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September 9, 2016



Ms. Kimberly Johnson
Chief of Zoning
COUNTY OF FAUQUIER
10 Hotel Street, 3rd Floor
Warrenton, VA 20186

Re: Case # INFP-16-005283, Apple Manor Roadway

Dear Ms. Johnson:

I am writing on behalf of my client, Ms. Melanie Fein, concerning the proposed roadway plans submitted by Zand78 LLC and Demavand9 LLC (the "LLCs") in the Apple Manor Subdivision. The purpose of this letter is to notify you that my client, along with other lot owners, are the dominant owners of the ingress and egress easement on Apple Manor Road, Orchard Hill Lane, and Audubon Trail in the Apple Manor Subdivision (the "Easement") and my client does not consent to any alteration, relocation, or rededication of the Easement in connection with the proposed roadway.

Under Virginia law, the Easement may not be altered or relocated without the written consent of the easement owners. See VA. Code § 15.2-2275 ("No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein."); see also VA. Code § 55-50. Consequently, Fauquier County requires a written agreement showing the consent of all persons affected by a relocated or altered ingress/egress easement, including when the easement is extended or new lots are added along the easement. See <http://www.fauquiercounty.gov/home/showdocument?id=8311> and <http://www.fauquiercounty.gov/home/showdocument?id=8327>.

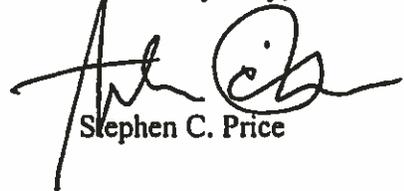
The proposed roadway will result in alteration of the Easement by (i) the addition of lots that will have access to the Easement, (ii) an extension of the Easement to include a part of Apple Manor Road that was vacated in 2010, (iii) the possible relocation of a portion of the Easement, and/or (iv) the attempted rededication by the LLCs of a portion of the Easement for the exclusive use of the lots owned by the LLCs. My client does not consent to any such alteration of the Easement in connection with the proposed roadway, and other lot owners have informed us that they similarly will not consent.

Please find enclosed copies of Ms. Fein's deeds which reference the plat showing the Easement, the plat itself, and the Declaration of Covenants, Restrictions and Conditions of the Apple Manor Subdivision, p. 3, which also reference the Easement. The validity and scope of the Easement was affirmed in 2003 by an opinion and order of Judge Jeffrey W. Parker of the Fauquier Circuit Court, who held that my client and the other lot owners have the right to use the Easement to its full length and extent. (Copies of the opinion and order are also enclosed.)

An instrument was recorded in 2010 which purported to vacate a portion of the Easement on Apple Manor Road (copy enclosed). However, my client has challenged the validity of this action because she and other owners of the Easement did not consent to the vacation. The challenge to this attempted vacation is *Fein v. Payandeh*, Case # 2010-801, now pending in the Fauquier Circuit Court. (A copy of the Complaint is enclosed.) The LLCs are proposing to "rededicate" this portion of the Easement—which Ms. Fein contends rightly belongs to herself and Apple Manor lot owners—for the exclusive use of the LLCs' lots in connection with the proposed roadway.

The County should not take any action with respect to the proposed roadway until the contested status of the Easement is resolved by the Court. In any event, as required by law and the County's procedures, the County should require the written consent of all Apple Manor lot owners, who are the Easement owners per the enclosed original subdivision documents and by virtue of their deeds, before considering any roadway plans involving the relocation, alteration, or rededication of the Easement.

Yours very truly,



Stephen C. Price

Enclosures:

Deeds of Ownership- D.B.1019, P. 680 & 684; D.B. 1229, PP. 784-787
Subdivision Plat showing Easement- D.B. 696, P. 1546
Declaration of Covenants- D.B. 735, P. 84; D.B. 741, P. 906; D.B. 779, P. 1121
Letter Opinion 2/14/03 and Judge's Order 3/11/03
Attempted Easement Modification- D.B.1351, PP. 2119-2154
Complaint *Fein v. Payandeh*, Case # 2010-801

Copy sent without enclosures to:

Kevin Burke, Esq.
Michael J. Coughlin, Esq.

Copy sent without enclosures to:

The Hon. Mary Leigh McDaniel

