

**Town of Kittery  
Planning Board Meeting  
September 22, 2022**

**21 Happy Avenue and 12 Roseberry Road Right-of-Way (ROW) Review**

Action: Accept or deny application. Approve or deny plan. Owners and applicants, William and Cathy Cullen and Caroline Hall request consideration of a right-of-way plan for a 4.78 acre +/- acre parcel (Tax Map 11, Lot 29) proposing a ROW located on Happy Avenue (Tax Map 11 Lot 29-5) in the Residential Suburban Zone (R-S). Agent is Nathan Amsden, PLS., Amsden Field Survey.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
Yes	Sketch Plan Review Completeness / Approval		PENDING
No	Site Visit		
No	Public Hearing		
Yes	Final Plan Review		

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.** 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 has been duly recorded in the York County registry of deeds, when applicable.

**Background**

The existing 4.78-acre parcel contains two single family homes. An existing 12-foot travel way (plans say 16 feet which is an error) that begins after a bend in Happy Avenue continues to the current condominium which consists of the two aforementioned single-family residences. The applicants wish to divide the lot they share into two lots with a residence on each. Additional land north of the proposed boundary for Lot A on both sides of the pond up to Martin Road is proposed to be deeded to Southern Maine Fish and Game Inc. This does not require consideration by the Planning Board as a subdivision but does require ROW approval by the Board to provide frontage to both lots. The conceptual plan proposes the ROW for the Board’s review.

There are several other aspects to this project to note.

- The first item to note is that the condominium’s legal frontage is currently derived from Martin Road. This is non-sensical because the pond (owned by Southern Maine Fish and Game Inc.) cuts off access to the larger portion of the condominium’s lot. As stated above, the piece of the condominium’s lot which abuts the pond to the south and Martin Road to the north will be deeded to Southern Maine Fish and Game, Inc.
- The second item of interest is that the residence on proposed Lot B is accessed via Roseberry Lane through a legal easement per the applicant and has the address of 12 Roseberry Lane currently. Lot B will be deriving frontage from the creation of the ROW but will not be using it for access. Lot A will similarly derive frontage from the ROW and will continue to use it for access. Lot A’s residence has the address of 21 Happy Avenue.
- The third is that staff requested CMA to inspect and review the existing Happy Avenue travel way (wetland crossing application) that was permitted in 1998 as it exists today and compare it to the plans that were submitted for this proposed ROW. CMA’s letter is included for the Board to review. To summarize, the road was built according to the plan with one exception that did not appear to have impacted additional wetlands.

