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August 19, 2025

VIA FEDERAL EXPRESS AND EMAIL

Hon. Solomon Weiss, Chairman
Village of South Blooming Grove Planning Board
811 Route 208
Monroe, New York 10950

Re: SBL 220-1-10 Property
Owners: Mordechai and Leah Loeb

Dear Chairman Weiss and Planning Board Members:

This firm represents Mordechai and Leah Loeb, the owners of Tax Parcel 220-1-10 located in the Village of South Blooming Grove. I am writing to put the Board and the Village on notice of my clients' objection to the proposed site plan submitted by Treza Development (Tax Parcels 220-1-3, 220-1-9, and 220-1-24) and any proposed municipal action or approvals which attempt, directly or indirectly, to "relocate," diminish or interfere with the existing 78-year-old right-of-way benefitting my clients' property.

The foregoing Parcels and the Loebs' Parcel are depicted on Filed Map No. 1357 filed in the Orange County Clerk's Office on November 3, 1947. This approved subdivision is entitled "Subdivision of Delano Heights."[1] Specifically, the Treza parcels are shown on the Delano

[1] Subdivision of Delano Heights, Filed Map No. 135, Pocket 15, Folder H, stamped and filed by Samuel Garrett, P.E., dated November 3, 1947.

Heights Subdivision as Lots 22, 24 and 28 through 35. The Loebs' parcel is shown as Lots 34, 51, and portions of Lot 20.

The Delano Heights Subdivision clearly depicts a twenty-foot wide easement access road labeled "Sleepy Hollow Road." This right of way is not a paper street. New York case law on "paper streets," i.e., undeveloped and unused easements or rights of way created through a filed subdivision map is well settled.

In *Lodol v. Arbus*, 46 AD3d 765 (2d Dept. 2007), the Second Department defined the "paper street rule" in New York. As the Court noted, the paper street rule drawn from *O'Hara v Wallace* (83 Misc 2d 383, 387, 371 NYS2d 570 [1975], *mod on other grounds* 52 AD2d 622, 382 NYS2d 350 [1976]) provides that an easement in a street created by reference to a filed map can be extinguished **only by the united action of all the lot owners for whose benefit the easement was created** (*see also Guardino v Colangelo,* 262 AD2d 777, 779, 691 NYS2d 664 [1999]).

When a street depicted on a subdivision map is in actual use, wholly or partially, it is no longer a paper street; it becomes an actual street or right of way. *See Waterview Towers, Inc. v. 2610 Cropsey Dev. Corp.*, 2016 N.Y. Misc. LEXIS 4264 (Kings Co. 2016). It is settled law that a street becomes a public street by dedication or use (*Matter of Hillelson v Grover*, 105 AD2d 484, 485, 480 N.Y.S.2d 779 [1984] ['A highway or street located within the geographical limits of a town may become a town highway or street either by dedication or use']; *Hillelson v Grover*, 105 AD2d 484, 485, 480 N.Y.S.2d 779 [1984]; *Romanoff v Village of Scarsdale*, 50 AD3d 763, 764, 856 N.Y.S.2d 168 [2008]).

The Third Department in *Guardino v. Colangelo*, 262 AD2d 777 (3d Dept. 1999) held that an easement created by grant, either express or implied, can be extinguished by adverse possession (*see, Spiegel v Ferraro,* 73 NY2d 622, 625; *Gerbig v Zumpano,* 7 NY2d 327, 330). But the paper street rule creates an express exception providing that, where an easement in a street or road is created by reference to a filed map, it "**can be extinguished only by the united action of all lot owners for whose benefit the easement was created**" (*O'Hara v Wallace,* 83 Misc 2d 383, 387, *mod on other grounds* 52 AD2d 622; *see, Coccio v Parisi,* 151 AD2d 817, 818 [3d Dept. 1989]; *Fischer v Liebman,* 137 AD2d 485, 487 [2d Dept. 1988]).

In *Blum v. Valentine*, 87 AD3d 1100 (2d Dept. 2011), the Second Department, in applying the paper street rule, even reversed a lower court's finding that a "paper street" existed and not right of way as depicted on a filed map.

Here, neither the developer nor the Village, nor any person or instrumentality acting on behalf of the Village, may permit the unilateral relocation or extinguishment of a right of way depicted on a subdivision map appearing in the property owner's the chain of title. The right of way in question, as depicted on the 1947 subdivision map, is enforceable as a private easement

benefiting the lot owners in the subdivision. The developer's argument that the right of way is merely a "paper street" is incorrect and does not negate its enforceability as a right of way.

New York law allows for the abandonment of a paper street only under very specific conditions, such as when the street has never been opened, is not a public highway, has not been used by the public, and is not necessary for the use of owners within the subdivision. But such abandonment requires an evidentiary hearing, at a minimum, and the consent of all possible modern-day beneficiaries of the easement described in the Filed Map.

These conditions do not exist with the right of way in question - which has been open, used by owners of lots in the subdivision, and carried forward in the chain of title. *See DeMato v. Mallin*, 68 A.D.3d 711(2d Dept. 2009); *Matter of Ignaczak v Ryan*, 79 A.D.3d 881 (2d Dept. 2010).

I have reviewed the letter to the Planning Board, dated July 24, 2025, from Treza's attorney with respect to these lots and this subdivision. That letter cites only two cases: *Lewis v. Young*, 92 NY2d 443 (1998) and *DeRuscio v. Jackson*, 164 AD2d 684 (3d Dept. 1991).

The *Lewis* case is a Court of Appeals case from 1998. As you know, the Court of Appeals is the highest state court in New York. The *Lewis* case is only about "relocating" an easement on private property between two residential owners. This applies where an easement is given over one property (the servient tenement) for ingress and egress. The property benefitted by the easement is the dominant tenement holder. The high court held that an easement for ingress and egress focuses primarily on the access right and not the physical location of the right of way. Thus, the property owner burdened by the easement can petition the Court to relocate it so that it does not interfere with that owner's use of his own property.

The *Lewis v. Young* case is generic. It does not apply to paper streets formed in a filed and approved subdivision.

The *DeRuscio* case is a Third Department case (we are in the Second Department). It is still good law, but it is not on point. First, *DeRuscio* was decided in 1991. That's dated. Second, it involved a dispute between two private residential property owners. As one property owner was developing his property, the local ZBA directed him to obtain an easement over the "paper streets" contained in the original subdivision map. When the defendant in that case denied the plaintiff access, the plaintiff sued for a declaration that he had an easement right over the paper streets laid out on the subdivision map.

The Court in *DeRuscio* reaffirmed the rule that property owners have easement rights over paper streets created on their subdivision map. But the Third Department held that such access only extends to those paper streets that one's property touches or requires to access the nearest public way. Ultimately, the Third Department in *DeRuscio* upheld the paper street rule

and the rights of owners in that subdivision. This case does not support Treza's relocation argument.

Here, any attempt to classify the Delano Heights subdivision right-of-way as a "paper street" and seek its relocation or extinguishment, wholly or in part, is an open and hostile violation of my clients' New York property rights. We will not hesitate to commence litigation to protect the Loebs' vested real property rights. The right of way depicted on the 1947 subdivision map remains enforceable as a private easement benefiting the lot owners. Any alteration or extinguishment would require the consent of all affected lot owners.

Very truly yours,

Richard M. Mahon

RICHARD M. MAHON

RMM/2650280

cc: Daniel Kraushaar, Esq., Village Attorney (via FedEx)
Thomas J. Shepstone, Village Planner (via FedEx)