

Re: Twin Oaks Development
47 Cutts Rd

Planning Board,

I am going to outline some questions that I maintain regarding this development.

The 26 pages of the newly revised plans have only been available for a few days prior to this meeting. I have not had sufficient time to research my questions. I will propose them here. I am sure you will be able to address them.

There was a survey done for significant trees in the proposed construction zones. I was told it was to maintain a certain level of canopy in this wetland area. I requested, from Attar, a map reflecting the "anticipated limit of work". I have not received this. I went to another engineer who is familiar with construction of this type. The engineer outlined on a map the areas that will probably have to be cleared in order to construct the road, storm water systems and septic systems, and public parking. It was staggering and discouraging. Almost all of the oaks and maples that were saved from the last harvest will have to be removed. These trees are most important in the wooded area because they support so much of the needs of the environment. If the canopy has been found to be lacking, will the developers be responsible for replanting of native trees to reach the required canopy cover?

By taking recent physical measurements I find that I am not in agreement with the drafted copy of the wetland setbacks. I can point out 2 stakes with blue flagging tape that were probably initially installed by Mr. Noel. I recognize that he was working during the driest 3 years of rainfall in recent history and may not reflect the current conditions. I believe an additional independent survey should be done to satisfy the abutters that all attention has been made to protect the integrity of their properties.

I am concerned that information made in the comfort of the office using CAD applications does not adequately and accurately address the real life experience of human measurements on the ground at this time before construction is about to begin.

Will the HOA be held liable for damage to the ecosystem, if the no cut , no mow areas are breached? Will damage to the wetlands and ponds by fertilizers applied to the lawns by the homeowners or lawn care specialists be assessed. I request that an independent steward be designated for that job by the town.

I have two deer yards near my home. One is to the west of my home in a grove of hemlock trees where deer (sometimes 10-12) take shelter at night, during storms, and in the heat of the summer. This will be in the path of the road construction.

Will the public parking be constructed at level to the surrounding lots?. If so, will the amount of fill required to bring it to that elevation be evaluated? If so, how will the steep

incline from the parking area to the proposed connection with the KLT be addressed? Will the runoff from the parking area during the anticipated more frequent and intense storms drain into the wetland protection area? How will this be addressed?

How will the invasive species, such as bittersweet and bamboo that have been introduced to the construction site (lots 5,6,7,8,) via fill that has been dumped and stored there, be managed in the future.

Acorn Lane does cross 3 stone walls. As I mentioned in the past, the remains of the logging road, where planning board members were led to walk, is NOT where stakes have been placed for the proposed Acorn Lane. The proposed road is to the east, with a ditch running through one of the oldest and largest oak trees remaining in the area Through a stone wall, across the open space and then through a third stone wall. I request that the stones that will be removed

While I appreciate the idea of a less populated space against my property lines, having a septic system to the north and one to the south of me, will greatly reduce the value of my home. What will be the reduction of the value to my home and how do you reach that conclusion? Will I be compensated?

Is lot 9 subject to the same conditions (wetland sensitivity, i.e. no cut , no disturb) as the other lots in the Twin Oaks development? it is being included in the count of the homes in this development . If not, why is this an exception?

The next items may be more of a civil matter, but I will state them here.

Will the space between line L129 and L128 which appears on sheet 2 adhere to the "no cut ,no mow " rule?

Will the HOA be responsible for the maintenance of the public parking lot, such as snow removal, trash pickup, signage, invasive species removal?

I request that the fill which was placed over the logging road in years past be removed so that it can return to its naturally wet state.

The next 2 items have been submitted to Attar this week as they may be able to address these before the meeting.

Should this development plan be approved I am requesting the following:

*I will request a buffer to be placed after the construction is finished so that the disturbance that I will be experiencing such as car lights and noise and visuals will be mitigated. If it is to be a buffer of trees, I request that they be appropriate as to species and size by a licensed

landscaper sensitive to the environment (wet shade and deer) to be planted by a licensed landscaping company.

*It is not clear on the maps where my easement will be located . What are the construction requirements in order to connect to Acorn Lane such as set backs, materials, drainage, elevation etc. I will be on a slope which will directly empty onto Acorn Lane. How will this be installed after the construction of Acorn Lane?

In conclusion, past performance of the developers' care and respect for natural resources lead me to be very concerned about the future performance considering drastic land and water changes happening at this time that should be taken into account.

Respectfully,

Judith Andrews

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Planning Board Meeting 1/25/2024

Concerning Subdivision plan to be located at 47 Cutts Road

To the members of the Kittery Town Planning Board,

I am writing to you today on behalf of my family, especially my mother, Judy Andrews, who is the longtime owner of property situated at 49 Cutts Road in Kittery, now 25 Andy's Lane. As the daughter of Judy Andrews, I feel a deep responsibility to address a matter of great concern to us all - the proposed development on Cutts Road and Andy's Lane, initiated by Chip and Anne Andrews. I will refer to my mother as Judy henceforth in this letter.

