

ITEM 1

**Town of Kittery
Planning Board Meeting
April 13, 2023**

ITEM 2 - 21 Happy Avenue and 12 Roseberry Lane Right-of-Way (ROW) Review

Action: Approve or deny final plans and Findings of Fact.

Owners and applicants: William Cullen and Caroline Hall

Agent: Nathan Amsden, PLS., Amsden Field Survey.

Proposal: right-of-way plan converting existing driveway for a 4.78 acre +/- acre parcel to facilitate division of land ownership at existing residential condominium property

Property: Happy Avenue, Tax Map 11 Lot 29-5

Zoning: R-S Residential Suburban

PROJECT TRACKING

| REQ'D | ACTION | COMMENTS | STATUS |
|---|---------------------|---|----------|
| Yes | Sketch Plan Review | November 17, 2022 | Accepted |
| No | Site Visit | November 28, 2022 9:00AM | Held |
| No | Public Hearing | December 8, 2022 6:00PM | Held |
| Yes | Final Plan Approval | Approved 12/8/22, Reconsidered 1/12/23. | Pending |
| <p>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.</p> | | | |

Summary:

The existing 4.78-acre parcel contains two single family homes permitted as a condominium. An existing 12-foot travel way that begins after a bend in Happy Avenue serves 21 Happy Avenue while an easement from Roseberry Lane serves 12 Roseberry Lane. 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 will 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 Planning Board voted to approve this application on December 8, 2022, but voted to reconsider during the January 12, 2023 meeting in response to concerns about field monumentation that were expressed by co-applicant and owner Caroline Hall. Ms. Hall stated that these issues have been resolved and requests the board to review and re-approve the application. Findings of Fact drafted for the January 12 meeting may be voted upon during this meeting if the board approves the project.

Recent Action:

The Board held a public hearing for this application on December 8th 2022 at which time the Board approved the plan with the following conditions:

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- 38 1. The plan must be stamped by a licensed surveyor
- 39 2. The private ROW to be deeded to the property known as 21 Happy Ave may not be expanded or
- 40 improved except for reasons of maintenance and repair.
- 41 3. All culverts must remain functional and kept clear of debris.
- 42 4. Snow must be deposited in the snow storage areas as shown on the plan and sand or salt must not
- 43 enter the wetlands or any abutting properties at any time.
- 44 5. No additional development may use this private ROW for access.
- 45

46 The applicant's agent submitted an amended final plan to Kittery's Planning and Development office on
47 April 6, 2023. Notes and a surveyor's stamp were added as advised.

48 Recommendation

49 Staff recommend re-approving this application and voting on the attached findings of fact.

50 Suggested motion:

51 ***Move to approve with Conditions the ROW plan application dated 10-19-21 by Caroline Hall and***
52 ***William Cullen for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue (Tax***
53 ***Map 11, Lot 29) in the Residential Suburban zone (R-S) .***
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ITEM 1

**KITTERY PLANNING BOARD
FINDINGS OF FACT**

UNAPPROVED

**for
21 Happy Ave
Private Right-of-Way Plan**

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: 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.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 6/12/2018;

| | | |
|------------------------------|---------|------------|
| Sketch Plan Review | Held | 11/17/2022 |
| Site Visit | Held | 11/28/2022 |
| Public Hearing | Held | 12/08/2022 |
| Final Plan/ Findings of Fact | Pending | 04/13/2023 |

Pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes (Hereinafter the "Plan").

1. Private Road Class 1 ROW Plan, Sheet C1, by Nathan Amsden, dated January 12, 2023.

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section **16.9.4.C.(3)(d)** and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Finding: The proposed right-of-way appears to conform to applicable Title 16 standards with the conditions of approval included herein.

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| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |
| B. Freshwater Wetlands Identified. |
| <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i> |
| Finding: All wetlands have been identified and no impacts are proposed by this plan. |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |
| C. River, Stream or Brook Identified. |
| <i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i> |
| Finding: No rivers, streams, or brooks have been identified on site. |
| Conclusion: This standard is not applicable. |
| Vote of in favor against abstaining |
| D. Water Supply Sufficient. {and} |
| <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i> |
| E. Municipal Water Supply Available. |
| <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i> |
| Finding: There is no additional proposed water use because both lots are already developed. |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |
| F. Sewage Disposal Adequate. |
| <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i> |
| Finding: Neither property uses municipal sewer as both have existing private septic. |
| Conclusion: This standard appears to be met. |

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| Vote of | in favor | against | abstaining |
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| G. Municipal Solid Waste Disposal Available. | | | |
| <i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i> | | | |
| Finding: The proposed Street ROW will not increase the burden on solid waste use since both lots are already developed. | | | |
| Conclusion: This standard appears to be met. | | | |
| Vote of | in favor | against | abstaining |
| H. Water Body Quality and Shoreline Protected. | | | |
| <i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i> | | | |
| Finding: The right-of-way is not located in the shoreland overlay zone. | | | |
| Conclusion: This standard is not applicable. | | | |
| Vote of | in favor | against | abstaining |
| I. Groundwater Protected. | | | |
| <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i> | | | |
| Finding: Both lots are currently developed and no further development will occur. | | | |
| Conclusion: This standard appears to be met. | | | |
| Vote of | in favor | against | abstaining |
| J. Flood Areas Identified and Development Conditioned. | | | |
| <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i> | | | |
| Finding: There is no additional construction proposed. | | | |
| Conclusion: This standard is not applicable. | | | |

