

MACKEY BUTTS & WISE LLP

March 8, 2017

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Mary Alex, Town Clerk
Town of Washington Town Board
10 Reservoir Drive
Millbrook, New York 12545

RE: Proposed Paving of Killlearn Road

Dear Mary:

We write on behalf of Chris and Claire Mann, Barbara and Mel Ohrbach, Elizabeth Mavroleon, Permele and William Doyle, Pat and John Ike, David and Alice Cynn, Ashish and Sapna Shah, Eve Propp, Mary Dickas and Andrew Baum, Candace Browning-Platt and William Platt, Victor J. Voorheis III and Nellie Voorheis, Lawrence and Lorna Graeve, Sarah von Maltzahn, Nina Griscom, and Candace and Lex Anderson, all of whom live on or contiguously to Killlearn Road ("Killlearn") in the Town of Washington. These residents oppose the proposal to pave Killlearn now being considered by the Town Board. As I am sure the Board members are aware, Killlearn was designated as a "Scenic Road" by the Town of Washington many years ago. The Town adopted a Scenic Road Local Law found at § 343 of the Town of Washington Zoning Code in 1994 ("Scenic Road Law").

See <http://washingtonny.org/Library/rfp/Zoning%20Code%20Complete.pdf>.

According to the Scenic Road Law, its purposes are:

- Preserve and protect the present quality and character of certain and specific roads of the Town of Washington (the "Town");
- To recognize the contribution the Town's road system has made and will make to the rural character, uniqueness and quality of life in the Town;
- To recognize that the Town's road system is an integral part of the diverse environments of the Town and what affects the roads also affects the ecology contiguous to the roads;

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- To recognize that there are specific unique features which contribute to the beauty and enjoyment of the Town's road system;
- To recognize the important role of the Town of Washington Highway Department (the "Town Highway Department") in preserving this critical Town asset and to further strengthen that role by providing an avenue of access and communication for the Town of Washington Highway Superintendent (the "Town Highway Department") with the Town of Washington Town Board (the "Town Board"), the Town of Washington Planning Board (the "Planning Board") and the Town of Washington Conservation Advisory Commission ("CAC"). The value of this access lies in the following: unlike the technical, safety and operational aspects of Town road management; matters pertaining to environmental and aesthetic aspects [and the long-term effect on these] are oftentimes judgmental. This Local Law recognizes and respects the fact that the Highway Superintendent, whose powers and authority are governed by New York State Law, will want, use and appreciate the support, direction and counseling pertaining to any particular action regarding the aforementioned characteristics needing to be preserved or impacted;
- To recognize that Town roads should continue to provide safe, confident use to residents and transients and at the same time continue to offer the wealth of aesthetic features already in place and there to be enjoyed;
- To recognize these many fragile components that are connected with the Town roads and are presently taken for granted. This Local Law recognizes that fragility. Once eliminated or adversely altered, these resources may be irreplaceable;

Killearn's designation as a Scenic Road meant that the Board determined that the above stated objectives would be served by such action. The objectives of the Scenic Road Law, and the beauty of Killearn, are no different than when the Board made the designation. The proposal for rescinding the designation and paving the road fails to demonstrate the need for a change. Conclusory statements about safety issues without any supporting evidence cannot serve as a legitimate basis for the proposed change.

Moreover, the community asset, "scenic beauty," is specifically mentioned as a priority in the Town of Washington's comprehensive plan. See <http://www.washingtonny.org/wp-content/uploads/2015/04/2015-Town-of-Washington-Comprehensive-Plan.pdf>. Further, the word "scenic" appears exactly

forty-six (46) times in the Town of Washington Zoning Code. Clearly Scenic Roads in the Town have long been recognized as a priority deserving protection.

Nearly all of the residents on whose behalf we submit this correspondence purchased and have chosen to remain on Killearn because of its scenic beauty, demonstrated by the fact that it is a dirt road. These residents have a vested right in the Scenic Road designation and its remaining a dirt road. Their property values are directly influenced by the Scenic Road designation and by the fact that it is a dirt road. Attached is a copy of correspondence from Candy Anderson describing the desirability of dirt roads and how they add value to property in the Town of Washington. The residents believe that if all the residents of Killearn were given notice and an opportunity to be heard on the subject, an overwhelming majority of residents would favor retaining the Scenic Road designation and keeping Killearn a dirt road. In fact, when they have inquired of their neighbors their views, they have not been able to identify any residents on Killearn, other than those who originally wrote to the Planning Board or who appeared at the last meeting of the Planning Board in support of the letter, who do not strongly oppose paving Killearn. We note that buyers of property on Killearn – on both sides of this issue – have made their investment decision on the basis that the road was dirt, with every expectation that it would remain dirt indefinitely.

