



# KITTERY TOWN PLANNING BOARD MEETING

Council Chambers – Kittery Town Hall 200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - [www.kittery.org](http://www.kittery.org)

**AGENDA for Thursday, February 27, 2014**

**6:00 P.M. to 10:00 P.M.**

## **CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 2/20/2014**

**PUBLIC COMMENTS** - Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate. Those providing comment must state clearly their name and address and record it in writing at the podium.

## **PUBLIC HEARING/OLD BUSINESS**

**ITEM 1 – (45 minutes) Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code.** Action: review amendment and make recommendation to Town Council. Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

## **OLD BUSINESS**

**ITEM 2 – (45 minutes) – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.**

Action: review amendment and schedule a public hearing. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations.

**ITEM 3 – (15 minutes) - Board Member Items / Discussion**

A. Punch List Item; B. Review By-Law changes; C. Discuss legal issues associated with Waivers; D. ‘Non-Conforming Structure Replacement outside the Shoreland Zone’; E. Other

**ITEM 4 – (15 minutes) - Town Planner Items:**

- A. Quality Improvement Plans for Kittery Shore and Harbors
- B. Sarah Mildred Long Bridge Plan Update Status
- C. Town Planning Board Briefing Book
- D. Other

## **NEW BUSINESS**

**ITEM 5 – (15 minutes) - Beatrice Way – Right-Of-Way Plan – Preliminary Plan Completeness Review**

Action: review and accept or deny preliminary plan application and schedule a public hearing. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

**ADJOURNMENT - (by 10:00 PM unless extended by motion and vote)**

*NOTE: ACTION LISTED IN ABOVE AGENDA ITEMS IS FOR REFERENCE ONLY AND THE BOARD MAY DETERMINE A DIFFERENT ACTION.  
DISCLAIMER: ALL AGENDAS ARE SUBJECT TO REVISION ONE WEEK PRIOR TO THE SCHEDULED TOWN PLANNING BOARD MEETING.  
TO REQUEST A REASONABLE ACCOMMODATION FOR THIS MEETING PLEASE CONTACT STAFF AT (207) 475-1323 OR (207) 475-1307.*

## Town of Kittery Maine Town Planning Board Meeting February 27, 2014

**Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code.** Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	Held 6/27/13 and 10/24/13 and 1/23/14	
YES	Schedule Public Hearing	Scheduled for 2/27/14	
YES	Public Hearing		
YES	Review/Recommendation to Town Council		

**Staff Comments**

**Background**

On February 12, 2013, Mary Thron and Raymond J Arris received approval from the BOA to alter a lot line between two contiguous non-conforming lots. The applicant's original goal was to simply transfer property from one non-conforming lot (M58 L42) to the abutting non-conforming lot (M58 L42A) to accommodate a new septic field without the need of an easement.

The BOA did not grant this request because the outcome would make an existing nonconforming lot more nonconforming. Property M58 L42 is currently 35,415 square feet in size, less than the 80,000 square feet required in the Residential Rural Conservation zone. Transferring land would reduce the already undersized lot making the property more non-conforming. The BOA, however, granted an equal land swap, creating an irregular (zig-zag) property line between the lots, something the applicant is trying to avoid with this proposed code amendment.

In addition to the Title 16, the State's Mandatory Shoreland Zone (MRSA 38, Chapter 3, and Subsection 435-449) applies to those properties located within the Shoreland and Resource Protection Overlay Zones. The State's minimum standards prohibit the creation of a "more non-conforming" condition. On 10/24/13 the Board continued the application to allow Staff additional time to work with the Maine DEP (MDEP) and the applicant's attorney, David Jones, on an amenable code amendment.

**Review**

At the January 23, 2014 meeting, the Board reviewed the revised amendment that received input from the applicant's attorney and Michael Morse with the MDEP. The Board requested the amendment be revised to address formatting, and clarity regarding how the provision is applied when a subject property is located in or out of the Shoreland Overlay Zone.

The most recent revised draft amendment addresses the Board's comments, along with the applicant's original intent, and the portion that applies to the Shoreland Overlay Zone is supported by the MDEP. Comments incorporated from MDEP include:

- 1) The reference to the *Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards* be referenced in a note.
- 2) When both subject lots do not conform to the State's minimum lot dimensional requirements property lines cannot be adjusted.
- 3) The reference *residential dwelling units* be replaced with *principal structures and uses*.
- 4) Language that addresses the legal, non-conforming status of a lot-of-record after a property line has been adjusted, and though the lot is altered, does not constitute a "new lot".

In addition to MDEP comments, working with a draft prepared by Attorney Jones (in consideration of the Board's 1/23 comments), Staff and the Town Attorney made the following additional changes that:

- 5) Provide specific standards for adjustment of non-conforming lots outside the Shoreland Overlay Zone.
- 6) Remove the proposed amendment (*Adjustment of Common Boundary Line of Non-Conforming Lots*) from 16.7.3.5.10 Contiguous Non-Conforming Lots to a separate stand-alone section (proposed as 16.7.3.5.12), yet still applicable to non-conforming lots; and
- 7) Create a separate stand-alone section for *Single Lot Division* (proposed as 16.7.3.5.11, *Single Lot Division of a Nonconforming Lot*) and renumber effected code sections. (16.7.3.5.13 and 16.7.3.5.14)

The rationale for re-numbering the proposed amendment, *Adjustment of Common Boundary Line of Non-Conforming Lots*, and the existing section, *Single Lot Division*, is that 16.7.3.5.10 specifically targets the treatment of contiguous non-conforming lots that, depending on the situation (A, B, or C), may be required to merge into a single lot. The proposed amendment to adjust a common boundary line between two non-conforming lots, each having a legally created principal structure, is not applicable here because 16.7.3.5.10.B (*Contiguous Built Upon Nonconforming Lots*) states that in such situations the lots need not be combined.

In the same manner, *Single Lot Division*, targets a "single lot" not "contiguous non-conforming lots". With this in mind, this section is better separated from Contiguous Nonconforming Lots, but still remain under Article III Nonconformance.

#### **Related Code Amendments**

It became evident while working with MDEP the Title 16 Shoreland Zoning provisions are not fully in compliance with the State's *Mandatory Shoreland Zoning Act*, specifically with two MDEP Department Orders (dated 2000 and 2010) issued when Kittery amended their Shoreland Zoning. The conditions of approval noted in these orders were never fully complied with and include *16.7.3.5.10 Contiguous Non-Conforming Lots*.

Staff has initiated a review process and have provided MDEP a draft that includes the required amendments. An abstract of the draft (Title 16.7 only) is included for the Board's reference. After MDEP review, the draft will be included on a Board agenda for review and action.

#### **Recommendation**

After holding a public hearing, and if the Board supports the new code amendment, they can make a recommendation to the Town Council for adoption. Chris, think you need two public hearings for code amendments.

1 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

2 A. Contiguous Nonconforming Lots. If two or more  
3 contiguous nonconforming lots or portions thereof are in  
4 common ownership and if a combination of such lots or a  
5 portion thereof constitutes a lot of nearer conforming size, such  
6 combination is deemed to constitute a single lot.



8 B. Contiguous Built Upon Nonconforming Lots. If there  
9 exists a legally created principal structure on each of the  
10 contiguous nonconforming lots or portions thereof that would  
11 otherwise require the lots to be combined as provided herein,  
12 the contiguous lots need not be combined to create a single lot  
13 as required by Section A above.



14

15 C. Contiguous Partially Built Upon Lot. If one or more of  
16 the contiguous nonconforming lots is vacant or contains no  
17 principal structure, the lots must be combined to the extent  
18 necessary to meet the purposes of this Code as required by  
19 Section A above.



20

21 This subsection does not apply:

22 1. to any Planning Board approved subdivision which was recorded in the York County Registry of  
23 Deeds on, or before July 13, 1977;

24 2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface  
25 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and  
26 the State of Maine Subsurface Wastewater Disposal Rules; and

27 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

28 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are  
29 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square  
30 feet of lot area.

31

32 **16.7.3.5.11G. Single Lot Division of a Non-Conforming Lot.**

33 If two principal structures existing on a single lot legally created when recorded, each may be sold on a  
34 separate lot provided the Board of Appeals determines that each resulting lot is as conforming as  
35 practicable to the dimensional requirements of this Code. If three or more principal structures existing on a  
36 single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board  
37 determines that each resulting lot is as conforming as practicable to the dimensional requirements of this  
38 Code. (Ordained 1-23-12; Effective 2-23-12)

39

40 **16.7.3.5.12 Adjustment of Common Boundary Line of Non-Conforming Lots.**

41

42 The common property line of two non-conforming lots of record, each with legally created principal  
43 structures, can be adjusted if:

44 a) the Code Enforcement Officer determines that the resulting lots are not more non-conforming than  
45 the existing lots with respect to the dimensional requirements of this Code, or

46 b) when the lots are located entirely outside the Shoreland Overlay Zone, the Board of Appeals  
47 determines that each resulting lot is as conforming as practical to the dimensional requirements of this  
48 Code, and

49 i. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or

50 ii. each resulting lot is not less than the smallest residential lot permitted under the town's land use  
51 base zones, Title 16.2, when served by public sewer, or

52 c) when all or part of either lot is located in the Shoreland Overlay Zone, the Planning Board  
53 determines that each resulting lot is as conforming as practical to the Maine Department of  
54 Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal  
55 structures and uses<sup>3</sup>, and

56 i. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore  
57 frontage,<sup>1,2</sup> and

58 ii. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for  
59 principal structures and uses remain conforming to those requirements.<sup>3</sup>

60 iii. common boundary lines may not be adjusted when both subject lots are non-conforming  
61 according to the State's minimum lot dimensional requirements\*

62

63 <sup>1</sup> 16.7.3.5.12.c)i is allowed only when both subject lots are under the same single or joint  
64 ownership

65 <sup>2</sup> adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and  
66 State of Maine Subsurface Wastewater Disposal Rules or public sewer is required

67 <sup>3</sup> Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum  
68 Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and  
69 adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

70

71 It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming*  
72 *Lots*) to allow for the creation of an additional lot. A property line adjustment in accordance with this  
73 subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally  
74 non-conforming lot of record, not applicable to the joining of lots.

75

76 **16.7.3.5.1311 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

77 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking  
78 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the  
79 requirements of this Code for both the original and addition or enlargement of the structure or use.

80

81 **16.7.3.5.1412 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

82 The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps  
83 are not to be considered part of the structure for such determination. Step landings may not exceed three  
84 feet by three feet (3'x3') in size.

B. The Planning Board may require a study to be performed, or commissioned, by the applicant to insure compliance with the above requirements.

#### **16.7.2.6 Averaging Building Setbacks.**

Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side. (Ordained 9-26-11; Effective 10-27-11)

### **Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

#### **16.7.3 Purpose.**

The purpose of this Code is to promote land use conformities. The purpose of this Article is to regulate nonconforming lots, uses, and structures.

#### **16.7.3.1 Prohibitions and Allowances.**

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

B. Nonconforming vacant lots of record may be developed, maintained or repaired.

C. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.

#### **16.7.3.2 Transfer of Ownership.**

Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the provisions of this Code.

#### **16.7.3.3 Repair and Maintenance.**

This Code allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this Code, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

#### **16.7.3.4 Discontinued Resumption Prohibited.**

A lot on, or structure in, which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the land or structure must thereafter meet the provisions of this Code. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five (5) year period.

#### **16.7.3.5 Types of Nonconformance.** (Ordained 9-26-11; Effective 10-27-11)

##### **16.7.3.5.1 Nonconforming Use Continuance.**

The use of land, or structure, lawful at the time such use or structure was created, may continue although such use or structure does not meet the provisions of this Code.

**16.7.3.5.2 Nonconforming Use Expansion.**

Expansion of nonconforming uses is prohibited, except nonconforming residential uses may, be expanded within existing residential structures or within expansions of such structures as allowed in Section 16.7.3.4., Nonconforming Residential Use in Commercial Zones Expansion.

**16.7.3.5.3 Nonconforming Residential Use in Commercial Zones Expansion.**

Notwithstanding the above limitations on expansion of nonconforming use, a nonconforming residential use located within the Commercial zones may be expanded. Where the expansion of the residential use involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this Code. If the proposed structure expansion cannot meet the dimensional requirements of this Code, the application must be submitted to the Board of Appeals for review as a Miscellaneous Variation Request. In reviewing all such applications, the Board of Appeals must use the criteria established herein, and then may approve proposed dimensional requirement variations.