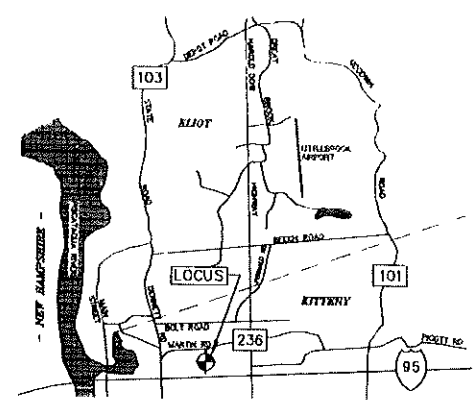
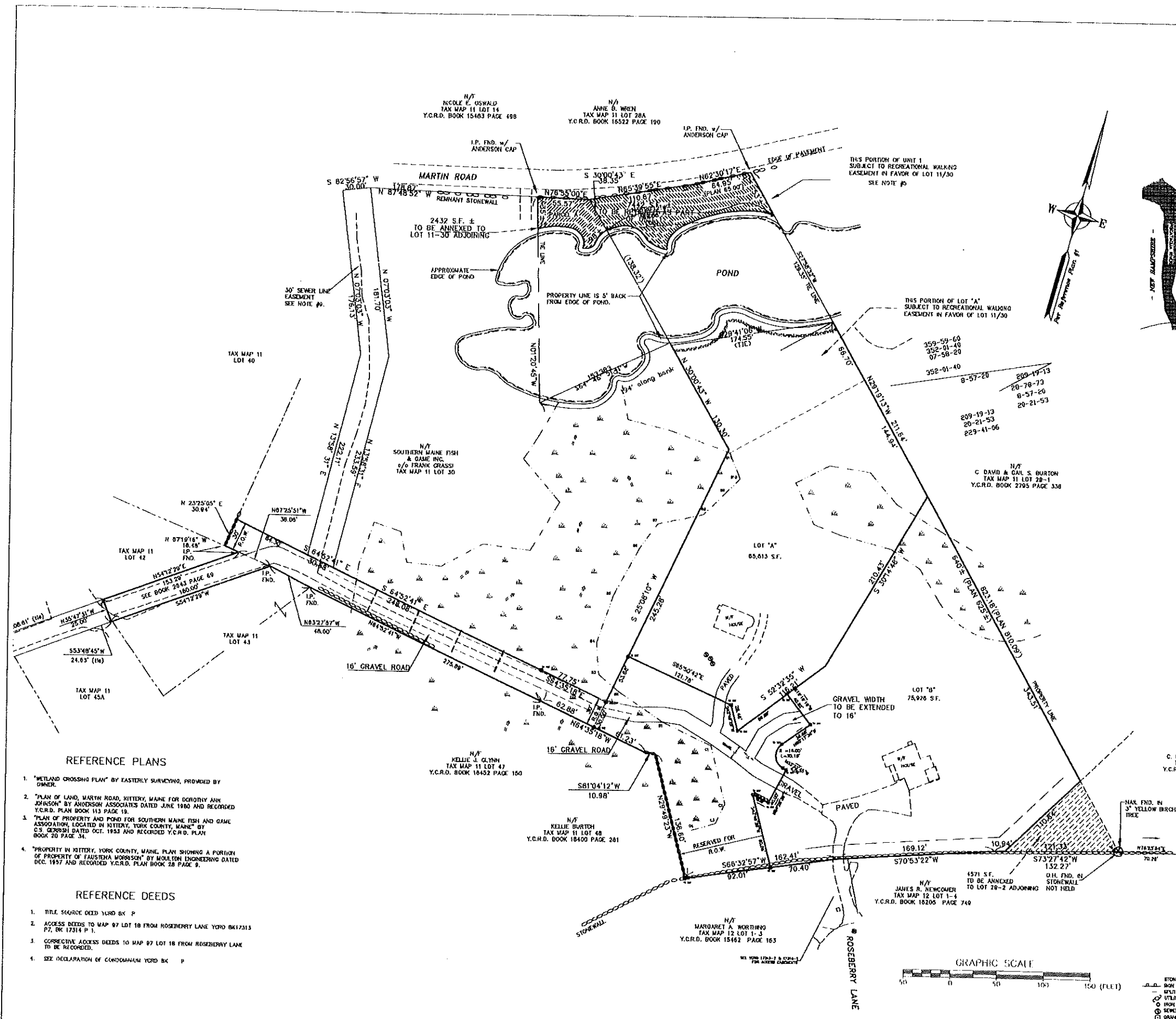
### **Sketch Plan**

1. The proposed ROW is 30 feet wide which does not meet Class 1 Private Road requirements. The applicant must request a waiver.
2. The proposed ROW exceeds the 400 feet allowed for a Class 1 Private Road. The applicant must request a waiver. The length of the ROW should be noted on the plans.
3. The existing travel way was permitted and constructed as a 12-foot gravel travel way instead of the 18 feet that is required for a Class 1 Private Street. There is no impact to the neighborhood in terms of either views or traffic because the two houses already exist. A waiver must be requested. The Board will want the Fire Department's approval of the proposed travel way.
4. It does appear that the total impervious surface area will not change significantly with the possible exception of the hammerhead turnaround. More information on the width of the turnaround, whether it exists currently and will it be gravel is needed. The applicant may want to request a waiver from submitting a stormwater management plan.
5. Sidewalks (5-foot wide) are part of the standards for a Class 1 Private Street in Table 1, Section 16.8. The applicant may want to request a waiver.
6. Both proposed lots exceed the 40,000-square foot minimum lot size.
7. Both proposed lots exceed the required 150-foot frontage on the proposed ROW.
8. The applicant has indicated to staff that he wished to convey the land on both sides of the pond that will not be part of proposed Lot A to Southern Maine Fish and Game Inc. However, the plans state that a walking easement on those portions of the condominium lot will be granted in favor of the parcel that Southern Maine Fish and Game, Inc. currently own. Will that portion of the property be deeded outright or not?
9. The plan notes are often incomplete (no book and page numbers for instance) or confusing. Some may no longer apply. The notes regarding the utilities should be clarified – will easements be required?
10. The recorded easement allowing Lot B's access from Roseberry Lane should be noted on the plans with book and page from the registry.

### **Recommendation**

The sketch plan submittal lacks some required information and a number of waivers are required. Staff recommends that the Board ask any questions members might have and provide direction so that the applicant may prepare a plan for acceptance.