During the October 24, 2023 Planning Board meeting I spoke about my very real concerns that this proposed development is overlaying Judy's deeded right of way she has had since 1981, my concerns about the management of the water between the upper and lower ponds, and the responsible parties; as well as my numerous concerns about building and contamination of the ponds, aquafer and wetlands in the area during construction and town enforcement of fertilizers and the like moving forward.

After consulting with counsel; we do recognize that Chip Andrews owns the underlying land of the ROW and that he has the ability to develop the area but he cannot block it. We also recognize is that Judy has utility access thru this ROW and at any time she would have the ability to relocate her utilities to the ROW; in short, she could put a utility pole in the middle of the proposed road at the juncture of Cutts Rd., or on the lawn of lot 4. We will pursue this matter in civil court if or when needed. However, I would like to note that if proper water management of the ponds is not adhered to, and her current utilities suffer, Judy would have no choice but to relocate her water and power. In the last town meeting Mike Sudak made a suggestion of a possible compromise or easement to allow water management of the upper pond, to the lower one, but to this date he nor Anne or Chip have made any attempt at communication with Judy.

It seems reasonable for the town to have more information on how much of an impact this development will have on the wetlands it traverses. Questions such as how much of the canopy will be cut? How many feet on either side of the roads will be impacted until this project is finished? How will the town treat noise pollution and light pollution? How will Kittery share findings of pollution with residents and how will remediation be enforced? I could go on, but perhaps the town should consider new ordinances with regard to the town's oversight of contamination of wetlands before you consider allowing a development to be built in the midst of one.

Excerpt from the Town of Kittery's code:

§ 16.5.9 Conservation of wetlands including vernal pools.

A.

Purpose.

...

(e)

Establish maintenance responsibility and/or fees to protect and maintain the wetland areas.

It is my hope that the town will review any and all documentation from the development and the future HOA about their environmental impact as well as enforce and test for non-compliance in the future ad nauseum.

During the planning meeting in October it came to light that the development plan contained a house lot within the 250' wetland setback. This was acknowledged as an error by Mike Sudak, of ATTAR. It further came to light that the plan in relation to Judy's boundary was off by 12 feet. This was again acknowledged and subsequently corrected by Mike Sudak. These are two major discrepancies made in the planning for this development. These are not mere inches, but meters. This calls into question the integrity and detail of this plan. It should not be up to the Kittery residents to locate these discrepancies. This pinpoints an immediate need for a review of the development plan by disinterested 3rd party civil engineer prior to any level of approval of this plan.

This brings me another very concerning issue with this development. During the town meeting in October 2023, both Max Zakian and Jason Garnham acknowledged that the town of Kittery's GIS surveys were inaccurate. However, ATTAR's current plan is reliant on the GIS systems wetland boundary to form the 250 foot setback that is necessitated for the road and homes. Because the GIS has been acknowledged as inaccurate, this should not be used for the setback.

We were again advised by counsel to ask for the wetland delineation concerning this development. I left a voicemail for Max Zakian on 1/18/24 asking for this information and I was referred via email to page 59 of the agenda package. Page 59 is the memo by Mr. Joseph Noel dated 4/3/22. There does not appear to be an image or overlay available to view such that a lay person could see where the actual wetland boundaries/demarcations are in relation to this plan.

The current stakes that are located in the ground, placed by Mr. Joseph Noel, are only about 230 feet in measurement to the middle of the proposed road. We have measured and photographed for integrity purposes. We understand in speaking with him, Mr. Noel's stakes do not form a wetland boundary per se, but they are in the midst of the test areas he studied. In fact, many of these stakes are in the midst of standing water and it would seem that the actual wetland boundary would be even further restrictive. Therefore, there simply is not enough space beyond the 250 foot wetland setback to put a road along the edge of Judy's property line.

Of interest is that a memo by Mr. Noel dated 4/3/2022, he notes that soil mapping of one area was expended in 11/2021 and that that area needed to be added to the project plans. He further notes that the Conservation Commission is more than likely not aware of this additional wetland work. I also viewed the document in which his additional test pits dug and signed on 8/4/22, but no

additional memo seems to be included with this packet, nor any real tangible information, map, overlay to show which area he was referring to in this 4/3/22 memo.