**16.7.3.5.4 Nonconforming Structure Relocation.**

A. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements to the greatest practical extent as determined by the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone), and provided the applicant demonstrates the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can be installed in compliance with the law and said Rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Chapter 16.8, Article VII, for other specific requirements related to septic waste disposal systems.

B. In determining whether the structure relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), may require replanting of native vegetation to compensate for the destroyed vegetation, and may restrict mowing and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting will be required as follows:

1. Trees removed to relocate a structure must be replanted with at least one native tree, six (6) feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.
2. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to that disturbed, destroyed or removed.

Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. Removal of the stakes, caution tape, silt fences, and such other materials used during construction, is required at the completion of the onsite work, but not before permission to remove such has been given in writing by the Code Enforcement Officer.

3. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

D. If the total amount of floor area and volume of the original structure can be relocated beyond the required setback area, no portion of the relocated structure may be constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

#### **16.7.3.5.5 Nonconforming Structure Repair and/or Expansion.** (Ordained 9-26-11; Effective 6-28-11)

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

B. If the proposed expansion of a structure is: (1) a vertical expansion that follows the existing building footprint and (2) will not result in setbacks less than those existing, approval by the Board of Appeals is not required if the structure is not located in a Shoreland Overlay or Resources Protection Overlay Zone. Applications for such development will be reviewed and may be approved by the Code Enforcement Officer or the Planning Board if the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 – Minimum Setbacks from Wetlands and Water Bodies.

C. Except in the Residential - Village (R-V) zone, minimum setbacks of residential storage sheds that are less than one hundred-twenty-one (121) square feet one-story residential garages that are less than five hundred and seventy-seven (577) square feet, and decks less than two hundred fifty-one (251) square feet, may be one-half the minimum rear and side yard setbacks providing the lots are legally nonconforming.

#### **16.7.3.5.6 Nonconforming Structure Reconstruction.**

A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, ~~by any~~**regardless of the** cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as

determined by the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be ~~relocated or~~ reconstructed beyond the required setback area, no portion of the ~~relocated or~~ reconstructed structure may be ~~replaced or constructed~~ ~~reconstructed at~~ less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action by the owner~~ by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of damage, ~~or~~ destruction, or removal.

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

#### **16.7.3.5.7 Nonconforming Use Expansion.**

Expansion of a nonconforming use of any structure or land area other than that occupied as such when created is not permitted with the following exceptions:

A. uses in conformity with Chapter 16.7; and

B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.3.2.17.D.2.

**16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals provided the proposed use is not more nonconforming.

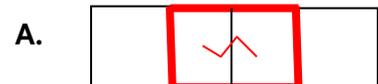
C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board per Section ~~16.7.3.5.2, 16.7.3.6.2.~~

**16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this Code, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

**16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

~~A.—Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this Code, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements. common ownership and if a combination of such lots or a portion thereof constitutes a lot of nearer conforming size, such combination is deemed to constitute a single lot.~~



B. Contiguous Built Upon Nonconforming Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Code, it all or part of the lots do not



~~meet the dimensional requirements of this Code, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 MRSA §4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. If there exists a legally created principal structure on each of the contiguous nonconforming lots or portions thereof that would otherwise require the lots to be combined as provided herein, the contiguous lots need not be combined to create a single lot as required by Section A above.~~

C. Contiguous Partially Built Upon Lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this Code, if any of these lots do not individually meet the dimensional requirements of this Code or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.  
~~If one or more of the contiguous nonconforming lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the purposes of this Code as required by Section A above.~~



This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977;
2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
  - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
  - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

D. Single Lot Division.

If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code.  
(Ordained 1-23-12; Effective 2-23-12)

**16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use.

**16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size.

**16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**

(Ordained 9-26-11; Effective 10-27-11)

**16.7.3.6.1 Nonconforming Structure Expansion.**

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

**16.7.3.6.2 Nonconforming Use Change.**

An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

**Town of Kittery Maine  
Town Planning Board Meeting  
February 27, 2014**

**Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.**

An amendment to the Town Code to address the applicability the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion/	8/22/2013, 1/9/2014	HELD
	Workshop	December 3, 2013	HELD
	Planning Board Code Subcommittee (PBCS) Mtgs.	2/4/14; 2/12/14; 2/18/14	
YES	Schedule Public Hearing		TBD
YES	Review/Recommendation to Town Council		TBD

**BACKGROUND**

Through the review of recent subdivision projects, an issue with the application of Article VIII, 16.7.8.1. (Land Not Suitable for Development) has been raised. According to the Maine State Soil Scientist, the referenced document, *Soil Suitability Guide for Land Use Planning in the State of Maine*, is out of date and no longer applicable. The Planning Board initiated discussions on the issue with input from Bill Straub, CMA, Peer Review Engineer. He concurred that the use of the document for regulatory purposes is no longer appropriate.

This portion of the Town Code is referenced in Title 16.2 Definitions.

**Net residential acreage** means the gross available acreage less the area required for streets or access and less the areas of any portions of the site which are unsuitable for development as outlined in Article VIII of Chapter 16.7.

The Board last discussed the proposed amendment at the September 26<sup>th</sup> meeting. At the December 3<sup>rd</sup> Workshop, the specifics related to the amendment and the issues surrounding soil suitability and its applicability to net residential area and septic were discussed. (Minutes provided). The Board made subsequent changes at the January 9 Board meeting and the February 4, 12 and 18 meetings of the PBCS (notes attached), which are included in the amendment herein. The Board was interested in further discussion of items F and H, as addressed in the draft amendment.

**REVIEW**

The attached amendment is based on how other towns in Maine address soils associated with development suitability and the calculation of net residential acreage in general. The latest draft also

includes a change to the portion of the Code, 16.8.11.5, where “Land Not Suitable for Development” is currently referenced.

## **RECOMMENDATION**

In addition to addressing reference to the out-of-date *Soil Suitability Guide for Land Use Planning in the State of Maine*, PBCS and Staff recommend the Board take this opportunity to revise the entire portion of the code related to net residential calculations, proposed as amendment to Article VIII, 16.7.8.1.

The Board should discuss the amendment, considering the input from the soil scientists and engineers (December 3 minutes, attached) and provide comments at the February 27, 2014 meeting. If possible, a public hearing could be scheduled on March 27, 2014.

1 **Proposed Amendment – EDITS THROUGH 2/18/14 PBCS MEETING**

2 **Article VIII. ~~Land Not Suitable for Development~~**

3  
4 **~~16.7.8.1 Locations and Sewage.~~**

5 ~~The Planning Board may not approve portions of any proposed development that:~~

6 ~~1. Are situated below sea level;~~

7 ~~2. Are located within the one hundred (100) year frequency floodplain as found in the definition;~~

8 ~~3. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except the Planning Board may grant approval if central sewage collection and disposal system is provided.~~

9 ~~4. Has any part of the development located on filled tidal wetlands.~~

10 ~~5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in the State of Maine.~~

11  
12  
13  
14  
15 Article VIII. Net Residential Acreage

16  
17 16.7.8.1 Net Residential Acreage Calculations

18 The Net Residential Acreage determines the maximum number of dwelling units allowed on a parcel. To  
19 calculate the Net Residential Acreage the following land area must be subtracted from a parcel's gross  
20 area:

- 21 A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest*  
22 *Annual Tide (HAT) levels* for the most current year.
- 23 B. All land located within the floodplain as defined in Title 16.2, *Flood, One Hundred (100) Year.*
- 24 C. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, lakes, streams and  
25 other water bodies.
- 26 D. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled.*
- 27 E. All land located within existing easements and rights-of-way, as well as proposed rights-of-way,  
28 parking and associated travel ways, including driveways that service two (2) or more dwelling units.
- 29 F. All land isolated from the primary portion of the parcel by a road/street, existing land uses, or any  
30 physical feature, natural or manmade, such that it creates a barrier to the central development of  
31 the site and no means of access is proposed nor likely to be provided in the future. However, to  
32 demonstrate that identified isolated land may be considered developable for the purpose of this  
33 calculation, the applicant must submit a plan and supporting documentation for the Board's  
34 consideration.
- 35 G. All land zoned non-residential.
- 36 H. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- 37 I. All land identified as exposed bedrock, or soils with a drainage class of *poorly drained*, and/or  
38 *very poorly drained* as defined in Title 16.2 *Soils.*
- 39 J. Fifty (50) percent of all land that is characterized with a drainage class of *somewhat poorly*  
40 *drained*, unless public sewer is utilized, in which case no land area is subtracted.
- 41 K. All land area within a cemetery/burying ground as defined in Title 16.2, including associated  
42 setback per MRS Title 13 §1371-A *Limitations on construction and excavation near burial sites.*
- 43 L. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection  
44 Overlay Zone not included in 16.7.8.1.A -K.
- 45

46 16.7.8.2 Documentation

47 The Net Residential Acreage calculation must be supported by verifiable information and accurate data  
48 and shown on the subdivision plan or other plan when applicable.

49

50 **16.2 Definitions**

51

52 Tidal Land, Filled: means portions of the submerged and intertidal lands that have been rendered by  
53 human activity to be no longer subject to tidal action or below the natural low-water mark after October 1,  
54 1975.

55

56 Soils

57 ~~1. "Poorly drained soils" means soils where water is removed so slowly that the water table is at or~~  
58 ~~within twelve (12) inches of the ground surface for six to nine months of the year.~~

59

60 ~~2. "Very poorly drained soils" means soils in an area where water is removed so slowly that the water~~  
61 ~~table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.~~

62 A soil's drainage class must be determined by a Maine Certified Soil Scientist and based on the NRCS  
63 Supplemental Key for the Identification of Soil Drainage Class based on the Maine Association of  
64 Professional Soil Scientists, Key to Drainage Classes, March 5, 2002 or subsequent revisions.

65 Cemetery and Burying Ground: A private or public place set apart for the interment of the dead. In the  
66 absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information  
67 from the Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the  
68 internment area is determined by starting with a 10-foot distance from existing tombstones and expanded,  
69 where necessary, to form a final rectilinear area.

70 **Net residential acreage** means the land area identified for regulatory purposes as developable and is  
71 means the gross available acreage less the area required for streets or access and less the areas of any  
72 portions of the site which are unsuitable for development land area identified as outlined in Article VIII of  
73 Chapter 16.7 Net Residential Acreage. The Net Residential Acreage is used to determine the maximum  
74 number of dwelling units allowed on a parcel.

75

76

77 **16.8.11.5 Application Procedure.**

78 All development reviewed under this Article is subject to the application procedures in Chapter 16.10,  
79 Development Plan Application and Review, and the following:

80 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch  
81 Plan:

82

83 1. Calculations and maps to illustrate:

84 a. proposed dimensional modifications and the dimensional standards required in the zone in which the  
85 development will be located;

86 b. non-buildable area (land ~~not suitable for development~~ area as defined in Article VIII of Chapter Title  
87 16.7.8.1);

88 c. net residential acreage and net residential density; and

89 d. open space as defined in Section 16.8.11.6.D.2 of this Article.

Planning Board  
Code Subcommittee

Feb. 18, 2014

Town Hall

NOTES

Present: Chris DiMatteo, Ann Grinnell, Karen Kalmar, Gerry Mylroie, Susan Tuveson, Earledean Wells

**16.7.8.1 Net Residential Acreage**

**A. Changes** (double spaced version)

- Chris included all the changes listed in the notes from last meeting except adding another reference to the one hundred (100) year floodplain at line 23 and the typo in the definition of Net Residential Acreage. (thanks Chris)
- line 31: "Note" was deleted. Statement now reads: However, to demonstrate that the identified isolated land may be considered developable for the purpose of this calculation, the applicant must submit a plan and supporting documentation for the Board's consideration.
- line 35: Now reads: All land in a commercial land-use base zone
- line 44: Now reads: All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Zone not included in 16.7.8.1 A through K. (or A-K) .

**B. Discussion**

In item G. should there be a percentage subtracted for land-use base zones that permit only limited residential development? Chris will look into this before the NRA draft is included in the packet for Feb. 27. If there are *many* parcels that might have multiple zones including both residential and MU/B-L etc., he will note this for consideration by the Board.

**16.8.7.1 Sanitary Sewer System and Subsurface Wastewater Disposal**

**A. Changes**

- line 1: delete the errant o (after Article VII). Chris will determine whether a comma is needed between Article VII and Chapter 16.8.
- line 2-3 replace "servicing sanitary sewer agency" with Kittery Sewer Department.
- new item B to read: Subsurface wastewater disposal is permitted in subdivisions with four or fewer lots.