***Move to continue the ROW plan application dated 10-19-21 by Caroline Hall and William and Cathy Cullen for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue (Tax Map 11, Lot 29) in the Residential Suburban zone (R-S).***



LOCATION MAP

NOTES

- THE PURPOSE OF THIS PLAN IS TO DEPICT A RIGHT-OF-WAY TO BE CONVEYED TO THE TOWN OF KITTERY, MAINE. THE SITE IS IDENTIFIED ON THE TOWN OF KITTERY TAX ASSESSING MAP AS MAP 11 LOT 29.
- SEE DECLARATION OF CONDOMINIUM YORD BK. P.
- THE RIGHT-OF-WAY AND LOTS ARE IN THE R-S ZONE (RESIDENTIAL-SUBURBAN). DISTRICT REGULATIONS ARE:  
MIN LOT SIZE WITH/WITHOUT PUBLIC SEWER 30,000/40,000 SF.  
MIN FRONTAGE 150'  
FRONT YARD SETBACK 40'  
SIDE/REAR YARD SETBACK 15'  
COVERAGE 20%  
BUILDING HEIGHT 35'
- THE TOTAL AREA OF THE RIGHT-OF-WAY TO BE DECLARED IS 44,084 SF.
- LOTS "A" AND "B" HAVE BEEN IN EXISTENCE AS CONDOMINIUM UNITS. THIS CONDOMINIUM IS DISSOLVED UNDER XX. THE LOTS ARE PRESENTED AS A LOT DIVISION OF MAP 11 LOT 29.
- LOT "A" HAS 220.13' OF FRONTAGE ON HAPPY AVE. LOT "B" HAS 250.72' OF FRONTAGE ON HAPPY AVE.
- THE PURPOSE OF THIS PLAN IS TO DEPICT A CONDOMINIUM AT PROPERTY IN KITTERY, MAINE. THE SITE IS IDENTIFIED ON THE TOWN OF KITTERY TAX ASSESSING MAP AS MAP 11 LOT 29.
- SEE DECLARATION OF CONDOMINIUM YORD BK. P.
- LOT "B" RETAINS THE EASEMENT RIGHTS TO EXTEND THE SEWER LINE FROM LOT "A" INTO LOT "B".
- LOT "A" RETAINS THE REPAIR AND MAINTENANCE RIGHT TO THE EXISTING WATER AND ELECTRIC UTILITIES CROSSING LOT "B".
- PORTION OF LOT "A" SOUTHERLY OF THE POND TO BE SUBJECT TO A WALKING RECREATIONAL EASEMENT IN FAVOR OF FISH & GAME. PROPERTY MAP 11 LOT 30.
- LOT "A" IS GRANTED THE RIGHTS OF ACCESS AND MAINTENANCE TO THE SEWER LINE AS INSTALLED ALONG HAPPY AVE. AND AS RESERVED BY THE 30' EASEMENT FROM SOUTHERN MAINE FISH & GAME, ADJUTING.
- ACCESS TO LOT "A" IS DEDICATED VIA HAPPY AVE.
- ACCESS TO LOT "B" IS DEDICATED VIA ROSEBERRY LANE.

REFERENCE PLANS

- "WETLAND CROSSING PLAN" BY EASTERLY SURVEYING, PROVIDED BY OWNER.
- "PLAN OF LAND, MARTIN ROAD, KITTERY, MAINE FOR DEBORAH ANN JOHNSON" BY ANDERSON ASSOCIATES DATED JUNE 1980 AND RECORDED Y.C.R.D. PLAN BOOK 113 PAGE 18.
- "PLAN OF PROPERTY AND POND FOR SOUTHERN MAINE FISH AND GAME ASSOCIATION, LOCATED IN KITTERY, YORK COUNTY, MAINE" BY C.S. GERRISH DATED OCT. 1953 AND RECORDED Y.C.R.D. PLAN BOOK 20 PAGE 34.
- "PROPERTY IN KITTERY, YORK COUNTY, MAINE, PLAN SHOWING A PORTION OF PROPERTY OF FAUSTINA MORRISON" BY MOUTON ENGINEERING DATED DEC. 1957 AND RECORDED Y.C.R.D. PLAN BOOK 28 PAGE 9.