Now, this is not a civil matter. Judy is not disputing her own property line, as she can locate all her original pins. This is a matter of ATTARs plan using acknowledged inaccurate GIS data. Mr. Noel's stakes are visible and measurable to anyone who cares to look for themselves. It is not Judy's responsibility to pay to re-survey this land and correct ATTARs plan. It is ATTARs responsibility to provide the burden of proof that all codes and boundaries have been met with accuracy in their application process. By using the GIS system, they do not meet this Burden of Proof.

The 250' wetland setback has not been met in the area in which it runs along Judy's property line and therefore, at the very least this section of roadway cannot be approved.

Also has the town of Kittery Planning Board found that there are demonstrated public benefits of the project that proposes to build a road and homes within wetlands, and that they clearly outweigh the detrimental environmental impacts of this development and if so, where can town residents find this rationale?

Excerpts from the Town of Kittery Subdivision Review Code:

§ 16.8.8 **Other requirements.**

A.

Burden of proof. In all instances, the burden of proof is upon the applicant proposing the development

...

§ 16.5.9 **Conservation of wetlands including vernal pools.**

Wetlands boundaries. The definition of wetland boundaries is as described in this section and in Chapter 16.3. ...

(2)

Settling disputes over wetland boundaries. If there is a dispute regarding the existence or boundaries of the wetlands, the boundaries of the wetland are to be determined, at the expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified soils scientist agreeable to both the Planning Board and the applicant.

Also, under this section of the town's codes:

(d)

A plan view showing the site as viewed from above is required. The plan view must: ...

[5]

Show the location of any wetlands, shorelines and floodplains. Wetland boundaries must be delineated using the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987 (1987 Manual).

Also under the Chapter 16 The conservation of wetlands including vernal pools:

F.

Procedures for wetlands alteration application.

(1)

Application and review process. The application and review process for the review of proposals within regulated wetlands must conform to the procedures explained in § 16.5.9 of this chapter, except where specifically stated otherwise in this section.

(2)

Submission requirements. An application to alter a wetland must be made in accordance with the submission requirements in § 16.5.9L to the Town Planner, or designee, accompanied by a fee as determined in Appendix A.

(3)

Advisory opinion. The Planning Board may request the Town Planner to acquire more specific data and analysis from qualified sources and/or the opinion of the Conservation Commission concerning the proposed activity.

(4)

Timing after Board acceptance. The Planning Board will issue its decision within 35 days of receipt of the completed wetlands alteration application, unless a public hearing is necessary. A hearing is not necessary if the Planning Board finds that the activity is so minor that it will not significantly affect the wetland or that the hearing will not produce additional information useful to the review. A decision may be rendered at the scheduling hearing if the Board determines that a complete application has been received and no public hearing is necessary. If a public hearing is held, the Planning Board is required to issue its decision within 35 days of completion of the public hearing.

(5)

Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed alteration must be notified by first-class U.S. Mail of any public hearing on the application for wetlands alteration.

(6)

Coordination. Submission requirements for an application for a wetlands alteration will be integrated into the required submissions for a subdivision or development review application to the Planning Board.

G.

Wetlands alteration approval criteria.

(1)

In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

(2)

It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this title and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with this title.

(3)

In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified, in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.

(4)

When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan (see § 16.5.9I) and not

prior to the completion of all performance guaranties for the project (see § 16.8.11F).

(5)

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 Planning Board will consider the following:

(a)

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;

[3]

Provides alternative project designs, such as conservation subdivision, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and

[Amended 10-24-2022]

In response to 16.5.9G (5), there is a practical alternative to developing a road within the wetland setbacks, and that is not to develop it. There is no need from anyone other than the current property owner. Also, the State of Maine will assist in this process should the town need. Please see this reference from the States Code manual:

§489-D. Technical assistance to municipalities

A state department or agency shall provide technical assistance to a municipality in the form of a peer review of development studies when the state capacity and resources exist. [PL 1995, c. 704, Pt. A, §22 (NEW); PL 1995, c. 704, Pt. C, §2 (AFF).]

1. Costs. A state department or agency may charge a municipality for this assistance under this section. A municipality may recover these costs from the developer.

[PL 1995, c. 704, Pt. A, §22 (NEW); PL 1995, c. 704, Pt. C, §2 (AFF).]

2. Type of development. The following provisions apply to assistance under this section.

A. Assistance is available for the review of site location issues arising from a proposal for a subdivision of at least 5 lots and 20 acres and for a proposal for a

development that has at least 3 acres of buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not revegetated and not subject to review by the department under this article. [PL 1995, c. 704, Pt. A, §22 (NEW); PL 1995, c. 704, Pt. C, §2 (AFF).]