**B. Discussions**

- Karen proposed the addition of a new item B. (see above). There was lengthy discussion of the rationale for this addition (aligning with the Comp. Plan's guidance to direct high intensity growth to areas with Town water/sewer, as well as density control north of Spruce Creek and protection of natural resources).
- Earledean is worried that this alone could produce sprawl over time. The argument in favor of the amendment is that it is supported by the Comp. Plan. It would also discourage large developments in areas that have been designated low-growth, where there are already many empty lots available in existing

subdivisions. It would preserve the current landowners' land value. And, it would be a stop-gap density-control measure that could be augmented by future changes to zoning regulations related to lot size.

- Cluster housing was also discussed. Susan would like to see cluster housing allowed in the Foreside. Ann and Karen agreed that tightly packed houses are not in keeping with what many perceive as desirable rural character, which is characterized by larger individual lots with woodlands preserved. Chris noted that some communities require large 'heritage' lots in certain zones. He also mentioned that there could be requirements on maintaining buffers/limiting clearing on large lots. The cluster concept is a tool that can offer a way to protect open space. However it is clear that there is concern about the subdivisions that the current ordinance has produced. This is a topic that the Board might wish to revisit.
- Central subsurface wastewater collection systems were also discussed. Earledean expressed concern about their effectiveness and the Town's ability to ensure their maintenance. Karen suggested that there are likely to be lots for which this would be the best, or only, alternative and that the Town could implement a monitoring process. Chris handed out information about multi-user systems that the committee will review before the next meeting.

NEXT MEETING: **WED. FEB. 26, 9:00AM** TOWN HALL

Planning Board  
Code Subcommittee  
Feb. 12, 2014  
Town Hall  
NOTES

Present: Chris DiMatteo, Ann Grinnell, Karen Kalmar, Gerry Mylroie, Susan Tuveson, Earledean Wells

**16.8.7.1 Net Residential Acreage: 2.12.14 draft (red print)**

**A. Changes**

General: Leave "All", delete "that is": re-letter after inserting new item G.

- line 19 -- Acreage instead of *area*
- line 23 -- All land within the one hundred (100) year floodplain as defined...
- line 26 -- Delete "that is"
- line 28 -- add at end: including driveways that service two or more dwelling units.
- line 29 -- F. All land isolated from the primary portion of the parcel by a road/ street, existing land uses or any physical feature, natural or manmade, such that it creates a barrier to the central development of the site and no means of access is proposed nor likely to be provided in the future. To demonstrate that such isolated land could be considered developable for the purpose of this calculation, the applicant may present a concept plan for the Board's consideration. (Chris will rework this)
- INSERT: new item G. Chris will draft language to subtract all land on a multi-zone parcel where residential development is prohibited. He will also consider applying a percentage deduction for parts of multi-zone parcels that are in MU or other zones with residential limitations.
- line 32: All and ~~that is two (2)~~ one (1) acre or more contiguous area....
- line 33: delete "that is"; identified instead of *characterized*
- line 35: Fifty (50) percent of land with a drainage class of somewhat poorly drained, unless public sewer is used, in which case no land area is subtracted.
- line 38: Title instead of *Title*; delete period after A
- line 39: ~~16.7.8.2. A through J~~ 16.7.8.1 A through K (after adding new G.)

**16.8.7.2 Documentation**

The Net Residential Acreage calculation must be supported by verifiable information and accurate data and must be shown on the subdivision plan.

**Definitions 16.2**

- Tidal Land, Filled -- approved as written
- Soils -- approved as written
- Cemetery and Burying Ground: comma after i.e. (line 64) ~~and~~ instead of *if* (line 66)
- Net Residential Acreage is means the land area identified for regulatory purposes as developable and is ~~determined by~~ the gross available acreage less the land area identified in Article VIII of Chapter 16.7 Net Residential Acreage. The New Residential Acreage is used to determine the maximum number of

dwelling units allowed on a parcel. (uncertain about strikeout. it was on my copy)

## **TASKS**

### **CHRIS/GERRY:**

- Finish items on Net Residential Acreage as noted above and send new version to subcommittee via email. After final subcommittee review on Tues. 2/18 Chris will send an e-version to the entire Planning Board with a request that they review this carefully prior to consideration at the Feb. 27 PB meeting. (I might have bodged this part... I wrote down "subcommittee first" and that's all... I'm now well past my 30 minutes of retention so, Chris, please correct if this is wrong)
- Make double spaced versions of drafts of future drafts for subcommittee so that notes can be made more easily.

**NEXT MEETING: TUES. Feb. 18, 2:00 PM** Town Hall

Planning Board  
Code Subcommittee  
Feb. 4, 2014  
Town Hall  
NOTES

Present: Chris DiMatteo, Karen Kalmar, Gerry Mylroie, Susan Tuveson, Earldean Wells

**I. 16.8.7.1 Net Residential Acreage**

16.8.7.1 NRA will replace existing 16.8.7.1 Land Not Suitable for Development. The 16.2 definition of Net Residential Acreage will be revised slightly to state the "why" of the concept (controlling density) and will eliminate the reference to land unsuitable for development. The new definition will also include a reference to this code.

- A. Discussions on this item
1. Limiting 16.8.7.1 to the "how", not the intent (intent in revised 16.2 definition)
  2. New definition: Tidal Land, Filled: acceptable as proposed
  3. Eliminating loopholes
  4. Aligning with Town goals (Comp Plan)
  5. Improving clarity in item E: driveways and other non-streets to be included: "access" (unclear) becomes "associated travel ways"
  5. Item F. isolated portions of property
    - a) intent: deduct from gross acreage any land that could not possibly or would not otherwise be developed
    - b) can be a strategy to prevent fragmenting parcels & saving back lots
    - c) consider property rights, prevent "takings"
    - d) define, in part, as land that could not support a conventional subdivision
    - e) New Gloucester sample reviewed, use some language if possible
- B. Style details
1. Clarity is paramount. Consistency of terms and form is a goal.
  2. "Acreage" preferred to "area" because density is measured in units per acre
  3. Numbers will be spelled out with the numerals included in parentheses
  4. Eliminate superfluous words, e.g. "that is" and "all"
  5. Spell out acronyms such as DEP HAT
  6. Rights-of-way is the plural of ROW
- C. Tasks
1. Chris/Gerry: revise definitions and rework item F.
  2. Chris:  $\sqrt{w/}$  Ann then set time for next meeting (Wed. 1.12.14); notify all
- D. Status
- Finish this item at next meeting and begin septic codes.

Next Meeting: **WED. Feb. 12, 2014, TIME: TBD**

December 3, 2013

**Planning Board Workshop Minutes**

Prepared by Chris. DiMatteo,

Sources: Debbie Driscoll Davis, Karen Kalmar, and Chris Di Matteo

**Attendees:**

Tom Emerson, Planning Board (PB) Chair

Susan Tuveson (PB)

Mark Alesse (PB)

Debbie Driscoll Davis (PB)

Karen Kalmar (PB)

Gerry Mylroie, Town Planner

Chris DiMatteo, Assistant Town Planner

Bill Straub, Peer Review Engineer, CMA Engineers

Earldeen Wells, Conservation Commission (CC) Chair

Don Moore (CC)

Steve Hall(CC)

Jan Carson (CC)

Megan Kline, Citizen/Former Planning Board Member

Ken Markley, Easterly Surveying, Inc.

Joel Noel, Soil Scientist

Jeff Clifford, Altus Engineering, Inc.

Jim Gove, Soil Scientist

Jim Logan, Frick Associates

Jay Stevens, Civil Consultants

Tom Harmon, Civil Consultants

Mike Cuomo, Soil Scientist

Ron Beal, Altus Engineering, Inc

***ITEM 1 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.***

*An amendment to the Town Code to address the applicability the Soil Suitability Guide for Land Use Planning in the State of Maine referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations.*

After introductions Earldeen Wells asked if proposed changes would allow more septs to be used.

A general discussion led by the soil scientists and engineers commenced that included the differences between the soil ratings described in the *Soil Suitability Guide...* and the soil drainage classes that are commonly used by the profession to describe soil suitability.

Answer to Ms. Wells question was essentially yes, because the old guide rated many soils as poor or very poor that soil scientists/engineers believe can, with varying levels of engineering, be safely used for subsurface waste water disposal.

Discussed Soil Potential Ratings Guide - Jim Logan

Hydric soils may or may not be wetlands

Mr. Harmon noted that the entire lot doesn't need to be made up of soils suitable for septic in order to have a successful development, implying that the deduction of soils in the net residential calculations is not entirely fair.

Engineered Septic Systems make soils less of an issue

**\*\*Density of Development is the REAL ISSUE\*\***

Mr. Clifford discussed page 137, section F of the current Comp Plan and the variable 1-3 acre zoning. 2 acre zoning with no septs in wetlands, covers most scenarios.

P:\PLANNING AND DEVELOPMENT\TOWN CODE ORDINANCE AMENDMENTS\2014 Proposed T-16 Amendments\Net Residential Acreage\December 3 Workshop Minutes.doc

He also stated with cluster development the average density is 1 dwelling per 2.6 acres.

Mr. Gove discussed soil base lot sizes that are in practice in many towns in N.H.  
The lots are sized so that nitrates dilution to less than < 10 parts per million.

Concerns about Pharmaceuticals in waste water were discussed and it was noted that they currently are not filtered out with conventional systems.

Concerns about Plastics degradation as parts of septic systems  
-Sun exposure is only part of the problem

Mr. Cuomo discussed the soil depth as it relates to septic systems and the current 15" near wetlands or Shoreland Zone and 9" elsewhere, may be improved by all being 15" and possibly 20" near wetlands and Shoreland Zone.  
Phosphates were discussed, as being less prevalent due to new laundry soaps

Storm Water Erosion and issue  
Take "significant" out of ordinance, as it is subjective  
Ditchlines should be taken out of net residential calculations  
"Highest Erodible Soils" in 16.7.8.1 I. "not scientific" should consider removing

*{Though the discussion moved somewhat back and forth between items Item #2 started with a discussion on common septic systems}*

***ITEM 2 – Town Code Amendment – Title 16.7 Sewer System and Septic Disposal and 16.9.1.4 Soil Suitability. Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development.***

Common/shared septic systems were discussed.  
Mr. Noel said he felt there were often problems with these, such as: more trenching in bedrock, more piping and water infiltration around the pump. He prefers individual systems.

Mr. Clifford said he felt that there is no specific benefit in all cases, but there can be cases where common systems are the best choice; it's site dependent. (ex: where there's only one area on the property that has suitable soil). Though he had seen problems in the past, he said the systems are better now. He also noted that there is a State threshold (roughly equivalent to 7 houses) where the engineering of common systems is subject to much more stringent rules and also requires MDEP staff review. He said this ensures better results.

Approximately less than 10% of the Town's septic systems are common systems.

Mr. Logan suggested that there should be a minimum of 40,000sf lots to allow adequate area between wells and septic systems, otherwise we might want to push toward shared systems.

A discussion of responsibility for maintenance of common systems ensued. A legal entity must be established and capable when common septic systems are required. It was suggested that HOAs should be required by code to put funds aside for this and be required to have an annual

maintenance plan that would be enforced by the CEO (State requires such a legal document for shared systems with 3 or more homes).

Concluding statements made, some included more flexibility, perhaps in the manner of waivers and the differences between prescriptive versus performance based code. **ITEM 3 –Town Code Amendment – Title 16.3.2.1 Residential-Rural and Title 16.3.2.6 Residential-Rural Conservation Zone Standards.**

*An amendment to the current density standards of 1 dwelling unit per 40,000 SF (R-RL) and 80,000 SF (R-RC) to 1 dwelling unit per 120,000 SF.*

Discussion about 1 acre / 2 acre zoning change to 3 acres as recommended by Comp Plan Update Committee

Discussed past opposition to this change

Discussed ways to accommodate long term property ownership vs. short term property ownership and family subdivisions

Mr. Markley suggested identifying the types of development or qualities of developments that aren't "palatable" and use these factors to control density. He wants more flexibility (waivers) to get the best "product" for his clients and the town.

Tom Emerson and Susan Tuveson spoke about demographic changes and their effect on trends in real estate sales. The trend is toward smaller homes in walkable areas. This is the opposite of large homes in rural areas. (Tom compared "walk scores" in two areas of Kittery. Foreside, far more valuable property now).

"Incentivizing" development in walkable areas through density bonuses and the transfer of development rights was discussed.

Mr. Mylroie noted that the Comp Plan Comm. doesn't want to stop growth, it recommends slowing growth in some areas and creating incentives in others. Creating quality improvement zones and consolidating some business zones were mentioned.