The mud and drainage problems resulting from the fact that Killearn is a dirt road may be resolved by far less drastic measures. Grading and drainage solutions, for example, should be considered before resorting to paving. Moreover, paving will only result in more drainage concerns with placement of run off, and the road would likely need to be widened, perhaps requiring cutting down trees and removing stone walls. This would clearly be a costly, laborious, contentious and controversial project that would not be supported by taxpayers in these economic times.

We respectfully submit that the safety concerns of a dirt road are no greater than those associated with a paved road. The residents on whose behalf we send this correspondence cannot recall any accidents attributable solely to the fact that Killearn is a dirt road. They also cannot recall any issues with emergency access. On the contrary, some of these residents have had fire and police calls to their residences over the years, including during the spring thaw, without trouble.

Most importantly, we respectfully submit that a paved road is more likely to encourage speeders. One need only contrast Killearn with the nearby Chestnut Ridge Road, which is known for motorists driving at a relatively high rate of speed, to realize that paving Killearn to reduce the mud problem during those periods of the year when it is relevant would result in significantly higher rates of speed year-round. Moreover, Killearn is not currently on the list of roads popular with groups of

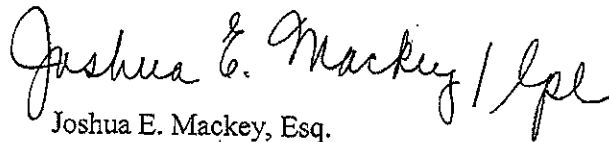
motorcyclists who travel the roads of Dutchess County during the warmer months. If Killlearn were paved, it is highly likely that the long inclining road and varied terrain and views would attract groups of motorcyclists, often with unmuffled motorcycles, who would disrupt the relative quiet of the road and increase the hazards. These risks are all greatly exacerbated by the fact that numerous pedestrians, bicyclists and some equestrians use the road, which has a number of blind curves that would become more rather than less hazardous as a result of the higher speeds and increased car and motorcycle traffic.

Any proposed act of rescinding the Scenic Road designation for Killlearn Road, or to pave the road without rescinding the designation, would be significant. We understand that the Board must refer the proposal to the Planning Board, who must hold a public hearing. Naturally, any action by either Board is subject to challenge by Article 78. Most obviously, although we have not attempted to reach all residents on Killlearn, we believe that any decision to rescind the Scenic Road designation or to pave Killlearn should be preceded by notice to all residents on the road, so that they have an opportunity to express their views. It is surprising that a single letter by a family on Killlearn could prompt such a threat to rescind a more than decade-old Scenic Road designation or to consider paving the road, particularly without notice to all those who live on Killlearn and whose property values would be significantly and adversely affected by such a decision. This is not even to mention the very substantial cost that would be entailed to pave the road, only to avoid the inconvenience that affects a few motorists each year.

In short, to preserve the rural character of the road and the neighborhood, to continue to ensure that motorists travel at a safe speed up and down the road, to avoid the enormous cost and potential adverse environmental effects of paving the road, and to give proper weight to the strong preferences of the majority of residents on Killlearn, we urge the Boards to consider another solution to the complaints that have been made. The residents on behalf we write believe that any decision to rescind the designation as a Scenic Road and to pave the road would be subject to challenge on a number of grounds.

Very truly yours,

MACKEY BUTTS & WISE, LLP


Joshua E. Mackey, Esq.

JEM/lpl
Attachment

Roger W. Kirby
35 Killlearn Road
Millbrook, New York 12545
Roger.w.kirby@gmail.com

By email and by 1st class mail

17 February 2017

Town of Washington-Town Board
c/o Gary Ciferri, Supervisor@washingtonny.org
c/o Mary Alex malex@washingtonny.org
(for distribution to each Board Member and to Joe Spagnola)

Town of Washington-Town Planning Board
c/o Nikki Caul POB 667, Millbrook, New York 12545
c/o Mary Alex malex@washingtonny.org
(for distribution to each Board Member)

and by mail to each Board at
POB 667
Millbrook, New York 12545

To the Members of the Town of Washington Board & Planning Board

I am submitting this letter to both the Town Board and to the Town Planning Board as I am unclear which, or possibly both, are entertaining a question respecting the possible paving of Killlearn Road. I had heard that at a recent meeting of the Town Board, three purported residents of Killlearn Road sought to have the Road paved, and that the Board had indicated that it would send the matter along to the Town Planning Board. I also understand that thus far all of this has been done without notice. I reside on Killlearn Road, and write in opposition to the paving of that the Road. Here are some of the bases for my opposition.

