

**Town of Kittery
Planning Board Meeting
December 8, 2016**

412 Haley Road – Cluster Subdivision Preliminary Plan Review

Action: Hold a public hearing. Approve or deny preliminary plan. Owner Marilyn Mann & James Smith, and applicant, Green & Company, requests consideration of a 12-lot cluster subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones. Agent is Joseph Coronati, Jones and Beach Engineers, Inc.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Review	8/11/2016 & 9/8/2016	APPROVED
NO	Site Visit	9/1/2016 & 12/6/2016	HELD
YES	Preliminary Plan Completeness/Acceptance	11/17/2016	ACCEPTED
YES	Public Hearing	Scheduled for 12/8/2016	PENDING
YES	Preliminary Plan Revise and Approval	Scheduled for 12/8/2016	PENDING
YES	Final Plan Review and Decision		TBD

Applicant: 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.

Background

The parcel is a conforming lot, 23.46 acres in size, with one, conforming single-family dwelling located on the southern portion of the lot. The residence is accessed by an approved, unnamed 40-ft right-of-way (ROW), approximately 1,400 feet in length, which also provides access and frontage to three abutting lots. The proposed development is a 12-lot cluster subdivision, with a 9-lot cluster located on the northerly side of the property, and a 3-lot cluster located closer to the waterfront.

The Planning Board approved a sketch plan on 9/8/2016 and a completeness determination for the preliminary application on 11/17/2016.

The Board is reviewing two applications, at this time. The applicant has submitted a Cluster subdivision application, as required by 16.10.3.1, General Development, Site and Subdivision Review as well as a Wetland Alteration Application, as required by 16.9.3.7, Wetlands Alteration Approval Criteria.

On 11/30/2016, Staff received a submission from Bergen Parkinson Attorneys representing several abutters of 412 Haley Road. Due to time constraints, Staff was unable to complete a review of that submission prior to packet assembly; therefore, the following review is not reflective of information contained in this submission. CMA and the Town Attorney have received copies for their review.

In addition to the attached comments from CMA, Public Works Commissioner and the Shoreland Resource Officer, the Fire Chief has commented to Staff that the project will require fire hydrants.

Staff Review

Cluster Subdivision

1. Cluster residential development is permitted, per Title 16.3.2.1. The proposed development does not require approval for a special exception use.
2. The total plan submission includes a cover sheet and 14 plan sheets. The applicant should indicate which plan sheet(s) are going to be recorded, presumably the Overview Subdivision Plan (OV2) and Subdivision Plans (A1 & A2), and prepare those plans with all the necessary information, or reference to where information required information is found so it can be reviewed independently from other plans.
3. In general, the plans appear cluttered, resulting in a difficulty in reading. There are several instances where plan notes, references and tables are absent from sheets where referenced materials are present. For example, a table describing the size and corresponding label of the proposed open spaces is depicted on sheet A1, which only depicts Open Space A, but is absent from sheet A2, which depicts Open Space B & C. A locus map is included on multiple plans, while a legend is only shown on the cover sheet. The applicant should revise plans to reduce redundant information from the plan set, while ensuring information necessary to each individual plan is present and referenced appropriately.
4. The proposed open space is only labeled on sheets A1 & A2, which do not show the entirety of the parcel, or the relationship between the three proposed areas. Open space should be identified on the Overview Subdivision Plan.
5. Plan note 11 on the existing conditions overview plan seems to indicate a “standard boundary survey” was not performed for this application. Such a survey is required per 16.10.5.2.B.4.
6. During the completeness review held on 11/17, the Board requested the applicant provide a draft Homeowner’s Association to outline maintenance and responsibilities regarding roads, as well as any proposed covenants to the properties. At the time of this review, the applicant has not submitted anything of this nature to the Town for review.
7. The depictions shown on the plan between the non-coastal wetland setbacks and the coastal wetland setback and buffer (Overview Subdivision Plan OV2 and Subdivision Plan A2), are not clear. The required 100-foot shoreland buffer (coastal wetland) is depicted at the southeasterly point of the property, but it is not shown along the entirety of the shoreland overlay zone, but rather stops to follow the building envelope, as influenced by other wetlands on the property. The plans should be revised to clearly depict and differentiate the required 100-foot buffer, wetland setbacks and the limits of the coastal wetlands.

Net Residential Acreage

8. The applicant submitted a revised Net Residential Acreage (NRA) calculation table since the preliminary application 10/27/2016 submission. For this review, the Board should disregard the NRA table depicted on the Overview Subdivision Plan OV2. The revised calculations are included with the 11/18/2016 “Response Letter”. The applicant should revise the table on sheet OV2 with any updated information.
9. Within the NRA calculations, the applicant includes 1.31 acres of somewhat poorly drained soils, however, the mapping of the class A high intensity soil survey is depicted on the existing conditions overview plan and is difficult to verify this deduction. The Board may want to review a stand-alone

soil map that corresponds to the report dated 10/27/2016, with a revised table indicating the total square footage of each drainage class found on the property to support the 1.31-acre deduction.

10. Title 16.7.8.2.G states “all land isolated from the principal location for development on the parcel by a road/street, existing land uses, or any physical feature ... 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” must be subtracted from a parcel’s gross area in determining the NRA. The Board should discuss whether the area depicted as open space A meets this criteria and if the applicant needs to provide any information to support the contrary. The area in question seems to be outside of the “principal” development area and is separated by a street and a significant wetland.
11. The applicant has provided an incomplete list of the deductions to determine NRA, with only the items presumed to be present on site included. A complete list of all the deductions as listed in Title 16.7.8.2 should be provided to verify the NRA complete and accurate, and no overlaps are present.

Wetland

12. A narrative wetland report to support the delineation was not submitted
13. Sheets P1 and P2 depict four areas of wetland impact along the main road, with a total impact of 2,263 sq. feet. The applicant has not submitted a mitigation plan for this impact. Per title 16.9.3.9.B.2, a mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered, to be placed in deed restrictions. All sheets depicting an impact to the wetland should be revised to include an undisturbed upland buffer zone. Further, all proposed wetland impacts should be depicted on subdivision plans A1 and A2 as well as sheet OV2.
14. A wetland alteration fee of \$9,052 ($\$4 \times 2,263$) must be submitted to the town contingent upon final approval.
15. The intent of the wetland alteration is to provide access to the proposed development as well as legal frontage to lots 1, 2, 10, 11, and 12.
16. Sheet OV1 depicts a small wetland on the easterly edge of the property and adjacent to the 404 Haley Road parcel as “2,711 s.f. +/- wetland onsite”. Reviewing the plan reference in note #6, it appears the onsite wetland is connected to a larger wetland offsite, thus making the total size of the wetland greater than 1 acre. The applicant should revise the plan to include the total size of the wetland, as well as revise the wetland setback to depict 100-foot setbacks rather than 50-foot.
17. There are two locations on the parcel where the wetlands appear to be “split” by the existing driveway/proposed main road, with a larger wetland on one side of the road and a smaller directly across. Each wetland is depicted as being under the 1-acre threshold that would increase the setback from 50-foot to 100-foot. It appears the two “halves” would function as a single wetland, as the plan reference #6 indicates, depicting the direction of flow, a 100-foot setback, rather than 50-foot should be shown. This results in an impact on the building envelopes for lots 1, 6, 7, 8 and 9. The Board may want to verify these wetlands are functionally independent wetlands, less than 1 acre in size, rather than one large wetland exceeding 1-acre in size.
18. Plan sheet A2 depicts Spruce Creek with the same icon as noncoastal/tidal wetlands. There do not appear to be any distinguishing makers identifying coastal from noncoastal wetlands anywhere on the plan. The applicant should clarify where the coastal wetlands were identified on-site and specify the method of determination (ex: delineation by soil scientist vs based on HAT line). All coastal

wetlands, including all areas affected by tidal action are subject to the regulatory standards of the Shoreland Overlay Zone, including the required 100-foot buffer.

Road

19. The proposed development includes two streets.
 - a. First, a street beginning at Haley Road and continuing toward Spruce Creek to provide access to the existing home and the two proposed waterfront lots. The street begins as a Class III private street (referred to as “public minor street”) 824-feet in length and continues as a Class I private street, 748-feet in length, resulting in a single street of 1,550-feet, 300-feet greater than what is allowed.

This street would provide access to all 12-lots to Haley Road, as well as three abutting properties who currently access Haley Road by way of an existing, unnamed ROW. In addition, this street provides legal frontage for the existing three abutting properties (402, 404 and 424 Haley Road) and lots 1, 2, 10, 11 and 12.

 - i. Required waivers/modifications: 1.) Street length. 2.) waive all standards to the far 750-feet to comply with Class 1 Private Street standards. 3.) Side Walks/pedestrian way 4.) Paved Shoulder
 - b. Second, an approximate 450-foot Class II private street that provides access and frontage for lots 3 – 9 and has a cul-de-sac terminus.
 - i. Required waivers/modifications: 1.) Side Walks/Pedestrian Way
20. The centerline of the main road is not consistently located at the centerline of the ROW, as required by 16.8.4.6.
21. The applicant’s intent is for the class III portion of the main street to be accepted by the Town as public. It is unclear whether waivers granted by the Planning Board in regards to street standards will make it ineligible for acceptance by 16.8.5.1.4. Waivers to the Class III portion of the street include: sidewalk/pedestrian way; paved shoulder; 16.8.4.6 Centerline (See staff note #20)
22. Although the intent is to petition the town to accept the Class III portion of the main street as public, approval of the cluster subdivision does not constitute acceptance from the Town. Therefore, the all plans and references should be revised to refer to this section as “Class III Private Street” rather than “Public Minor Street”. In addition, the Board should require the maintenance of all sections of streets to be addressed in the homeowner’s association.

Screening

23. Title 16.8.11.6.I.4 requires planting, landscaping, or other improvements, as a buffer to integrate the proposed development with the character of surrounding development.
24. As discussed during the sketch plan review on 9/8, in order to minimize traffic disturbance to the existing two abutting lots who currently use the ROW to access Haley Road (402 and 404 Haley Road), and to minimize the disturbance to existing vegetation directly along the Class III street, the plan depicts the proposed driveways for lots 1 and 2 located closer to the northerly corner of the lot, and the driveway for lot 3 located on the Class II road. Although the discussed intent of this was to maintain a visual buffer, the proposed plan does not restrict any further development or clearing of the area abutting the Class III street. The Board may want to consider restricting this area as No-Cut/No-Disturb buffer to provide screening between the proposed development and the two abutting lots.

25. At the intersection of the proposed Class II street located directly across from an existing dwelling, there is the opportunity for motor vehicle lights to become an issue. The cul-de-sac is estimated to have an ADT of 70 trips. The Board may want to require the applicant supplement existing vegetation to the abutting property (404 Haley Road) to screen traffic and/or lights from abutting properties.
26. Haley Road was not designated as a “scenic road” in the 2000 Comprehensive Plan (Adopted 3/25/2002). However, Staff have received comments expressing concern from residents in regard to the general impact the proposed development will have to the area. The proposed 20-foot strip of open space may not be sufficient to buffer the proposed development from abutting lots. In order to demonstrate sufficient buffering between the proposed development, abutting properties, and the scenic nature of Haley Road, as required by 16.8.11.6.I.4, the Board should require increasing the depth of the lot setbacks to 30-feet and designate the area as “No-Cut/No-Disturb” on the plan (see staff note #31).

Open Space

27. The proposed development includes three areas of open space, totaling 12.32 acres, 52.5% of the total lot. Open spaces are designated A, B and C, and are divided as follows:
 - a. A.) ~2.77 acres located at the northwesterly portion of the property, removed from the remainder of the property by the ROW; B.) ~1.79 acres along the southwesterly portion of the property; and C.) ~7.76 acres located at the southeasterly end of the lot. This larger portion of open space includes a strip of land approximately 20-feet in depth between the outside of edge of lots 1, 4, 5, and 6 and abutting properties.
28. Open space must include 3.61 acres of NRA. As referenced in staff comment #8, the applicant should revise the NRA table currently depicted on sheet OV2 to indicate both the required and revised total amount of NRA that is proposed to be included in the open space.
29. Open space must be designated as either reserved, common or public, and be depicted as such in a plan note. It is not evident that this designation has occurred.
30. Title 16.8.11.6.E.6 states open space should be in a contiguous form of unfragmented land to protect natural resources. It does not appear the current configuration of three open space areas meets this criteria. Staff recommends the applicant include the required 100-foot Shoreland Overlay setback/buffer as open space, thus creating a contiguous connection between open spaces A, B and C.
31. With consideration of Title 16.8.11.6.E.3, the Board may want to consider restricting the open space between lots 1, 4, 5, and 6 and abutting properties as No Cut No Disturb to buffer the development from existing properties (see Staff comment #26).
32. It is not evident from the application how the open space is to be managed and how that may support the preservation of critical habitat and “areas with the highest ecological value”. The wildlife habitat report should be revised to include information so support this objective. In addition to “reserve” open space, is there a need for “common” open space that could support passive/active recreation?

Recommendation

In addition to the recommendations presented by the Shoreland Resource Officer (attached), Staff recommends the following revisions to the plans:

1. Revise "Existing Conditions Overview Plan" to "Existing Conditions".
2. Revise plan note 13 on sheet A1 – replace "approval" with "acceptance" to clearly indicate that approval of the subdivision by the planning board means acceptance of the street by the town.
3. Revise plan note 14 on sheet OV1 to read "highest annual tide line" rather than "highest observable tide line" if determined by an elevation. If this is the case, reference the wetland scientist and date of wetland report.
4. A1 Plan note 1 should include zoning information for Shoreland Overlay Zone
5. Include a legend on each plan sheet or a clearly reference the sheet that contains one
6. Remove the "open space table" and include the total size of open space with the corresponding labeled area
7. Remove all "abutters not shown" list from plans and include on cover sheet.
8. Depict an area of undisturbed upland buffer equal in size to the wetland impact
9. Depict the wetland impact on sheets A1, A2 and OV2
10. Revise the size of the wetland located on the easterly edge of the property to include the total size of the wetland, rather than only the size of the wetland onsite
11. Revise any wetland setbacks, if necessary.

In addition, Staff recommends the submission of the following items either prior to the approval of the preliminary plan, or prior to the submission of a final plan:

1. Wetland narrative
2. Wildlife habitat area to verify the presence, if any, of deer wintering areas
3. Written confirmation of presence or absence of any coastal or tidal wetlands
4. Draft Homeowner's Association, Road Association(s) and any Open Space dedication and maintenance agreement (if necessary).
5. Landscaping plan demonstrating screening between proposed development and all abutting properties.
6. A table outlining the Net Residential Acreage calculation including all deductions as listed in 16.7.8.2

Action

Though some of the issues identified in this review are related to labeling or rearranging of information depicted on the plan sheets, most issues and additional information needs to be addressed prior to the Board granting preliminary plan approval. Further, after taking public testimony, the Board may want to continue the public hearing rather than closing it to provide opportunity for the abutters and public to comment on the additional information and revised plans. If the Board concurs, the Board may move to continue the application (suggested motion provided below)

Move to continue the preliminary site plan application dated October 27, 2016 from owner, Marilyn Mann and James Smith, and applicant, Green and Company, for 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural and Shoreland Overlay Zones, not to exceed 90-days.

JONES & BEACH ENGINEERS INC.

85 Portsmouth Avenue, PO Box 219, Stratham, NH 03885
603.772.4746 - JonesandBeach.com

November 18, 2016

Kittery Planning Board
Attn: Chris DiMatteo, Town Planner
200 Rogers Road
Kittery, ME 03094

**RE: Response Letter – Planning Board
412 Haley Road, Kittery, ME
Tax Map 34, Lot 3
JBE Project No. 16030**

Dear Mr. DiMatteo:

On behalf of our client, Green & Company, Jones & Beach Engineers, Inc., has received Planning Board comments dated November 17, 2016. Review comments are italicized and we offer the following responses in bold below:

1. *Temporary markers are not labeled on the plans, however the applicant states they will be in place on site prior to a site walk.*

RESPONSE: We are going to stakeout the centerline of the roadways prior to the site walk. Much of the centerline would fall on the existing driveway so we are going to have to stake offsets. We are also planning on staking the front corners of the lots and one stake down the side property lines so you can see which direction the lot lines will be located.

2. *A copy of the deed showing property owners Marilyn Mann and James Smith as well as a signed letter of authorization referencing a purchase and sale agreement between Mann/Smith and Green & Company Building and Development Corp was included with the application. A copy of the actual purchase and sale agreement between Mann/Smith and Green & Company was not submitted.*

RESPONSE: Our understanding is that we do not need to submit the actual Purchase and Sales agreement since we have provided a Letter of Authorization.

3. *The proposed development is located with a designated MS4 area and must comply with all state and federal MS4 regulations.*

RESPONSE: We will provide this note on the plans.

4. *A traffic report estimating the amount and type of vehicular traffic to be generated by the development is not required. The proposed development will generate an annual average daily traffic of approximately 120 trips (9.57 trips per single family home).*

RESPONSE: No Comment

5. *Net Residential Acreage (NRA) calculations are shown on the Overview Subdivision Plan (OV2), however, it does not appear to be a complete list of deducted land areas, as outlined in 16.7.8.2 Net Residential Acreage Calculation. For example, 16.7.8.2.K instructs the applicant to deduct "Fifty percent of all land characterized as drainage class of somewhat poorly drained, unless public sewer is used, in which case no land area is subtracted". The soil survey included with the stormwater management plan shows there are areas of somewhat poorly drained soil on the site, and the site is not connected to public sewer, however this does not appear to be included with the list of NRA deductions. Prior to holding a public hearing, the applicant should resubmit NRA calculations to clearly address each of the deducted land area criteria, as outlined in 16.7.8.2.*

RESPONSE: We have included the land characterized as "Somewhat poorly drained". In reviewing the calculations, we also noticed that we included 100% of the 100' wetland buffer and were only required to include 50% of that land. We have updated the calculations and provided a worksheet.

6. *As part of the sketch plan approval the Board requested the applicant complete a wildlife habitat study prior to the preliminary application submittal. The applicant has included a wildlife habitat map with their application that identifies the types of habitat on the property, however, the submitted study is not specific to the species of wildlife that will be impacted by the proposed development.*

RESPONSE: In speaking with our Wetland Consultant, Mark West of West Environmental Inc., he is going to prepare a more detailed Wildlife Habitat Study. However, he needs more time to complete this report and is planning on having it ready for the site walk on December 6th. He will also be in attendance that day and will be at the Planning Board meeting.

7. *The applicant is requesting a waiver for 16.8, Table 1, design and construction standards for streets and pedestrian ways. A narrative of the request is included with the application.*

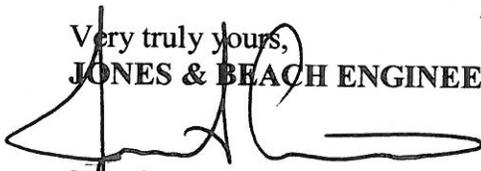
RESPONSE: No Comment.

We are submitting the following things along with this letter:

- Net Residential Area Calculations
- 13 Copies of additional Test Pits by Joseph Noel
- 13 Copies of Class A High Intensity Soil Survey Report by Joseph Noel, CSS.

If you have any questions or need any additional information, please feel free to contact our office. Thank you very much for your time.

Very truly yours,
JONES & BEACH ENGINEERS, INC.



Joseph Coronati
 Vice President

JONES & BEACH
 ENGINEERS INC.