Also discussed transfer of development rights, which has been used in the Mixed Use, Outlet area of Route One

#### **ITEM 4 – Town Planner Items**

- A. Memorial Circle Streetscape Improvements
- B. MS-4 Stormwater Management Plan (Not discussed?)

##### Memorial Circle Streetscape Improvements

Wooden Guardrails, tree line on either side of sidewalks, No sidewalk on Adams Drive.

Use concrete for sidewalks. Consider Elderly "Shuffle" when deciding on sidewalk surfaces: (avoid uneven or heavily textured surface in main walking area, perhaps use to "detail" edges): Shepard's Cove, Kittery Estates, Meetinghouse Village.....to Community Center  
Also include resting places along the way.....granite blocks (low maintenance) no shoveling or mowing under.

Mr. Mylroie reviewed staff/DPW input. Low maintenance ground covers, railing choices etc. Karen and Earledean asked that tree species be varied (use trees with similar size, shape). This would prevent total landscape devastation in the event of a species-specific blight.

Discussed issues around sidewalk and parking in front of Kittery Museum.....bring them into discussion early on. Bring sidewalk to rear parking area??

Tom asked any who can to attend the Town Council's "listening session" on Jan. 6, 7PM  
Susan will be out of town for the proposed Board retreat (Jan. 10). We'll set a new date when all members are present.

## Town of Kittery Planning Board Meeting February 27, 2014

### Beatrice Way – Right-Of-Way Plan Review

Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

#### PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Site Visit	Board's discretion	
YES	Determination of Completeness/Acceptance	To be held February 27, 2014	
YES	Public Hearing		
YES	Preliminary/Final Plan Review and Approval		

**Applicant:** The purpose of these Plan Review Notes is to assist in Development Plan Review process. Complete compliance, however, is not all inclusive of the Town's plan review requirements; other local, state and federal approvals may be required. Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices by the Town Planner and the Town's plan review consultant, CMA Engineers, Inc. While the Planning Board (PB) refers to Plan Review Notes during the plan review process the comments and recommendations are non-binding until approved by the PB. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS. As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.**

### Staff Comments

#### **Background**

Operation Blessing, LP, represented by Richard Sparkowich, received subdivision approval in August 2008 for three lots. The remaining 58 acres (with existing access from Old Farm Road) maintains 78 feet of frontage along a right-of-way that formerly was owned by Goodhouse Construction (Highpoint Circle developer) and currently co-owned by abutters Hanson and Gasbarro. September 13, 2012 the Applicant withdrew their request for an extension to complete the project and finalized the road construction and essentially completing the 2008 approved subdivision in November 2012.

Early in 2013 the applicant submitted an application to amend the 2008 Subdivision with the addition of a new Right-Of-Way that would allow the creation of one additional lot. The Modification of an Approved Plan included splitting the remaining 57-acre land into two lots; one with existing dwellings (total of 5) and the other with a single proposed dwelling. The applicant was not amenable to the requirements under the recently adopted cluster ordinance requiring setting aside open space, regardless of the number of lots being proposed. The Board never acted on the application within the required timeframe and thereby making it null and void.

The applicant has now submitted a Right-Of-Way Plan application. The applicant had submitted the application earlier, stating that they were beyond the 5 year period that would trigger subdivision; however, staff was not convinced that application shouldn't be reviewed as an amended subdivision and did not consider the application. With review of the latest application staff found that while more than 5 years has passed since the subdivision was approved, less than 5 years has elapsed since the third lot was conveyed, 11/16/2009.

### **Review to date**

#### Review type, Subdivision or Right-Of-Way

The Applicant contends the proposed development does not trigger subdivision thereby does not require an amendment to their 2008 approved subdivision. They find that since 5 years has passed since the approval of the subdivision (8/14/2008) that the lot split associated with the proposed Right-Of-Way does not trigger subdivision (three or more lots/dwellings within a five-year period).

Staff has obtained advice from MMA legal department (see attachment 1) with regard to when does the five-year period start, and they state it is the conveyance, not the subdivision approval, that constitutes the actual division. The third and last lot was conveyed by deed dated 11/19/2009, approximately four years and three months ago.

#### Title 16.8.16 Lots

16.10.8.3.4.S.1 requires that a Right-Of-Way Plan “does not create any nonconforming lots or buildings;”.

To make a positive finding on the above standard the proposed plan needs to conform to provisions under 16.8.16. Staff has the following comments:

- 1) Parcel A looks like a Flag Lot. Provision A under 16.8.16.9 Lot Shape prohibits “flag lots” but does not define them:

A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

Staff contends that a lot that looks like a “flag” (in that the street frontage is along a narrow portion of land, the pole of the flag) then the lot is a “Flag Lot”. The applicant’s agent, Ken Markley, Professional Land Surveyor, contests that the proposed lot is not a flag lot because it is not created through “which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.” Staff obtained advice from MMA’s legal department to address this issue. In her second email Attorney Seel clarifies her first email and concurs with Staff’s initial assumption. (see attachment 2)

- 2) Parcel A does not meet the 3:1 lot length to width ratio. As required in 16.8.16.9.A, the lot length cannot be more than three times the width of the lot. This measurement is based on the definition of Lot Width found in 16.2.

**Lot width** means the horizontal distance between the side lot lines, measured at the setback lines.

Side Lot Lines is essentially defined in 16.8.16.5 and states they “must be substantially at right angles or radial to street lines.” Front Yard is defined in 16.2 and means “an open area unoccupied by any structure ... on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot as it abuts along a public or private street.”

Staff does not agree with the applicant’s agent’s calculations on determining lot width. An email with Mr. Marley’s calculations and Staff’s comments is attached for reference. (see attachment 3) When considering the definition of Lot Width and meanings associated with “side lot line” and “front yard”, Parcel A is not in compliance to 16.8.16 Lots.

#### Plan Information

Staff has the following comments:

- 1) Parcel perimeter shown does not coincide with what is shown on the Tax Map. Tax Map 61 Lot 8 shows a parcel that connects to Old Farm Road via a narrow extension of land. The plan submitted does not show the connection/frontage on Old Farm Road?
- 2) Plan information per Title 16.10.5.2.B.7. *Surveyed acreage* ....missing total wetlands for parcel A
- 3) Plan information per Title 16.10.5.2.B.8. *Names and addresses* ....record owner information for parcel across from Gasbarro is missing
- 4) Plan information per Title 16.10.5.2.B.10.h. *setbacks Existing and Proposed* ....not shown on plan
- 5) Title 16.10.5.2.C.2.b. *Essential physical features* ....Forest cover is not shown

### **Recommendation**

Staff recommends the Board determine first if it concurs with MMA with regard to how the subdivision five-year period is determined, approval date of the subdivision or the date of the actual lot conveyance (deed). If the Board does, they can direct the Applicant to wait the full five year period or continue the review under an amended subdivision plan, that would incur meeting requirements of the Cluster Ordinance unless the Board is convinced that this particular instance is better suited to be reviewed as a conventional subdivision.

In either case, Staff recommends the Board not accept the application without before having the applicant address the issues raised in the Plan Review Notes.

# Attachment 1

**From:** Legal Services Department [[mailto:Legal\\_Services\\_Department@memun.org](mailto:Legal_Services_Department@memun.org)]  
**Sent:** Thursday, February 20, 2014 1:10 PM  
**To:** Chris DiMatteo  
**Subject:** RE: Kittery - Legal Question regarding Flag Lots

[Excerpt]

You also asked another question related to revisions to an approved subdivision plan and creation of additional lots. There is a discussion of this issue in materials I prepared for a Maine Bar Association seminar in 2010. Those materials appear in Appendix 5 of MMA's *Planning Board Manual*, which is posted in the "Members Center" of MMA's website ([www.memun.org](http://www.memun.org)). I have attached to this email a copy of a memo discussing the municipal subdivision law that I prepared for that seminar, which is also included in the manual appendix. The memo includes a discussion of how to calculate the 5 year period in relation to the creation of a subdivision and how to determine whether a new division must be reviewed by the planning board as a revision to an approved plan. There are a number of factors to consider in deciding whether a new lot needs approval—the language of the town's ordinance, the language of 30-A MRSA section 4406(1)(E), and the date on which lots in the approved subdivision were actually created by a deeded conveyance or other act that constitutes a "division." The approval of the subdivision plan is not an act that "divides" the parcel and creates a lot; it is only permission to "divide" the parcel in a manner consistent with the board's approval.

Becky Seel

## **The Statutory Definition of "Subdivision" for Purposes of Municipal Review and Related Issues**

**Rebecca Warren Seel, Esq.  
Senior Staff Attorney  
Legal Services Department  
Maine Municipal Association  
Prepared for the May 2010 MSBA Real Estate Institute**

[Excerpt]

### **4. Within any 5 year period beginning on or after September 23, 1971**

- To determine how many lots have been split from a "parent" parcel within a single 5 year period, the starting point for calculating the 5 year period is the creation of a particular lot (e.g., when sold, leased, made the subject of a written purchase and sale agreement or option to purchase); the presumption is that the division occurred on the date of the deed or other document, absent other evidence of record to the contrary.

## Attachment 2

**From:** Legal Services Department [[mailto:Legal\\_Services\\_Department@memun.org](mailto:Legal_Services_Department@memun.org)]  
**Sent:** Thursday, February 20, 2014 1:10 PM  
**To:** Chris DiMatteo  
**Subject:** RE: Kittery - Legal Question regarding Flag Lots

Dear Chris,

I'm writing in response to your follow up email regarding flag lots.

The language in section 16.8.16.9 of the town's land use ordinance regarding flag lots states:

"Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited."

In my earlier email, I linked the phrase "flag lots" and the language that follows the phrase "odd-shaped lots" in my discussion of what a flag lot is. On further reflection, I think it could be argued that the sentence in question speaks about two different types of lots: (1) "flag" lots and (2) "other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements." I think the intent of that section is to prohibit a person from creating a lot that is not a standard square or rectangle configuration. I believe that a lot in the shape of a flag that is carved from a single parcel is prohibited by the ordinance language and that it doesn't matter that it wasn't created by joining a narrow strip or strips of land from one parcel to some other parcel. Now that this issue has been highlighted by the present situation, I'd encourage the town to consider amending that section to make it clear that the shape of the lot is what is important, not what was done to create the shape.

You also asked another question related to revisions to an approved subdivision plan and creation of additional lots. There is a discussion of this issue in materials I prepared for a Maine Bar Association seminar in 2010. Those materials appear in Appendix 5 of MMA's *Planning Board Manual*, which is posted in the "Members Center" of MMA's website ([www.memun.org](http://www.memun.org)). I have attached to this email a copy of a memo discussing the municipal subdivision law that I prepared for that seminar, which is also included in the manual appendix. The memo includes a discussion of how to calculate the 5 year period in relation to the creation of a subdivision and how to determine whether a new division must be reviewed by the planning board as a revision to an approved plan. There are a number of factors to consider in deciding whether a new lot needs approval—the language of the town's ordinance, the language of 30-A MRSA section 4406(1)(E), and the date on which lots in the approved subdivision were actually created by a deeded conveyance or other act that constitutes a "division." The approval of the subdivision plan is not an act that "divides" the parcel and creates a lot; it is only permission to "divide" the parcel in a manner consistent with the board's approval.

I hope this helps. Feel free to follow up with me if you have additional questions.

Sincerely,  
Becky

**From:** Chris DiMatteo [<mailto:CDiMatteo@kitteryme.org>]  
**Sent:** Wednesday, February 19, 2014 11:49 AM  
**To:** Christine Bragg  
**Subject:** RE: Kittery - Legal Question regarding Flag Lots

Hi Christine,

I probably should have mentioned this yesterday, but if there is any opportunity to have a reply before tomorrow afternoon, that would be very helpful.

Thanks  
Chris

**Christopher Di Matteo**  
Assistant Town Planner  
200 Rogers Road, Kittery Maine 03904  
(207) 439-6807 Ext. 303 / (207) 475-1323 (Direct Line)  
[cdimatteo@kitteryme.org](mailto:cdimatteo@kitteryme.org)

**From:** Christine Bragg [<mailto:cbragg@memun.org>]  
**Sent:** Tuesday, February 18, 2014 10:18 AM  
**To:** Chris DiMatteo  
**Subject:** Kittery - Legal Question regarding Flag Lots

Chris, MMA Legal Services has received your inquiry. It has been assigned to our attorney, Rebecca Seel, who will respond as soon as possible. Our response time may vary depending on the volume of inquiries, the nature and complexity of your inquiry, and current staffing. We appreciate your understanding and cooperation.

If you have a specific deadline, please let us know.