1, Why does anyone who acquired property on Killlearn Road have any standing whatsoever or other cognizable ground upon which to demand paving of the Road, much less have others pay for it? These people purchased their property with full knowledge that Killlearn was and always has been a dirt road. These people thus have no basis to claim that their expectations for enjoyment of that property have been frustrated or unfulfilled in any way that matters to this question. Put another way but to the same effect, why does anyone who acquired property on Killlearn Road have any standing whatsoever or other cognizable

ground upon which to demand that others on the Road **and taxpayers throughout the Town of Washington** foot the bill?

2, By contrast, those who have acquired Killearn Road property precisely because it is unpaved would have their entirely reasonable expectations frustrated were the Road paved. Many acquired because of the bucolic pleasure of living by a country dirt road, and also because by itself the lack of paving provides additional safety for children, families, and pets. Cars simply must drive more slowly than they would on a paved road, especially as sections of Killearn are one lane only. Recall the fireball crash that occurred a few years back on Chestnut Ridge, right by Hammond Hill. The like could never occur on relatively slow moving Killearn, but if it were paved and deaths or injuries followed on account of the greater traffic and greater speeds of transport, why wouldn't those who authorized the paving of the Road with fore-knowledge of this additional risk be held accountable? And of course unpaved Killearn provides the additional pleasure of witnessing or being one of those fortunate who ride horses along the way. All of these fully entitled expectations would be defeated were the Road paved.

Having just received word of mouth of the paving possibility, I have not had opportunity to contact neighbors. I am however aware that Genna and Flynn Nixon, in contract to acquire property on the Road, have or are submitting correspondence in opposition to any paving of the Road. Their communication does a far better job than mine of capturing the very personal reasons young families have for wanting to live on a dirt road, and for not wanting Killearn Road altered in this important way. I refer to and hereby incorporate that letter by reference. To similar effect, at "3" below, read the note submitted to you in February 2016 by Victoria Salnikoff in which she reacted to the threat to pave Tower Hill.

3, Then there is the question of who would pay for it. It is premature to predict to-the-penny cost of such an undertaking, but looking on line suggests that would run in the vicinity of \$500,000 per mile, or bumping up to \$2 million for the 3.5 mile distance of the Road. That estimate does not include costs attached to any efforts to acquire adjacent property by exercise of eminent domain, efforts that predictably would be resisted every inch of the way, or the lawyer's fees incurred in responding to legal processes Road residents would initiate and support to prevent the paving. I mention this now because I understand that one or more residents already have engaged counsel to represent and advance opposition to pavement.

But, whatever the cost, where is that money to come from and why should those living on Killearn Road, much less those opposed to the paving, as well as every other Town of Washington taxpayer wherever they reside, be burdened in any way with that cost?

Two years ago, the Town sought a significant tax raise to support activities that, unlike the paving of Killearn Road, were intended largely to benefit the entire community. Let Kirk Henckels' comment stand in for many:

*A 25% [actually, 22%] increase in property taxes is **outrageous!** Besides the obvious financial burden on taxpayers, this increase will also damage a real estate market that is in the tank and never recovered from the last financial collapse in 2008. (emphasis supplied.)*

Others noted that the Village lacked legal authority to impose that increase. If Kirk Henckels's reaction was emblematic of the response to a tax increase designed mostly to benefit most, can you even begin to imagine the reaction and universal resistance to an increase designed to benefit a handful of persons on Killearn Road, **persons who, having knowingly acquired dirt road property, now turn around and insist that others—the majority of whom do not even live on Killearn Road-- pay for its paving?** There is only one word to describe such temerity, and that word is Kirk Henckels' "outrageous." A further measure of that negative reaction, as well as reasons for the benefits of a dirt road, may be found in the February 2016 response by Victoria Salnikoff to that very same proposed tax. It states in pertinent degree:

*The tax increase with **a closed door meeting** is unacceptable as well to use \$300,000 to repave Tower Hill Road when the residents of the area would like to keep the road a country dirt road and do not want it paved as it will increase traffic between 44 and 22 posing a danger to those who walk, ride and or run on the road.(emphasis supplied.)*

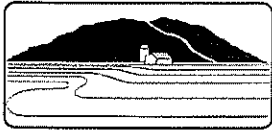
Before there are any further hearings concerning the matter of the paving of Killearn Road, kindly provide every resident of Killearn Road, every other Town of Washington taxpayer, and every one in contract to purchase on that Road, including the Nixons, with lawfully adequate notice. (Let me apologize for possibly supplying duplicate copies of this letter to you, but I think it important that this matter be addressed in its earliest stage.)