Net Residential Acreage Calculations
Haley Road, Kittery, ME

Total acreage of site	23.46	
100 yr floodplain acreage	1.57	
Total wetlands acreage	2.34	
50% of wetlands buffer acreage	2.47	
100% of Road right-of-way	2.19	
50% of 100 ft wetland buffer	1.55	3.09 Total Wetland Buffer**
50% of Somewhat Poorly Drained Soil	1.31	
Total acreage not buildable	11.42	
Total usable acreage	12.04	
40,000 square feet per dwelling	40,000	
0.918 acres per dwelling	0.918	
Max number of lots on site	13.11	
Proposed number of lots on site	12	
Calculated open space per property acreage	11.73	
Calculated open space per Net Res. Acreage	3.61	

SOIL PROFILE/CLASSIFICATION INFORMATION

Project Name:

Applicant Name:
GREEN & COMPANY

Project Location (municipality)

412 HALEY ROAD - KITTERY POINT, MAINE

Observation Hole 51 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Observation Hole 52 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
		DARK BROWN	
FINE			
SANDY	FRIABLE	DARK YELLOWISH BROWN	NONE
LOAM			
	FIRM (IN PLACE)	LIGHT OLIVE BROWN	COMMON DISTINCT
BEDROCK @ 50"			

Soil Classification: 3 Profile, C Condition
 Slope: %
 Limiting Factor: 27"
 Ground Water
 Restrictive Layer
 Bedrock
 Pit Depth

Texture	Consistency	Color	Mottling
		DARK BROWN	
FINE			
SANDY	FRIABLE	DARK YELLOWISH BROWN	NONE
LOAM			
	FIRM	LIGHT OLIVE BROWN	COMMON DISTINCT
BEDROCK @ 40"			

Soil Classification: 3 Profile, C/III Condition
 Slope: %
 Limiting Factor: 22"
 Ground Water
 Restrictive Layer
 Bedrock
 Pit Depth

Backhoe excavated test pits were conducted on November 14, 2016. Refer to project plans for slope information.

Observation Hole 53 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Observation Hole 54 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
		DARK BROWN	
FINE			
SANDY	FRIABLE	DARK YELLOWISH BROWN	NONE
LOAM			
	FIRM	LIGHT OLIVE BROWN	COMMON DISTINCT

Soil Classification: 3 Profile, C Condition
 Slope: %
 Limiting Factor: 21"
 Ground Water
 Restrictive Layer
 Bedrock
 Pit Depth

Texture	Consistency	Color	Mottling
		DARK BROWN	
COBBLY			
FINE	FRIABLE	DARK YELLOWISH BROWN	NONE
SANDY			
LOAM			
WEATHERED BEDROCK @ 25"			

Soil Classification: 2 Profile, A/III Condition
 Slope: %
 Limiting Factor: 25"
 Ground Water
 Restrictive Layer
 Bedrock
 Pit Depth

Joseph W. Hill
 Signature

221 209
 SE # SS#

11/14/16
 Date

SOIL PROFILE/CLASSIFICATION INFORMATION

Project Name:

Applicant Name:
GREEN & COMPANY

Project Location (municipality):
412 HALEY ROAD - KITTERY POINT, MAINE

Observation Hole 55 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
LOAMY		DARK BROWN	
FINE SAND	FRIABLE	DARK YELLOWISH BROWN	NONE
LOAMY FINE SAND		LIGHT YELLOWISH BROWN	COMMON FAINT FEW
TO FINE SANDY LOAM	FIRM	BROWN	DISTINCT

Soil Classification: 3 Profile, C Condition
 Slope: _____ %
 Limiting Factor: 28 " Ground Water, Restrictive Layer, Bedrock, Pit Depth

Observation Hole 56 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
LOAMY		DARK BROWN	
FINE SAND	FRIABLE	DARK YELLOWISH BROWN	NONE
LOAMY FINE SAND		LIGHT YELLOWISH BROWN	COMMON FAINT FEW
TO FINE SANDY LOAM	FIRM	BROWN	DISTINCT

Soil Classification: 3 Profile, C Condition
 Slope: _____ %
 Limiting Factor: 28 " Ground Water, Restrictive Layer, Bedrock, Pit Depth

Backhoe excavated test pits were conducted on November 14, 2016. Refer to project plans for slope information.

Observation Hole 57 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
VERY FINE SANDY LOAM	FRIABLE	VERY DARK BROWN	NONE
SILT LOAM	FIRM	OLIVE TO GRAY	COMMON DISTINCT
L.O.E. @ 40"			

Soil Classification: S Profile, C Condition
 Slope: _____ %
 Limiting Factor: 21 " Ground Water, Restrictive Layer, Bedrock, Pit Depth

Observation Hole 58 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
VERY FINE SANDY LOAM	FRIABLE	VERY DARK BROWN	NONE
SILT LOAM	FIRM	OLIVE TO GRAY	COMMON DISTINCT
L.O.E. @ 40"			

Soil Classification: S Profile, C Condition
 Slope: _____ %
 Limiting Factor: 16 " Ground Water, Restrictive Layer, Bedrock, Pit Depth

John W. Hill
Signature

221 209
SE# SS#

11/14/16
Date

SOIL PROFILE/CLASSIFICATION INFORMATION

Project Name:

Applicant Name:
GREEN & COMPANY

Project Location (municipality)
412 HALEY ROAD - KITTYRY POINT, MAINE

Observation Hole 59 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Observation Hole 60 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

DEPTH BELOW MINERAL SOIL SURFACE (inches)	Texture	Consistency	Color	Mottling
0	VERY FINE SANDY LOAM	FRIABLE	DARK BROWN	NONE
10	SILT LOAM	FIRM	OLIVE TO OLIVE GRAY	COMMON DISTINCT
40	L.O.E. @ 40"			
Soil Classification		Slope	Limiting Factor	Ground Water
8 Profile C Condition		%	16 °	<input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

DEPTH BELOW MINERAL SOIL SURFACE (inches)	Texture	Consistency	Color	Mottling
0	FINE SANDY LOAM	FRIABLE	DARK BROWN	NONE
10	LOAMY VERY FINE SAND	FIRM	LIGHT YELLOWISH BROWN	COMMON DISTINCT
40	L.O.E. @ 40"			
Soil Classification		Slope	Limiting Factor	Ground Water
7 Profile C Condition		%	24 °	<input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

Backhoe excavated test pits were conducted on November 14, 2016. Refer to project plans for slope information.

Observation Hole 61 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

DEPTH BELOW MINERAL SOIL SURFACE (inches)	Texture	Consistency	Color	Mottling
0	FINE SANDY LOAM	FRIABLE	DARK BROWN	NONE
10	LOAMY VERY FINE SAND	FIRM	LIGHT YELLOWISH BROWN	COMMON DISTINCT
40	L.O.E. @ 40"			
Soil Classification		Slope	Limiting Factor	Ground Water
7 Profile C Condition		%	24 °	<input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

Observation Hole 62 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

DEPTH BELOW MINERAL SOIL SURFACE (inches)	Texture	Consistency	Color	Mottling
0	FINE SANDY LOAM	FRIABLE	DARK BROWN	NONE
10	SILT LOAM	FIRM	OLIVE TO OLIVE GRAY	COMMON DISTINCT
40	L.O.E. @ 38"			
Soil Classification		Slope	Limiting Factor	Ground Water
8 Profile C Condition		%	15 °	<input type="checkbox"/> Restrictive Layer <input type="checkbox"/> Bedrock <input type="checkbox"/> Pit Depth

John W. Hill
Signature

221 209
SE# SS#

11/14/16
Date

SOIL PROFILE/CLASSIFICATION INFORMATION

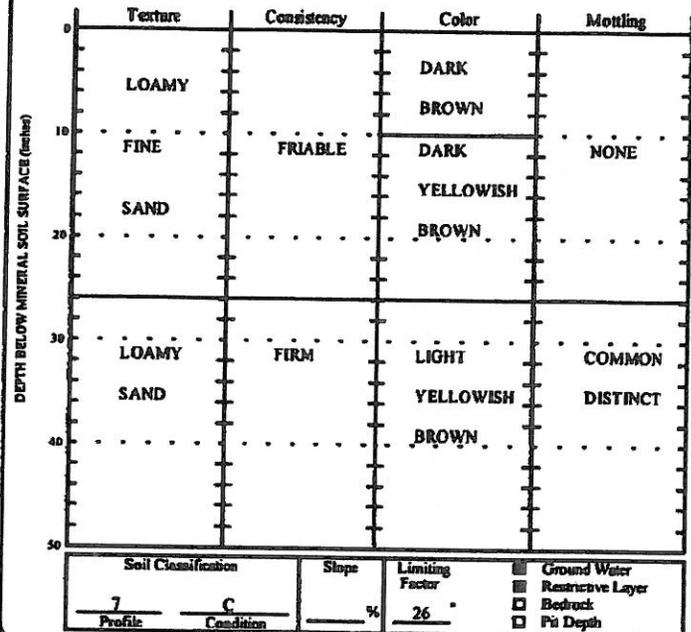
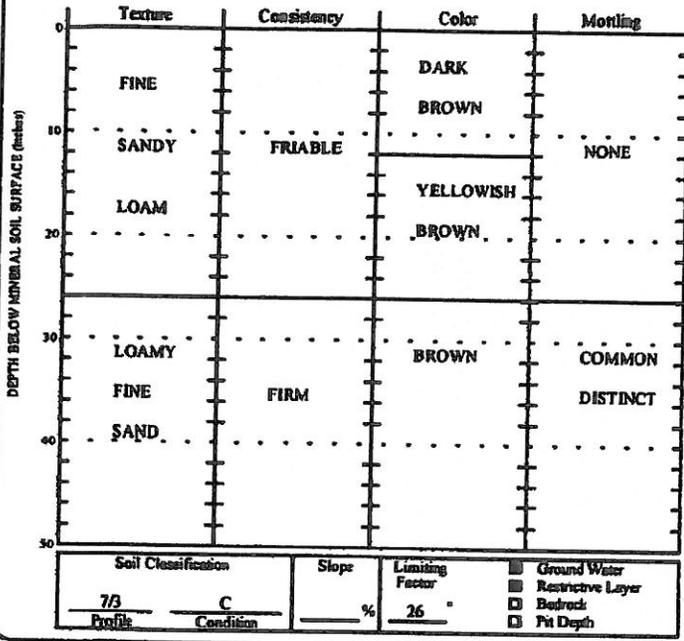
Project Name:

Applicant Name:
GREEN & COMPANY

Project Location (municipality):
412 HALEY ROAD - KITTEERY POINT, MAINE

Observation Hole: 63 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

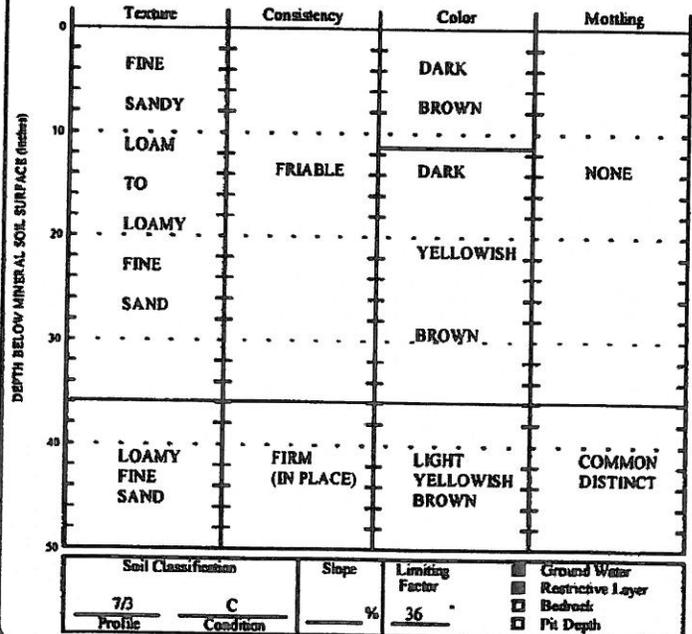
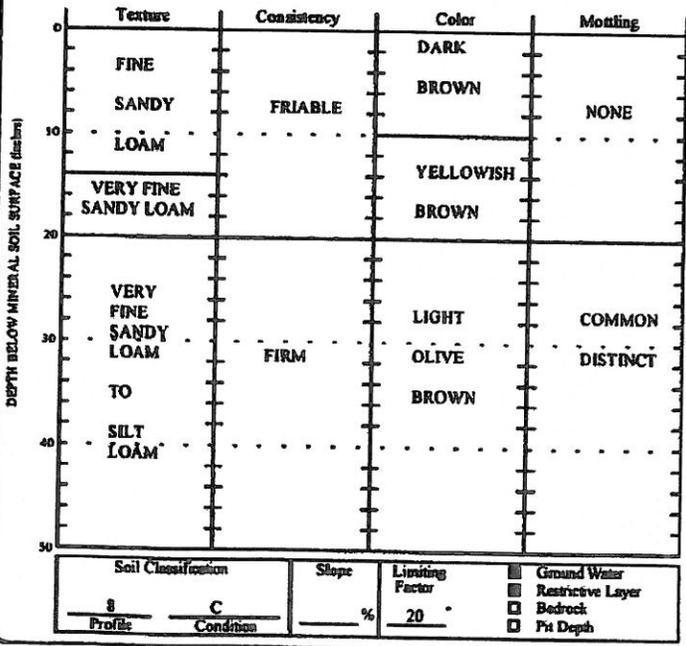
Observation Hole: 64 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil



*Backhoe excavated test pits were conducted on November 14, 2016.
 Refer to project plans for slope information.*

Observation Hole: 65 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil

Observation Hole: 66 Test Pit Boring
1 " Depth of Organic Horizon Above Mineral Soil



John W. Huel
 Signature

221 209
 SE# SSH

11/14/16
 Date

CLASS A HIGH INTENSITY SOIL SURVEY REPORT

FOR

**412 HALEY ROAD
KITTERY POINT, MAINE**

PREPARED FOR:

**GREEN & COMPANY
P.O. BOX 1297
NORTH HAMPTON, NEW HAMPSHIRE 03862**

PREPARED BY:

**JOSEPH W. NOEL
P.O. BOX 174
SOUTH BERWICK, MAINE**

**NOVEMBER 15, 2016
JWN #16-63**

**JOSEPH W. NOEL
P.O. BOX 174
SOUTH BERWICK, MAINE 03908
(207) 384-5587**

CERTIFIED SOIL SCIENTIST * WETLAND SCIENTIST * LICENSED SITE EVALUATOR

INTRODUCTION

PURPOSE

This report and the attached high intensity soil survey map were prepared to aid in planning for the proposed residential subdivision. The property is 23.5+/- acres and located off of Haley Road in Kittery Point, Maine. West Environmental Inc. conducted wetland delineation services in September of 2016. Per a request from Mr. Mark West of West Environmental Inc., the undersigned conducted an on-site on October 7, 2016 and reviewed portions of the wetland delineation with Mr. West and together fine-tuned the wetland boundary.

SOIL SURVEY METHODS

Fieldwork was conducted in June, October and November of 2016. Soil mapping procedures followed Maine Association of Professional Soil Scientists (MAPSS) guidelines (revised, March 2009). Seventy backhoe excavated test pits were conducted on June 28, 2016, October 20, 2016 and November 14, 2016 (refer to attached test pit logs for details). The test pit information was used to prove-out suitable soils for wastewater disposal and for generating the high intensity soil survey. Test pits (1 thru 50) were survey located by Jones & Beach Engineers, Inc. Test pits 51 thru 70 will be survey located and placed on the project plans. A review of the soil map and septic areas will be conducted after the test pits have been located. Additional soil observations were conducted to verify the soil map units (test pit information was not completed). If additional test pits are conducted, the soil survey may be fine-tuned/updated, if necessary. The hydrologic soil groups for the soil map were taken from the NRCS Web Soil Survey or the Hydrologic Soil Triangle (provided by the NRCS).

SOIL SURVEY CLASS

Soil surveys are divided into four levels or classes. For this project, a Class A (high intensity) level map was created. Characteristics of Class A maps include the following:

1. Map units will not contain dissimilar limiting individual inclusions larger than one-eighth acre. Dissimilar limiting inclusions may total more than one-eighth acre per map unit delineation, in the aggregate, if not continuous.
2. Scale of 1 inch equals 100 feet or larger (e.g., 1" = 50').
3. Ground control – base line and test pits for which detailed data is recorded are accurately located under the direction of a registered land surveyor or qualified professional engineer.
4. Base map with 2-foot contour lines with ground survey, or aerial survey with ground control.

SOIL MAP UNIT DESCRIPTIONS

Below are descriptions for each of the soil map units found on the site. Each of the soil map units includes: physical characteristics of the soil, hydrologic soil group, slopes, soil inclusions, soil limitations, etc.

- 1) Map Symbol: GO
Soil Series: Gouldsboro

The very poorly drained Gouldsboro soils are formed in marine silt and clay deposits. Gouldsboro soils usually have textures that are silt loam but can be silty clay loam or a mucky analogue (organics) at the surface. A detailed test pit of the Gouldsboro soils was not conducted due to water inundation. Gouldsboro soils are subject to saltwater inundation and are part of Spruce Creek. These soils are hydric, deep to bedrock, the hydrologic soil group is D, the slopes range from 0-3%, and the flood hazard is frequent. No inclusions were noted in this map unit. The Gouldsboro soil classification was used due to the Maine Soil Catena does not contain any other options. These were mapped by the NRCS as Sulfihemists. A mesic soil in New Hampshire may better describe this soil and would classify as either the Ipswich or Pawcatuck soils.

Soil Limitations

These very poorly drained soils have severe limitations to site development, primarily due to wetness, frost action, and frequent flooding. These areas are being avoided by the proposed development. These soils are contained within wetlands and their use/development would be governed by local, state and federal regulations.

- 2) Map Symbol: LA
Soil Series: Lamoine

The Lamoine soils are somewhat poorly drained and formed in fine textured marine/lacustrine sediments. These soils are found in an intermediate position on the landscape and are nearly level to gently sloping and are extensive in nature. Typically, the surface horizon is dark brown very fine sandy loam to silt loam. The subsoil is a light olive brown to olive to olive gray silt loam to silty clay loam. The substratum is a mottled olive to olive gray silt loam to silty clay loam that is restrictive in nature. The seasonal high watertable occurs less than 16 inches from the soil surface. These soils are deep to bedrock, the hydrologic soil group is D, the slopes range from 0-8%, and the flood hazard is none. Inclusions in this map unit are the Scantic, Elmwood, and Nicholville soil series soils comprising 5% of this map unit.

Soil Limitations

Lamoine soils have limitations for road and building construction due to seasonal wetness and fine textures. Only those areas with a seasonal high watertable greater than 9 inches outside shoreland zone and 15 inches within shoreland zone that meet all relevant setbacks are suitable for wastewater disposal. Coarse fill can be used to raise septic systems above the seasonal high watertable. Other building limitations can be overcome by intercepting

and diverting water upslope of the project area, using coarse fill to raise foundation floors and roads, etc., and using footing drains around buildings.

- 3) Map Symbol: LR
Soils Series: Lyman-Rock Outcrop Complex

This mapping unit represents a complex where two components could not be mapped separately (i.e., Lyman soils and bedrock outcrops).

The Lyman soils are somewhat excessively drained and formed in a thin mantle of glacial till overlying bedrock. These soils occur in the locally higher topographic settings that are steeply sloped and are found in three small areas on the property. Typically, the surface layer is a dark brown fine sandy loam about 6 to 8 inches thick. The subsoil, ranging from 5 to 14 inches thick is a dark yellowish brown cobbly fine sandy loam to fine sandy loam. The second component (Rock Outcrop) to this mapping unit is the exposed bedrock outcrops. The hydrologic soil group is D, the slopes are >25%, and the flood hazard is none.

Soil Limitations

The shallow to bedrock feature of the Lyman-Rock Outcrop complex presents limitations to all aspects of development. Where a certain depth of soil is required over bedrock for an activity such as pouring a foundation, a shallow excavation, or siting a road, bedrock may be ripped or blasted out as necessary and replaced with fill. Fill may also be placed over the bedrock to attain the desired depth without blasting or ripping.