Thank you. Christine Bragg, Legal Services Department

**From:** Chris DiMatteo [<mailto:CDiMatteo@kitteryme.org>]  
**Sent:** Tuesday, February 18, 2014 9:51 AM  
**To:** Legal Services Department  
**Subject:** RE: Kittery - Legal Question regarding Flag Lots

Hi Becky,

I have a follow-up and another question.  
I understand if this request has to be processed and possibly given to another attorney, but here are the questions.

1) When I shared your response with the applicant, their opinion was the a flag lot was essentially an odd-shaped lot where narrow strips of land are joined to other parcels. So if the act of joining other

pieces of land in order to meet the minimum lot size is not the case then you can't have a flag lot. If this is not your take, then please submit something that clarifies your statement below. I had thought that regardless of how it is designed, a lot that looks like a flag lot is a flag lot.

2) with regard to subdivisions and when it is applicable to be required to amend or not, is it the approval date of the subdivision or the date the last lot was conveyed when it comes to determining when the 5 years have elapsed, thereby not requiring subdivision for a simple lot split (the creation of an additional lot)?

Thanks for the help  
Chris

**From:** Legal Services Department [[mailto:Legal\\_Services\\_Department@memun.org](mailto:Legal_Services_Department@memun.org)]  
**Sent:** Friday, January 31, 2014 9:50 AM  
**To:** Chris DiMatteo  
**Subject:** RE: Kittery - Legal Question regarding Flag Lots

Dear Chris,

I'm writing in response to your email below regarding the definition of "flag lot." I'm not aware of any general definition of that term in Maine established by statute or court decision that would control Kittery's ordinance. As I read the wording of section 16.8.16.9 that you recited in your email, I think subsection A basically provides a definition of the term in the second sentence. A "flag lot" is an "odd-shaped lot" that looks like a flag and that is created by joining a narrow strip of land to another parcel in an attempt to meet the minimum lot size. The "narrow strip" in the case of a "flag lot" would amount to the flag's pole and the "other parcel" to which the narrow strip is joined would amount to the cloth part of the flag. A court generally will be guided by the wording of the ordinance before it looks outside the ordinance language for guidance. I think a court would find that referring to a lot as a "flag" lot means that the lot is physically configured to resemble a flag and attached pole.

I agree that subsection A has two distinct parts. One establishes the length to width ratio that a legal lot may not exceed. The second part addresses flag lots and other odd-shaped lots and expressly prohibits them. I don't think a lot configured to look like a flag would be legal under the language of that section of the ordinance, regardless of the width to length ratio. The ordinance establishes an across the board prohibition on flag lots and other odd shaped lots, regardless of the ratio, as I interpret subsection A.

I hope this helps. Feel free to follow up with me if you have additional questions about this.

Sincerely,  
Becky Seel

Rebecca Warren Seel  
Senior Staff Attorney  
Legal Services Department  
Maine Municipal Association  
60 Community Drive, Augusta, ME 04330

**From:** Christine Bragg  
**Sent:** Thursday, January 30, 2014 12:22 PM  
**To:** Chris DiMatteo  
**Subject:** Kittery - Legal Question regarding Flag Lots

Chris, MMA Legal Services has received your inquiry. It has been assigned to one of our attorneys, who will respond as soon as possible. Our response time may vary depending on the volume of inquiries, the nature and complexity of your inquiry, and current staffing. We appreciate your understanding and cooperation.

If you have a specific deadline, please let us know.

Thank you. Christine Bragg, Legal Services Department

**From:** Chris DiMatteo [<mailto:CDiMatteo@kitteryme.org>]  
**Sent:** Thursday, January 30, 2014 12:18 PM  
**To:** Legal Services Department  
**Subject:** Kittery - Legal Question regarding Flag Lots

Good morning/afternoon...

I was hoping that I can submit a question to the legal department via email regarding a definition of a 'Flag Lot'.

Our ordinance references it, much in the same manner of nearby towns, but does not define it. It is a term that does not seem to show up in customary dictionaries, so I thought I would ask you.

I have made an initial interpretation that assumes the first part of the provision in 'A' related to lot shape is not attempting to define a flag lot.

**16.8.16.9 Lot Shape.**

A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than five to one.

Thanks for your help on this.

Chris

## Attachment 3

**From:** Chris DiMatteo  
**Sent:** Monday, February 03, 2014 12:53 PM  
**To:** 'Kenneth Markley'  
**Cc:** 'Rick Sparkowich'; Gmylroie; Heather Ross; Shelly Bishop; Jan Fisk  
**Subject:** FW: Pdf of Submitted Plans

Hi Ken,

{Here is the email I prepared last week but didn't get a chance to get it out to you. As week discussed today with Gerry, revise the plan to meet the comments below.

Also, as we discussed, if you can't design the lot to meet the specific lot standards in the Code, but you think there is a compelling reason(s) why the Board should allow it, then formally request a waiver and prepare a narrative of what the reason is and how such a waiver can be supported. I will follow-up with the email I received from MMA regarding Flag lots}

Thanks for your extensive description of why you don't believe the proposed lot A is not a Flag Lot and meets the ordinance.

Let me start first with the title 16.8.16.9.A where the Town Code requires a maximum Lot Length/Width Ratio of 3:1.

You have interpreted this ratio as what defines a 'Flag Lot' since what follows in this provision of the ordinance is a reference to 'Flag lots and other odd shaped lots'.

I don't agree.

The 3:1 ratio applies to all lots regardless if they are 'Flag lots and other odd shaped lots'.

With the absence of definition for 'Flag Lot' the Code directs the application of a "customary dictionary meaning".

Here I admit there is not many definitions to go by, but the proposed lot 'A' is simply not a typical configured lot and I don't believe meets the code.

The shape of proposed lot A is in a shape of a flag, in that the widest portion of the lot is set back beyond the access to the site from the street/ROW.

The access and frontage is located in the narrowest part of the lot, resembling the "pole" for the 'flag'.

Outside of my general impressions above, below I have provided specific comments that pertain to your three different alternatives.

There are other items that are not addressed in the proposed plan.

1) dead end streets and cul-de-sacs. Table 1-Chapter 16.8. apparently "hammer-heads" are not listed, only cul-de-sacs.

Are you requesting a waiver and what is the justification.

2) The length of the proposed roadway. It appears to be in excess of 400 feet. Does this mean you are proposing that the roadway will be accessed by the existing dwellings, thereby having a 600-foot road length limit? 600 feet is the dead-end limit for a private class II that is between 3 and 7 dwellings.

Currently 6 dwellings are listed in the assessor's data (though the owner has stated that there are only 5).

3) wetland delineation. The plans do not show the full extent of wetlands. As we discussed during the previous submittal, at a minimum, public sources of wetland extents should be used to show that the lots meet the required land area per dwelling unit. If the Planning Board finds this not acceptable, they

can request delineation to be done and/or recertified. It is also pertinent in showing what the likely building envelopes are for the lots.

**Christopher Di Matteo**

**From:** Kenneth Markley [<mailto:ken@easterlysurveying.com>]

**Sent:** Wednesday, January 29, 2014 2:43 PM

**To:** Chris DiMatteo; 'Rick Sparkowich'

**Cc:** 'Pete Agrodnia'; Gmylroie; Heather Ross; Shelly Bishop

**Subject:** RE: Pdf of Submitted Plans

Chris,

I will assume you are talking about "Proposed Parcel A" on the attached plan because "Proposed Parcel B" is wider than it is deep. Actually the same can be said for "Proposed Parcel A" 95% of which is square in shape. I don't find a definition of "flag lot" in the definitions section of the ordinance so I assume you are referring to the 3 to 1 depth to width ratio requirement noted elsewhere in the code.

The road frontage of "Proposed Parcel A" is obtained along the north side of the proposed right of way which is 217.77 feet long. The definition of width for lots in Kittery is the horizontal distance between the side lot lines, measured at the setback lines.

Calculation of width #1: (As illustrated by the blue lines on the attached plan) The horizontal distance between lot lines measured 40 feet (the front setback) from the northerly sideline of the right of way is 1,804 feet in length. Historically a straight line is used when measuring width so that lots along the outside or inside curve of a road do not get an advantage. {I would expect the horizontal distance to be measured between the two side lot lines per 16.2 definition of Lot Width.} The depth of this lot as measured horizontally from the road frontage perpendicular to the back lot line is only 171 feet. Therefore, it meets the 3 to 1 ratio depth to width ratio of the code. {I would expect the lot depth to be measured where a building envelope exists and where the building will most likely be sited.}

Calculation of width #2: (As illustrated by the orange line on the attached plan) If you wanted to measure the width as being the distance along {the definition of Lot Width uses the word "at" not "along"} the entire front setback line the width would be 337 ft and the depth would remain 171 feet as measured perpendicular to the side of the road used as frontage. Therefore, it still meets the 3 to 1 ratio depth to width ratio of the code. {I would expect the measurement of lot width is a straight line between two points and not perimeter length as with street frontage.}

Calculation of Width # 3: (As illustrated by the green lines on the attached plan) The definition of width as stated in the code calls for the horizontal distance to be measured along the setback line. {Again, the definition of Lot Width uses the word "at" not "along"} It doesn't state which setback line to use. It has long been understood that the front setback would be used (see calc. #1 {the 171 feet is measured between two property lines that don't meet the criteria for "Side-lot lines", see 16.8.16.5} and calc. #2) {as mentioned above the 337 feet is not measured between two points} but if the building setback were to be used then the 100 foot setback from wetlands would apply and the width would be somewhere around 1350 ft and the depth as measured perpendicular

from the setback would be around 1328 ft making it almost a square lot(as it appears). Therefore, it still meets the 3 to 1 depth to width ratio of the code. {It's hard to follow along with the numbers you provide in conjunction with the green lines you reference on the plan. And again, the 1350-foot width you state is between two property lines that don't meet the criteria for "Side-lot lines", see 16.8.16.5}

One may arbitrarily take the depth to be let's say 1,600 feet and the width as being let's say 221 feet and call this a flag lot but that appears to be contrary to the actual written code and the intent of the ordinance. C{As mentioned at the start of the email, I don't agree that the 3:1 ratio is defining a flag lot.}

We can therefore conclude that this lot meets the intent of the ordinance to not allow odd shaped lots(used to meet code required dimensions) and promote large well shaped lots that are useful and enjoyable by the future owners, a condition which "Proposed Parcel A" in it's present configuration achieves.

{I would think that the definition for "front yard" is important to consider. I don't think that the proposed lot in question can meet the definition, and thus, making suspect the conformance of the lot.}

Respectfully, Ken

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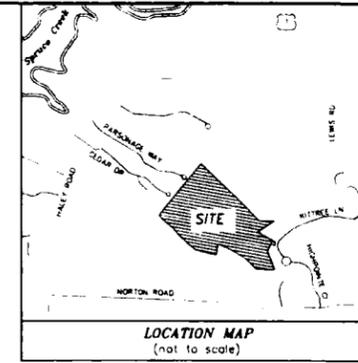
**From:** Chris DiMatteo [<mailto:CDiMatteo@kittery.me.org>]  
**Sent:** Tuesday, January 28, 2014 5:52 PM  
**To:** 'Kenneth Markley'; 'Rick Sparkowich'  
**Cc:** 'Pete Agrodnia'; Gmylroie; Heather Ross; Shelly Bishop  
**Subject:** RE: Pdf of Submitted Plans

Hi Ken,

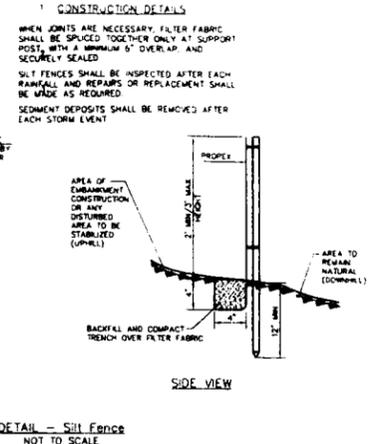
Can you take an opportunity to explain how the proposed lot dimensions meets the ordinance. It appears to me as a Flag Lot.

Perhaps there is an alternative location for the ROW.