Finally, in the event I were unable to attend a hearing, please suppose that I remain opposed to the paving of Killearn Road. In all events, **please have this read into and otherwise included in any record** of proceedings related to the matter of the paving of Killearn Road. Thank you.

Yours very truly,

Cc Wm Doyle
Gordon Elliott
Kirk Henckels
Gerald Imber, MD
Christopher L. Mann, Esq
at Messrs Sullivan & Cromwell
Genna & Flynn Nixon

(to be enlarged)



DUTCHESS LAND CONSERVANCY

Preserving Open Land in Dutchess County

PO Box 138
Millbrook, New York 12545
www.dutchessland.org
(845) 677-3002
Fax 677-3008

March 8, 2017

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Mr. Gary Ciferri, Town Supervisor
Town of Washington, Town Hall
10 Reservoir Drive
P.O. Box 667
Millbrook, NY 12545

RE: Killearn Road, Scenic Road Status

Dear Supervisor Ciferri:

As you know, the Town of Washington originally adopted its Scenic Road Law in order to preserve and maintain its scenic roads and protect the town's rural character. Washington was the first town in Dutchess County to adopt a scenic road law. The law provides a means of balancing traditional general and emergency repairs and maintenance of its existing roads and public safety, with the preservation of irreplaceable character, aesthetic and historic features, and the high-quality scenic nature of those roads approved as "Scenic" under the law. The law allows landowners along the road to nominate their road as a Scenic Road, thus giving the landowners a say in what happens to the road and its adjacent right-of-way (typically 25 feet on either side of the road.) In fact, scenic road designation contributes to the very pace of rural life.

We understand that the objectives of the law are to:

- preserve and protect the present quality and character of certain roads or portions thereof;
- to recognize the town's road system makes a contribution to the rural character, uniqueness and quality of life in the town;
- to recognize that the town's road system is an integral part of the diverse environments of the town and the road can also affect the ecology contiguous to the roads;
- to recognize there are specific unique features that contribute to the beauty and enjoyment of the road system;
- to recognize that town roads should continue to be safe as well as aesthetic;
- to recognize that once fragile components are eliminated or adversely altered, they are irreplaceable; and
- to recognize the important role of the highway superintendent.

And that a road must meet at least one of four criteria in order to be designated as a scenic road. It must be:

- 1) bordered by mature trees or stone walls;
- 2) the traveled portion of the road cannot be more than 20 feet in width;
- 3) the road must offer views of near and distant landscape; and/or
- 4) the road must be compatible with the natural environment and is integrated well with the surrounding terrain.



In the mid to late 1990's and early 2000's the Dutchess Land Conservancy (DLC) was actively involved in helping landowners with the nominations of their roads as Scenic Roads, to help aid in the retention and preservation of rural quality and scenic beauty. While the DLC didn't work on the Killlearn Road Scenic Road nomination, we did work on a number of others (Tower Hill, North Tower Hill, Short Road, Butts Hollow, Deep Hollow, Fraleigh Hill, Kennels, and Andrew Haight Roads) all of which were declared scenic roads pursuant to Town of Washington Local Law # 2 of 1994 on the basis that these roads were gravel surfaced; they were less than twenty feet in width; that mature trees and stone walls were adjacent to the roads (often within the ROW's); that views from these roads included open fields, adjacent woodlands, wetlands, stone walls, old fences, mature trees, streams and ponds, and varied wildlife habitat which are important natural characteristics which help conserve the scenic and rural qualities; that these roads were used by local residents and others for walking, jogging, hiking, exercising dogs, bicycle riding, and horseback riding; that the designation of these roads as scenic was consistent with the Town and County Master Plans and would contribute to the protection of the town's scenic and environmental resources. I'm assuming that Killlearn Road was approved as a Scenic Road based on these very same attributes, and we don't believe any of the reasons for the original nomination have likely changed.

In addition, the DLC holds conservation easements on some of the properties along Killlearn Road in order to protect the land's important resources. One such easement property is the site of a "buttonbush pool," which is considered to be a significant habitat by Hudsonia. It's possible that any alterations to the road could adversely affect this habitat, as well as others along the road. This should be thoroughly studied before any alterations are considered.