REFERENCE DEEDS

- TITLE SOURCE DEED YORD BK. P.
- ACCESS DEEDS TO MAP 87 LOT 18 FROM ROSEBERRY LANE YORD BK12315 P.7, BK 17314 P.1.
- CORRECTIVE ACCESS DEEDS TO MAP 87 LOT 18 FROM ROSEBERRY LANE TO BE RECORDED.
- SEE DECLARATION OF CONDOMINIUM YORD BK. P.

RIGHT-OF-WAY PLAN  
OFF HAPPY AVE.  
KITTERY, ME 03904  
TAX MAP 11 LOT 29

PREPARED FOR  
WILLIAM & CATHY CULLEN  
12 ROSEBERRY LANE  
KITTERY, ME 03904

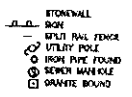
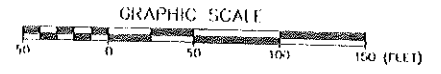
CAROLINE HALL  
21 HAPPY AVE  
KITTERY, ME 03904

OWNER OF RECORD:  
WILLIAM & CATHY CULLEN  
YORD BK. 18389 P. 346

BY  
AMSDEN FIELD SURVEY  
103 FRANCES TOWN RD.  
GREENFIELD, NH 03047

SCALE 1"=50'

DATE 9/14/22



FOR REVIEW



June 13, 2022

Adam Causey, AICP, Director of Planning and Development  
Town of Kittery  
200 Rogers Rd.  
Kittery, ME 03904

**RE: Happy Avenue ROW– Comparison of Existing Conditions with 1998 Wetlands Crossing Plan  
CMA #591-146**

Dear Adam,

In accordance with our task assignment #591.146, we have prepared this letter to summarize our review of existing conditions at the Happy Avenue driveway and proposed Right-of-Way with respect to the March 1998 Wetland Crossing Plan approved by the Kittery Planning Board in July 1999.

We have reviewed the following information:

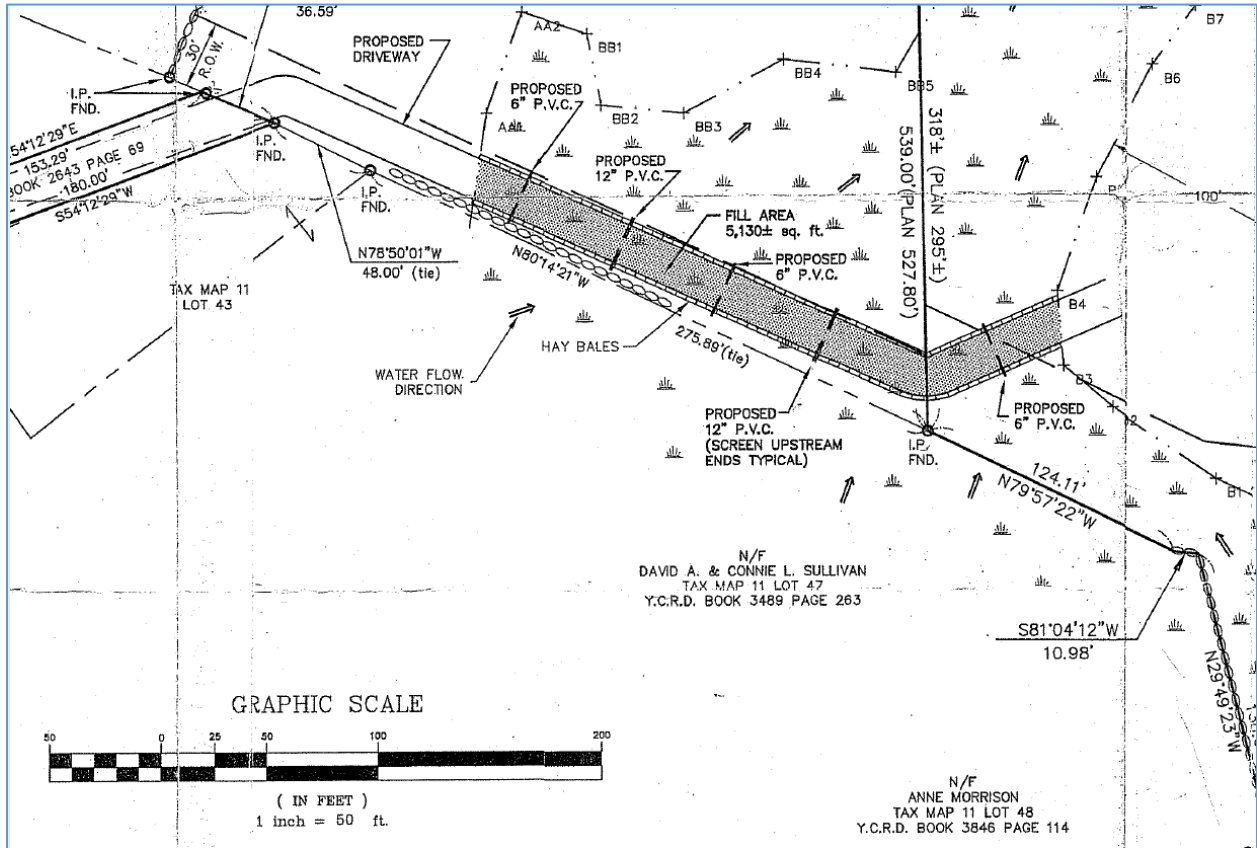
- Plan titled *Wetlands Crossing Plan for Property at Martin Road Kittery Maine dated March 9, 1998* and prepared by Easterly Survey, and approved by the Kittery Planning Board July 8, 1999;
- *Right-of Way Plan off Happy Avenue Kittery Maine Tax Map 11, Lot 29*, dated October 29, 2019, Prepared by Amsden Field Survey for William and Cathy Cullen, and Caroline Hall.
- Application for Right of Way Pan Review to Town of Kittery for 21 Happy Avenue, dated October 19, 2021, on land owned by William and Cathy Cullen of Eliot, ME; and application made by Caroline Hall of 21 Happy Avenue.