Chris



- PLAN REFERENCES:**
- "MINOR SUBDIVISION OF LAND OF OPERATION BLESSING LIMITED PARTNERSHIP, HIGHPOINTE CIRCLE & KITTREE LANE, KITTEERY, MAINE, PREPARED FOR OPERATION BLESSING LIMITED PARTNERSHIP, PREPARED BY CIVIL CONSULTANTS, DATED AUGUST 14, 2008 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 331 PAGE 46.
  - "HIGHPOINTE ESTATES, 9 OLD FARM ROAD, KITTEERY, MAINE, PREPARED FOR GOODHOUSE CONSTRUCTION COMPANY, PROPERTY OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, GEORGE T. & LORETTA C. MARTIN, & OPERATION BLESSING, LIMITED PARTNERSHIP, PREPARED BY CIVIL CONSULTANTS, LAST REVISED 5/28/04 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 291 PAGE 39.
  - "PLAN OF LAND OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, 9 OLD FARM ROAD, PREPARED BY CIVIL CONSULTANTS, DATED 1/7/04 AND RECORDED AT THE Y.C.R.D. ON SEPT. 6, 2012 AS PLAN BOOK 357 PAGE 1.
  - "BOUNDARY PLAN PREPARED FOR A DAVID MANN, KITTEERY, MAINE, PREPARED BY THOMAS F. MORAN, INC., DATED FEB 16, 1987, STAMPED "PROGRESS PRINT" MAR. 4, 1987.
  - "SHEET 1 OF 2 PLAN OF LAND, LEWIS ROAD, KITTEERY, YORK COUNTY, MAINE, FOR A DAVID MANN", PREPARED BY THOMAS F. MORAN, INC., DATED JULY 31, 1989.
  - "CONCEPT SKETCH, CONVENTIONAL LAYOUT, OPERATION BLESSING, 22-24 OLD FARM ROAD, KITTEERY, YORK COUNTY, MAINE, 03904, TAX MAP 61 LOT B", PREPARED BY CLD CONSULTING ENGINEERS, DATED MAR. 2007.



**LINE TABLE**

L1	N04°19'02"E	32.37'
L2	S85°40'58"E	36.00'
L3	S04°19'02"W	31.32'

- NOTES:**
- OWNERS OF RECORD  
TAX MAP 61 LOT B  
OPERATION BLESSING, LP  
Y.C.R.D. BOOK 14125 PAGE 908  
DATED JUNE 8, 2004
  - TOTAL EXISTING PARCEL AREA  
TAX MAP 61 LOT B  
57.59± Acres (Based on Record Surveys)
  - BASIS OF BEARING IS PER PLAN REFERENCE #1
  - APPROXIMATE ABUTTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION
  - THE EXTERIOR BOUNDARY SHOWN HEREON IS PER RECORD PLAN REFERENCES REFERENCED AT THE TIME OF SURVEY. SEE REFERENCED PLANS FOR FURTHER INFORMATION.
  - THE WETLAND DELINEATION SHOWN HEREON IS BASED ON PLAN REFERENCE #6 AND HAS NOT BEEN VERIFIED BY THIS FIRM. FURTHERMORE, FLOODPLAIN AREAS HAVE NOT BEEN MAPPED BY THIS FIRM AND ARE NOT SHOWN HEREON.
  - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
  - DIMENSIONAL REQUIREMENTS SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF KITTEERY PRIOR TO DESIGN OR DEVELOPMENT.
  - ANTICIPATED ADDITIONAL TRAFFIC IS 10 TRIP ENDS PER DAY, FOR ONE NEW SINGLE FAMILY RESIDENCE.

**ZONING DATA PER TOWN OF KITTEERY LAND USE AND DEVELOPMENT CODE 16.3.2.1 (SEE NOTE #8).**

ZONE: Rural Residential (R-RL)

REQUIREMENTS:

- MINIMUM LAND AREA PER DWELLING UNIT: 40,000 Sq. Ft.
- MINIMUM LOT SIZE: 40,000 Sq. Ft.
- MINIMUM STREET FRONTAGE: 150 Ft.
- MINIMUM FRONT SETBACK: 40 Ft.
- MINIMUM SIDE SETBACK: 20 Ft.
- MINIMUM REAR SETBACK: 20 Ft.
- MAXIMUM BUILDING COVERAGE: 15%
- MAXIMUM BUILDING HEIGHT: 35 Ft.

THE PURPOSE OF THIS SURVEY IS TO PROPOSE A NEW 43± AC. PARCEL AND NEW 50' RIGHT-OF-WAY KNOWN AS BEATRICE ROAD AS SHOWN HEREON.

**PROPOSED DIVISION OF LAND & RIGHT-OF-WAY PLAN**

FOR PROPERTY AT:  
22 Old Farm Road/Highpointe Circle/Kittree Lane  
Kittery, York County, Maine

OWNED BY:  
Operation Blessing, LP  
c/o Richard D. Sparkowich  
PO Box 4069, Portsmouth, NH 03802

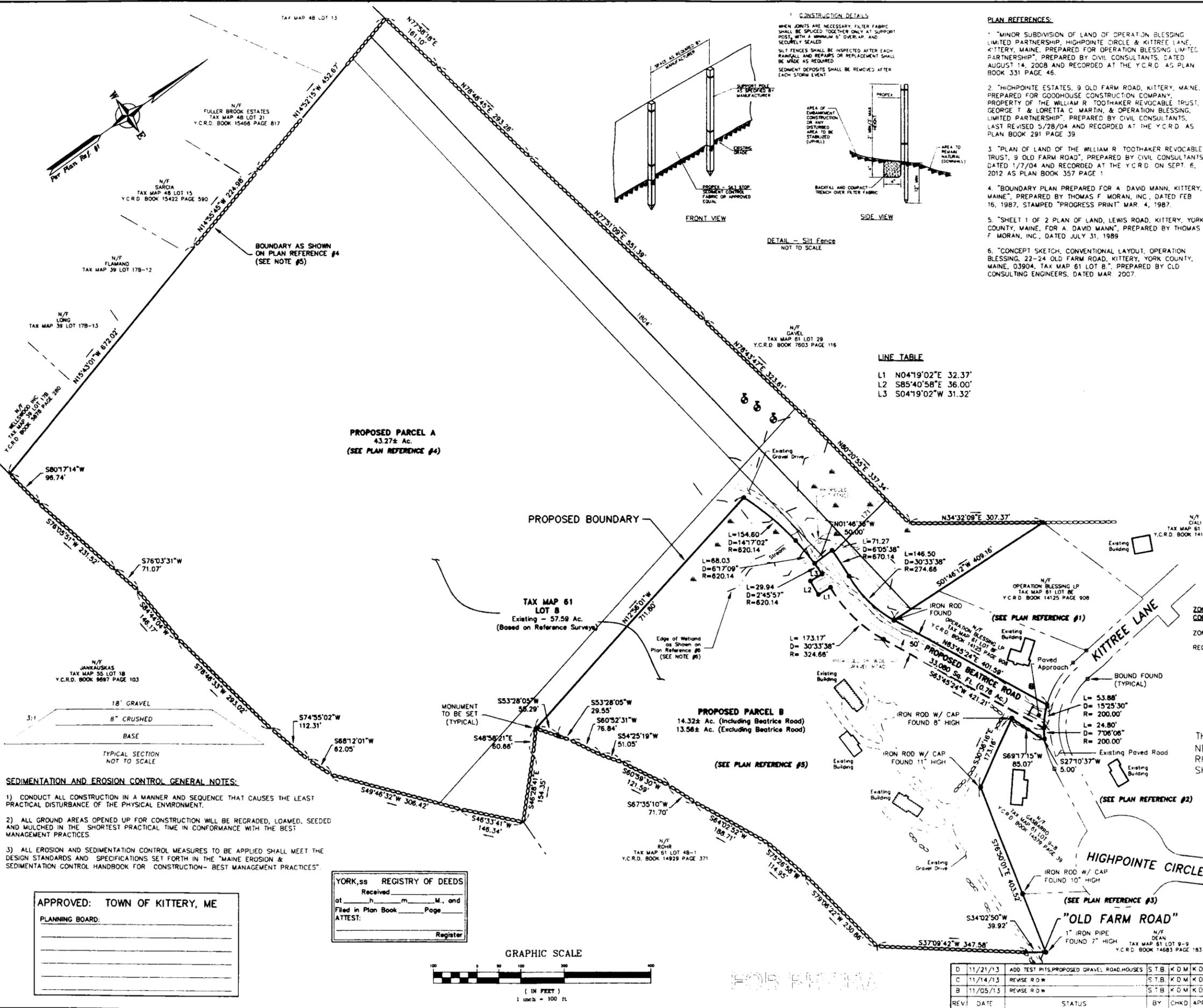
North  
EASTERLY  
**SURVEYING, Inc.**

SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
KITTEERY, MAINE 03904  
(207) 439-6333

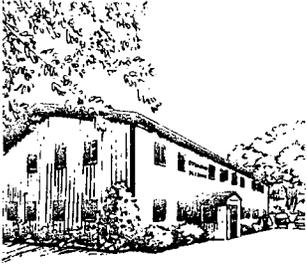
SCALE: 1" = 100'  
PROJECT NO: 12726  
DATE: 11/15/12  
SHEET: 1 OF 1  
DRAWN BY: A.M.P.  
CHECKED BY: K.D.M.

DRAWING No: 12726 Boundary  
FIELD BOOK No: "Kittery #21"

**Tax Map 61 Lot 8**



REV.	DATE	STATUS	BY	CHKD	APPD
D	11/21/13	ADD TEST PITS, PROPOSED GRAVEL ROAD, HOUSES	S.T.B.	K.D.M.	K.D.M.
C	11/14/13	REVISE R.O.W.	S.T.B.	K.D.M.	K.D.M.
B	11/05/13	REVISE R.O.W.	S.T.B.	K.D.M.	K.D.M.



"We labor together with God  
(I Cor. 3:9) in bringing hope to  
the needy."

**OPERATION BLESSING, Inc.**

600A Lafayette Road  
P.O. Box 4069  
Portsmouth, N.H. 03802-4069  
Tel. (603) 430-8561



February 6, 2014

Kittery Planning Board  
PO Box 808  
Kittery, ME 03904

RE: Proposed Right of Way Approval – Operation Blessing, LP – Kittree Lane & Highpointe Circle, Kittery, ME

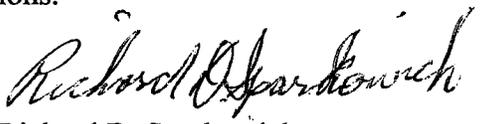
Dear Planning Board Chairman and Members,

We would like to ask the planning board to approve a right of way which would allow us to divide a 57 acre parcel into two lots one being 45 acres in size and the other being 11.7 acres in size. Currently the lot is being used as housing for Operation Blessing personnel and passive recreation. The 45 acre parcel is being sold as a lot for one residence which may be built within the next few years. This additional single family residence would create approximately 10 average daily trips (ADT). The right of way is about 600 feet long to a hammer head turn around. We are proposing to widen the existing gravel woods road to 18 feet wide with side slopes which according to the AASHTO design guidelines (attached) would be safe for up to 400 ADT. We have also attached a waiver request from the road standards but we are not sure that we need it because the 10 ADT do not even come up to the lowest street design standards which start at 12 ADT. We are also proposing to use silt fencing as shown on the plan for erosion control.

We hope that you find this right of way approval meets the intent of the town codes and the comprehensive plan.

Please feel free to contact me should you have any questions.