B. A municipality may also obtain technical assistance in the form of a peer review from a private consultant or regional council and may recover costs from the developer for a project of any size. The Department of Agriculture, Conservation and Forestry has the authority to establish rules as necessary for this purpose. [PL 2011, c. 655, Pt. JJ, §33 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

[PL 2011, c. 655, Pt. JJ, §33 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY

PL 1995, c. 704, §A22 (NEW). PL 1995, c. 704, §C2 (AFF). PL 2011, c. 655, Pt. JJ, §33 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2011, c. 657, Pt. W, §5 (REV).

I was unable to locate a Planning Board Municipal Manual for Kittery on the Town's website so I have included this reference from the 'Maines Municipal Associations Manual for Local Planning Boards: Legal Perspective'; starting on page 46:

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Under

“Making the Decision”

“Basis for the Board's Decision”

□ Expert vs. Non-Expert Testimony; Personal Knowledge of Board Members; Investigations by Board Members. The board may base its decision on non-expert testimony in the record if it finds that testimony more credible than expert testimony presented on the same issue. Mack v. Municipal Officers of Town of Cape Elizabeth, 463 A.2d 717 (Me. 1983) (flooding issue); DeMille v. Town of Cape Elizabeth, AP-99-45 (Me. Super. Ct., Cum. Cty., December 21, 1999) (traffic safety issue). If two conflicting expert opinions are offered for the record, the board has the option of making its own independent finding of fact. Cf., Gulick v.

Board of Environmental Protection, 452 A.2d 1202, 1208 (Me. 1982). In the absence of expert testimony, the board may rely on the testimony of anyone personally familiar with the site and conditions surrounding the application and on its own investigations. *American Legion v. Town of Windham*, 502 A.2d 484 (Me. 1985); *Grant's Farm Associates v. Town of Kittery*, 554 A.2d 799 (Me. 1989); *Goldman v. Town of Lovell*, 592 A.2d 165 (Me. 1991). Board members may rely on their own expertise and experience and that of their professional staff, provided that information is formally entered into the record. *Pine Tree Telephone and Telegraph Co. v. Town of Gray*, 631 A.2d 55 (Me. 1993); *Adelman v. Town of Baldwin*, 2000 ME 91, 750 A.2d 577. If members of the board do conduct independent investigations in order to generate the information needed to help the board analyze an application and reach a decision, those members must be careful to be objective; otherwise, the applicant may have grounds to cite one or more members for bias and due process violations. See generally, 18 A.L.R.2d § 4.

And,

“Taking Adequate Time to Make a Decision; Seeking Technical and Legal Advice

Although the board should avoid unreasonable delays in making a decision and should not “string the applicant along,” the board should not feel pressured into making a decision at the first meeting. This is especially true where the meeting has been very emotional because of a controversial proposal. The board should take time to visit the site of the proposed project where that would be helpful. (See discussion of site visits in this chapter.) The board should consider seeking technical advice from its regional planning commission, from a State agency (such as the Department of Environmental Protection), or other experts that the board is authorized to consult, and legal advice from the municipality’s lawyer or the legal department at Maine Municipal Association, particularly if the applicant or another party is represented by a lawyer. If the municipality is unwilling to budget money for the board to use to hire its own consultants or lawyer, it may be willing to adopt an ordinance provision that requires an applicant to set aside an amount of money in escrow which can be used by the board to hire consultants to help the board review the application. A sample ordinance provision appears in Appendix 5 and Appendix 6. See *Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702, for a case in which the court acknowledged reliance by the planning board on a vehicle traffic peer review study paid for by the town. If the board anticipates that an application will be controversial and that the board’s decision ultimately will be challenged in court, it should consider having its professional technical and legal advisors present at some or all of the meetings at

which the application is discussed. The board must be careful to introduce into the record any information provided by its advisors, whether the information is provided orally or in writing, especially if the information is provided outside the public board meeting. See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, and *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200, for a discussion of the utilization by a board of legal advice provided by its attorney. In at least one Maine Supreme Court case, a board found that an application was complete and then circulated it to paid staff for comments while it began its substantive review. The staff identified problems with the application and after a year of repeated attempts to get more information from the applicant, the staff sent a letter saying that the application was incomplete, spelling out in detail why and what was needed to make it complete. The developer appealed and the court found that his appeal was premature and that there was nothing wrong per se with the staff's and board's process. *Philric Associates v. City of South Portland*, 595 A.2d 1061 (Me. 1991)."

In further support the absolute need to reevaluate the wetland boundary and applicable setbacks, I would like to provide language from the state of Maine's Natural Resources Protection Act;

"The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State. [PL 1987, c. 809, §2 (NEW).]

The Legislature further finds and declares that there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue and that the Department of Environmental Protection provide coordination and vigorous leadership to develop programs to achieve the purposes of this article. The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize

delays and difficulties in evaluating alterations of these resource areas. [PL 1987, c. 809, §2 (NEW).]