The purpose of this current review was to review whether the driveway was constructed in general accordance with the approved 1998 plan. Review of the proposed 2021 ROW has not been done.

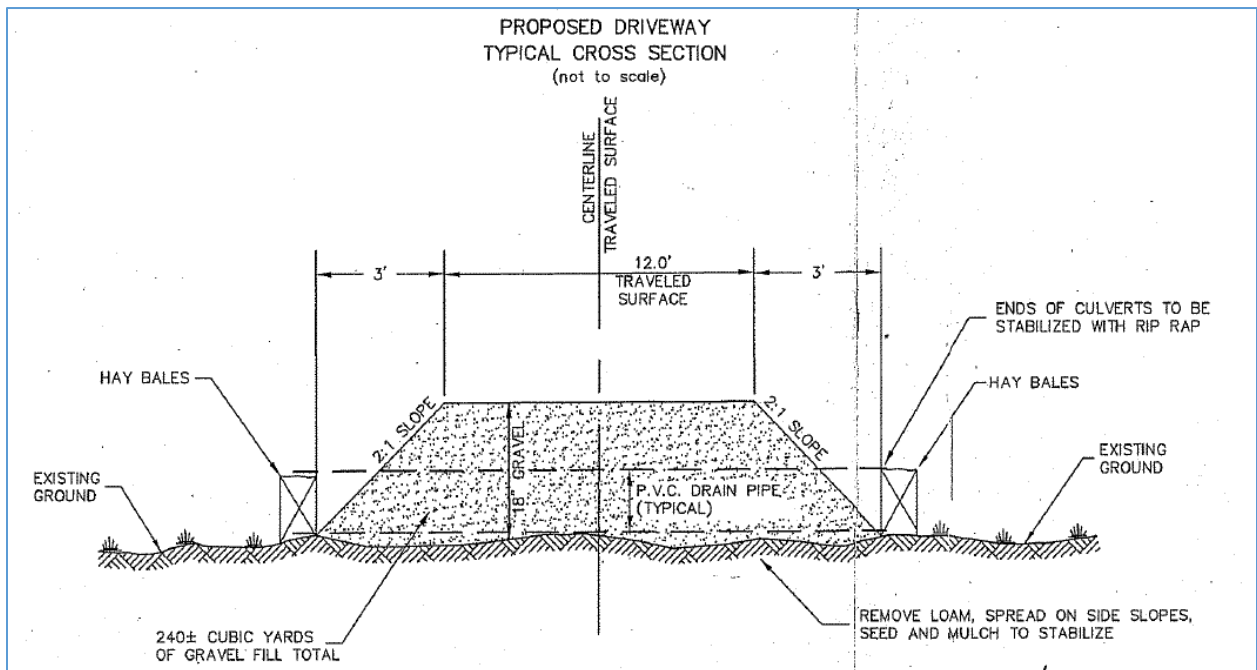
The 1998 wetland crossing plan depicts a 12-foot-wide driveway, with side slopes, constructed over approximately 250 feet of wetlands to access Tax Map 11, Lot 29. A residence has since been constructed on the lot and has been accessed off Happy Avenue for many years. There were four proposed pipes crossing the wetlands fill, to equalize marsh elevations and transmit flow. The alignment was straight and parallel to the property line until a property corner (since eliminated), where the fill was designed to angle to the northeast, and into the property. (*See segments from the 1998 plan.*)