Sincerely:

  
Richard D. Sparkowich  
Operation Blessing, LP



# TOWN OF KITTEERY MAINE

## TOWN PLANNING DEPARTMENT

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1323  
 Fax: (207) 439-6806  
[www.kittery.org](http://www.kittery.org)

**RECEIVED**  
 FEB 06 2014  
 BY:

### APPLICATION: RIGHT-OF WAY PLAN REVIEW (APPLICABLE FOR A SINGLE LOT)

<b>FEE FOR REVIEW</b>	<input type="checkbox"/> \$300.00	<b>Amount Paid:</b> \$ 300.00	<b>Date:</b> 1/24/2013					
<b>PROPERTY DESCRIPTION</b>	Parcel ID	Map	61 Lot	8	Zone(s): Base Overlay MS4	RR   YES NO	Total Land Area  58 Acres	
	Physical Address: None assigned until residence is built							
<b>PROPERTY OWNER'S INFORMATION</b>	Name		Operation Blessing Limited Partnership			Mailing Address 600A Lafayette Road Portsmouth, NH 03801		
	Phone		207-439-6141					
	Fax		same (call first)					
	Email		ricksparkowich@gmail.com					
<b>APPLICANT'S AGENT INFORMATION</b>	Name		Richard Sparkowich			Name of Business Operation Blessing Limited Partnership  Mailing Address 22B Old Farm Road Kittery, ME 03904		
	Phone		207-439-6141					
	Fax		same (call first)					
	Email		ricksparkowich@gmail.com					
<b>DESCRIPTION</b>	Existing Conditions: Lot 61-8 has not been divided for more than 5 years. The last division occurred on 9/30/2008. Approx. 11.7 acres are used for Operation Blessing(O.B.) Staff Housing. The remaining 45.1 acres, to the rear of the plot, have been made available for recreational use of families connected to O.B., as well as, use by some surrounding neighbor							
	<b>Proposed legal and physical changes:</b> (Documents for dedication of the ROW, maintenance agreements, riders to deeds, grading, drainage and pavement, etc.)							
	Divide out 45.1 acres(proposed PARCEL A on submitted Plan) from the back portion of Operation Blessing Limited Partnership property. Access and Lot frontage is provided via a paved, Private Way, Off Highpointe Circle. - For the New 45.1 Acre Lot, access and legal frontage is provided via a proposed 50 ft. R.O.W. with an 18 ft. wide, gravel roadway.							
	The buyer intends to keep the land undeveloped, except for the eventual construction of their own home.							
	I certify that, to the best of my knowledge, the information provided in this application is true and correct and will not deviate from the Plan submitted without notifying the Kittery Town Planning Department of any changes.							
Applicant's Signature:		<u>Richard D. Sparkowich</u>			Owner's Signature:		<u>Richard D. Sparkowich</u>	
Date:		<u>2/6/2014</u>			Date:		<u>2/6/2014</u>	



# TOWN OF KITTERY MAINE

## TOWN PLANNING DEPARTMENT

200 Rogers Road, Kittery, Maine 03904

PHONE: (207) 475-1323

Fax: (207) 439-6806

[www.kittery.org](http://www.kittery.org)

**RECEIVED**  
FEB 06 2014

BY: .....

### APPLICATION: WAIVER REQUEST WAIVER

PROPERTY DESCRIPTION	Parcel ID	Map	61	Lot	8	Zone(s)	RR	Total Land Area	58 Acres
	Physical Address	None assigned until residence is built							

PROPERTY OWNER'S INFORMATION	Name	operation Blessing Limited Partnership		Mailing Address	600A Lafayette Road Portsmouth, NH 03801
	Phone	207-439-6141			
	Fax	same (call first)			
	Email	rick.sparkowich@gmail.com			

APPLICANT'S AGENT INFORMATION	Name	Richard Sparkowich		Mailing Address	228 Old Farm Road Kittery ME 03904
	Phone	207-439-6141			
	Fax	same (call first)			
	Email	rick.sparkowich@gmail.com			

DESCRIPTION	Ordinance Section	Describe why this request is being made.
	***EXAMPLE*** 16.32.560 (B)- OFFSTREET PARKING.	***EXAMPLE*** Requesting a waiver of this ordinance since the proposed professional offices have a written agreement with the abutting Church owned property to share parking.
	16.8 Article IV Table 1 Street Design	Requesting a waiver of this ordinance, since the proposed R.O.W. will only service 1 residence.

I certify, to the best of my knowledge, the information provided in this application is true and correct and will not deviate from the Plan submitted without notifying the Town Planning Department of any changes.

Applicant's Signature:	<u>Richard D. Sparkowich</u>	Owner's Signature:	<u>Richard D. Sparkowich</u>
Date:	<u>2/6/14</u>	Date:	<u>2/6/14</u>

**SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION**

Department of Human Services  
 Division of Health Engineering  
 (207) 287-5672 Fax: (207) 287-3165

Town, City, Plantation  
 Kittery

Street, Road, Subdivision  
 Old Farm Lane

Owner's Name  
 Operation Blessing  
 Limited Partnership

**SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)**

Observation Hole A5  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine	Dark brown 10YR 3/3	None
	sandy	Yellowish	
	loam	brown 10YR 5/6	
20	Stony	Light	
	fine	Friable	
30	sandy	olive	Mottles
	loam	brown	
40		2.5Y 5/4	
50			

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>2</u> Profile <u>C</u> Condition	___ %	<u>20</u> "	<input type="checkbox"/> Restrictive Layer
			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A6  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine	Dark brown 10YR 3/3	None
	sandy	Yellowish	
	loam	brown 10YR 5/6	
20	Stony	Light	
	loamy	Friable	
30	sandy	olive	Mottles
	loam	brown	
40		2.5Y 5/4	
55			

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>4</u> Profile <u>C</u> Condition	___ %	<u>26</u> "	<input type="checkbox"/> Restrictive Layer
			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A7  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Fine	Dark brown	None
	sandy	Yellowish	
	loam	brown 10YR 5/6	
20	Stony	Light yel brown	
	fine	Friable	
30	sandy	Olive	Mottles
	loam	Firm	
40		brown	
52		2.5Y 4/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> Profile <u>C</u> Condition	___ %	<u>20</u> "	<input type="checkbox"/> Restrictive Layer
			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A8  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
0	Stony	Dark brown 10YR 3/3	
	fine		
	sandy	Dark	
	loam	Friable	
20	X	yellowish	None
		brown	
30		X	
		10YR 4/6	
40		Bedrock	
		X	
52			X

Soil Classification	Slope	Limiting Factor	<input type="checkbox"/> Ground Water
<u>2</u> Profile <u>All</u> Condition	___ %	<u>19</u> "	<input type="checkbox"/> Restrictive Layer
			<input checked="" type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

*Michael Corbett*  
 Site Evaluator Signature

211  
 SE #

20 June 06  
 Date

**SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION**

Department of Human Services  
 Division of Health Engineering  
 (207) 287-5672 Fax: (207) 287-3165

Town, City, Plantation  
 Kittery

Street, Road, Subdivision  
 Old Farm Lane

Owner's Name  
 Operation Blessing  
 Limited Partnership

**SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)**

Observation Hole A9  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Depth Below Mineral Soil Surface (inches)	Texture	Consistency	Color	Mottling
0	Fine		Very dark gr brown	None
			Yellowish	
10	sandy	Friable	brown	
			10YR 5/4	
20	loam		Light yellowish brown	
30	Stony		Olive	Mottles
	fine	Firm	brown	
40	sandy		2.5Y 4/4	
56	loam			

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> <u>C</u>	— %	<u>19</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A10  Test Pit  Boring  
 1 " Depth of Organic Horizon Above Mineral Soil

Depth Below Mineral Soil Surface (inches)	Texture	Consistency	Color	Mottling
0	Fine		Dark brown	
			10YR 3/3	
			Yellowish	
10	sandy	Friable	brown	None
20			10YR 5/6	
30	loam		Light yellowish brown	
			2.5Y 6/4	
40	Stony		Olive	Mottles
	fine sandy	Firm	brown	
61	loam		2.5Y 4/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> <u>C</u>	— %	<u>27</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A11  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Depth Below Mineral Soil Surface (inches)	Texture	Consistency	Color	Mottling
0	Fine		Dark brown	
			Yellowish	None
10	sandy	Friable	brown	
			10YR 5/6	
20	loam		Light yellowish brown	
			2.5Y 6/4	
30	Stony		Olive	Mottles
	fine	Firm	brown	
40	sandy		2.5Y 4/4	
50	loam			

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> <u>C</u>	— %	<u>21</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

Observation Hole A12  Test Pit  Boring  
 2 " Depth of Organic Horizon Above Mineral Soil

Depth Below Mineral Soil Surface (inches)	Texture	Consistency	Color	Mottling
0	Fine		Dark brown	
			10YR 3/3	
10	sandy	Friable	Yellowish brown	
			10YR 4/6	None
20			Dark yellowish brown	
30	Gravelly sand	Loose	10YR 4/6	
			Pale yellow	
40	Sand		2.5Y 7/3	
	Stony fine sandy loam	Firm	Light olive brown	Mottles
60			2.5Y 5/4	

Soil Classification	Slope	Limiting Factor	<input checked="" type="checkbox"/> Ground Water
<u>3</u> <u>C</u>	— %	<u>35</u> "	<input type="checkbox"/> Restrictive Layer
Profile Condition			<input type="checkbox"/> Bedrock
			<input type="checkbox"/> Pit Depth

*Michael...*  
 Site Evaluator Signature

211  
 SE #

20 June 06  
 Date



American Association of  
State Highway and  
Transportation Officials

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**Guidelines for  
Geometric  
Design of Very  
Low-Volume  
Local Roads  
(ADT  $\leq$  400)**

**2001**

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### Rural Roads

- rural major access roads
- rural minor access roads
- rural industrial/commercial access roads
- rural agricultural access roads
- rural recreational and scenic roads
- rural resource recovery roads

### Urban Roads

- urban major access streets
- urban residential streets
- urban industrial/commercial access streets

Each of these functional subclasses is defined below.

## Rural Major Access Roads

Rural major access roads serve a dual function of providing access to abutting properties as well as providing through or connecting service between other local roads or higher type facilities. In rural areas, major access roads may have significant local continuity and may operate at relatively high speeds. Because of the possibility of through traffic, there may be a meaningful segment of traffic that includes unfamiliar drivers. Major access roads may thus, in some respects, function like collector or even minor arterial roads, particularly since even arterials often carry low traffic volumes in rural areas. Major access roads are usually paved, but may be unpaved in some rural areas. As discussed in Chapter 1, the design guidelines for very low-volume local roads may also be applied to some collector roads that primarily serve familiar drivers. Such collector roads should be treated as major access roads for purposes of these guidelines.

## Rural Minor Access Roads

Rural minor access roads serve almost exclusively to provide access to adjacent property. Many of these roads are cul-de-sacs or loop roads with no through continuity. The length of minor access roads is typically short. Because their sole function is to provide access, such roads are used predominantly by familiar drivers.

Minor access roads generally serve residential or other non-commercial land uses. Speeds are generally low for the local environment, given the purpose of the road and short trip lengths. As noted above, many minor access roads end in cul-de-sacs or dead ends, thus limiting the opportunity for high travel speeds. Minor access roads are frequently narrow, and in some rural areas may function as one-lane roads. Minor access roads can be either paved or unpaved. Traffic is largely composed of passenger vehicles or other smaller vehicle types. However, such roads need to be accessible to school buses, fire trucks, other emergency vehicles, and maintenance vehicles such as snow plows and garbage trucks. Access roads serving commercial or industrial land uses are classified separately.

Metric						
Total roadway width (m) by functional subclass						
Design speed (km/h)	Major access	Minor access	Recreational and scenic	Industrial/commercial access	Resource recovery	Agricultural access
20	—	5.4	5.4	6.0	6.0	6.6
30	—	5.4	5.4	6.0	6.0	7.2
40	5.4	5.4	5.4	6.4	6.4	7.2
50	5.4	5.4	5.4	6.8	6.8	7.2
60	5.4	5.4	5.4	6.8	6.8	7.2
70	6.0	6.0	6.0	7.0	—	8.0
80	6.0	6.0	6.0	7.4	—	—
90	6.6	—	6.6	—	—	—
100	6.6	—	—	—	—	—

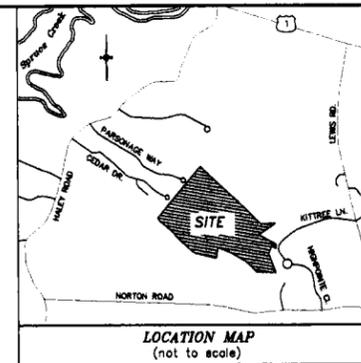
  

US Customary						
Total roadway width (ft) by functional subclass						
Design speed (mph)	Major access	Minor access	Recreational and scenic	Industrial/commercial access	Resource recovery	Agricultural access
15	—	18.0	18.0	20.0	20.0	22.0
20	—	18.0	18.0	20.0	20.0	24.0
25	18.0	18.0	18.0	21.0	21.0	24.0
30	18.0	18.0	18.0	22.5	22.5	24.0
35	18.0	18.0	18.0	22.5	22.5	24.0
40	18.0	18.0	20.0	22.5	—	24.0
45	20.0	20.0	20.0	23.0	—	26.0
50	20.0	20.0	20.0	24.5	—	—
55	22.0	—	22.0	—	—	—
60	22.0	—	—	—	—	—

Note: Total roadway width includes the width of both traveled way and shoulders.