The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life. [PL 1987, c. 809, §2 (NEW).]

This article is known and may be cited as "the Natural Resources Protection Act." [PL 2007, c. 290, §1 (NEW).] “

I would also like to highlight the residents of Kittery's intentions for the town as documented in the Vision and Goals for Kittery's Future, a document located on the town's website for which numerous residents of the town worked together to create a guideline for the town and expressed their feelings and goals for the 5 year period of time. A couple of quotes I would like to share are as follows:

“IMAGINE ... a Kittery where its beautiful and treasured natural features are preserved and protected and where enjoyment is enhanced through increased access to these for both passive and active recreation.

KEY THEMES AND ELEMENTS FOR A VISION AND GOALS FOR KITTERY'S FUTURE • Participants expressed a strong appreciation for the natural setting of the Town and a desire that efforts to preserve these features be made, including: o Open space and rural character

If you could do one thing to improve Kittery... what would it be? • Sidewalks and bike lanes • Establish Town planning process • Improve school system • Increase sustainability • Improve town government

HIGHLIGHTS OF FORUM DISCUSSION KEY THEMES AND ELEMENTS FOR A VISION AND GOALS FOR KITTERY'S FUTURE • Participants expressed a strong appreciation for the natural setting of the Town and a desire that efforts to preserve these features be made, including: o Open space and rural character”

These statements were made as part of a 5 year vision and are not related to the current development plan. However, the above sentiments are from residents of Kittery concerned with the future of the town and who cared enough to spend their personal time creating this document.

All of this information I have referenced is to support that the proposed roadway which traverses along the western edge of Judy Andrews' property, is within the wetland setback and also is not a civil matter. This is a matter that should be clarified between the town and the developer, by an expert in wetland boundaries. In the document submitted for the town planning board meeting, ATTAR seems to request approval of the plan before their plan undergo a third party review. This is reckless and unreasonable, and runs the risk of important issues to be overlooked in the future. This would be akin to giving someone the deed to a house and then hoping they pay the mortgage. No institution would consider this good business practice. The town should require an expert third party review prior to any level of approval, most specifically the section of road which appears to be within the 250 foot wetland setback.

Offering approval at this stage knowing the GIS surveys are inaccurate and that more accurate wetland demarcation is needed, would indicate bias toward the applicant by the town planning board.

In conclusion; Throughout this statement to the town of Kittery I have noted that the GIS surveys are known to be inaccurate, and the road way that traverses along my mother's boundary is within the 250 foot wetland setback, there is no substantial need for the town to alter or approve development through the wetland area, and the applicant has not provided burden of proof that the area is not within the wetland setback; and therefore their application remains incomplete. While this is my own conclusion, I have relied on the available documentation submitted for the 1/25/24 planning board meeting, code from the Town of Kittery website, and the State of Maine; as well as the "Maine Municipal Association: Manual for Local Planning Boards" to inform and support my conclusion.

The town residents have also raised their voices and the State of Maine's Natural Resources Act has solidified the importance of these wetlands to the Town and State. I further note that the state of Maine can provide resources to the town for wetland delineation matters such as these. I urge the Town of Kittery to use these resources. The planning board is not beholden to developers, and it should take the amount of time needed to make informed, supported and rationalized decisions; even if lengthy and unfavorable to those making the application.

Thank you for taking the time to review this letter.

Respectfully,

Oriana Allen

1/22/2024

.....

January 22, 2023

To:

Kittery Planning Board Department and Planning Board members.

My name is David Graf. I am Judith Andrew's partner.

My following comments all pertain to the proposed Twin Oaks Subdivision, 47 Cutts Road, Kittery, ME.

I will focus on one aspect of this proposed subdivision, a feature that I believe is the most difficult to accept without a challenge and a thorough review.

Specifically, I am concerned with the proposed roadway that is planned to run immediately along Judith Andrews' western property line..

This roadway, a 40' ROW with 20' pavement, 3' shoulder, etc. (as shown on the maps) fits exactly into a small sliver of land that precisely exists in the narrow space between the outer limit of the 250' Shoreland Protection Overlay Zone, and the westerly edge of Judy's property.

I want to remind everyone that without this exact width of land, existing precisely where it does, the roadway that accesses the development of proposed lots # 9, 10, 11, 12 would not be possible. This perfectly spaced and placed sliver of land –with a road built on it – is the only way to access and develop these 4 lots.