Our understanding of the Town Scenic Road Law is that the Town must submit a proposal to alter or improve a scenic road to the Town Planning Board as per section 6.e. of Local Law 2 of 1994:

"6.e. Any proposal for alteration or improvement not involving routine road maintenance or emergency repairs, whether on behalf of a public or private applicant, shall be submitted to the Planning Board. The Planning Board shall submit such proposal to the CAC and Highway Superintendent for review and comments and shall hold a public hearing in the manner set out in Section 4..."

A public hearing must be set with a public notice published in the newspaper at least 5 days before the hearing, and notice by mail to owners of lots fronting the road.

It is also our understanding, that as part of its review process, the Planning Board must consider alternatives to the proposed improvement, and should review the proposal with regard to its impact on stone walls, speed of vehicular traffic, preservation of curves, hills and valleys, non-widening of the road, scenic views, impact on mature trees and roadside vegetation, signage, sand, gravel, refuse and salt use, as well as considering comments from the CAC, Highway Superintendent, and the public. Sometimes proposed "improvements" such as paving, straightening or widening a road do not take into consideration the scenic and rural qualities and old stone walls and/or mature trees are removed, curves are straightened, roads are widened and paved, significantly changing the rural nature of the road. Alterations must be carried out so as

March 8, 2017

to preserve to the highest degree possible the aesthetic, historic/or scenic characteristics of the road.

We encourage the Town to give the residents ample opportunity to comment on any changes proposed to the road's Scenic Road status, surface material, and any other potential resulting changes within the right-of-way. We hope that you will thoughtfully consider any impacts these potential changes will have, and take into account alternatives to paving the entire road that may achieve the desired results. As noted above, these roads were nominated and approved as Scenic Roads for a reason.

We also encourage you not to rescind the Scenic Road status of Killearn Road, no matter what your final decision is with regard to the surfacing of the road. It's our understanding that the adoption of a road as a Scenic Road in the Town of Washington does not mean that a dirt road will never be paved, but that the landowners have the opportunity to have their say before any final decisions are made, understanding that major changes, such as paving, require a great deal of consideration in terms of how this change will impact those qualities which make the road special.

Thank you for your consideration.

Sincerely,



Rebecca E. C. Thornton
President





**H
W** **GUERNSEY**

REALTORS, INC.

SINCE 1908

February 27, 2017

Re: Killlearn Road

To whom it may concern,

In my 30+ years of selling real estate in rural Dutchess County, it has been my experience that the majority of my buyers ask to see properties on a road without a yellow line on it. Most buyers prefer and seek a property first for its location. As we all know, "location" is the most important factor when people are buying real estate.

Our town's charm, livelihood and business thrive on our countryside's rural integrity. The charm and beauty of Killlearn Road would be lost forever if it becomes paved. Why would we want it paved over to create more traffic on what is now a scenic, unpaved road? In my opinion it would open up more traffic to non-residents in avoiding the steep descent on Chestnut Ridge Road, especially in winter. My husband and neighbors have trained horses and driven carriages on Killlearn Road, as have generations before. Why would anyone want to make it convenient to more traffic?

As a matter of fact, there are properties on Killlearn Road under conservation easements with the Dutchess Land Conservancy. These easements prohibit paved driveways.

I sincerely hope that our lovely, quiet, and tree-lined dirt roads maintain their charming existence, helping to keep property values high.

Sincerely,

Candace B. Anderson
Associate Broker

CBA/spi

hwguernsey.com

P.O. Box 0, 3295 Franklin Avenue, Millbrook, NY 12545, 845-677-5311
246 County Route 7, Pine Plains, NY 12567, 518-398-5344



February 10, 2017

To the Town of Washington Planning Board,

I am writing in opposition to the paving of Killearn Road in Millbrook, NY.

My husband and I are currently in contract of sale with 166 Killearn Road with a closing date scheduled on or before March 16, 2017.

We have a friendly dog and I am 6 1/2 months pregnant. We are looking to grow our family during our time living on Killearn Road and one of the main reasons that we are purchasing this home is for the dirt road charm and the safety benefits that come along with it- slower cars, less people using it as a through road, etc.

My husband and I are strongly opposed to the paving of Killearn Road. Please reconsider and think of the wellbeing and safety of young and growing families who do and will reside on this charming, quiet and residential road.

Please have this communication read into and included in any record of proceedings concerning the matter of the paving of Killearn Road.

Sincerely,

A handwritten signature in black ink, appearing to read 'Genna Nixon', with a stylized flourish extending to the right.

Genna Nixon
(646) 306-4500