**Exhibit 1. Guidelines for Total Roadway Width for New Construction of Very Low-Volume Local Roads in Rural Areas**

The cross section width guidelines for major access roads, minor access roads, and recreation and scenic roads are based primarily on travel by passenger cars and recreational vehicles. Widths for industrial/commercial access roads, resource recovery roads, and agricultural roads consider more frequent use by larger trucks and, in the case of agricultural access roads, use by wide agricultural equipment. These greater widths for industrial/commercial access roads, resource recovery roads, and agricultural access roads reflect the offtracking and maneuverability requirements and the greater widths of the larger vehicles using these roads. The ability of vehicles in opposing directions of travel to pass one another is an important design consideration for rural roads. Access past parked vehicles is not a major concern because parking on rural roads



**ZONING DATA PER TOWN OF KITTERY LAND USE AND DEVELOPMENT CODE 16.3.2.1 (SEE NOTE #7):**

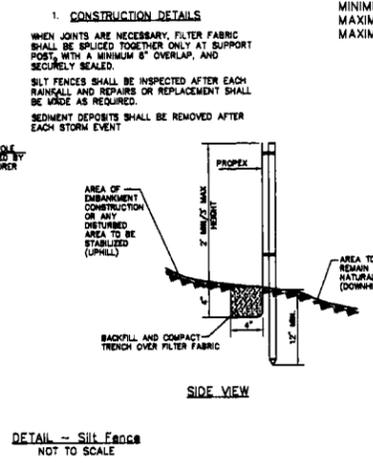
ZONE: Rural Residential (R-RL)

REQUIREMENTS: \*

- MINIMUM LAND AREA PER DWELLING UNIT: 40,000 Sq. Ft.
- MINIMUM LOT SIZE: 40,000 Sq. Ft.
- MINIMUM STREET FRONTAGE: 150 Ft.
- MINIMUM FRONT SETBACK: 40 Ft.
- MINIMUM SIDE SETBACK: 20 Ft.
- MINIMUM REAR SETBACK: 20 Ft.
- MAXIMUM BUILDING COVERAGE: 15%
- MAXIMUM BUILDING HEIGHT: 35 Ft.

**PURPOSE OF PLAN:**

THE PURPOSE OF THIS PLAN IS TO PROPOSE A LAND DIVISION OF A 57.59± AC. PARCEL OF RECORD INTO TWO PARCELS: PARCEL A CONTAINING 45.11± AC. AND PARCEL B CONTAINING 11.71± ACRES. THIS PLAN ALSO PROPOSES A 50' WIDE RIGHT OF WAY TO BE KNOWN AS "BEATRICE WAY".

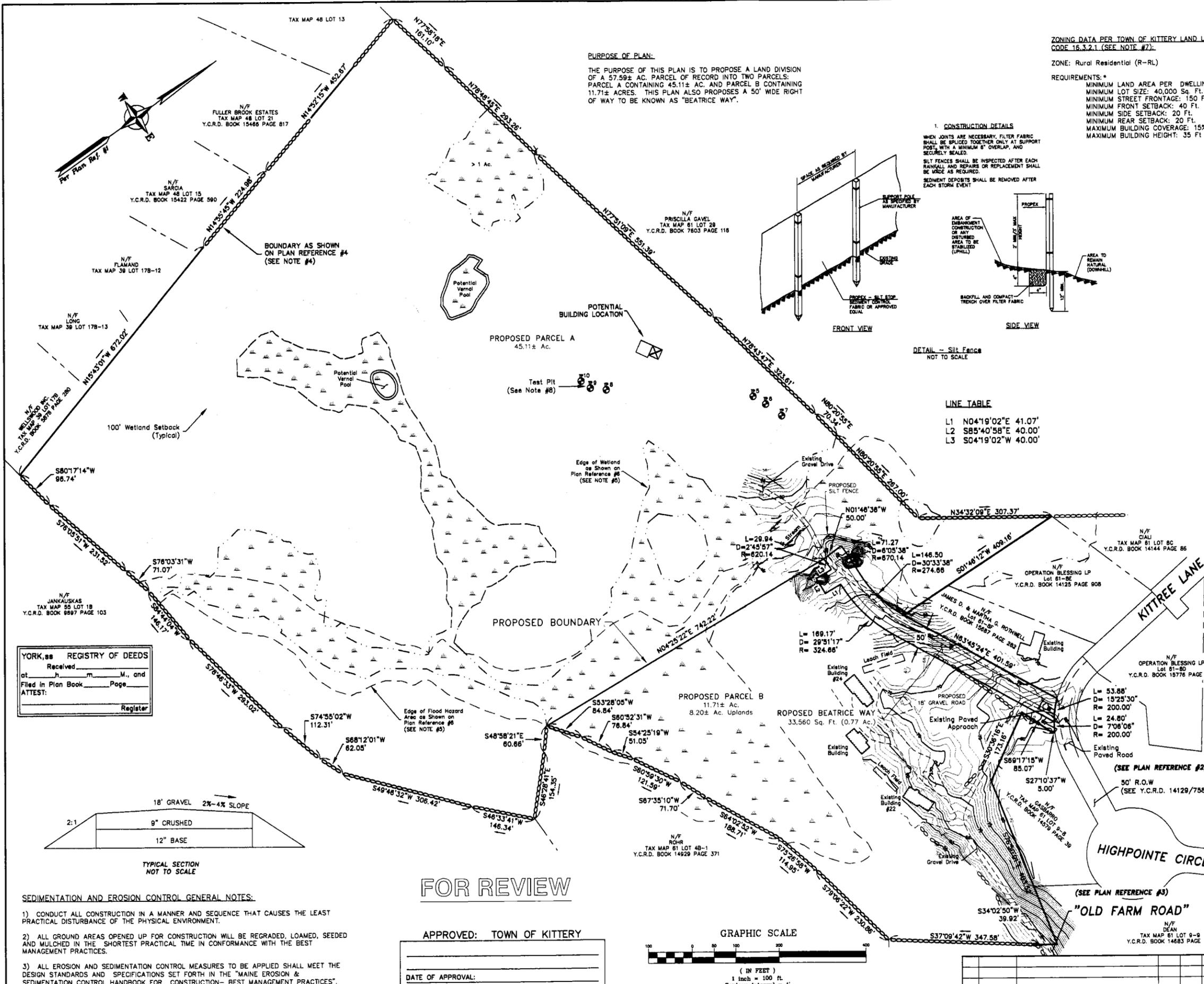


**LINE TABLE**

L1	N04°19'02"E	41.07'
L2	S85°40'58"E	40.00'
L3	S04°19'02"W	40.00'

- PLAN REFERENCES:**
- "MINOR SUBDIVISION OF LAND OF OPERATION BLESSING LIMITED PARTNERSHIP, HIGHPOINTE CIRCLE & KITTREE LANE, KITTERY, MAINE, PREPARED FOR OPERATION BLESSING LIMITED PARTNERSHIP", PREPARED BY CIVIL CONSULTANTS, DATED AUGUST 14, 2008 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 331 PAGE 46.
  - "HIGHPOINTE ESTATES, 9 OLD FARM ROAD, KITTERY, MAINE, PREPARED FOR GOODHOUSE CONSTRUCTION COMPANY, PROPERTY OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, GEORGE T. & LORETTA C. MARTIN, & OPERATION BLESSING, LIMITED PARTNERSHIP", PREPARED BY CIVIL CONSULTANTS, LAST REVISED 5/28/04 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 291 PAGE 39.
  - "PLAN OF LAND OF THE WILLIAM R. TOOTHAKER REVOCABLE TRUST, 9 OLD FARM ROAD", PREPARED BY CIVIL CONSULTANTS, DATED 1/7/04 AND RECORDED AT THE Y.C.R.D. ON SEPT. 6, 2012 AS PLAN BOOK 357 PAGE 1.
  - "BOUNDARY PLAN PREPARED FOR A. DAVID MANN, KITTERY, MAINE", PREPARED BY THOMAS F. MORAN, INC., DATED FEB. 16, 1987, STAMPED "PROGRESS PRINT" MAR. 4, 1987.
  - "SHEET 1 OF 2 PLAN OF LAND, LEWIS ROAD, KITTERY, YORK COUNTY, MAINE, FOR A. DAVID MANN", PREPARED BY THOMAS F. MORAN, INC., DATED JULY 31, 1989.
  - "CONCEPT SKETCH, CONVENTIONAL LAYOUT, OPERATION BLESSING, 22-24 OLD FARM ROAD, KITTERY, YORK COUNTY, MAINE, 03904, TAX MAP 61 LOT 8", PREPARED BY CLD CONSULTING ENGINEERS, DATED MAR. 2007.
  - "HIGH INTENSITY SOIL SURVEY, OPERATION BLESSING, 22-24 OLD FARM ROAD, KITTERY, YORK COUNTY, MAINE, TAX MAP 61 LOT 8", PREPARED BY CLD CONSULTING ENGINEERS, DATED MAR., 2007.

- NOTES:**
- OWNERS OF RECORD:  
TAX MAP 61 LOT 8  
57.59± Acres (Based on Record Surveys)  
OPERATION BLESSING, LP  
Y.C.R.D. BOOK 14125 PAGE 908  
DATED JUNE 8, 2004
  - BASIS OF BEARING IS PER PLAN REFERENCE #1.
  - APPROXIMATE ADJUTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
  - THE EXTERIOR BOUNDARY SHOWN HEREON IS PER RECORD PLAN REFERENCES RECOVERED AT THE TIME OF SURVEY. SEE REFERENCED PLANS FOR FURTHER INFORMATION.
  - THE WETLAND DELINEATION AND FLOOD HAZARD AREAS SHOWN HEREON ARE BASED ON PLAN REFERENCE #6 AND INFORMATION PROVIDED BY THE CLIENT. WETLANDS MUST BE VERIFIED PRIOR TO DESIGN OR CONSTRUCTION.
  - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
  - DIMENSIONAL REQUIREMENTS SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF KITTERY PRIOR TO DESIGN OR DEVELOPMENT.
  - TEST PIT LOCATIONS ARE PER PLAN REFERENCE #7. SEE SAID PLAN AND REPORT BY MICHAEL CUDMO, SOIL SCIENTIST, DATED SEPT. 2006 FOR A COMPLETE DESCRIPTION OF SOILS AND TEST PITS. NOT ALL TEST PITS ARE SHOWN.

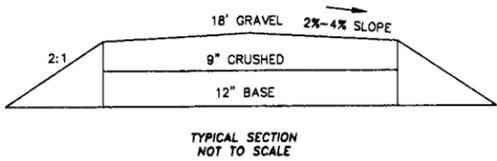


**YORK, ME REGISTRY OF DEEDS**

Received \_\_\_\_\_ at \_\_\_\_\_ m. and \_\_\_\_\_ m., and Filed in Plan Book \_\_\_\_\_ Page \_\_\_\_\_

ATTEST: \_\_\_\_\_

Register

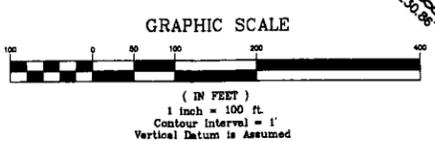


- SEDIMENTATION AND EROSION CONTROL GENERAL NOTES:**
- CONDUCT ALL CONSTRUCTION IN A MANNER AND SEQUENCE THAT CAUSES THE LEAST PRACTICAL DISTURBANCE OF THE PHYSICAL ENVIRONMENT.
  - ALL GROUND AREAS OPENED UP FOR CONSTRUCTION WILL BE REGRADED, LOAMED, SEEDED AND MULCHED IN THE SHORTEST PRACTICAL TIME IN CONFORMANCE WITH THE BEST MANAGEMENT PRACTICES.
  - ALL EROSION AND SEDIMENTATION CONTROL MEASURES TO BE APPLIED SHALL MEET THE DESIGN STANDARDS AND SPECIFICATIONS SET FORTH IN THE "MAINE EROSION & SEDIMENTATION CONTROL HANDBOOK FOR CONSTRUCTION - BEST MANAGEMENT PRACTICES".

**FOR REVIEW**

APPROVED: TOWN OF KITTERY

DATE OF APPROVAL: \_\_\_\_\_



**PROPOSED DIVISION OF LAND & "BEATRICE WAY" RIGHT-OF-WAY PLAN**

FOR PROPERTY AT  
22/24 Old Farm Road/Highpointe Circle/Kittree Lane  
Kittery, York County, Maine

OWNED BY  
Operation Blessing, LP  
c/o Richard D. Sparkowich  
PO Box 4069, Portsmouth, NH 03802

North  
EASTERLY  
SURVEYING, Inc.

SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
(207) 439-6333 KITTERY, MAINE 03904

SCALE: 1" = 100'  
PROJECT NO: 12728  
DATE: 2/5/14  
SHEET: 1 OF 1  
DRAWN BY: A.M.P.  
CHECKED BY: K.D.M.

DRAWING No: 12728\_DIVISION\_FEB5\_2014  
FIELD BOOK No: "Kittery #27"

**Tax Map 61 Lot 8**

REV.	DATE	STATUS	BY	CHKD	APPD