The reason given for the existence of this fortuitous, narrow swath of land is that the 250' Shoreland Protection Overlay Zone's outer perimeter – in the exact area of Judy's western property line- runs on a line almost exactly 40' from Judy's property line

The Shoreland Protection Overlay Zone's 250' no build 'setback' is determined by reference to the digitized Kittery GIS Map. However, in the town meeting in October of 2023 both Max and Jason mentioned that the Town of Kittery's GIS surveys were inaccurate. The zoom participant, Mr. Harris, also stated that the GIS survey was inaccurate.

Further, Kittery's own GIS website begins with this statement:

DISCLAIMER: The Town of Kittery, Maine, does not guarantee nor warrant the accuracy of the maps and/or data provided on this website, and is not liable for any damages, direct or indirect, sustained as a result of the use of, or reliance upon, any of such maps and/or data. The Town of Kittery, Maine, is not liable for any misuse or misrepresentation of such data by the user or by any other party. The Town of Kittery, Maine, reserves the right to periodically update or change such data, without notice, and is not liable to the user or any other party on account of any such update or change. By using this website, you confirm your agreement to the terms and conditions listed in this paragraph.

(Italics added)

Despite the admitted possibility of GIS mapping inaccuracies, Attar's plan is reliant on the GIS Shoreland Boundary as the basis for the 250' setback that makes the road possible

Additionally, I wonder about the following sentence—quoted from Joseph Noel's (Wetland Scientist/Licensed site evaluator) letter to Mr. Ken Wood-Attar Engineering, of April 3, 2022:

" I requested that Attar Engineering, Inc. re-establish a number of wetland flag locations so I could review the wetland boundary while conducting the soil mapping. During the soil mapping one area of the wetland was expanded on November 30, 2021. This area needs to be added to the project plans. In closing, the wetland boundary in the project area has either been re-flagged or reviewed and has been changed/updated from the original delineation. The Conservation Commission most likely was not aware of this additional wetland work"

(Italics and underlining added for emphasis)

I wonder if Mr. Noel's requests were followed up on when he said that a wetland should be expanded, and if the Conservation Commission was made aware of this change.

Regarding the surveys of the wetlands providing original GIS data- as well as more current surveys- I also wonder if it is possible that an error of less than 25' in the field could have been made - making all the difference in the possibility of building this road.

GIS Resource Protection Overlay Zone Boundaries:

Specifically in the area immediately opposite Judy's western property line:

You can see that there is a large '2 lobed shape' to this particular area of the RPOZ (Resource Protection Overlay Zone) boundary. I find it puzzling that the left hand lobe of the RPOZ boundary completely covers the wetland it is drawn on top of—while the right hand

lobe of the RPOZ falls approximately 80' short of similarly covering the wetland it is drawn on top of.

If the RPOZ boundary on the right hand lobe was drawn similar to the boundary indicated on the left hand lobe, the 250' setback would extend right up to Judy's property line.

I would like to know how this difference of RPOZ boundary is explained.

Specifically, I believe clarification is needed regarding:

- * How the RPOZ boundary was actually determined?
- *What are the criteria for establishing this boundary?
- *How do the RPOZ boundary criteria relate to the wetland boundary criteria?
- * Who did the surveying that resulted in these boundaries?
- *When was the survey conducted?
- * What were the weather conditions when the survey was conducted. Yearly rainfall data indicates that there was unusually low rainfall at the time Mr. Noel's surveys were made.
- * Have the flags been re-set since that time and if so, with what degree of certainty were they re-set?
- *How was the survey information entered onto the GIS map and with what degree of certainty was it entered?
- * Are there flags placed on the ground that specifically show the boundary of the RPOZ and the wetlands?
- * Have there been changes in these specific wetland conditions that have occurred since the original survey- that would affect the 250' setback?

*I think it is fair to state that with the admitted uncertainty of the placement of the RPOZ boundary, with the fact that the boundary appears to be located many feet back within a wetland in this one specific location, and with the ramifications that result from this particular 250 setback, a new survey of this area is warranted. I feel this is especially so as a difference of only a few feet in the 250' Shoreland Protection Overlay Zone setback would prohibit the building of the road.

ACTUAL MEASUREMENTS ON THE GROUND:

On Jan. 13, 2024 Judy and I made actual measurements on the ground. (we will be glad to demonstrate these measurements on site at any time)

1) We started by laying out a straight line between Judy's 2 western property line corner stakes. These are metal stakes that have not been moved and have been there for decades (since her property was first surveyed). It was easy to draw a straight line between the 2 stakes as there was snow on the ground at the time.

2) We walked down into the woods, thru the water and found the first/closest blue flag- possibly as placed by Mr. Noel or re-flagged by Attar. The flag was marked: EWH-76

3) We found the closest 'center of road' stake-to Judy's property line- as placed by Attar.