- 4) Map Symbol: NI
Soil Series: Nicholville

Nicholville soils are moderately well drained and formed in medium to fine textured marine and lacustrine sediments. It is of limited extent and has an intermediate position on the landscape. Typically bedrock is greater than 40 inches. The surface horizon is dark brown very fine sandy loam to fine sandy loam (about 9 inches thick). The subsoil is dark yellowish brown to yellowish brown fine sandy loam to very fine sandy loam (about 5 to 6 inches thick). The substratum is a dense brownish yellow to light olive brown to olive gray very fine sandy loam to silt loam with redoximorphic features (i.e., evidence of wetness) and is restrictive in nature. The hydrologic soil group is C, the slopes range from 3-8%, and the flood hazard is none. Inclusions in this map unit are the Lamoine, Nicholville (swpd) and Skerry soils comprising 10% of this map unit.

Soil Limitations

A limitation to development is wetness due to perched water on the restrictive subsoil/substratum. These limitations can be overcome by intercepting and diverting water upslope of the construction area, by using coarse fill to raise the septic system, foundation and parking areas, and by using footing drains around the building.

- 5) Map Symbol: SC
Soil Series: Scantic

The poorly drained Scantic soils are formed in marine/lacustrine sediments. These soils are low on the landscape. Typically on this site, the surface horizon varies from 8 to 10 inches thick and consists of a very dark grayish brown silt loam with prominent concentrations. The substratum is an olive gray silt loam to silty clay loam that is restrictive in nature. These soils are deep to bedrock, the hydrologic soil group is D, the slopes range from 0-3%, and the flood hazard is none. Inclusions in this map unit are the Lamoine soil series comprising 5% of this map unit.

Soil Limitations

These poorly drained soils have limitations to site development, primarily due to wetness and frost action. These are hydric soils and are usually found in wetlands. The areas designated as wetlands should be avoided to the greatest extent possible by the proposed development. The use/development of the wetland areas would be governed by local, state and federal regulations.

- 6) Map Symbol: SK
Soil Series: Skerry

Skerry soils are moderately well drained and formed in glacial till. It is found throughout the site, typically in gently to moderately sloped setting adjacent to the shallow to moderately deep bedrock knolls and as well as being upslope from the Lamoine soils. Typically bedrock is greater than 40 inches. The surface horizon is dark brown to brown very fine sandy loam to fine sandy loam (about 9 inches thick). The subsoil is dark yellowish brown to yellowish brown fine sandy loam to loamy fine sand. The substratum is a dense light yellowish brown to light olive brown fine sandy loam to sandy loam to loamy fine sand with redoximorphic features (i.e., evidence of wetness) and is restrictive in nature. The hydrologic soil group is C, the slopes range from 3-15%, and the flood hazard is none. Inclusions in this map unit are the Elmwood, Hermon, Nicholville, and Tunbridge soils comprising 10% of this map unit. The Skerry map unit where the existing home and septic system are located may have more bedrock than mapped. Limited soil observations were made here to avoid ruining the landscaping or damaging the leachfield.

Soil Limitations

A limitation to development is wetness due to perched water on the restrictive subsoil/substratum. These limitations can be overcome by intercepting and diverting water upslope of the construction area, by using coarse fill to raise the septic systems, foundation floors and roads, and by using footing drains around the building.

- 7) Map Symbol: TL
Soil Series: Tunbridge-Lyman Complex

This mapping unit represents a complex of two soil series that are similar in nature and could not be mapped separately (i.e., Tunbridge and Lyman soils).

The well drained Tunbridge soils formed in moderately deep sandy loam glacial till. These soils are high on the landscape and are found in several areas. Typically on this site, the surface horizon varies from 8 to 10 inches thick and consists of dark brown fine sandy loam. The subsoil is a dark yellowish brown fine sandy loam. The subsoil is underlain by bedrock at depths of 21 to 40 inches. The Tunbridge Variant soils (inclusions within these map units) have a substratum that is light olive brown to brown fine sandy loam with redox features and is restrictive in nature.

The second component is the Lyman soil series. Lyman soils are somewhat excessively drained and formed in a thin mantle of glacial till overlying bedrock. It occurs on the high topographic setting. Refer to the Lyman-Rock Outcrop Complex for more information.

This soil complex contains soils that are shallow to moderately deep to bedrock (i.e., 10" to 40"), the hydrologic soil group is C due to the Tunbridge being the higher component percentage of the complex, the slopes range from 3->25%. Inclusions in this map unit are Hermon, Skerry and Tunbridge Variant soil series comprising 10% of this map unit.

Soil Limitations

The shallow to moderately deep bedrock feature of the Lyman-Tunbridge complex represents limitations to site development. Where a certain depth of soil is required over bedrock for an activity such as pouring a foundation, a shallow excavation, or siting a road, bedrock may be ripped or blasted out as necessary and replaced with fill. Fill may also be placed over the bedrock to attain the desired depth without blasting or ripping.

SOIL MAP LIMITATIONS

The quality of the soil map produced is affected by the accuracy of the topographic information and location of the wetland flagging and test pits by the surveyors along with the quality of the ground control provided. Inaccuracies or deficiencies in the base map may be unknowingly reflected in the soil survey, particularly in the boundary line placement between soil map units. The map scale that the soil map was produced can also affect the slopes as this map is adjusted to maps with different scales (e.g., mapping on 1" = 100' and enlarged to 1" = 60").

Each map unit may contain inclusions. Inclusions are soil series within a map unit that are different from the named soil series. In general, the total amount of dissimilar soils is less than twenty-five percent of the named map unit.

It is important to realize that this map was designed for the use in planning for a residential subdivision and that it may not be adequate for other uses.

Joseph W. Noel

Joseph W. Noel
Maine Certified Soil Scientist #209
Wetland Scientist





December 1, 2016

Chris DiMatteo, Town Planner
Town of Kittery
P.O. Box 808
Kittery, Maine 03904

**RE: Town of Kittery, Planning Board Services
Haley Road Subdivision
412 Haley Road, Tax Map 34, Lot 3
CMA #591.101**

Dear Chris:

CMA Engineers has received the following information for Assignment #101, review of the Haley Road Subdivision at 412 Haley Road (Tax Map 34, Lot 3).

- 1) Subdivision Application, 412 Haley Road, Kittery, ME, Tax Map 34, Lot 3, by Jones & Beach Engineers, Inc. of Stratham, NH dated October 26, 2016.
- 2) Cluster Subdivision, "Haley Road Subdivision", Tax Map 34, Lot 3, 412 Haley Road Kittery, ME, by Jones & Beach Engineers, Inc. of Stratham, NH dated October 26, 2016.
- 3) Drainage Analysis, Sediment and Erosion Control Plan Prepared for 412 Haley Road, Kittery, ME, Tax Map 34, Lot 3, by Jones & Beach Engineers, Inc. of Stratham, NH dated October 27, 2016.

We have reviewed the information submitted for conformance with the Kittery Land Use and Development Code (LUDC) and general engineering practices, and offer the comments below that correspond directly to the Town's Ordinances.

The proposed project includes a 12-lot subdivision of an existing parcel with one house. Access to the property is proposed by an improved roadway entrance from Haley Road to a three-way intersection including a cul-de-sac and the driveway to the existing house. Construction of the roadway includes wetland impacts. The proposed subdivision is a cluster subdivision. The project is located in the rural residential zone and has portions in the resource protection overlay zone and shoreland overlay water body/wetland protection area-250' zone.

16.3 Zoning Regulations

16.3.2.1 Residential-Rural (R-RL)

The proposed use (dwellings) is a permitted use, and cluster residential development is specifically included in the permitted uses.

Land area: Public sewer is not available. The minimum land area per dwelling unit is 40,000 sf for un-sewered lots. In using the residential cluster format for the subdivision, the applicant may reduce the lot size from 40,000 sf to 20,000 sf. for unsewered lots.

There are 12 residential units proposed, requiring 5.5 acres; 23.5 acres are in the lot. Further, each lot has at least 20,000 sf. This is satisfactory.

16.3.2.17 Shoreland Overlay Zone (OZ-SL)

The portion of the lot that falls within the shoreland overlay zone is at the south western portion of the property that includes the existing house, the roadway south of the cul-de-sac spur and proposed Lot #12. The proposed use (dwellings) is a special exception use in the overlay zone.

Minimum lot size by base zone - 40,000 sf

Minimum land area per dwelling unit by base zone - 40,000 sf

Minimum shore frontage by base zone -150 feet

Devegetated area – less than 20%

Setback – 100' from normal high water line

Subject to clarification of devegetated areas (to be confirmed), the lots appear to meet these requirements.

16.3.2.19 Resource Protection Overlay Zone (OZ-RP)

The portion of the lot that falls within the resource protection overlay zone is along the coast within the Shoreland Overlay Zone and along the wetland on the southern part of the property. No development is proposed within this zone.

16.8 Design and Performance Standards-Built Environment

Article IV. Streets and Pedestrian Ways

There is an existing 1500' long driveway, 12' wide, to access the existing house. This is within a 40' right-of-way. The Applicant is proposing to rebuild the first approximately 750' as a minor road and the second 750' of the roadway as a Class I private street.

The Applicant is requesting a waiver of the maximum length of a Class I street (400') for the 750' section to the last house. The applicant could extend the length of the minor street and reduce the length of the Class I roadway to 400' from the turnaround tee.

There is also a proposed cul-de-sac roadway that the Applicant is proposing to build as a Class II private road. The Applicant has not requested a waiver from the requirement for maximum length of roadway to cul-de-sac of 600' by not including the 750' length of the minor road for the total Class II private roadway length.

It is unclear what applicable roadway length for the waiver(s) should be considered. Is the total length of the Class I and Class II private streets from Haley Road or from the intersection of the Class II private street? It seems that the criteria for roadway length in each case would be from Haley Road to either the cul-de-sac or the turnaround tee, making the required length of roadway to be waived for the Class I private street much longer and requiring a second waiver for the Class II private street length as well.

16.8.4.4. Street Design Standards. Table 1:

The minor street portion of the roadway does not meet the following standards:

Street Width Design:

c. Sidewalk/Pedestrian way-The Applicant has not included the 5' sidewalk in their roadway design.

d. Paved Shoulder-The Applicant has included 2' paved shoulders on each side of the road not 8' on the opposite side.

e. Gravel Shoulder-The Applicant has included a 2' gravel shoulder on both sides of the roadway however, it is located on the backside of the cape cod berm. The intent of the gravel shoulder is to widen the roadway, the cape cod berm prevents vehicles from accessing the shoulder.

Sidewalk materials Cross-section:

d. Curb Material-The Applicant is proposing a bituminous cape cod berm. Is this material acceptable to the Planning Board and Public Works Department?

16.8.4.4. Street Design Standards. Table 1:

The Class II private street portion of the roadway does not meet the following standards.

Street Width Design:

c. Sidewalk/Pedestrian way-The Applicant has not included the 5' sidewalk in their roadway design.

e. Gravel Shoulder-The Applicant has included a 2' gravel shoulder on both sides of the roadway however, it is located on the backside of the cape cod berm. The intent of the gravel shoulder is to widen the roadway, the cape cod berm prevents vehicles from accessing the shoulder.

Cul-de-sac:

Street length to radius- It is unclear what applicable roadway length should be considered. Is the total length of the Class II private street from Haley Road or from the intersection of the Class I private street? It seems that the criteria for roadway length would be from Haley Road to either the cul-de-sac, making the length of roadway to the cul-de-sac larger than the maximum 600' specified.

Sidewalk materials Cross-section:

d. Curb Material-The Applicant is proposing a bituminous cape cod berm. Is this material acceptable to the Planning Board and Public Works Department?

16.8.4.8.D. The site distances on Haley Road should be indicated.

16.8.4.13 Sidewalks are required along the minor road and Class II private street.

16.8.4.14.B.1.a. There are portions of the roadway located within 100' of Spruce Creek.

16.8.4.14.B.1.c The Applicant should demonstrate that no other reasonable alternative exists for the location of the roadway.

16.8.4.14.B.7-9 The Applicant should demonstrate that the drainage feature requirements have been met for the portion of the roadway that is in the Shoreland Overlay Zone.

Article VII Sewage Disposal

The project includes individual septic systems for each lot.

16.8.7.2.D. Reserve leach fields have not been shown where there is a limiting factor within 24". The following lots require reserve leach field locations: Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 8, Lot 9, Lot 10, Lot 11 and Lot 12.

Article VIII. Surface Drainage

The Applicant has provided a drainage analysis and sediment and erosion control plan that uses a closed drainage system for roadway drainage that flows to a wet pond. The proposed stormwater management system restricts post construction flows to levels lower than pre-construction levels and appears appropriate for the site.

Does this project require a Maine Department of Environmental approval? If so, the Applicant should provide copies of the Chapter 500 application.

We have the following comments related to the Drainage Analysis, Sediment and Erosion Control Plan:

4.0 SEDIMENT & EROSION CONTROL BEST MANAGEMENT PRACTICES

4.12 Construction sequence:

To the extent practical, silt fencing, hay bales and construction entrances should be installed prior to tree clearing.

The construction sequence should be modified to apply to this project as there are several references that do not apply (remove or reclaim pavement, install the sewer system, pave parking lots, etc.).

6.0 CONCLUSION

The conclusion references another project (1708 Post Road, Wells, ME) and should be modified to apply to the proposed project.

16.8.8.1.C.1 Minimum pipe size is 12", there are several proposed 8" pipes shown on the plans.

16.8.8.2 The Applicant should meet the requirements of post-construction stormwater management.

Where is the underdrain shown in the roadway sections anticipated to be required?

Article XI. Cluster Residential and Cluster Mixed-Use Development

16.8.11.6.C The Applicant is proposing individual private sewer systems. Is this acceptable to the Planning Board?

16.8.11.6.E.2. Open space should be calculated as reserved, common or public as specified in this section.

16.8.11.6.E.6. The Applicant should demonstrate how the open space is contiguous and unfragmented.

16.8.11.6.E.7. Is a portion of the open space in close proximity to other open spaces used for recreation?

16.8.11.6.I.4. No buffering is proposed for the development.

The Applicant should clearly demonstrate that the pedestrian easement remains post-development; this is not clear on Sheet C3.

16.9 Design and Performance Standards-Natural Environment

Article III. Conservation of Wetlands Including Vernal Pools

16.9.3.9 The Applicant should provide details of mitigation plan, including preservation of upland areas adjacent to the largest impacted area (1,463 sf).

Should you have any questions, please do not hesitate to call.

Very truly yours,

CMA ENGINEERS, INC.



Jodie Bray Strickland, P.E.
Project Engineer

cc: Joe Coronati, Jones & Beach Engineers, Inc.



TOWN OF KITTERY
Planning and Development
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307 Fax: 207-439-6806

INTEROFFICE MEMORANDUM

TO: CHRIS DI MATTEO, TOWN PLANNER
FROM: JESSA KELLOGG, SHORELAND RESOURCE OFFICER
SUBJECT: 412 HALEY ROAD PROPOSED CLUSTER SUBDIVISION
DATE: DECEMBER 1, 2016

Shoreland Resource Officer Comments on 412 Haley Road Preliminary Plan

SEDIMENT AND EROSION CONTROL PLAN

- Executive Summary Page, Fourth Paragraph – Update to refer to the current manual “Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers” published in October 2016.
- Page 1, Section 4.0 – Update to refer to the current manual “Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers” published in October 2016.
- Page 2, Section 4.4 – Update to refer to the current manual “Maine Erosion and Sediment Control Practices Field Guide for Contractors” published in 2015.
- Page 3, under the table – Update to refer to the current manual “Maine Erosion and Sediment Control Practices Field Guide for Contractors” published in 2015.
- Page 3, Section 4.7 - Update to refer to the current manual “Maine Erosion and Sediment Control Practices Field Guide for Contractors” published in 2015.
- Page 3, Section 4.9 – Why is there a need for a grease hood in the catch basins?
- Page 4, Section 4.12, Subsection 2 – Refers to the Town of Wells
- Page 6, Section 4.13, Subsection 4 – Because this project is in the MS4 it needs to state that “silt fences and other barriers shall be inspected weekly and within 24 hours of a significant rain event of 0.50 inches or more and at least daily during prolonged rainfall during the life of the project”. These weekly inspections need to be documented by the General Contractor and kept on-site for inspections by the Shoreland Resource Officer. This is referenced correctly on Page 7, Section 5.0, second paragraph.
- Page 12, Inspection and Maintenance Report Form – First sentence needs to state “To be completed weekly and within 24 hours of a significant rain event of 0.50 inches or more and at least daily during prolonged rainfall”. The second sentence needs to state “Note: The following records are required to be kept, and attached, to the Stormwater Pollution Prevention Plan on site and available for inspection.”
- Page 15, Section 6.0 – Update to refer to the correct site at 412 Haley Road in Kittery, Maine. Update to refer to current manual “Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers”, published in October 2016.

CLUSTER SUBDIVISION “HALEY ROAD SUBDIVISION” PLANS

- Sheet OV1 – It appears that the 42,916sf wetland is connected by a 15” driveway culvert to the 603sf wetland on Map 34 Lot 3-3A (Robbins) and then connected by a 12” driveway culvert to the 2,711sf wetland on Map 34 Lot 3-3 (McCartney). Are these functionally separate wetlands or one larger complex?
- Sheet C2 – There is a notation of Silt Fence (Typ.) on the plan near TP18 and TP33 that does not point to the silt fence. This needs to be corrected to point to the silt fence on the plan.
- Sheet C2, Note 18 – This should state “Inspect and maintain erosion control measures weekly and within 24 hours of a significant rain event of 0.50 inches or more and at least daily during prolonged rainfall.”
- Sheet C2, Note 31 – Update to refer to correct regulatory agency, MDEP.
- Sheet C3 – Same comment about wrong placement of silt fence indication as on Sheet C2.
- Sheet C3 – The 100’ and 250’ lines are not labeled.
- Sheet P3, Note 1 –The Notice of Intent (NOI) needs to be submitted to Maine DEP, not the EPA Regional office.
- Sheet P3, Note 1 – There are two subsection A’s for Note 1, the second one should be B. The Notice of Termination should be filed with Maine DEP, not Kittery DPW.
- Sheet P3, Note 9 – Should state “Final drainage, grading and erosion protection measures shall conform to regulations of the Maine Department of Environmental Protection”.
- Sheet P3, Note 12 – First sentence should state “ Drainage inspection and maintenance schedule: silt fencing will be inspected weekly and within 24 hours of a significant rain event of 0.50 inches or more and at least daily during prolonged rainfall to ensure that the fence still has integrity and is not allowing sediment to pass.” This will provide consistency with the Sediment and Erosion Control Plan.
- Sheet D2 - Repeated question from Sediment and Erosion Control Plan Page 3, Section 4.9 – Why is there a need for a grease hood in the catch basins?
- Sheet E1, Silt Fence, Maintenance, #1 – Should state “Silt fences shall be inspected weekly and within 24 hours of a significant rain event of 0.50 inches or more and at least daily during prolonged rainfall. Any repairs that are required shall be done immediately.”
- Sheet E1, Temporary Erosion Control Notes, #9 – Need to reference Maine DOT standards, not NH.
- Sheet E1, Temporary Erosion Control Notes, #11 – Need to reference Maine standards, not NH.
- Sheet E1, Construction Sequence, #1 – Needs to reference Maine DEP and MPDES, not EPA or NPDES.
- The drainage infrastructure extends past the limits of the minor roadway so the stormwater outfall will be in a private ROW which may cause issues with maintenance and will require a stormwater easement.

Rebecca Spitko

From: David Rich
Sent: Wednesday, November 30, 2016 5:17 PM
To: Rebecca Spitko
Subject: RE: 412 Haley Road

Hi Rebecca,

I completed my review of the project and found several areas of concern. Which areas follows:

- The roadway is not centered in the ROW which will be an issue for future needs of the town.
- The ROW goes through the wetlands which will be an issue for any future needs of the town.
- None of the roadway designs meet or current standards(Minor,class2 or class1) the Minor is lacking the 5' sidewalk and the 8' paved shoulder opposite of the sidewalk side. The Class 1and 2 area missing the 5' sidewalks.
- A 6" perforated pipe under the side of the road was requested by the town? They are installing curb and under drains so what is its purpose?
- The plan references the utilities being placed outside of the ditch line and ROW.
- The location of the silt fence will interfere with the construction of the minor roadway.
- The drainage extends past the limits of the minor roadway so the out fall will be in a private ROW which may cause issues with maintenance.
- Drainage should reference MDOT guide lines not NHDOT.

