and notice to the servient estate are essential to establish an easement, but not to uphold the efficacy of Rockefeller's voluntary abandonment.

Although Plaintiff uses this argument in an effort to escape the consequences of its own grantor's abandonment of a claimed easement right (as to which there is no requirement that such abandonment be written or recorded), the fact is that Plaintiff's argument actually supports TNC's argument (see pages

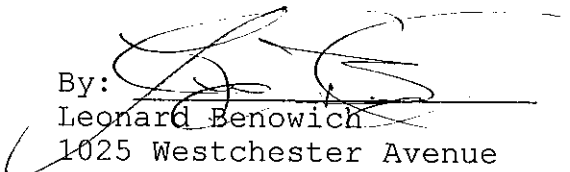
11, 13-14, *supra*), that no easement could have been created in favor of the Seven Springs Parcel precisely because there is no notice of any such easement in the deed to TNC or otherwise. See e.g. Witter v. Taggart, supra; Simone, supra; Puchalski v. Wedemeyer, supra; pp. 13-14, *supra*.

The only evidence is that Rockefeller consented to the closing of Oregon Road.

Conclusion

For these reasons, and for the reasons set forth in TNC's Moving Memorandum, as well as the motions and memoranda submitted by the other defendants, we respectfully submit that the Complaint should be dismissed in all respects.

Dated: September 14, 2006 **ROOSEVELT & BENOWICH, LLP**

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Certificate of Service by First Class Mail

LEONARD BENOWICH, an attorney duly admitted to practice in this Court, hereby affirms, under the penalty of perjury, that on September 14, 2006, I caused a true copy of the foregoing **Memorandum of Law** to be served upon the following counsel:

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by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to the party and/or parties listed above.

Dated: White Plains, New York
September 14, 2006


Leonard Benowich