4) We lined up the 'center of road' stake with the blue wetland flag (easy to do as we could make a walked path/line in the snow) and continued this line up to Judy's property line. We placed a stake on Judy's property line at this point. This stake can be found at 54' from the northwest corner stake of Judy's property. The compass heading of this line-extending in a straight line thru the 3 markers- was 250 degrees.

5) We used a new 100' tape measure to determine distances (with a stake driven into the ground at the 100' mark).

6) We found that the distance from the stake at the center of the proposed road to the presumed wetland flag was 222'.

7) We found that, therefore, the lower edge of the roadway's 40' ROW would be 202' from the presumed wetland flag, and the upper edge of the roadway's 40' ROW would be at 242' from the wetland flag.

8) The distance from Judy's property line to the blue flagged stake was 245'.

Summary of the preceeding section:

As the location of the Shoreland Protection Overlay Zone is possibly inaccurate and out of date, and might be moved closer to Judy's property line upon review (to more reasonably reflect the wetland it is drawn on top of) the entire roadway-as proposed- could fall within the 250' no build setback.

Concluding remarks:

As is mentioned in Oriana Allen's remarks Attar was found to have made a significant error in their plan-placing a house lot within the 250' no build Shoreland Protection Overlay Zone, and also being in error regarding Judy's property line. These errors were only exposed when public comment and discussion and questioning at the meeting of Oct 26, 2023 revealed Attar's mistakes and brought them to light.

In light of these errors, and in order to ensure against any other errors that might still exist in the plan, I respectfully suggest the Planning Board seriously consider re-examining Attar's current plan, and that the Board impose an additional review of survey lines, particularly requiring a new hydrologic study and a new survey of the wetlands and of the Resource

Protection Overlay Zone, and a review of the GIS map of the RPOZ in particular . These additional reviews are within the Planning Board's power to request of the applicant.

Thank you for your consideration of my concerns.

Respectfully:

David Graf



Continued from concerns/questions of 47 Cutts Road proposed development

11. Maine Fish and Wildlife determined New England cottontails were highly unlikely on the property

Can Mike show the overlay (page 17 of the plan set) that shows the rare animals (Cottontail), as well as, the aquifer overlay(same page) that was revised on 1/11/2024 and can he speak to how this proposed development will most likely not have any impact on these two things.

47 Cutts Road Kittery, ME
Conservation Subdivision
Concerns and Questions

§ 16.10.7 Open space requirements.

E. All historic, cultural or archeological resources must be included in the designated open space.

§ 16.10.8 Open space and facilities dedication and maintenance.

In cases where historic or culturally important sites are included in the open space, the Planning Board may require that extra protections be put into place, such as a fence around a graveyard or a stone wall around an early homestead site. The Board may also require that markers or signs be erected at the developer's expense, describing the site's significance

G.

Preservation of historic, archaeological, and cultural features, such as, but not limited to, historic structures, stone walls, cellar holes, earthworks, middens or graves.

I believe there is a historic stone wall located where Acorn Lane will pass through to Lot 9-12. What would preservation look like?

§ 16.10.5 General standards.

D.

Open space designated and set aside in a conservation subdivision will be permanently preserved as required by this performance standard. Land that is designated as reserved or common open space as defined by Title 16 must be separate tax parcels and not included as a part of any residential lot. Public open space must be approved and accepted by Town Council per § 16.10.4B. In all cases, the Planning Board must approve the configuration of the open space.

It appears that there are residential lots within Open Space blocks. Please explain how the Open Space listed on the map and also part of a residential lot is taxed?

G.

In cases where proposed development includes shoreland, the entire area that falls within the Shoreland Overlay Zone, the Resource Protection Overlay Zone or the Stream Protection Overlay Zone must be protected as open space. All areas designated as floodplain and the 250-foot radius around a state-designated significant vernal pool must similarly be protected as open space. Where an area falls within two or more such zone designations, the zone with the largest total area will apply. Such open space may not be part of any private house lot. Can you clarify this on the map? Lot 13

On page 15 of the Plan Set (General Notes) page, please explain in detail #24 and #28 as it relates to the flood control culvert, who does this work, and how is it maintained?

Also, on this page (General Notes) #26 a typo may want to be fixed so that it reads snow maintenance and not 'snot' maintenance. :)

Are there dimensions listed for the proposed KLT parking area? Can pins be placed to designate this area? Abutter's property line is very close to this area.

13. Following planning board and staff feedback, the revised plan set now shows snow storage in the proposed cul-de-sac areas to reduce the risk of pollutant contamination in the abutting natural resources. Any concerns that the snow plowed in the proposed KLT parking area could be a risk because it is located within the Shoreland Protection Zone?

(e) The Board may, at its discretion, request a more detailed site study (intensive site assessment) of the wetland in question to be done by professionals as qualified in Subsection above at the expense of the applicant. Is this being considered?