That's all that I have at this time. I would like to request more notice time for review please. Thanks

From: Rebecca Spitko
Sent: Monday, November 28, 2016 9:34 AM
To: David O'Brien <DO'Brien@kitteryme.org>; James Soucy <jsoucy@kitteryme.org>; David Rich <drich@kitteryme.org>; Robert Marchi <RMarchi@kitteryme.org>; George Kathios <GKathios@kitteryme.org>
Subject: 412 Haley Road

Hello everyone,

Attached is the preliminary plan application for a 12-lot cluster subdivision located at 412 Haley Road, for your review. Chris will be able to answer any questions you may have during tomorrow's Department Head meeting. A public hearing for this application is scheduled for December 8th.

Becca

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1955-2015

November 30, 2016

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VIA HAND-DELIVERY

Ms. Ann Grinnell
Chair, Planning Board
200 Rogers Road Ext.
Kittery, ME 03904

Re: Proposed Cluster Subdivision at 412 Haley Road (Tax Map 34 Lot 3)

Dear Ms. Grinnell:

We represent David & Laine McCartney, John & Shaye Robbins, Ray Grenier, Peter & Cheri Wilkins and Paul & Jane Schill, all of whom own real property in the Town of Kittery abutting the proposed cluster residential development at 412 Haley Road ("Abutters").

It has come to our attention that on September 8, 2016, the Planning Board accepted a sketch plan application from Marilyn Mann & James Smith (the "Applicants") for the construction of a 12-lot cluster residential development¹ located at 412 Haley Road (the "Proposed Development"). The Planning Board held a meeting on November 17, 2016, at which it determined that the Applicants' plan was complete. The Board plans on conducting a site walk of the Proposed Development on December 6, 2016 and will discuss final approval of the Proposed Development at its meeting on December 8, 2016.

The purpose of this letter is two-fold:

First, it is patently clear that the Proposed Development does *not* comply with a number of requirements associated with cluster residential developments ("CRD") as outlined in the Town's Land Use Ordinance. These shortcomings cut to the heart of the Town's goals and objectives when it first allowed construction of CRDs, and are ultimately fatal to the Applicants' proposal. This letter will explore each of these issues in turn, and will demonstrate why the Planning Board must reject the Proposed Development, as well as the road length waiver requested as part of the Applicants' proposal.

¹ We use this term as defined in the Section 16.2 of the Town's Land Use Ordinance, and as laid out in detail in Section 16.8.11 of the same Ordinance.

Second, this letter will highlight a number of legal issues surrounding the Proposed Development that should give the Board great pause when considering the Applicants' proposal.² In particular, the Applicants' proposal calls for the expansion of the existing and recorded 40 foot right-of-way connecting Haley Road to the Proposed Development (*see* Plan Review Notes for 412 Haley Road, August 11, 2016 attached as "Exhibit A"). As proposed, a significant portion of this expansion would be improved into a Class III private street, while another portion would be improved into a Class II private street. Further, the proposed plan is clear that the Applicants will petition the Town to accept this improved and expanded driveway as a public road. While they are certainly not "anti-development," the Abutters are concerned that the Proposed Development—and in particular, the necessary widening of the existing deeded 40 foot right-of-way—could permanently alter a neighborhood that they have all invested a substantial amount of time, energy, and financial resources in over the years. To allow this to happen is not only unfair, but ultimately gives the Abutters' more than sufficient cause to initiate legal action.

We trust that once the Planning Board has had the opportunity to review this letter, it will agree that as designed, the Proposed Development does not belong in this precise location, and more importantly, that by granting this application, the Planning Board would certainly be creating myriad legal issues that could wreck havoc in this close-knit community.

I. THE PLANNING BOARD SHOULD DENY THE APPLICANTS' PROPOSAL, AS IT DOES NOT MEET THE NECESSARY REQUIREMENTS FOR A CLUSTER RESIDENTIAL DEVELOPMENT UNDER THE TOWN'S LAND USE ORDINANCE.

Section 16.2 of the Town's Land Use Ordinance (the "Ordinance") defines "cluster residential development" as:

A form of land use improvements and/or change in which the dimensional requirements are reduced below that normally required in the zoning district in which the land use improvements and/or change is located, *in return for* the provision to set aside a portion of the tract as of [sic] permanent open space and other environmental enhancements owned and maintained jointly in common by individual lot/unit owners, the Town, or land conservation organization.

(Emphasis added). The definition highlights the quid pro quo inherent in a CRD. The Applicant is able to pack more units onto a parcel than would normally be allowed under the Town's general zoning requirements,³ and in return must meet a number of *stringent, carefully*

² The Abutters understand that the Town does not have the jurisdiction to act upon the following claims, as they are private in nature. Nonetheless, they are included below to inform the Board, particularly as to the likely result—private litigation—of the Board's potential decision to approve the Applicants' Proposed Development.

³ For example, the minimum lot size in the Residential - Rural District (R-RL), in which the Proposed Development is located, is 40,000 square feet per lot (Section 16.3.2.1(D)). However, when the Applicant

reviewed requirements related to open space, septic systems, and other important features. More importantly, the development of a CRD is meant to include a mixture of tight-knit neighborhoods and accessible, usable public open space. This balance would, at least in theory, allow the Town to add residential housing while still protecting the rural, natural state that exists in much of its buildable land.

In contrast, the CRD was *not* created to grant developers an easy means of bypassing the existing performance standards, and clearly prohibits the use of the CRD form while failing to adhere to both the specific technical requirements, as well as the general intent of such development. Clearly, if a developer does not wish to work within the practical bounds, and the spirit of the Town's CRD ordinance, they are instead free to move through the typical site plan review process for subdivisions, including a larger minimum lot size.

To that end, we will now highlight a number of ways in which the Proposed Development fails to meet both the technical requirements and the general intent of a CRD as specifically laid out by the Town's Land Use Ordinance. Because of these deficiencies, the Board should deny the Applicants' proposal.

a. General Design

As described above, the prevailing purpose of a CRD as stated in the Ordinance, is to encourage development that preserves existing natural resources, while remaining in "harmony with the natural features of the land, water, and surrounding development."⁴ However, while the Ordinance anticipates the use of "innovative" strategies to make use of limited buildable land, it does not envision the type of piece-meal development proposed by the Applicants.

At first glance, the error in the general design of the Proposed Development is striking. To begin with, the Applicants' preliminary plan does not call for one CRD, but instead, calls for two "mini cluster developments with different style lots," each with its own road maintenance association, and perhaps each with its own name.⁵ Although the Applicants attempt to justify this design by reference to the unique topographical nature of the parcel, the fact remains that such a design *cannot* and *should not* be allowed under the Town's CRD guidelines.

Not only is "mini cluster development" not defined—nor specifically allowed—by the Ordinance, but such a design was certainly not anticipated by the Ordinance's drafters. A CRD is

proposes a cluster development within the R-RL, the minimum lot size is reduced by 50% to 20,000 square feet (Section 16.8.11.6(D)).

⁴ Section 16.8.11.1

⁵ This is in addition to the houses of the Abutters, creating three, non-connected neighborhoods within a very small space. Creating such a fractured landscape is certainly not within the best interest of the Town or the Board.

meant to create a cohesive neighborhood. Conversely, the Proposed Development creates *two* incompatible groups of residences. The larger will be comprised of nine units crammed into an incredibly tight area, with little to no available green space save a small front or backyard. The second, which is not even serviced by the same cul-de-sac, is only comprised of three units, one of which is an existing farmhouse.⁶

Simply put, this design is in direct conflict with the purpose and the vision of the CRD. The Applicants do not propose a project that is in harmony with nature or the surrounding development, but instead are attempting to take advantage of the relaxed performance standards in the CRD in order to make this project economically-feasible.

Thus, the correct solution is for the Board to deny this application. Alternatively, if the Applicants wish to utilize a CRD in the future, they should be required to submit *two separate plans*, one for each of these distinct and unconnected “mini cluster developments.”⁷ By doing so, the Board will be able to ensure that *each individual cluster* meets the required ratio of open space, complies with each individual performance standard on its own, and is generally compliant with the clear intent of the Ordinance.

b. Open Space

The requirement of setting aside *usable* open space is at the heart of a CRD design. In pertinent part, the Ordinance requires: (1) that “open space must contain at least 50% of the total area of the property”; and (2) that open space should be “in a contiguous form of unfragmented land.” Together, these requirements highlight the presumed intent of the Ordinance to balance tighter residential development with protected natural, green spaces that could be easily utilized by the development’s residents. However, as explained below, the Proposed Development does not meet either of these requirements, and therefore should not be approved by the Board.

i. Total Land Area and Mix of Open Space Use

As rendered, the Proposed Development covers a total of 23.46 acres. Thus, to comply with the Ordinance, 12.3 acres, or approximately 50%, must be maintained as open space that

⁶ Further, proposed Lots 11 and 12 are conventionally sized—each being comprised of at least 40,000 square feet—and could potentially be permitted *without* the use of a CRD. This fact emphasizes again why the use of this style is inappropriate for this given circumstance.

This fact is pointed out in ¶19 of the report prepared by Michael Cuomo, a Maine licensed soil scientist, on behalf of the Abutters. This letter (hereinafter referred to as the “Cuomo Letter”) is referenced in additional footnotes below, and is attached to this letter as “Exhibit B.”

⁷ Naturally, this would also require the Applicants to prove to the Board’s satisfaction that each of these two “mini clusters” *individually* meets the requirements set out in the Ordinance, especially the requirement that 50% of the total land area of *each cluster* be set aside and separately deeded as open space.

is directly deeded to the eventual homeowners' association.⁸ These requirements are not mere formalities or placeholders. Instead, they are meant to ensure that the resulting neighborhood is not overly built out, but maintains a strong ratio of open space that can be used *both* for the preservation of existing natural habitat *and* for use by the CRD's residents.⁹ Such a mix is clearly contemplated by the ordinance in Section 16.8.11.6.E.4 and 5, which require that open space within a CRD be *both* permanently deeded for recreational amenity *and* set aside for the preservation of "large trees, tree groves, woods, ponds, streams," and other natural habitat.

Despite its appearances, the Proposed Development does not achieve this goal. While it may set aside slightly more than the required amount of open space, lost in the fine print is the fact that 95%¹⁰ of the anticipated open space is unbuildable, due to the presence of numerous protected wetlands and other naturally sensitive areas.¹¹ The presence of *some* wetlands is to be expected, of course, but as submitted, the Proposed Development goes too far; it effectively uses land that is both unbuildable and unusable for recreational purposes to stand in for most of the open space required in a CRD. Should the Board allow such a discrepancy to be included in the Applicants' final plan, it would not only be violating the explicit terms of the Ordinance, but it would be contradicting the clear intent to provide a *mix* of recreational and preservation open space within the Ordinance.¹² This would effectively allow the Applicants to use the leniency of the CRD's technical standards to cram far more units onto the proposed parcel than would otherwise be allowed. Such an outcome skirts the true intent and spirit of the CRD, and would set an unfortunate precedent for future development in Kittery.

⁸ See Section 16.8.11.7

⁹ Additionally, the Ordinance requires that 30% of the development's total net residential acreage be set aside. In this regard, the Town's Ordinance makes clear, that the *total* amount of net residential acreage must be reduced by a number of items. Here, the Proposed Development also fails, despite the Applicants' November 18, 2016 letter. For example, the Cuomo letter notes that the needed stormwater management area will require the granting of an easement to the Town (§ 11). The area of this easement must be subtracted from the net residential acreage of the project, which has not been accomplished. The same can be said for needed pedestrian easements (§ 10) and subtidal land (§ 9). These are issues that the Board *must* require the Applicant to address, as they affect whether or not the Proposed Development is in compliance with the 30% net residential acreage requirement.

¹⁰ Map OV2 of the Applicants' packet specifies that only 11.66 acres of the total project area constitutes "buildable land."

¹¹ The prevalence of wetlands also highlights how the Proposed Development falls far short of the 30% of net residential acreage also required by the Ordinance

¹² For example, Section 16.8.11.1.B states that the general purpose of the CRD is to, among other things preserve open space *and* create recreational areas. It is no mistake that these two goals are coupled - after all, preserving open space within a residential neighborhood that can serve no purpose than acting as a natural buffer is not efficient. While *some* unusable open space can be helpful, the goal of this particular type of *residential* development focuses in large part on providing adequate recreation space for *residents*.

ii. Contiguous Open Space

Additionally, the Ordinance requires that the open space within the CRD be “in a contiguous form of unfragmented land”¹³ The purpose of this requirement, as clearly stated, is to “protect natural resources,” but it also naturally follows from that requiring contiguous open space promotes the cohesive feel of a smaller, more rural neighborhood, rather than the more spread out, chopped-up feeling of a typical subdivision.

The Proposed Development does not meet this requirement. As laid out in Drawings A1 and A2 of the preliminary application, the proposed open space is broken up into three separate parts that do not share any common boundaries. Each falls on a separate side of the development, thereby acting as more of a piece of discarded land rather than space that could promote neighborhood recreation and connectivity. Even more egregious is the fact that Open Space A, potentially the largest of the three tracts, is located *between* two of the Abutters’ parcels and *across* what would eventually become a Class II road; this is completely at odds with the Ordinance’s call for contiguous open space. It is inconceivable how the Applicants could consider such a location to even be within the bounds of the Proposed Development, let alone a piece of land suitable for the purposes of such open land laid out in the Ordinance.

Together, these shortcomings make clear that the Proposed Development does not meet the requirements for contiguous open space as required by Section 16.8.11.6.E.6, and should therefore be denied.

c. Individual Septic Systems

Section 16.8.11.6.C of the Ordinance states that:

Public or privately shared sewer and water *must be provided* unless it is demonstrated to the Planning Board’s satisfaction that alternative methods used result in a development that is compatible with Section 16.8.11.

(Emphasis added.) The Proposed Development does not call for public or privately shared sewer systems, but instead proposes that each unit will have its own individual septic system. Thus, the Applicants bear the burden under the Ordinance of demonstrating to the Board’s satisfaction both *why* this change is necessary, and more importantly *how* such a change is consistent with the goals of the CRD ordinance itself. This is a burden that the Applicants cannot meet.

In their submission, the Applicants state that the use of individual septic systems is due to: (1) a desire to keep future HOA fees lower and prevent the need for future septic management agreements; and (2) because the topography of the parcels prevent the use of the preferred public, or privately shared systems. These concerns may have merit; however, they

¹³ Section 16.8.11.6.E.6.

are not sufficient in and of themselves to prove to the Board's satisfaction that the purposes of the Ordinance are being fulfilled.

Although Section 16.8.11 has numerous standards and methods for determining overall compatibility, it seems appropriate to focus on two particular goals for CRDs set out in the ordinance.¹⁴

First, the Ordinance is clear that a CRD is authorized in order to promote the "efficient use of the land and water."¹⁵ Although the Applicants have not provided a specific analysis of the differences in water volume and pressure needed to operate twelve individual septic systems, rather than one or two shared systems, it seems rather obvious that the former would create significant inefficiencies that would contradict the purpose of the CRD. At the very least, the Applicants should be required to provide an analysis that demonstrates the efficiency of this approach in terms of the number of gallons used, rather than the number of dollars saved by the future HOA.

Second, the Ordinance states that a CRD was authorized to preserve area of the "highest ecological value."¹⁶ Here, the concern created by the Proposed Development is tied to the amount of square feet that individual septic tanks would take up, thereby harming protected wetlands. Yet more importantly, installing these individual systems so close to both sensitive wetlands, and Spruce Creek itself, has the potential to create numerous ecological issues in the future. Without consulting the appropriate expert, the Applicants cannot prove to the reasonable satisfaction of the Board that the Proposed Development would not create additional seepage of raw sewage into the ground and surrounding wetlands, or that given the nature of such private systems, that the potential for additional environmental issues does not exist.

¹⁴ In addition to these shortcomings, it must be noted that the Applicants have failed to meet other Ordinance criteria with regard to necessary septic system testing.

First, the Applicant has failed to show on its plans where they would place a secondary subsurface wastewater disposal system, as required by Section 18.7.2.D. Additionally, the Applicants have failed to satisfy a number of criteria with regard to septic system test pits. For example, Lots 2, 3, 4, 5, 7, and 11 require two suitable test pits to be dug. Additionally, Lots 1, 9, 10, and 12 have not been fitted with test pits that meet State requirements. Finally, and most importantly, the "proposed septic area" for Lots 1 and 9 is less than the required setback from the affected wetlands. See Cuomo Letter ¶¶ 16-18.

¹⁵ Section 16.8.11.1.A.

¹⁶ Section 16.8.11.1.D. The Cuomo Letter highlights additional materials necessary for the approval of wetland alteration (and required by the Ordinance) that *have not* been submitted to the Board. These include a wetland mitigation plan (¶1); and a determination of the Proposed Development's effect on freshwater wetlands within 250 feet of coastal wetlands (¶3).

The simple fact is that the Ordinance *assumes* that a CRD would utilize public or shared private water and sewer infrastructure because of the inherent ecological and efficiency benefits within those systems, and thus *requires* Applicants who chose to use different systems to affirmatively demonstrate *how* and *why* their choice is appropriate. The above has demonstrated only two limited ways in which the Applicants have not met this burden and have not proven general compatibility with the Ordinance; many more examples certainly exist. Thus, the Board *must* require the Applicants to submit additional information in order to meet their burden of proof, or alternatively, deny their application.

d. General Purpose

Finally, although they do not have the same authority as performance standards, the Board should be aware of the many ways in which the Proposed Development is incompatible with the purposes for the CRD written into the ordinance.

i. Impact on the Municipality, Neighboring Properties, and the Natural Environment; Maintenance of Rural Character

Ordinance Section 16.8.11.1.I states that the purpose of the CRD is to “[minimize the impact] of residential development on the municipality, neighboring properties, and the natural environment.” Without a doubt, the Proposed Development fails all three of these objectives.

First, while any residential development will create *some* impact on the municipality, this particular development produces far more than is necessary. While the Applicants could have decided to develop the affected parcel within the bounds of the normal site plan review process, the size and scope of the Proposed Development requires the Town to accept, maintain, and assume liability for a new Minor Road, and potentially the maintenance of an intensive wet pond that is the only form of storm water management that the applicant has indicated.¹⁷ Not only is this type of municipal impact costly, but it is completely unnecessary, as minimizing the size of the Proposed Development would eliminate the need for any expansion of the existing roads. Thus, it cannot be concluded that the Proposed Development minimizes any potential impact on the municipality.

¹⁷ This new minor road is only necessary because the Applicant proposes a development that will create approximately 120 new trips per day over the existing gravel driveway (as cited in Staff Review ¶ 4 in the Planning Board’s November 17, 2016 meeting packet). In contrast, if the Applicant proposed a development that is more appropriate for this setting, it is likely that the number of new trips created would be small enough (between 35 and 71) to not require the expansion of the existing right-of-way to conform to the specifications of a Class III private road. See Table I, Section 16.8, Article IV of the Town’s Land Use Ordinance. This change alone would dramatically decrease the long-term effect on the Abutters and the whole of the surrounding neighborhood.