The actual fill coincides with the approved 1998 Wetland Crossing Plan for most of the alignment. However, the driveway at the eastern limit of the alignment diverges and extends easterly/southeasterly into the property and does not follow the permitted northeasterly angle. Approximately 80-100 feet of wetlands were filled outside of the approved plan. It is noted that a similar length of approved for wetlands filling in the 1998 plan remains wetlands and was not filled. (*See figure with comparison, below.*)

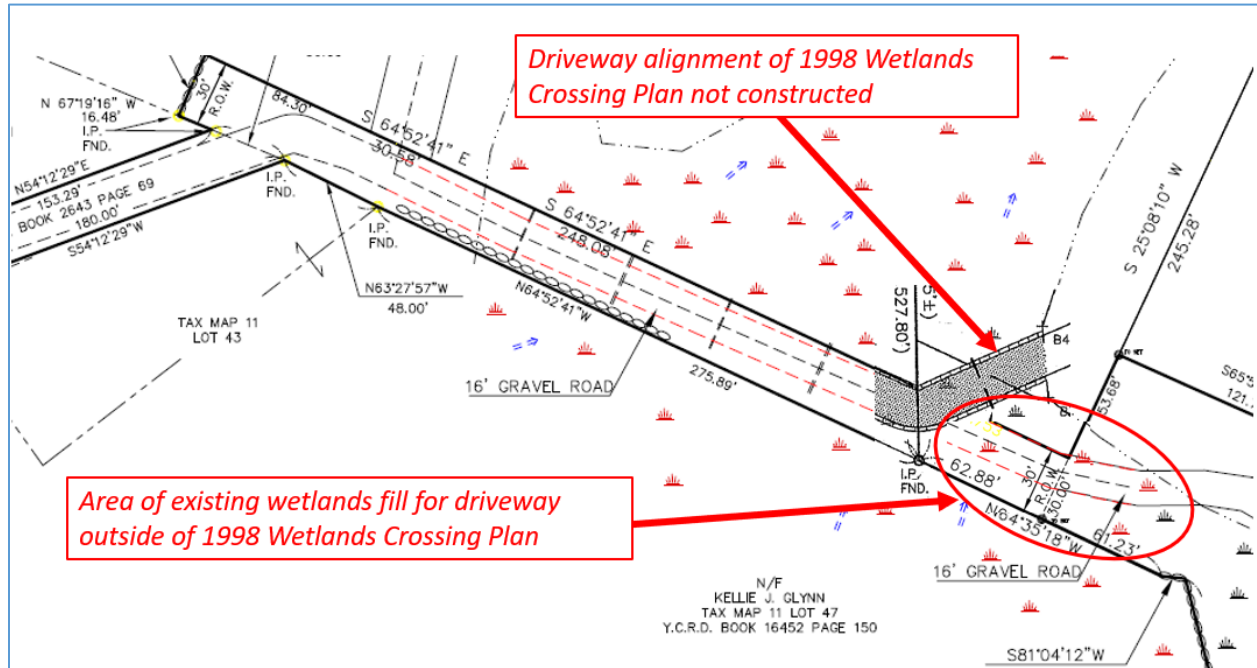
Segment of the 1998 Wetlands Crossing Plan



Roadway Cross-Section from the 1998 Wetlands Crossing Plan



*Comparison of Existing Driveway with 1998 Wetlands Crossing Plan*



With the exception of the alignment issue described above, construction of the driveway was consistent with the details included on the 1998 Wetland Crossing Plan:

- Driveway with was 12 feet wide (or very close);
- Each of the pipe crossings are present, with the diameters indicated, with remnants of erosion control evident;
- The thickness of the fill and side-slopes were consistent with the plan;
- At one if the 12-inch pipes, flow was evident. It was in a southerly direction. The plan indicated flow in a northerly direction. (This observation is noted but is a deviation from the design that was constructed.)
- It is noted that 21 Happy Avenue appears to be accessed only from those driveways, with access to Roseberry Lane blocked off.

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

Very truly yours,

CMA ENGINEERS, INC.

William A. Straub, P.E.

Principal/Project Manager

WAS:kao