(f) When proposing a wetland alteration, particularly in order to create access, there is a strong preference for bridging a wetland, rather than using a culvert crossing. Is this being considered?

§ 16.10.6 Design standards.

Existing natural vegetation, including trees, unless diseased or dying, must remain to control soil erosion, provide shade and wildlife habitat and assist in stormwater infiltration to ensure the least amount of disturbance during construction. Existing large healthy trees located near new rights-of-way, driveways or building sites, whose removal is not necessary for construction, must be protected from damage during construction. Such trees must be noted on the plans, and plan notes must include protection details. Is this noted on the plan set and what do the protection details look like?

E.

Development setbacks from wetlands, streams and water bodies must comply with § 16.5.30 and § 16.10.5G. These setbacks must be permanently maintained as "no cut, no disturb" buffer areas except where common access by the conservation subdivision residents is required per § 16.10.5H. These buffer areas must be identified as such on all subdivision plans, including the as-built plan. The Planning Board may require signs denoting the boundaries of these buffer areas be placed prior to the issuance of any certificate of occupancy to ensure that encroachment does not occur. If the setback areas do not contain substantial vegetation, as determined by the Planning Board, to provide a sufficient and environmentally appropriate buffer and ecological benefit, the Board may require additional native or Northeastern native climate-tolerant plantings. If plantings are required, any plantings that do not survive must be replaced. This plantings requirement does not expire and runs with the land. Will the Planning Board consider?

§ 16.10.11 Predevelopment requirements.

Prior to the beginning of any site work, including tree cutting or disturbing any soil, the applicant must: Define the limits of any proposed clearings. File all required performance guarantees and

inspection escrows in forms etc. Who checks to see if this work is done prior to beginning any site work?

The site plan now shows the shoreland and resource protection overlay zones. 142 Per §16.10.5.G, all development is now located outside of the zone, except for the proposed KLT parking lot (which can be within the overlay, as long as it maintains all required setbacks and is used to facilitate use of the open space). What are the setbacks and can they be shown on the map?

Staff recommend conditional approval at this time. Following guidance from the planning board and Town staff, the applicant is still requesting waivers regarding road width and topography. The plan set should be reviewed by the third-party engineer as part of the final application process to ensure the revised plan complies with all standards. Has the plan set been reviewed by a third party engineer?

§16.10.7.G Open space may not be mowed unless part of a public park/trail (The standard appears to be satisfied) Just curious on this one on how this standard can be satisfied. As several Lots appear to have parts or a significant amount of their yard in the Open Space zone, how is this standard enforced?

§16.7.10.D.(2).(m). Draft homeowners association documents showing who will maintain stormwater systems. As required in the Andrews Subdivision (2019) final plan and as seen in the 77 Bartlett proposed subdivision final plan, will an HOA document be needed before final approval?

Who will provide regular inspections during the construction period to insure that all rules and regulations are followed? Would these check - ins be on a regular basis, dated, and filed? (As proposed in the 77 Bartlett proposed subdivision 'Inspection Tasks' and 'Documentation' on pages 214-216)

On page 18 of the Plan Set, please explain the area that's located off of Acorn Lane NE of Judith's house. (PRP Inv. In/Inv. Out)

With the proposed 3 foot paved pedestrian travelway and the 1 foot gravel shoulders, along with stormwater management inclusion of swales, please show on the map how this would look along Acorn Lane and how it would not work its way into the Shoreland Protection Zone.



Town of Kittery, Maine

Conservation Commission

200 Rogers Road, Kittery, Maine 03904

Date: 23 January 2024

To: Town of Kittery Planning Board, and Town Planning and Development Department

FR: Town of Kittery Conservation Commission

RE: 47 Cutts Road Preliminary Review

Kittery's Conservation Commission would like to express concerns regarding the Preliminary Review Building Plan for 47 Cutts Road. While we understand there have been modifications to the plan, to mollify many of the abutter's concerns, we continue to have concerns that this project creates a significant negative impact on the local environment.

The current primary plan, modified to 12 homes stretching over 36 acres, has several significant points of impact on wetlands, and all the proposed lots abut forested wetlands and sensitive habitat. We recommend including specific no-cut zones and other environmental protections (such as chemical-free lawn care, etc.) in the homeowner association by-laws or covenants.

Lastly, the Conservation Committee understands that a \$10/sq ft mitigation fee applies to this project, should a wetland alteration permit be approved. However, we recommend that additional oversight is required along Dogwood Lane. There appeared to be a road incursion planned through what visually appears to be an additional wetlands area, noted during the Site Walk. (Wetlands Impact #2). This road incursion, in particular, should be reconfirmed before this project is granted final approval.