Second, and just as important, the Proposed Development does *not* minimize the impact on the neighboring properties. Again, the Abutters are not arguing that the Applicants should be precluded from building—that would clearly overstep the bounds of the Board’s authority. However, it must be highlighted, and will certainly be explored at length below, that the Proposed Development will transform the existing neighborhood, and will likely destroy the existing rural character on which the Abutters have rightly become accustomed.¹⁸

A fair interpretation of the Ordinance suggests that by allowing the use of CRDs, the Town sought to preserve existing communities, and where applicable, the rural nature that makes Kittery unique. Unfortunately, the Proposed Development furthers *neither* of these goals. Not only would the existing gravel driveway adjacent to many of the Abutters’ properties be dramatically expanded, but an additional nine units of housing would be placed directly within the sight-lines of at least four abutting lots. This type of impact highlights exactly why a CRD is inappropriate in this location, and under these types of circumstances. Not only has the Proposed Development failed to comply with all of the requirements highlighted above, but it has essentially used the CRD standards as a vehicle to allow it to place an excessive number of housing units in a location that is simply not suitable for such development. This type of end-around should not be allowed, and accordingly, the Board should deny the Applicants’ submission.

e. Summation

Each of the above issues is sufficient in and of itself to invalidate the Proposed Development; yet together, they signal the clear nonconformity of this project with the Town’s CRD criteria. As such, the Board should deny the development outright, or in the alternative, require the Applicants to correct each of these issues and resubmit a corrected preliminary plan.

II. ADDITIONALLY, THE PLANING BOARD MUST DENY THE APPLICANTS’ REQUEST FOR A WAIVER OF THE TOWN’S ROAD LENGTH REQUIREMENTS, AS THE APPLICANTS HAVE FALLEN PAINFULLY SHORT OF MEETING THEIR BURDEN OF PROOF.

As part of the Proposed Development, the Applicants have requested a waiver from the road length requirements laid out in Section 16.8, Table 1 of the Town’s Land Use Ordinance. The Board must deny this request, as the Applicant cannot come close to proving the necessary facts to support such a waiver.

¹⁸ Among these significant impacts will be the increase of traffic over the existing gravel driveway, which will require its expansion to that of a Class III public road in large part (*see* Footnote 17 above). In this regard, it is worth noting that the Abutters’ own traffic impact study, completed by William Bray, concluded that the Proposed Development would create **138 to 159** new trips per day, rather than the 120 trips estimated by the Applicant. A copy of this report is attached to this letter as “Exhibit C.”

The Town's Land Use Ordinance is clear that waivers should be granted sparingly, and only under highly specific circumstances. In general, the Ordinance requires that each Applicant meet each and every condition required by the Planning Board before a final plan can be approved. Further, if an Applicant requests that a certain condition not apply to its proposed project, such a request may only be granted if the Board determines that the requirement "**may be waived without jeopardy to public health, safety, [or the] general welfare.**"¹⁹ This extremely high bar speaks to the Town's desire to limit the availability of waivers, and require Applicants to meet the specifications laid out in the Code. In this regard, the Applicants have fallen far short of what is required.

As justification for their seeking a waiver for Class I road length, the Applicants have spoken about the potential benefit of a cluster development in general (which we have broadly refuted above). Yet the Applicants make very little reference as to why this *particular* request is so benign that will not cause *any jeopardy whatsoever* to the public's health, safety, or general welfare. In fact, the *only* specific justification the Applicants present is merely that allowing such a waiver would save the Town a minor amount of additional maintenance costs (*see* Waiver Request for Class I Road Length, page 1).

This lack of attention to detail alone should be sufficient grounds for the Board to deny such a waiver request. Waivers should not be widely available to make the site review process more *convenient* for an applicant. Instead, they should be reserved for the rarest of circumstances, where an Applicant can show that despite his or her diligent efforts, strictly complying with the tenets of the Ordinance would not only place an undue burden on the project, but would in fact do *nothing* to promote the Town's principal goal of protecting the public. Until such a showing can be produced, the Board's proscribed course of action under Section 16.10 is to deny the Applicant's request and require compliance with all the necessary standards.

In sum, based on the bare-bones request submitted by the Applicants, which ignores the standard for a waiver of conditions laid out in the Ordinance, the Board should at the very least require that the request be resubmitted. However, even if and when an appropriate request has been submitted, we would simply request that the Board look beyond the seemingly benign request for a longer Class I road, and look to how allowing such a deviation from the Code could negatively affect the natural environment, and more importantly, the general welfare of the Abutters who would, if approved, be forced to deal with the aftermath.

¹⁹ Section 16.10.8.2.5.

III. THE TOWN, THE APPLICANT, AND THE ABUTTERS HAVE ALREADY STIPULATED AND CONFIRMED THAT THE GRAVEL DRIVEWAY ABUTTING THE PROPOSED DEVELOPMENT WOULD NEVER BECOME A TOWN ROAD. THUS, THE DOCTRINE OF COLLATERAL ESTOPPEL PREVENTS THE TOWN FROM ACCEPTING ANY EXPANSION OF THE EXISTING 40 FOOT RIGHT-OF-WAY.

Collateral estoppel prevents a party against whom a decision had been made from getting a second bite at the apple by having the same issue considered again.²⁰ Although this concept generally applies to the court system, the Maine Supreme Judicial Court has been clear that the doctrine also applies *both* to administrative bodies, including a municipal planning board.²¹

Here, because the Town has considered—and decided—the proper size and width of this particular right-of-way on at least two previous occasions, it seems plain that the Applicants should not, and in fact cannot, ask the Planning Board to overturn its previous decisions here. The Applicants had their opportunity to ask for expansion of the right-of-way in the past, but clearly showed the Town that this would *never* be their intent. This occurred not once, but on three separate occasions. In each instance, the Planning Board queried and recorded the Applicants' intentions on the public record.

First, when the Planning Board initially approved the 40 foot right-of-way in 1995, the project's engineer, speaking on behalf of the Applicants, stated that the driveway "would not be widened, it would be used as is." (Kittery Planning Board Minutes, November 9, 1995, attached as "Exhibit D"). Then, in 1996, the Town received and approved a signed Road Maintenance Agreement (attached as "Exhibit E") from the Applicants and the Abutters, stating both that the right-of-way would be maintained as a "12 foot wide gravel road," and that none of the parties would "ask the town for this road to become a town road." Finally, in 2001, the Applicants sought an extension of the existing right-of-way to accommodate one more lot (*see* Staff Comments for the Kittery Planning Board, December 13, 2001, attached as "Exhibit F"). This extension was approved subject to fifteen (15) separate conditions. (Map 34 Lot 3 ROW Plan, attached as "Exhibit G"). Condition 13 clearly states that "[t]he right of way will remain privately owned and maintained by the land owners. The road *will not* become a "town road" (emphasis in the original).²²

²⁰ *See Portland Water Dist. v. Town of Standish*, 2008 ME 23, ¶ 9, 940 A.2d 1097.

²¹ *Witham Family Ltd. P'ship v. Town of Bar Harbor*, 2011 ME 104, ¶ 17, 30 A.3d 811.

²² Of additional note is the Wetland Alteration and Subdivision Plan of Michael J. and Julia A. Kilchenstein Off Haley Road, Kittery Maine, recorded in the York County Registry of Deeds on March 3, 1997 in Plan Book 234, Page 1 (attached as "Exhibit H"). Although this Plan was not recorded by the Applicants, it did create the lots that a number of the Abutters now reside in. Like the plans and documents already mentioned, this plan certainly created reasonable expectations for the Abutters in terms of how the right-of-way could be potentially expanded in the future.

IV. COLLATERAL ESTOPPEL ALSO EXTENDS TO THE EXPANSION OF THE EXISTING 40 FOOT RIGHT-OF-WAY INTO A CLASS III PRIVATE ROAD.

In this context, the issue of whether or not a road becomes a “town road” is not just an issue of ownership; it is ultimately an issue of the total impact on the surrounding neighborhood.²³ Again, the Town’s land use ordinance maintains that a Class III private road must meet the same criteria as a *public road* (Town of Kittery Land Use Ordinance Section 16.8.4.14). Thus, when an existing Class II private road or lower is elevated to meet the specifications of a Class III road, it has in effect become a “town road,” with regards to its scope, impact, and usage.²⁴ While ownership of the right-of-way may continue to be private, the classification of “town road” within the context of the Town’s ordinance speaks also to its performance standards, scope, and necessarily, the intensity of its use. After all, the primary reason for such upgrades is to accommodate a greater amount of traffic. As we outlined above, the three previous decisions regarding the “town road status” of this particular right-of-way contemplated the issue of ownership *and* the issue of impact. Preventing such an expansion of the driveway’s scope and use was clearly contemplated by the parties to the previous road maintenance agreement, but more importantly, this decision was accepted and formalized by the Town. Simply put, the Applicants are not allowed to reopen this issue for discussion. Doing so not only wastes the Town’s time, but is ultimately unfair to the Abutters, who have relied on the *finality* of these decisions for many years.

V. NOTWITHSTANDING THE ABOVE, THE DOCTRINE OF PROMISSORY ESTOPPEL PREVENTS THE APPLICANTS FROM EXPANDING THE 40 FOOT RIGHT-OF-WAY.

Promissory estoppel is a core legal principle that protects the action one person makes in *reasonable reliance* on the promise of another. In essence, it prevents a person who has been acting in good faith from having the proverbial rug pulled out from under them.²⁵ Protecting these reasonable expectations is especially important in the context of real estate. Before closing on a new house, a buyer typically researches the property’s chain of title, and has his or her lawyer investigate any servitudes or easements that may affect the parcel. These steps are not mere formalities. The buyer wants and expects to know *exactly* the state of affairs he or she is buying into.

²³ Reducing such impact to the Abutters and the surrounding neighborhood is also a purpose of the cluster residential development ordinance itself, as is pointed about above in Section I(d). Thus, both in regard to the private rights explored here, and the public ordinance explored above, the Proposed Development creates far too much impact to existing residences to be approved.

²⁴ As noted above in Footnote 17 and laid out in Exhibit C, the sheer usage of the existing gravel driveway would more than triple, from 43-50 trips per day to between 138 and 159 trips per day.

²⁵ *Popanz v. Peregrin Corp.*, 1998 ME 95, ¶ 6, 710 A.2d 250 (“a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.”).

To that end, when a prospective buyer—as was the case with the Abutters—discovers that specific reference is made to the existence of a particular size of right of way and other explicit restrictions on surrounding parcels, the law protects that buyer's reliance on those references; it prevents future parties from removing those references and restrictions and ultimately disregarding the deeded right-of-way as stated in the Abutters' titles.

Such is the case here. When the Abutters researched the state of affairs of their parcels, they found three important references that ultimately influenced their decisions to buy. The first is the deed language within the chain of title (*see, e.g.*, Exhibit A to Deed from Jonathan D. Segal and Lisa Harrington Segal to John M. Robbins and Shaye McGann Robbins, recorded in the York County Registry of Deeds in Book 15482, Pages 66-68, attached as "Exhibit I"), which states plainly that the purchased parcel included "an easement for the purpose of egress and ingress . . . 40 feet wide." The other is the Right-of-Way Plan recorded by the Applicants, which restates the proper 40 foot width of the existing right-of-way, and the fact that no more than four units would be built to access it (Right of Way Plan for A. David Mann, September 1995, recorded in the York County Registry of Deeds in Book 227, Page 44, at Note 7, attached as "J"). Finally, the Abutters reviewed the existing Road Maintenance Agreement (Exhibit D) which explicitly state that the existing 40 foot right-of-way *would not* be converted into a town road.²⁶

²⁷

The simple truth is that based on what they found, the Abutters bought their homes under the reasonable, legally protected expectation that the neighborhood's character would not change dramatically. As anyone could tell by walking around the Haley Road area, the natural landscape is well-preserved, the houses are spread out, and the gravel driveway that connects many of the Abutters' parcels is rarely travelled upon. Some amount of change to the neighborhood may be inevitable, but the Abutters did not buy their homes without first doing their research. They learned, and ultimately relied upon certain documents that effectively promised that a subdivision the size of the one proposed would not be built, and more importantly, that the road that runs directly in front of their properties would not be converted into a larger, busier, more invasive public road.

Ultimately, the Abutters contend that the outer limits of the existing gravel driveway is within the twenty year old, town approved, applicant registered, deed referenced right-of-way.

²⁶ As stated above, this representation regarding the right-of-way's future "town road" status reasonably affects the Abutters' expectations related to the ownership *and the size/scope* of the right-of-way.

²⁷ It is also worth noting that the Abutters would also have found the meeting minutes from the October 12, 1995 meeting of the Kittery Planning Board, where the original Right-of-Way Plan was approved (attached as "Exhibit K." There, one of the applicants clearly states that "this [the proposed and future development around Haley Road] would not become another Bartlett Farms." This is a clear reference to the adjacent subdivision, which is much denser than the current development on Haley Road. More to the point, this statement represents another piece of information that the Abutters reasonably relied on prior to making their decisions to purchase. Together with the above-cited statements, the clear conclusion is that the Applicants are likely precluded from reneging on these representations and continuing with the Proposed Development as planned.

The law protects the Abutters' reliance on these documents and representations and the Planning Board should, in good judgment, respect this.

VI. FURTHER, ESTABLISHED LEGAL PRINCIPLES PRECLUDE THE APPLICANTS' ATTEMPT TO EXPAND THE SIZE AND LOCATION OF THE CURRENT RIGHT-OF-WAY.

Generally, a landowner has free rein to relocate an easement on his or her land. However, as with most things, there are logical limits. The most logical of these limits is where relocation would negatively affect the neighbors' ability to use and enjoy their parcels as they were before.²⁸ A common way that the courts do this is by strictly construing the language that creates a right-of-way, particularly when that language states the right-of-way dimensions. For example, if a particular plan calls for a *40 foot* right-of-way, rather than a right-of-way of unspecified dimensions, the court will generally interpret this specified size as being the *maximum* dimensions that the right-of-way will ever reach.²⁹ This is simply another way for the court to protect the expectations of affected parties who, as explained above, likely purchased their properties in good-faith reliance on what was plainly recorded. Doing this not only protects what is fair under the circumstances, but ultimately resolves any dispute as to what a particular plan or easement drafter intended.

Once again, these principles are directly at play here. First, the location and dimensions of the existing right-of-way have been clearly established from the beginning. The original right-of-way plan (Exhibit J) expressly marks these dimensions and the deed of *each and every* Abutter (*see, e.g.*, Exhibit I) expressly states that the right-of-way was to be **40 feet** in width and no more. As explained above, this specific dimension is not a guess or a suggestion, nor is it a dimension that a reasonable person would expect to change in the future. Instead, this description's specificity formed the basis for the Abutters' assumption about the use of the easement in the future. This was not an illogical choice, but one that any rational home-buyer would make, and ultimately is an expectation that the Planning Board should respect.

Further, there is no doubt that allowing the Applicants to relocate and expand the existing right-of-way would damage both the value of the Abutters' homes, and ultimately, the neighborhood that they have all helped to build. As the Planning Board is well aware, expansion of the existing right-of-way will also require the changing of the existing driveway's surface to asphalt, the widening of the travel surface to 20 feet, and the creation of a 15-foot wide paved shoulder and pedestrian sidewalk, as well as the addition of street lamps (Town of Kittery Land Use Ordinance Section 16.8.4.14). Not only will these changes significantly expand the impact of the right-of-way on the surrounding neighborhood, but it threatens to convert a

²⁸ *Restatement (Third) of Property (Servitudes)* § 4.8(3)(b) (2000); *see also* Jon W. Bruce, et al., *The Law of Easements and Licenses in Land* § 8.06(c) (2d. Ed. 1995).

²⁹ *See Onorati v. O'Donnell*, 326 N.E.2d 367 (Mass.App.Ct. 1975) (finding it improper to extend the dimensions of a right-of-way when the dimensions were clearly stated in the deed of conveyance).

Kittery neighborhood—the uniqueness of which the Abutters certainly appreciated when deciding to purchase their homes—into a congested area that lacks the buffers, natural landscape, and unique qualities that define the area. These expectations cannot be swept under the rug; the law prevents this from happening. Again, the Planning Board should take these concerns, and their possible repercussions, into consideration when deciding whether to accept the Proposed Development.

VII. FINALLY, THE PROPOSED EXPANSION OF THE GRAVEL DRIVEWAY WOULD VIOLATE THE COMMON SCHEME FOR DEVELOPMENT EXISTING BETWEEN THE APPLICANTS AND THE ABUTTERS.

As the Planning Board is well aware, when a subdivision or other planned development is created, the resulting parcels are usually subject to a set of covenants and restrictions, which are included with the deed that is placed into the public record.³⁰ Once this occurs, *each and every landowner* whose parcel is included as part of the subdivision is able to sue to enforce any and all of these restrictions or specifications. This concept is a near cousin to those discussed above; it protects landowners, who have invested substantial amounts of money in their homes from having a single neighbor change the rules in the middle of the game.

Here, the parcels owned by the Abutters and the Applicants are all part of the same common scheme, a scheme that includes clear specifications regarding the existing 40 foot right-of-way. Beginning with the creation of the original 40 foot right-of-way, each and every parcel conveyed by the Applicants to an eventual Abutting Landowner contained the same language:

“Together with an easement for the purpose of egress and ingress . . . over the above reference [sic] *private 40 foot wide right of way* . . . the *40 foot wide right of way* [is] subject to the restrictions and conditions within the notes of both of the above referenced plans [Exhibit I].” (emphasis added).

This language highlights the common scheme of development in place in this neighborhood, which *prohibits* the expansion of the existing 40 foot right-of-way. Not only does the identification of the width of the affected right of way speak to the ongoing expectations of the Abutters regarding the nature and intensity of its use, but the restrictions mentioned in the notes to the Right-of-Way Plan (referenced above) explicitly state that the number of units utilizing the easement would be limited and that any future building permits would *only be granted* if these restrictions were upheld. Further, these notes demonstrate the Abutters’ clear and consistent expectations that the existing gravel driveway would *not* be expanded in a way that would fundamentally alter the nature of the right-of-way, or the complexion of the surrounding neighborhood, as the Proposed Development would clearly do.

³⁰ *Thompson v. Pendleton*, 1997 ME 127, ¶ 11, 697 A.2d 56; *Tisdale v. Buch*, 2013 ME 95, ¶ 13, 81 A.3d 377 (quoting *3 W Partners v. Bridges*, 651 A.2d 387, 398 (Me. 1994)).

Thus, because a common scheme of development has been created, the Abutters have the right to rely on and enforce these representations, which prevent the Applicants from expanding the existing 40 foot right-of-way.

VIII. CONCLUSION.

This is an issue of fairness and playing by the rules. Although the Abutters do not question the Applicants' right to improve the condition of the road, and to develop their land, the Abutters believe that this must be done within the existing, deeded 40 foot right-of-way, and must follow all of the precepts of the cluster residential development performance standards included in the Town's ordinance.

First, it is our position that as submitted, the Proposed Development falls far short of what is required for the Board to approve a CRD. Not only is the Proposed Development out of sync with the general feel and layout of a proper cluster development, but the submitted plans do not come close to meeting the technical requirements of the Ordinance. As proposed, there is likely insufficient open space to comply with the 50% requirement of the Ordinance, especially when considering the lack of *usable recreational space* included. However, even if such space is sufficient, it is undeniable that this space is not contiguous within the meaning of the Ordinance. Furthermore, the Proposed Development's choice to use individual septic systems is unsupported by the facts, and falls far short of meeting the burden of proof placed on the Applicants by the Ordinance. These issues alone provide the Board with adequate reason to deny the Proposed Development as submitted, or at a minimum, require the Applicants to reassess their plans and resubmit a plan in compliance with the Ordinance.

Second, we highlighted a number of additional issues that while private in nature should give the Board pause. It is our position the ultimate decision regarding the future use and size of this particular right-of-way was settled nearly twenty years ago by *this* Planning Board after consulting both the Applicants and the Abutters. To open up the topic for discussion once again is not only a waste of the Planning Board's time, but contradicts long-settled legal principles that protect the Abutters' interests. Additionally, approval of the Proposed Development—and more importantly its right-of-way expansion—would decimate the long-held, reasonably formed expectations of the Abutters. The Abutters purchased their homes after conducting extensive research, including into the Applicants' recorded right-of-way plan, town documents, and the existing road maintenance agreement. Together, these documents told them *what* they were purchasing and *how* they could expect that reality to change in the future.

