

MACKEY BUTTS & WISE LLP

ATTORNEYS AT LAW

April 26, 2021

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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

Ian S. MacDonald
Christina A. Mazzarella
Paul E. Denbaum

Dear Mary:

—
Neil A. Wilson
Roderick J. MacLeod
R. Keith Salisbury
Tyrone Brown

I 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, Roger Kirby, Olivia Kirby, Douglas and Terri Burkhart, Fred Kopilak, Daria Salusbury, Alexander Salusbury, Anne and James Wetzold, Donna and Thomas Michaels, Yan Pecoraro and Natasha Gopaul, as well as Candy and Lex Anderson and Sarah and Dixie von Maltzahn, all but four of whom live on Killlearn Road (“Killlearn”) – and the other four contiguous with Killlearn – in the Town of Washington. These residents oppose the proposal to pave Killlearn presently under consideration 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 (the “Scenic Road Law”).

According to the Scenic Road Law, its purposes are:

- To 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;

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- To recognize that the Town's road system is an integral part of the diverse environments of the Town and that what affects the roads also affects the ecology contiguous to the roads;
- 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. 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 often judgmental. The Scenic Road 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; and
- To recognize these many fragile components that are connected with the Town roads and are presently taken for granted. The Scenic Road 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. Present conditions are no different than when the Board made the designation. The proposal to repeal Killearn's Scenic Road designation and pave the road fails to demonstrate the need for a change. Conclusory statements about safety issues by a small number of residents 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 (2015). 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.

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. Their property values are directly influenced by the Scenic Road designation. Attached is a copy of correspondence from Candy L. Anderson, a long-time area real estate agent, describing the desirability of dirt roads and how they enhance property value in the Town of Washington. We firmly believe that if all of the residents of Killearn were asked, an overwhelming majority of residents would favor retaining the Scenic Road designation.

The seasonal 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, whether by asphalt blacktop or oil and stone, 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. Moreover, if an oil and stone application is chosen in an effort to retain a sliver of rural feel to the road, that will be even more expensive to maintain in light of the need to re-apply the surface every few years.

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. To the contrary, some of these residents have had fire and police calls to their residences over the years without trouble.

Moreover, we further 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 few weeks of the year when it is relevant would result in significantly higher rates of speed year-

round. A paved road might also encourage motorcyclists to use Killearn, which could pose a nuisance and danger to residents.

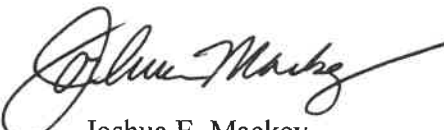
A repeal of the Scenic Road designation for Killearn Road would be significant, costly and would have adverse environmental impacts. The Board must refer the proposal to the Planning Board who will hold public hearings and conduct a thorough review under the State Environmental Quality Review Act ("SEQRA"). Any action by either Board is subject to challenge by Article 78. Most obviously, we believe that any decision to repeal the Scenic Road designation and to pave Killearn should be preceded by notice to all residents on the road, so that they have an opportunity to express their views.

The substantial cost to all Town residents in paving Killearn also should not be overlooked. The increase in taxes for every Town resident so that a few residents are less inconvenienced sounds the alarm of taxation without representation. This cost is even more difficult to justify when it appears that a solid majority of Killearn residents oppose paving, whether by asphalt blacktop or by an oil and stone or similar application.

In short, to preserve the rural character of the road and Town as a whole, 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 impacts of paving the road, and to give proper weight to the strong preferences of the majority of residents on Killearn, we urge the Boards to consider another solution to the concerns that have been raised.

Respectfully yours,

MACKEY BUTTS & WISE, LLP



Joshua E. Mackey

JEM/acf
Attachments



COMPASS

April 16, 2021

Town of Washington

To Whom it May Concern,

It is difficult to put into words exactly what it is about this island of pastoral beauty not two hours from Manhattan that captivates, but as a local homeowner and realtor with almost four decades of experience in this area, I see it happen. My husband and I raised our children on a farm, built by the Anderson family in 1959, in the Town of Washington. We live there to this day, with no plans to leave—ever.

I know that part of the allure is the rural integrity of this part of the world. In so much of the northeast, that integrity is being chipped away by modern development. I've seen the process unfold: people drawn to an area because of its undeveloped loveliness, who lack context and a sense of the area's history, decide that having no chain stores, no highway exit, or too little nightlife is an inconvenience, and they start to lobby for the very development whose absence first drew them.

In Millbrook, paving Killlearn Road is like paving parkland. And it will be reflected in a decline in property values. **Historical data shows that nearly all the highest recorded real estate sales in the Town of Washington have been on unpaved roads.** In fact, paving Killlearn will invite far more traffic to the quiet country road, a consequence I doubt residents or potential buyers would welcome. The inconvenience of mud season, with which all who live here are familiar, is no reason to lay down blacktop at the expense of privacy, beauty, and property values.

One of the most salient facts about our area is the fact that so much of the land is protected. Thousands of scenic acres of undeveloped, walkable, hikable, huntable, ridable landscape that all can enjoy.

I have always been a supporter of the thoughtful zoning and the conservation easements throughout the Town of Washington. Nothing has changed. This area is an increasingly rare example of rural preservation. Please do not allow Killlearn Road to be paved.

Sincerely,

A handwritten signature in cursive script that reads "Candy Anderson".

Candy Anderson

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