The law is strongly protective of these expectations because without such protection a homeowner is ultimately at the mercy of the whims of any neighbor, without having any manner of recourse. To that end, this letter has outlined a number of ways in which the approval of the Proposed Development would violate long-established legal principles, and ultimately create grounds for legal action. Accordingly, we ask that the Planning Board reject

November 30, 2016
Ann Grinnell, Chair
Town of Kittery, Planning Board
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the Applicants' preliminary plan and *not accept* a new plan that does not conform to the long-established rights of the Abutters.

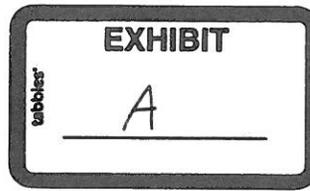
We thank the Board for the opportunity to submit these comments and would welcome the opportunity to discuss this matter further. In the event that you wish to do so, please do not hesitate to contact me.

Very truly yours,


Durward W. Parkinson

DWP/btm

cc: Gregory J. Orso, Esq. [via email]



**Town of Kittery
 Planning Board Meeting
 August 11, 2016**

412 Haley Road – Sketch Plan Review

Action: Accept or deny application. Approve or deny plan. Owner/Applicant Marilyn Mann & James Smith requests consideration of a 11-lot subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential – Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones. Agent is Richard Green, Green & Company.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Review	Scheduled for 8/11/2016	PENDING
YES	Site Visit		
YES	Preliminary Plan Review Completeness/Acceptance		
YES	Public Hearing		
YES	Preliminary Plan Approval		
YES	Final Plan Review and Decision		

Applicant: 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.

Background

This is an initial, conceptual review of a major subdivision located at 412 Haley Road. The parcel is a conforming lot, 27.45 acres in size, with one, conforming single-family dwelling. The applicant is proposing an 11-lot cluster subdivision, including the existing waterfront residence

A portion of the lot is located with the Shoreland Overlay Zone. Therefore, all shoreland regulations and restrictions apply to any area within 250' of Spruce Creek's highest annual tide elevation.

Staff Review

1. Staff met with the applicant and their agent to discuss objectives to develop. The applicant proposes an 11-lot cluster subdivision with modified frontage, and minimum lot size standards. Cluster subdivision is a permitted use in the R-RL zone. Two waterfront lots are in addition to the primary 9-lot clustered subdivision.
2. Existing conditions on the lot is one, single-family dwelling, with frontage along Haley Road. The residence is accessed by an approved 40-ft ROW, approximately 1,400 feet in length. In addition, the gravel drive and ROW from Haley Road provides access and frontage for 3 abutting lots.
3. In the July 20 cover letter, the applicant states the minimum land area per dwelling unit for the R-RL zone is 20,000 square feet. The minimum land area per dwelling unit in the R-RL zone is actually 40,000 square feet. However, this may have been a typo in the cover letter, as it appears the applicant used the correct minimum land area per dwelling unit in determining the net residential density of 14 lots. (13.6*43,560/40,000 = 14.8).

4. The applicant provides a list of deductions to determine Net Residential Acreage (NRA). Once a formal standard boundary survey and wetland delineation has been completed, the applicant should verify the NRA calculations, referencing Title 16.7.8.2, to ensure all required deductions are included, and no overlaps are present.
5. The applicant proposes improving the existing gravel driveway to provide access to the subdivision. A class 3 private street will provide frontage for lots 1, 2, 6, 9, 10, 11, as well as the two existing lots, identified as 402 and 404 Haley Road. A second Class 2 private street will access lots 3 – 7. The two streets will require different names and the applicant will be responsible for any improvements to conform to the street standards as outlined in Table 1 of Chapter 16.8, Article IV. Since the original street ROW was never named, properties identified as 402 & 404 Haley Road will likely need to change their addresses.
6. The applicant intends to petition the streets to be accepted by the Town as public, however it is unclear whether that petition will be included with this application.
7. As stated on the ROW plan dated 10/29/2001, and revised 6/30/2004, existing underground utilities are located under the northerly and westerly shoulder of the gravel drive. The applicant proposes to extend the waterline into the subdivision, as well as install hydrants along both roads.
8. No buffering is provided along the cluster development and abutting properties 424 and 428 Haley Road, located to the east of the proposed development. The Board may want to consider requiring a buffer to preserve the character of abutting properties. This would result in a somewhat reduced building envelope for lots 1, 3, 4 and 5.
9. The two waterfront lots begin at the cul-de-sac, extend approximately 500', and expand out to show a building envelope, creating two flag-shaped lots. Flag shaped lots are prohibited per Title 16.8.16.2. In addition, this design provides approximately 25' of frontage for both lots 10 and 11. The applicant may want to consider extending the ROW to end in a cul-de-sac closer to the buildable area of lots 10 and 11, thus resulting in lot shapes consistent with the dimensions outlined in Title 16.8.16.2, Lot Shape. This may also help to ensure the driveway(s) are less than the 500-foot limit.
10. The property receives town water. However, it is not on town sewer. Privately shared sewer must be provided unless the applicant can demonstrate, to the Board's satisfaction, individual sewer systems can maintain all state and town setback standards. If the applicant does not plan to provide a shared sewer collection and treatment system, no lot may be smaller than 20,000 square feet per single-family residence, and, though none are proposed, 8,000 square feet per bedroom per multi-family residence, if applicable.
11. The location of subsurface wastewater disposal systems and reserve areas are not depicted on the sketch plan. Proposed sites should be included on preliminary and final plans.
12. The applicant plans to provide access to Spruce Creek for swimming and recreational activities. It is unclear whether the intent of this access is public, available only to the subdivision property owners. If the latter, the applicant may wish to include access to properties abutting the proposed ROW as well.
13. The required open space is divided into three segments: directly to the north of the ROW upon entering the property from Haley Road; on the easterly edge of lot 10; and on the westerly edge of lot 11. Per Title 16.8.11.6.E.6, when possible, open space should be in a contiguous form of

unfragmented land. The Board may want to consider if an alternative arrangement of the required contiguous, unfragmented open space exists.

14. 412 Haley Road is located in a designated MS4 area. Preliminary and final plan application will need to demonstrate a plan to meet the requirements outlined in 16.8.8.1, Stormwater drainage, and 16.8.8.2, Post construction stormwater management. The Shoreland Resource officer will review and approve management to ensure compliance with MS4 general performance requirements.
15. The sketch plan incorrectly identifies the name of the road “Goose Point” as “Goose Pond Drive” and should be revised.

Recommendation

With the exception of a high intensity soil survey, the sketch plan appears to be sufficient for the Board to initiate a review per Title 16.10.4.2.1 and with consideration of Title 16.8.11.5. The Board should determine if the proposal is in general conformance with Title 16 and if there is additional information/suggestions the Board wants to convey to the applicant prior to submitting a preliminary plan application.

Action

The sketch plan submittal appears substantially complete. The Board may request submittal of additional information the Board deems it necessary to continue the review. If the Board determines no further information is needed the Board may accept the sketch plan.

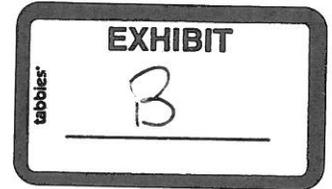
Move to accept the sketch plan application dated July 20, 2016 from owner/applicant Marilyn Mann & James Smith for an 11-lot subdivision located at 412 Haley Road (Tax Map 34, Lot 3) in the Residential – Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones.

A site walk is not required; however, the abutters to the proposed development have spoken to Staff in the past and have requested notification when any application is filed. The Board should consider whether a site walk is warranted at this time. Or if the Board is satisfied with the information provided by the applicant, they can approve the Sketch Plan. A suggested motion to continue the sketch plan and schedule a site visit is provided below.

Move to schedule a site walk and continue the Sketch Plan for owner/applicant Marilyn Mann & James Smith for an 11-lot subdivision located at 412 Haley Road (Tax Map 34, Lot 3) in the Residential – Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones not to exceed 90 days.

Michael Cuomo, Soil Scientist

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mcuomosoil@gmail.com



Ann Grinnell, Chair
Kittery Planning Board
200 Rogers Road Extension
Kittery, Maine 03905

30 November 2016

Dear Planning Board Members;

My clients, represented by Bergen Parkinson Attorneys, asked me to review the natural resource information and plan set submitted by Jones and Beach Engineers, Inc. for Green and Company's proposed subdivision at 412 Haley Road. Attached you will find a resume outlining my qualifications.

1) Wetland Mitigation Plan Not Provided

2200 square feet (sf) or 0.05 acre of wetland impact is proposed. A wetland mitigation plan and report per 16.9.3.9, including a functional assessment, is required but has not been submitted.

2) State Wetlands Permit Required

Some of the wetland fill is in the Shoreland Zone so a State permit is required regardless of the size of the proposed impact.

3) Wetlands of Special Significance Not Identified

Freshwater wetlands within 250 feet of coastal wetlands; wetlands subject to flooding; wetlands within 25 feet of a stream or brook; and vernal pools are 'Wetlands of Special Significance' as defined by the State. Some of these exist on the subject property and others may exist. A definitive determination in regard to these has not been made by the applicant's consultant. These need to be properly identified.

4) Wetland Alteration Criteria

16.9.3.7. A. "Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed. "

This has not been demonstrated.

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5) Reducing Wetland Impact

16.9.3.7.E. "The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the Board will consider the following:

The proposed use:

1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;
2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact; ..."

The development could be clustered entirely on the more northerly upland area, which would eliminate 400 sf (0.01 acre) of wetland impact.

.....

"4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas. "

This has not been demonstrated.

6) Designing Road Crossings to Limit Wildlife Loss

16.9.3.7.F." In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives:

The proposed use will not:

5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;..."

No wildlife habitat provisions have been made in culvert design.

No determination has been made whether Significant Wildlife Habitat, as defined by the State, exists on this property.

7) Determining Wetland Size

16.9.4.3 "Setbacks from Altered Wetlands or Water Bodies.

The illegal altering of a water body or wetland area, where the surface area of the water body is decreased (lowered), after May 13, 1987 may not be used to change the location from which a setback is measured. The illegal filling of a water body or wetland area, where the normal water surface area of the water body is increased (raised), after May 13, 1987 must be measured from the most recent edge of the normal water surface elevation. "

Past wetland fill for the existing driveway are used to justify dividing wetlands into smaller segments. This is critical because the size of the wetland determines the setback and two of the wetlands are just slightly below the 1 acre threshold for a 100

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foot setback. This fill was presumably placed in 1989 when the house was built, according to the assessor's records.

The Planning Board should require the applicant to prove the wetland fill for the driveway was permitted. If not, the wetland setbacks should be based on the wetland's original size.

8) Incorrect Wetland Setbacks

Distinct from the discussion above in paragraph 7, the wetland size and setback shown incorrectly in two instances.

West of the existing gravel driveway a wetland is labeled as 1,735 sf on sheet OV1. This freshwater wetland is connected with the large tidal wetland, but is incorrectly assigned a setback of 50 feet on sheet A2, where 100 feet is required.

West of the existing gravel driveway along the property line common with the McCartney property, a wetland is labeled as 2,711 sf on sheet OV1. This freshwater wetland is connected with the large tidal wetland, but is incorrectly assigned a setback of 50 feet on sheet A2, where 100 feet is required. The 100 foot setback would apply to this wetland at least as far north as the McCartney driveway.

9) Net Residential Area - Subtidal Land

16.7.8.2 "Net Residential Acreage Calculation.

To calculate net residential acreage the land area listed below must be subtracted from a parcel's gross area.....

A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most current year...."

If the applicant has included any of the lands below the HAT (specifically the Gouldsboro soils) in the total acreage of the site, it must be deducted from the Net Residential Acreage Calculations.

10) Net Residential Area -Pedestrian Easement

Reference Plan 8 on sheet A2 notes a pedestrian easement. The area of this easement must deducted from the Net Residential Area Calculation.

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11) Net Residential Area - Stormwater Management Area

The proposed Stormwater Management Area (sheet C3) on Open Space B (sheet A2) will treat runoff from the proposed town road. Stormwater control features which will require future maintenance by the town must be located in an easement to which the town has permanent legal access for maintenance. Drainage and access easements must be shown on the plans and deducted from the Net Residential Area calculation.

12) Net Residential Area - 50% of Wetland Setback

The setbacks are shown incorrectly as described above in paragraph 8, so the deduction of 50% of the setback is also incorrect.

13) Net Residential Area - Setback to Filled Wetlands

The setbacks shown to other wetlands are subject to further review as discussed above in paragraph 7. If the Planning Board and/or CEO find the wetland fill was not properly permitted, the deduction of 50% of the setback will change.

14) Net Residential Area - Road Right Of Way

The area of the road right-of-way deducted in the calculation dated 10 November 2016 is 2.19 acres. This figure neglects an area equal to that of the proposed cul-de-sac.

15) Centerline of Road

16.8.4.6 " The centerline of a roadway must be the centerline of the right-of-way."

The plans submitted do not comply with this requirement. If the plans are modified to comply with this requirement, wetland impact will increase.

16) Lack of Reserve Areas

16.8.7.2 .D "Subsurface Wastewater Disposal Systems

On lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail.

Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this Code....

3. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites)"

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Proposed lots 2, 3, 4, 5, 7, and 11 require a reserve area with a minimum of 2 suitable test pits.

17) Unsuitable Soils for Wastewater Disposal Systems

Proposed lots 1, 9, 10, and 12 show the "Proposed Septic Area" over unsuitable test pits which do not meet State requirements.

18) Inadequate Setbacks for Wastewater Disposal Systems

Proposed lots 1 and 9 show the "Proposed Septic Area" less than the required local setback from wetlands.

19) Hydrogeologic Claim Unsupported

In the applicant's subdivision application letter dated 26 October 2016 Mr. Coronati makes the statement that individual wastewater disposal systems "...will spread the nitrates over the entire subdivision which is better for the environment..." than a single community system. No hydrogeologic study has been submitted supporting this statement or demonstrating that the proposed wastewater disposal systems on individual lots meet nitrate attenuation standards.

Respectfully submitted,



Michael Cuomo
Maine Soil Scientist #211
Maine Site Evaluator #211



Copy to: Bergen Parkinson, LLC
John and Shaye Robbins

Michael Cuomo, Soil Scientist

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Education

Bachelor of Science in Soil Science, Univ. of New Hampshire, Magna Cum Laude, 1985. Minors: Resource Economics and Geography.

Master of Science in Soil Science, Univ. of New Hampshire, 1992.
Thesis: *Analysis of Subjectivity in a Multiple Parameter Wetland Evaluation Method.*

Publication:

Keys to the Taxonomic Classification of New England Soils;
Sidney A.L. Pilgrim and Michael Cuomo, editors; Dec. 2000.

Professional Licenses

Maine Cert. Soil Scientist #211;
Maine Lic. Site Evaluator #211;
New Hampshire Cert. Soil Scientist #006;
New Hampshire Cert. Wetland Scientist #004; and
New Hampshire Lic. Designer of Subsurface Wastewater
Disposal Systems #788.

Professional Organizations

Society of Soil Scientists of Northern New England; past
President, Vice Pres., Secretary, and Treasurer.
Maine Assoc. of Wetland Scientists; founding member and past
Secretary/Treasurer.
Maine Association of Professional Soil Scientists.
Maine Association of Site Evaluators.
New Hampshire Association of Natural Resource Scientists;
founding member, past Secretary/Treasurer; Professional
Ethics and Standards Committee.

Work Experience

1985 - 1989 Soil Scientist, The Barwick Companies, South
Berwick, ME. Primary responsibility: high intensity
soil survey.

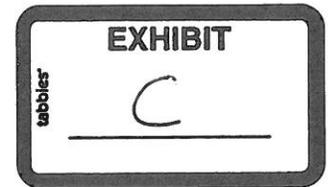
1989 - 1990 Wetland/Soil Scientist, Eco-Analysts, Bath, ME.
Primary responsibility: wetland delineation.

1990 - present Self-employed. Primary focus: wetland delineation
and high intensity soil survey for private
landowners, developers, and industry. Site
evaluation. Secondary focus: providing technical
assistance to towns.

Current scope of services: identifying and delineating regulated wetlands; assessment of wetland functions and values; high intensity soil survey; environmental feasibility studies for development projects; and on-site wastewater disposal design and feasibility investigations.



Traffic Solutions
William J. Bray, P.E.
235 Bancroft Street
Portland, ME 04102
(207) 774-3603
(207) 400-6890 mobile
trafficsolutions@maine.rr.com



November 29, 2016

Town of Kittery Planning Board
200 Rodgers Road Ext.
Kittery, Maine 03904

RE: Development Traffic Impacts

Dear Chair and Members of the Kittery Planning Board:

My Client, represented by Bergen and Parkinson Attorneys, requested the preparation of daily traffic estimates for two development options. The first estimate to include the four existing homes and accessory dwelling unit located on the existing 40' foot right-of way. The second trip estimate includes an additional 11 residential homes proposed in a development plan for the right-of-way for a total of 16 dwelling units.

The ninth and most recent edition of the Institute of Transportation Engineers (ITE) "**TRIP GENERATION**" manual provides both weekday and weekend trip generation rates for a number of specific land-use categories. Land-use #210 Single-Family Detached Housing was selected as the appropriate code for determining both daily and hourly trip estimates for both development options. The following average vehicle trip end rates are provided for each noted daily time period:

- Weekday = 9.52 trips per unit of housing
- Saturday = 9.91 trips per unit of housing
- Sunday = 8.62 trips per unit of housing

The existing five homes located on the right-of-way can be expected to generate a total of 48 daily trips on a typical weekday, 50 daily trips on Saturday, and 43 daily trips on Sunday. The increased number of dwelling units in development option #2 can be expected to increase the daily trip totals to 152 weekday trips, 159 trips on Saturday, and 138 trips on an average Sunday.

The Town of Kittery's Design and Construction Standards for Streets and Pedestrian Ways establishes roadway design standards (Table 1 in Chapter 16.8 of the Town's Land Use Code) for a number of roadway types including both public and private streets. The applicable design and construction standard for a street or segment of street is determined based upon the volume of average daily traffic and the resulting street classification.

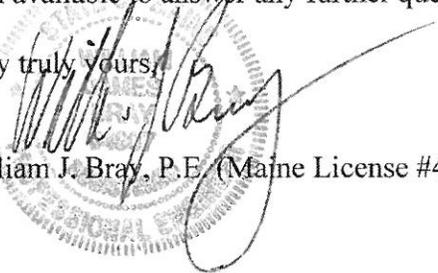
The existing private 40'foot right-of-way; with an estimated ADT volume of 43 to 50 daily trips, meets the average daily trip criteria of a Class II Private Street. This street classification, as presented in Table I, is satisfied if the projected daily volume of average daily trips falls between 35 and 71 daily vehicle trips.

The proposed 11-lot subdivision, if fully developed, would increase the ADT on the private right-of-way to 138 to 159 daily trips. This projected increase in daily vehicle trips would exceed the threshold ADT criteria for a Class II Private Street requiring conformance with the standards promulgated for a Class III Private Street.

I was specifically requested to prepare an estimate of how many additional single-family homes could be built on the private right-of-way within the ADT parameters of a Class II Private Street. A total of 2 additional single-family homes could be developed without exceeding the threshold ADT value of a Class II Private Street classification [51 existing ADT + 2 units x 9.91 trips/unit = ADT of 70].

I am available to answer any further questions regarding this study.

Very truly yours,


William J. Bray, P.E. (Maine License #4907)

EXHIBIT

tabbles

D

APPROVED-12/28/95

KITTERY PLANNING BOARD MEETING - November 9, 1995

BOARD MEMBERS PRESENT: Alan Rhoades, Chair
Craig Wilson, Vice Chair
Russell White
Gay Lakin

ALSO PRESENT: Town Planner Nels Bohn, Milt Hall, Janet Bleicken, Kurt Bleicken, David Mann, Mike Livingston, Mike Kilchenstein, William Clayburn, Brian Nichol, Aneta Fellows, Kevin Czarcinski and Anne Barton, recorder.

1. Mr. Rhoades called the meeting to order at 7:08 p.m.

PUBLIC HEARING FOLLOWED BY BOARD DELIBERATION ON AN APPLICATION BY A. DAVID MANN FOR APPROVAL OF AN APPROXIMATELY 900-FOOT LONG, 40-FOOT WIDE PRIVATE RIGHT-OF-WAY AT 412 HALEY ROAD, MAP 34, LOT 3

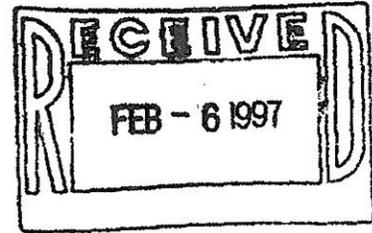
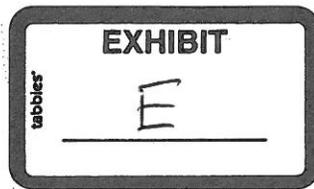
2. Mike Livingston, engineer of the plan, said what was proposed was a 900' long private right-of-way for the purpose of creating lot frontage to subdivide parcel A from Mr. Mann's property. He said the right-of-way would be 40' wide and privately owned and maintained. Mr. Livingston said several restrictions were noted on the plan referring to the driveway and how many dwelling units it would be allowed to service. He said the driveway would not be widened, it would be used as is.

3. William Clayburn spoke in favor of the application, saying he has known Mr. Mann for 8 years and that Mr. Mann has been a good neighbor. He said he was sure Mr. Mann wouldn't allow anything to be built that wasn't in good taste. Mike Kilchenstein said he would be buying Parcel A, and he had shown his house plans to Mr. Mann, who found them to be satisfactory. Brian Nichol, an abutter across the street from the property, asked to see Mr. Kilchenstein's plans, which Mr. Kilchenstein showed to him. Mr. Kilchenstein said the house would be about 150' from the water and 30' from the back line.

4. Mr. Rhoades said there would be certain restrictions as this property was in the shoreland zone. Mr. Kilchenstein said Joe Noel had looked at the property. Mr. Rhoades said his understanding was that Mr. Kilchenstein's intention hearing was to divide Parcel A and sell it as a possible building lot. Mr. Kilchenstein said his intention was to have that option. He said it was possible that he might be interested in selling a piece of the land. Mr. Kilchenstein said he would still have about 3 1/2 acres and the other lot would be about 2 acres. He said he hadn't decided yet to do that, but he had checked to make sure it met all the requirements for the amount of space and setbacks required.

5. There were no further comments from the public. Mr. Bohn noted that this was an approval of a right-of-way, not any individual house-

To: The Town of Kittery
From: Mike Kilchenstein
Julie Kilchenstein
David Mann
Marilyn Mann



Re: Use of land along right of way road bordering our land (lot 34-3 and 34-3 A)

To whom it may concern,

When the subdivision of land was approved by the town allowing Mike & Julie Kilchenstein to buy and get a building permit for the 5.5 acres, lot A, there was discussion with the town that there would be a possibility that this lot would be divided into 2 lots. At the time the subdivision was approved it was stated that 4 dwellings could use the road as it is.

Currently you have the Mann's house using it, the new house built on Haley Rd makes #2, the building permit issued to the Kilchenstein's make #3, the 2nd lot created by dividing the Kilchenstein's lot makes #4.

This letter would serve as a formal agreement between parties using the road as to how it would be maintained and improved as new construction would happen on this land. Obviously no new construction could occur unless all town requirements are met as far as density, setbacks, wetlands etc. The town will also recognize that the line of site requirements are more than met.

1) This letter serves as a maintenance agreement between the parties using the road. As maintenance is needed, the abutters will split the cost equally. The road will be maintained as a 12 foot wide gravel road as the fourth lot is created specified in the approval granted on Jan 11th 1996. The Kilchenstein's also agree as the fourth lot is created that the turn in at their lot can serve as a turnaround, as it is as wide as the gravel road across the culvert. The Mann's also agree that their driveway area can serve as a turnaround for vehicles as needed.

2) If further division of the Mann's property is proposed in the future, sites 5 & 6 would require the road to be made 14 feet wide and have a maintenance agreement with all owners. As you know the right of way along the whole area is much wider than this, and vehicles can drive across the area as if it is much wider, the whole area is cleared and graded already.

3) The Mann's and Kilchenstein's agree that this road is a private road, and even with further development, will remain a private road. We will not ask the town for this road to become a town road.

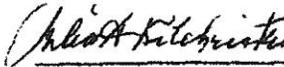
4) This agreement is a very fair future looking agreement which is being made to give the town an accurate picture of possible use of the land being described. These are large pieces of land, and there are no plans for any sort of dense development. This would not be possible anyway due to the wetlands situations which exist. Any development being discussed here is certainly not dense or out of keeping with other development being allowed in the town. The line of sight on Haley Road is certainly able to justify the use of this road for this type of use as it exceeds most of the turnoffs along the road.

This letter is agreed to by the following parties:

Mike Kilchenstein

 Date 11-3-96

Julie Kilchenstein

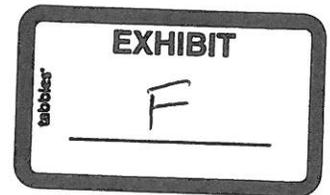
 Date 11-3-96

David Mann

 Date 12-3-96

Marilyn Mann

 Date 12-18-96



STAFF COMMENTS
KITTERY PLANNING BOARD
Thursday, December 13, 2001
6:00 P.M

1. Roll Call.
2. Approval of Minutes – November 8, October 3
3. Discussion by Members of the Public (20 minutes).
4. Extension of a Right of Way submitted by Marilyn Mann. The site is located at Haley Road. Map 34 Lot 3.

Staff has worked with the applicant and the engineer in the review of the proposed right-of-way extension. The right of way extension as proposed does not meet the current standards set forth in our town code. I have received a letter from David Obrien indicating that he would accept the width as proposed. I have asked the applicants engineer for a review for wetland impacts that may result from the proposal. The plan as drawn could permit the creation of the lot shown and at least one additional lot. I would suggest that ANY approval be limited to the creation of the one lot as the road as proposed would not meet town standards. I discussed with the engineer the proposed waivers and would suggest the road width and length of cul-de-sac be added to the list.

*After careful consideration of these issues I would **RECOMMEND APPROVAL** for the proposed right of way extension.*

16.28.180 Waiver authorized.
Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions. (Land use and dev. code § 7.4.1, 1994) PAGE 276-1

MOTION DEVELOPMENT

If I were to make a motion, it would sound like the following:

Having reviewed the proposed development we find it in substantial compliance with the Comprehensive Plan and Kittery Land Use and Development Code in general and specifically Section 16.36.050-G Request for extension.

16.36.070B. Board Action – (Three potential paths)

A. To Approve the project

Note: Include (project name, developers name, engineering firms name, plan number, revision number, date of plan, number of sheets) as submitted,

B. or; Approve the project with conditions

Note: Include (project name, developers name, engineering firms name, plan number, revision number, date of plan, number of sheets)

Said Approval shall become final when the following conditions have been met:
(List any conditions as necessary)

C. disapprove, table or continue plans other than sketch plans within thirty (30) days of the date of board acceptance for a subdivision plan, and within thirty-five (35) days for other plans.

1. MOTION.....The Board authorizes the Chairman to sign for the Planning Board.
 2. REQUEST.....The Board should ask if the developer would accept the minutes as a finding of fact.
 3. NOTICE.....In Accordance with 16.24.020 - An aggrieved party may appeal any decision of the planning board, under these regulations, to the York County Superior Court, within forty-five (45) days of the date of the action taken by the board.
5. Construction of a 6,000 square foot commercial building and 17 parking spaces as submitted by Seacoast Crane Company, Inc. The site is located at 98 Route 236. Map 28 Lot 19-1.

I have met with the engineer on the proposed project and have discussed the requested waivers. After some discussion on impervious calculations I would agree that the waivers are acceptable. My concern for the site plan surrounds the layout of parking, use of wall-packs for lighting and the overall lack of landscaping for the proposed site. I would certainly request cut sheets for all site lighting with light levels not to exceed 1/2 foot candle at the property line. I would request that the applicant submit a final landscaping plan for review by the Planner.

After careful consideration of these issues I would RECOMMEND APPROVAL for the proposal with the additional submissions.

16.28.180 Waiver authorized.

Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions. (Land use and dev. code § 7.4.1, 1994) PAGE 276-1

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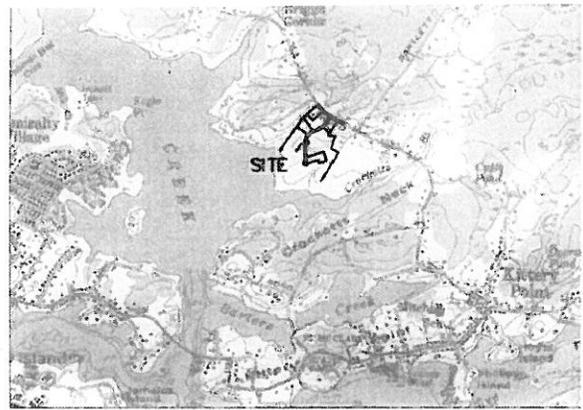
NOTES:

1. THE PURPOSE OF THIS PLAN AND APPROVAL IS TO EXTEND A PRIVATE RIGHT OF WAY ACROSS THE REMAINDER OF LOT 3 ON TAX MAP 34 TO CREATE FRONTAGE FOR A NEW LOT.
2. TOTAL AREA OF LOT (APPROX.) 25.0± ACRES
 AREA OF NEW LOT (APPROX.) 1.71± ACRES
 AREA OF EXIST ROW 0.95± ACRES
 AREA OF NEW ROW 0.55± ACRES
3. EXISTING UNDERGROUND UTILITIES ARE LOCATED UNDER THE NORTHERLY AND WESTERLY SHOULDER OF THE EXISTING GRAVEL ROAD.
4. EXTERIOR BOUNDARY INFORMATION IS BASED ON REFERENCE PLAN #1.
5. A PEDESTRIAN RIGHT OF WAY OVER AND ACROSS THE EXISTING DRIVEWAY (APPROX. 1,000 FEET) AND TO THE HIGH WATER MARK (200 FEET) OF SPRUCE CREEK EXISTS. (SEE DEED REFERENCE 2.)
6. NO STRUCTURE EXISTS WITHIN 40 FEET OF THE EXISTING OR PROPOSED RIGHT OF WAY.
7. NO MORE THAN FIVE DWELLING UNITS CAN USE THE RIGHT OF WAY WITH THE GRAVEL ROAD IMPROVED TO 16 FOOT WIDE; ONE DWELLING UNIT ON EACH OF THE FOLLOWING LOTS: 3, 3-4, 3-3, 3-3A, AND THE NEW LOT.
8. ANY FUTURE CONVEYANCES PERMITTING USE OF THE RIGHT OF WAY SHALL CONTAIN THE RESTRICTIONS STATED IN THE NOTES.
9. ANY WIDENING OF THE GRAVEL ROAD WILL CONFORM WITH SECTION 7.12, "CONSERVATION OF KITTEERY WETLANDS" OF THE "LAND USE AND DEVELOPMENT CODE ZONING ORDINANCE FOR THE TOWN OF KITTEERY, MAINE".
10. SIGHT DISTANCES WERE MEASURED IN ACCORDANCE WITH SECTION 8.5.8.4 OF THE ORDINANCE.
11. NO BUILDING PERMITS WILL BE GRANTED UNLESS THE CONDITIONS OF THIS PLAN AND APPROVAL ARE UPHELD.
12. WETLAND LIMITS WERE DELINEATED BY LEONARD A. LORD CSS #271 ACCORDING TO THE 1989 FEDERAL MANUAL FOR IDENTIFYING AND DELINEATING JURISDICTIONAL WETLANDS.
13. THE RIGHT OF WAY WILL REMAIN PRIVATELY OWNED AND MAINTAINED BY THE LAND OWNERS. THE ROAD WILL NOT BECOME A "TOWN ROAD".
14. THIS PLAN REPRESENTS A SURVEY OF THE RIGHT OF WAY ONLY. NO UPDATED BOUNDARY SURVEY WAS DONE ON ANY OF THE LOTS SHOWN.
15. A ROAD MAINTENANCE ASSOCIATION WILL BE ESTABLISHED CONSISTING OF ALL THE LOT OWNERS USING THE RIGHT OF WAY IN ORDER TO MAINTAIN THE 16 FOOT WIDE TRAVEL WAY SPECIFIED ON THIS PLAN. THE ASSOCIATION BY LAWS WILL BE RECORDED AND BINDING TO EACH LOT OWNER AND THEIR HEIRS OR ASSIGNS.

*Right of Way
ap*

rights Granted:

.32 - Figure 1: Design and Construction Standards for streets



LOCUS MAP



REFERENCE PLANS:

1. PLAN OF LAND PREPARED FOR A. DAVID MANN; BY THOMAS F. MORAN, INC.; DATED MAY 16, 1989.
2. TOPOGRAPHIC PLAN OF LAND FOR A. DAVID MANN; BY THOMAS F. MORAN, INC.; DATED NOVEMBER 12, 1982.
3. RIGHT OF WAY PLAN FOR A. DAVID MANN; BY ANDERSON LIVINGSTON ENGINEERS, INC.; DATED SEPTEMBER 1995; RECORDED Y.C.R.D. PLAN BOOK 227 PAGE 44
4. WETLAND ALTERATION AND SUBDIVISION PLAN FOR MICHAEL J. AND JULIA A. KILCHENSTEIN; BY ANDERSON LIVINGSTON ENGINEERS, INC.; DATED DECEMBER 1996; RECORDED Y.C.R.D. PLAN BOOK

REFERENCE DEEDS:

1. GEORGE E. MILIKEN TO ALEXANDER D. AND MARILYN MANN; DATED OCTOBER 13, 1978. RECORDED Y.C.R.D. BOOK 2427 PAGE 255
2. ALEXANDER D. AND MARILYN MANN TO DOUGLAS A. AND JUDITH F. TON; DATED JUNE 28, 1989. RECORDED Y.C.R.D. BOOK 5110 PAGE 48
3. ALEXANDER D. MANN TO WARREN P. AND JANE SCHILL; DATED JANUARY 3, 1996; RECORDED Y.C.R.D. BOOK 7681 PAGE 35
4. ALEXANDER D. MANN TO MICHAEL J. AND JULIA A. KILCHENSTEIN; DATED JANUARY 12, 1996; RECORDED Y.C.R.D. BOOK 7688 PAGE 337
5. ALEXANDER D. MANN TO RAYMOND A. GRENIER, JR.; DATED JANUARY 3, 1996; RECORDED Y.C.R.D. BOOK 7713 PAGE 285.
6. ALEXANDER D. MANN AND MARILYN M. MANN TO KIM C. ADAMS; DATED OCTOBER 23, 1998; RECORDED Y.C.R.D. BOOK 9163 PAGE 46.

*Copy of
In-flat File - Mylar's*

ZONE: RR, RURAL RESIDENTIAL
 ZONE: SHORELAND

SETBACKS: FRONT 40 FT.
 SIDE & REAR 20 FT.
 WETLAND 100 FT.

FRONTAGE 150 FT.
 LOT SIZE 40,000 SQ FT

APPROVED BY THE PLANNING BOARD OF
 KITTEERY, MAINE
 FOR RIGHT OF WAY

Robert White, Chair K.P.B.

Ken Bond Approval 12/13/2001

MAP 34 lot 3 ROW PLAN

RIGHT OF WAY PLAN

stating that he felt the Manns had legal interest in the property, even though there was a Chapter 13 bankruptcy situation.

MOTION

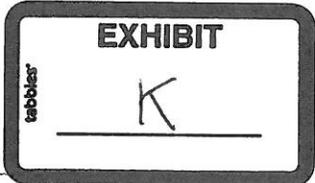
B6. Mr. Wilson moved that the Board find the right-of-way plan for A. David Mann off of Haley Road, Kittery, Maine, Map 34, Lot 3, on a plan drawn by Anderson/Livingston Engineers, Plan #1319.951001, dated September, 1995 to be complete and the Board so waive the requirement of 9.6.2.2.b, and that conditions of acceptance be that in accordance with 9.6.2.2.f, the accesses within 100' of the property line be located and a demonstration of legal interest to the satisfaction of the Town Attorney be provided to the Town Planner two weeks prior to the public hearing. Mr. Clark seconded the motion and a vote was taken with all in favor.

B7. A public hearing was scheduled for November 9. Mr. Rhoades asked for additional comments. Mr. Bohn said this was a 40' wide right-of-way with a 12' wide travel way which was 900 or 1,000 lineal feet. He said in the Town's design standards, any cul-de-sac more than 600' should be a 20' wide paved road. Mr. Bohn said the Board had waived that requirement in certain situations. He said it may be appropriate to limit the amount of traffic that would use a 12' wide gravel surface. Mike Livingston said he could provide a note that limited the number of lots which could use the right-of-way without further review or upgrade of the right-of-way. Mr. Rhoades said he would like to see the general sense of what the build-out of a 34 acre parcel would be. Mr. Mann said this would not become another Bartlett Farms.

PLANNER'S TIME

B8. Shapleigh Middle School - Mr. Bohn said Terrien Architects wanted to make some revisions to the site plan. He said they were asking for a sense of the Board about replacing the concrete sidewalk with an asphalt sidewalk but retaining the concrete curbing, reducing the 3 1/2" caliber trees to 2", which was still beyond the Town's minimum standard, and a change in the thickness of the paving in the parking lot and drop off areas. Mr. Bohn asked if there were such revisions, would a revised site plan be needed or could it be done by letter form. Mr. Rhoades felt the architects should revise the sheets which showed these changes. The Board agreed to the reduction in the caliber of the trees and replacing the concrete sidewalk with asphalt.

B9. Mrs. Lakin left at this time (12:15 a.m.) Mr. Rhoades said he had talked to Arthur Andrews before the meeting about the reduction in the pavement thickness. He said he would like to hear what Mr. Andrews and Rick Rossiter had to say about this. Mr. Wilson said there were no standards for parking lots. He said the only thing the Board could hang their hat on was that Terrien Architects had agreed to do this and the Board could make them stay with it. Mr. Rhoades said if the Town was saving 5% of the cost now but reducing the useful life of the parking lot by 40%, that didn't make sense. He said he would like to see comparative cost benefits for doing this. The Board agreed that they would need to see further documentation on the long term negative impacts of the reduction in pavement thickness.



Rebecca Spitko

From: Lainey McCartney <deplus3@gmail.com>
Sent: Sunday, August 28, 2016 9:42 PM
To: Deb Driscoll; Karen Kalmar; Mark Alessi; annhgrinnell@icloud.com; drummr1@comcast.net; dutchdunkelberger@gmail.com; Rebecca Spitko; Chris DiMatteo
Subject: Concerns regarding 412 Haley Rd. Project

Hello All,

My name is Lainey McCartney and I am writing to voice my concerns regarding this proposed cluster development on 412 Haley. My husband David and I live directly across from this proposal at 404 Haley.

Before purchasing this house we were given a document/plan from the Kittery Planning Board, dated 12/13/2001, and signed by Russell White. This document indicated to us that The Town of Kittery had made a decision regarding the right of way access to this property and the lot across from us. It was stated simply.

Note #13 on this plan states that, "the road will not become a "Town Road" "

It also says that no more than five dwelling units can use the right of way (note #7).

This means that 15 years ago, the Town agreed to ONE MORE HOME on our road, and that it WOULD NOT become a town road. How is this proposal possible with documents like this in hand and on record?

The new proposal is only possible on a town road.

Our rights aside, there are wetland issues with the road, the area is an established wild life corridor with trailways criss-crossing that property, 22 more cars minimum on that road, run-off in an already compromised Spruce Creek.....

I could go on and on. I'm anxious and sad beyond words.

I felt compelled to write and let you know of that plan if you were not aware of it already. I think it's important.

Best Regards,

Lainey McCartney

Rebecca Spitko

From: janeschill@myfairpoint.net
Sent: Monday, August 29, 2016 5:55 PM
To: Rebecca Spitko
Subject: Site walk at 412 Haley Rd.

Hi Rebecca

Per our conversation last week, my husband & I will not be able to attend the site walk on 9/1/16, but we have some concerns. We are abutters to this proposed cluster project at 424 Haley Rd.

- 1) We are concerned that we had to have so many feet set back from wetland at the back of our property. We assume the same will be true for anything going in on the other side of this wetland area.
- 2) We are also wondering about what kind of buffer would be put in place, or if existing trees would be left along the property lines.
- 3) Are there covenants on this property?
- 4) Who will be responsible for the winter maintenance of a new road until the town takes it over, if it ever does?

I know this is in preliminary stages, but we are directly affected. Thank you for forwarding this on to planning board members.

Paul & Jane Schill
424 Haley Rd.
207-439-4939

Rebecca Spitko

From: Chris DiMatteo
Sent: Monday, August 29, 2016 3:52 PM
To: Earldean Wells; Ann Grinnell
Cc: Rebecca Spitko
Subject: RE: 412 Haley Road Development

Hi Earldean,

Thanks for the email.
When does the KCC plan to respond to Ms. Robbins?

We will provide in the packet for the 9/8 meeting as well as a copy to the applicant.

Chris

-----Original Message-----

From: Earldean Wells [mailto:earldeanwells@myfairpoint.net]
Sent: Monday, August 29, 2016 3:16 PM
To: Chris DiMatteo <CDiMatteo@kitteryme.org>; Ann Grinnell <annhgrinnell@icloud.com>
Subject: FW: 412 Haley Road Development

Hello Chris,

I have received the attached letter from a neighbor of the 412 Haley Road property that is to be site walked this Thursday.

Roger has an appointment in Boston that morning so I will not be attending the walk but there should be a KCC member or two also there.

Please include this letter in the packet with other material for this proposed development.

Thank you

Earldean

-----Original Message-----

From: Shaye Robbins [mailto:shayemr@gwi.net]
Sent: Friday, August 26, 2016 1:14 PM
To: earldeanwells@myfairpoint.net
Subject: 412 Haley Road Development

Hello Earldean,

I am writing to you in your capacity as Chair of the Conservation Commission, to ask that your committee take a look at the proposed 11 lot subdivision adjacent to wetlands and Spruce Creek, and with acreage that supports significant wildlife that is working its way through the planning process. There is a site walk this Thursday, Sept 1 at 8AM. I have followed your work on behalf of Kittery and appreciate you input.

Although it is still very early in the process, and the planning dept is working diligently, and the planning board has worked very hard on the cluster development zoning rules, with I understand input from across the community, we are still concerned and are reaching out to open a conversation.

The neighbors to this proposed development are wondering if there has ever been a wetlands assessment or wildlife assessment done on this property. We ask because the nature of the proposed development is rather intensive, and we wonder if the wetlands should start to degrade as a result of this intensive development what to do? We also wondered "how long" for wildlife to rebound to using the space, or "is it enough" dry land set aside in the process to support the wildlife activities currently on the site. The dryland where the development is proposed has hosted numerous births, nesting, bedding and denning areas over the years. Many of which have been chronicled by our neighbor a photographer. The land has also been used for hunting as the current owner (it is being sold to a development company) has allowed this use. The hunters have many years of experience with who lives there, where the travel etc.

We wondered, if we don't know what is there now, because it has been private for so many years, how will we be able to compare later to alleviate any damages or make changes to Kittery Zoning in the future if we find that this type of intensive development in this type of area (wetlands, adjacent to water, and wildlife).

At the very least, we at least thought you should know,

If you have a moment to speak to me, I am available at
207-703-0353
or 207-522-8117 (text and/or call)

Thank you,

Shaye

Rebecca Spitko

From: Dave McCartney <dave@gemininh.com>
Sent: Sunday, September 04, 2016 10:00 AM
To: Deb Driscoll; Karen Kalmar; Mark Alessi; annhgrinnell@icloud.com; drummr1@comcast.net; Robert Harris; dutchdunkelberger@gmail.com; Chris DiMatteo; Rebecca Spitko; Jessa Kellogg
Subject: Wildlife Documentation: 412 Haley Rd Project

To Whom it May Concern,

Attached please see the photos that document the abundance of wildlife which exists on the proposed 412 Haley Cluster site. These are just a few of the hundreds we have taken in the past couple years, on and adjacent to our property, while living next door to 412.

Every abutting neighbor can attest that there are daily sightings of deer, turkeys, and foxes criss-crossing their properties through the 412 property. Less often, but regularly, we see coyote, porcupine, mink, eagles, Baltimore orioles, blue birds, heron and numerous other species of bird and wildlife.

Each Spring we witness fox families with 4-6 new kits, deer families with 1-3 new fawns each, and skittish bluebirds throughout, because of the safety this spot holds for them.

What happens when they are displaced? Aren't we, as a community, only as healthy as some of our smallest creatures? Aren't we their stewards at this point?

We ask you to be mindful of the vibrant life which exists daily, in that small space, as you move forward in your considerations of the 412 Haley Plan.

https://www.dropbox.com/sh/wwcdkoe9bf1iscp/AAAt3TBjQSDP9o9cO_HF-oVja?dl=0

Thoughtfully,

David & Lainey McCartney

David McCartney
603.860.3044

Good Day. My husband Peter Wilkins and I live at 398 Haley Road. As directly abutting residents of the proposed development of a major subdivision at 412 Haley Road, we are writing to express our concerns about the plan, as we understand it.

We, as well as other nearby and abutting residents, have concerns about legal and code issues, such as management and preservation of wetlands, preservation of open space, storm runoff, wastewater disposal, impact on wildlife and vegetation, and correctly sized lots, homes built in accordance with code, ROW access to Spruce Creek, and road improvement as mentioned in the Sketch Plan Review of 8/11/16.

We also have concerns about issues not mention in the Plan.

We have lived at 398 Haley for 20+ years. When we first purchased the property, there were no other houses except for that owned by Marilyn and David Mann, which was as the end of the existing dirt road. Gradually, a few more houses were developed fronting that road. These homes had large lots and are located quite a distance from ours, so we didn't feel they were intrusive in any way.

This is, and has been, a quiet neighborhood. While I don't know for sure, but might assume, the other residents may have built homes here because they, as we do, highly value our slightly isolated lots and the peace and quiet they afford, our view of Spruce Creek and the open space surrounding us. And though everyone may not agree, we also enjoy sharing our open space - at a distance and in a limited way - with deer, groundhogs, chipmunks, ducks, turkeys, skunks, foxes, raccoons, the occasional coyote and once, a moose that crossed our property and swam across Spruce Creek! We would not like to see the character of the land we live on change in a way that might eliminate these chance encounters.

Eleven new homes could mean a dramatic increase in traffic - most families own 2 or even more cars - which would mean more cars on Haley Road, which is already heavily travelled, generally at speeds well over the 25 mph limit. There is also the issue of construction vehicles as lots are cleared, land filled and graded, and houses constructed, and what that could mean for access to the dirt road for the families fronting it. It could mean an increase in noise levels, certainly during construction, but also as families occupy these homes. Additionally, if there is to be a ROW for residents, there will need to be a dramatic improvement to allow children to swim and boats to be launched, as this area is wet, full of tall grasses and rocks and presents little, if any, beach area. Impact on Spruce Creek for such activities is also of concern.

There is also a concern about impact on services such as fire and police, and access to and from what appears to be two cul-de-sacs.

My husband and I are not opposed to development, per se. As a one-time member of the Portsmouth, NH Planning Board I am well aware of the need to find the "highest and best use" of land. However, the size of this proposed subdivision could dramatically alter the quality of life in this small community and we hope the Planning Board will give these concerns careful consideration as well.

Rebecca Spitko

From: Chris DiMatteo
Sent: Thursday, November 03, 2016 9:02 PM
To: Rebecca Spitko
Subject: FW: Development on Haley Road

FYI,
Please print and add to the file
thx

From: Lyn Rosoff [mailto:sndwind@aol.com]
Sent: Thursday, November 03, 2016 6:07 PM
To: annhgrinnell@icloud.com; Chris DiMatteo <CDiMatteo@kitteryme.org>
Subject: Development on Haley Road

Ann –

I am writing in opposition to the cluster housing proposal planned for Haley Road. I live on Spruce Creek, directly opposite this proposed development. I know it is the goal of the Town to preserve and protect the Creek from encroachment and more pollution to this very sensitive body of water. This cluster development would have a negative impact on efforts to protect the Creek and its natural beauty. The development is on a hill. These homes, which will reach 35 feet high, will require clear cutting and sprawl that will destroy the beauty of this amazing body of water.

I have seen for myself the wildlife that lives in the Haley Road area, from foxes to deer to numerous birds. A 9-home cluster development will result in removing these animals from the woods that are currently there. Our Creek will start looking like Lake Winnepesaukee!

I appreciate what cluster housing is supposed to accomplish, but this area off of Haley Road is not the right space for cluster housing. Surely it violates our goal of keeping the rural character of the Town and preserving the natural beauty of the land and water, as expressed in Title 16 of the Land Use and Development Code.

I hope you will vote against this plan. Please keep me informed of future meetings related to this proposal.

Thanks.

Lyn Rosoff
61 Tilton Avenue
617-224-6960

Rebecca Spitko

From: Chris DiMatteo
Sent: Tuesday, November 08, 2016 8:49 AM
To: Rebecca Spitko
Subject: Fwd: haley-road-proposed-development

FYI

Sent from my iPhone

Begin forwarded message:

From: "Matso, Kalle" <Kalle.Matso@unh.edu>
Date: November 5, 2016 at 11:06:46 AM EDT
To: "annhgrinnell@icloud.com" <annhgrinnell@icloud.com>, "cdimatteo@kitteryme.org" <cdimatteo@kitteryme.org>
Subject: haley-road-proposed-development

Dean Ann and Chris,

I am writing with regard to the proposed development on Haley Road, close to where I live at 31 Goose Point. As the coastal scientist for the Piscataqua Region Estuaries Partnership (PREP), I am particularly concerned with sub-sections "G" and "I" of ordinance 16.8.1.1 of the Land Use and Development Code. Since this area is so close to the estuary, I would be hesitant to support any additional development. The water quality in Spruce Creek is not as good as it should be; bacterial counts in the water are often too high and shellfishing has been closed indefinitely for a long time. Not all of this is attributable to residential development and stormwater run-off, but some of it is.

Until we resolve these issues, I believe it is contrary to sub-sections G and I (below) to allow this development, a stone's throw from Spruce Creek, to proceed.

- G. reduction of impact of water resources by minimizing land disturbances and the creation of impervious surfaces
- I Minimization of residential development impact on the municipality, neighboring properties and the natural environment.

Thank you for your attention to this matter and for the work you do.

Kalle Matso
Coastal Science Program Manager
Piscataqua Region Estuaries Partnership (PREP)
<http://prepestuaries.org>
University of New Hampshire
Affiliate Assistant Professor
Department of Natural Resources and the Environment
603-781-6591

kalle.matso@unh.edu

Home Address:
31 Goose Point
Kittery Point, ME 03905

Rebecca Spitko

From: Chris DiMatteo
Sent: Monday, November 14, 2016 4:03 PM
To: Dave McCartney
Cc: Ann Grinnell; Rebecca Spitko; Joseph Coronati
Subject: RE: 412 rendering

Hi Dave,

The Board can consider requiring this information as part of the application's overall review. They can do this at any time during the process prior to final approval.

I have copied the applicant's agent so they are aware of the interest.

Thanks for the email.
Chris

-----Original Message-----

From: Ann Grinnell [mailto:annhgrinnell@icloud.com]
Sent: Monday, November 14, 2016 10:48 AM
To: Dave McCartney <dave@gemininh.com>
Cc: Chris DiMatteo <CDiMatteo@kitteryme.org>
Subject: Re: 412 rendering

Dear Dave,

I am forwarding your email to our Planner, Chris, and am asking him to respond to your request.

The project at 412 Haley is on our agenda this Thursday. You might want to come and listen to the deliberation.

Thanks for emailing me.

Ann G

ps Chris, please answer Dave's email. Thanks.

> On Nov 14, 2016, at 9:44 AM, Dave McCartney <dave@gemininh.com> wrote:

>

> Anne, I am writing in regards to the proposed 412 Haley Rd cluster development. In order for the community to get an idea of what this finish project may look like, is it possible to request an architectural rendering of at least the 9 lot cluster as it might be seen from Haley road?

>

> I appreciate the consideration in this request.

>

>

> Dave McCartney (abutter)

> (603) 860-3044

Rebecca Spitko

From: Chris DiMatteo
Sent: Wednesday, November 16, 2016 8:35 AM
To: Rebecca Spitko
Subject: FW: Proposed Subdivision on Spruce CRook

fyi

-----Original Message-----

From: Kathryn Driscoll [mailto:kdriscoll35@comcast.net]
Sent: Wednesday, November 16, 2016 8:31 AM
To: annhgrinnell@icloud.com
Cc: Chris DiMatteo <CDiMatteo@kitteryme.org>
Subject: Proposed Subdivision on Spruce CRook

RE: 12 Lot Cluster Subdivision Proposed on Spruce Creek

To: Ann Grinnell, Chair of the Planning Board and Chris DiMatteo Town Planner,

I am writing to you to ask you to vote against the proposed intensive development on Spruce Creek.

We live on Spruce Creek and we are well aware of the delicate, environmental nature of the Creek. In the past we have been involved with the Spruce Creek Association, monitoring the water health of the Creek, and working to encourage rain gardens to prevent run off and pollution of the Creek. This Devilment calls for 9 homes to be built on the Creek that includes driveways with lots of hardtop, septic systems — this is a huge development an overdevelopment on the Creek with the resulting loss of the meadow, the greenscape and loss of the wildlife habitat and the threat of run off and polluting of the Creek. How can this NOT in times of heavy rains (like we have been having when it does rain these last few months) result in run off into the Creek, our delicate and precious resource?

Please consider voting against this project—for the health of the Creek and to preserve some natural habitat for wildlife in Kittery.

Respectively Submitted,
Kathryn Driscoll
Mara Lamstein
35 Mill Pond Rd.
Kittery, Me

Rebecca Spitko

From: Chris DiMatteo
Sent: Thursday, November 17, 2016 9:30 AM
To: Rebecca Spitko
Subject: FW: 412 Haley Road Cluster Development

-----Original Message-----

From: Ann Grinnell [mailto:annhgrinnell@icloud.com]
Sent: Thursday, November 17, 2016 9:21 AM
To: Tom Newbold <newbold.tom@gmail.com>
Cc: Chris DiMatteo <CDiMatteo@kitteryme.org>
Subject: Re: 412 Haley Road Cluster Development

Dear Tom,

Thank you for your email concerning the Planning Board review of 412 Haley Road. This item is on our agenda tonight for 'completeness review'.

I have forwarded your email to the Planner, Chris, who will make sure all members of the board receive it. I urge you and others to come to the Planning Board meetings and see how our deliberative process works. Public comment will be welcome at the public hearing on this application. Please go to the Kittery website and find the link to the Planning Department. You will be able to read the information we have received concerning 412.

Ann g.

> On Nov 17, 2016, at 7:07 AM, Tom Newbold <newbold.tom@gmail.com> wrote:

>

> Hi Ann,

>

> As Chairwoman of the Kittery Planning Board, I urge you and the planning board to apply the most rigorous of due diligence in the board's review of the 414 Haley Road Cluster Development Application.

>

> My primary concern in this regard is the negative impact to Spruce Creek. The sum total of 50 years of residential development along the shores of Spruce Creek is destroying the Creek's ecological health. This is undeniable. While legally unenforceable, I would recommend that all future development between Haley road and Spruce Creek cease. As destructive ecological tipping points go, sustained development between Haley Road and Spruce Creek has cross this tipping point years ago.

>

> Yes, there are clear benefits to cluster development, but not in an ecologically sensitive areas. Though I am far from an eco-terrorist, I feel that beyond the rights of property owners, beyond the development of much needed housing stock, and beyond the right of a developer to earn a living, we now have a more certain ethical and moral obligation to future generations of Kittery residents to blunt the continued assault on and degradation of our town's ecological health.

>

> Tom

>

> Tom Newbold

> 616 Haley Road

> Kittery Point, ME 03905

Rebecca Spitko

From: Katie Clark <kclark_uk@hotmail.com>
Sent: Friday, November 18, 2016 6:13 PM
To: Chris DiMatteo
Cc: DK Clark; Rebecca Spitko
Subject: 412 Haley Road Development

Dear Chris

I am one of the abutters of 412 Haley Road.

We are very concerned about maintaining Kittery and Kittery Point's unique and rural character and limiting developmental sprawl.

I just learned of a planning meeting that took place last night regarding this development. Going forward, I would appreciate being notified of all planning meetings where the development will be discussed, as well as any site walks, and any public hearings.

I have some questions and concerns regarding this development and specifically around Lots 11 & 12.

Will there be permission for any docks into Spruce Creek to be built as a result of the development?

What is the size & height restriction for structures on Lots 10, 11, & 12?

I look forward to your response.

Many thanks,

Katie Clark
21 Folcutt Road

Katie Clark
+1 207 698 0080
kclark_uk@hotmail.com

Rebecca Spitko

From: Ann Grinnell <annhgrinnell@icloud.com>
Sent: Monday, November 28, 2016 6:07 AM
To: Chris DiMatteo; Rebecca Spitko
Subject: Fwd: Letter to the Planning Board re 412 Haley Road-- Attention Ann Grinnell

Ann H Grinnell
5 Stimson St.
Kittery, Maine 03904
207-439-0564

Begin forwarded message:

From: Chris Redmond <c.redmond@mightyroots.com>
Subject: RE: Letter to the Planning Board re 412 Haley Road-- Attention Ann Grinnell
Date: November 27, 2016 at 8:28:45 PM EST
To: Ann Grinnell <annhgrinnell@icloud.com>

Hi Ann,

Just wanted to let you know this was sent to me. I'm guessing it was meant for another Chris.

Chris Redmond

From: Ann Grinnell [mailto:annhgrinnell@icloud.com]
Sent: Sunday, November 27, 2016 8:21 PM
To: mary satterthwaite <marespruce@comcast.net>; Redmond Chris <chris@littlegreenhomes.com>
Subject: Re: Letter to the Planning Board re 412 Haley Road-- Attention Ann Grinnell

Dear Mary and Susan,

Thank you for the email you sent to me, below, that speaks about the project at 412 Haley Rd. that is in front of the Planning Board. Please come to our meetings and the public hearing concerning this project. All info is on the Kittery Website.

Take care, Ann

Ann H Grinnell
5 Stimson St.
Kittery, Maine 03904

On Nov 27, 2016, at 9:27 AM, mary satterthwaite <marespruce@comcast.net> wrote:

Dear Ann,

My partner Susan and I are writing you as concerned citizens after hearing about the proposed 412 Haley Rd. Development. We have lived on Spruce creek for 28 years, directly across from this proposal.

Through the years, the town of Kittery has done a decent job of managing growth on the creek, and had ensured that this precious resource has not become a Lake Winnepesaukee through over-development.

A cluster of 11 new homes is simply not in keeping with the rural nature of Haley Road, Spruce Creek, and the surrounding area at large. In our opinion, this area is simply not conducive to this kind of development for multiple reasons.

These are our concerns: 1) Potential run-off into an already fragile creek from the use of fertilizers by the new homes 2) Light pollution 3) Noise pollution 4) Severe impact on animal habitat 5) Degradation of Kittery's rural nature 6) Loss of viewscape from both Haley Road and from the creek 7) A dock/marina on the Creek which will service 11 more homes and its' detrimental impact on the creek.

All of this is just too much for this small corner of the creek. We urge you to consider the above and to vote against this plan.

Thank you for this audience.

Best regards, Mary Satterthwaite and Susan Coffey
32 Newson Ave.
Kittery