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| Vote of in favor against abstaining |
| K. Stormwater Managed. |
| <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i> |
| Finding: There is a condition to maintain the current functionality of the existing stormwater control measures . |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |
| L. Erosion Controlled. |
| <i>The proposed development will not cause unreasonable soil erosion or a reduction in the land’s capacity to hold water so that a dangerous or unhealthy condition results.</i> |
| Finding: There is to be no further development or improvements made to this ROW |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |
| M. Traffic Managed. |
| <i>The proposed development will:</i> |
| <ol style="list-style-type: none"> 1. <i>Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and</i> 2. <i>Provide adequate traffic circulation, both on-site and off-site.</i> |
| Finding: The proposed ROW will only be used as a private travel way to the address of 21 Happy Ave. |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |
| N. Water and Air Pollution Minimized. |
| <i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i> |
| <ol style="list-style-type: none"> 1. <i>Elevation of the land above sea level and its relation to the floodplains;</i> 2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i> 3. <i>Slope of the land and its effect on effluents;</i> 4. <i>Availability of streams for disposal of effluents;</i> 5. <i>Applicable state and local health and water resource rules and regulations; and</i> 6. <i>Safe transportation, disposal and storage of hazardous materials.</i> |
| <ol style="list-style-type: none"> 1. All proposed development is located outside of a Flood Hazard Area. 2. No additional development is proposed beyond the improvement of the travel way. 3 thru 6. Not applicable to the proposed development. |

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| Finding: The proposed ROW will not result in undue water or air pollution |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |

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| O. Aesthetic, Cultural and Natural Values Protected. |
| <i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i> |
| Finding: The proposed ROW does not impact any significant aesthetic, cultural or natural values that require protection. |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |

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| P. Developer Financially and Technically Capable. |
| <i>Developer is financially and technically capable to meet the standards of this section.</i> |
| Finding: The ROW and drainage is to be maintained as is, so does not require a performance guarantee. |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |

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| S. For a Right of Way. |
| <i>The proposed ROW:</i> |
| <ol style="list-style-type: none"> 1. <i>Does not create any nonconforming lots or buildings; and</i> 2. <i>Could reasonably permit the right of passage for an automobile.</i> |
| Finding: The proposed development does not create any nonconforming lots or buildings and provides adequate passage for vehicles. |
| Conclusion: This standard appears to be met. |
| Vote of in favor against abstaining |

Article III. Street Signage

16.8.3.1 Names.

Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and are subject to the approval of the Planning Board.

Finding: The applicant, Caroline Hall, has a residence that is already addressed as 21 Happy Avenue. The other applicants, Bill and Cathy Cullen, are also already addressed as 12 Roseberry Lane.

Conclusion: This requirement appears to be met

Vote of in favor against abstaining

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NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Right of Way (ROW) at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

- 1.) Row Width 16.8 Attachment 1.a. Standard is 40 feet, the existing ROW is 30 feet.
- 2.) Travel way Width 16.8. Attachment 1.b. Standard is 18 feet (gravel), current condition is 12 feet.
- 3.) Sidewalk 16.8 Attachment 1.c. Standard is 5 feet, no sidewalks currently exist in the area.
- 4.) Roadway Length 16.8 Attachment 1(Cul-de-Sac) b. Standard is 400 feet, existing ROW is 705 feet
- 5.) Stormwater Management 16.8.9 D (2) m. Road was built to 1999 plan and reviewed by CMA, the Town’s peer review engineers. Road must be maintained by the owners of 21 Happy Ave.

Conditions of Approval (to be included on the final plan):

- 1. The ROW must not be improved or expanded, except for purposes of maintenance and repair.
- 2. All culverts must remain functional and kept clear of debris by the owner of 21 Happy Ave.
- 3. Snow must be deposited in the snow storage areas as shown on the plan and plowed snow, sand or salt must not enter the wetlands or any abutting properties at any time.
- 4. No additional development may use this private ROW for access.

56 Notices to Applicant: (not to be included on the final plan)

- 57 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with
- 58 review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and
- 59 abutter notification.
- 60 2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or
- 61 variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
- 62 3. One (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal
- 63 permits or legal documents that may be required, must be submitted to the Town Planning Department.
- 64 Date of Planning Board approval shall be included on the final plan in the Signature Block.
- 65 4. This approval by the Town Planning Board constitutes an agreement between the Town and the
- 66 Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any
- 67 Conditions of Approval.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of in favor against abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____

Dutch Dunkelberger, Planning Board Chair

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

Jason Garnham

From: cghall.63 <cghall.63@gmail.com>
Sent: Thursday, March 9, 2023 9:09 AM
To: Jason Garnham

Happy Ave Plan

Sent from my Galaxy
Mr. Garnham,

I am writing to request that the Happy Ave Plan be placed on an upcoming agenda for final review by the Planning Board.

On January 12, I raised concerns over lot size and placement of boundary markers. The Board voted to reconsider its prior approval of the plan and continued the matter for 90 days. Because of the reported discrepancies, you suggested the services of an independent surveyor for which I was most grateful.

Since the January meeting, the issues have been rectified. The 21 Happy Ave lot size has been restored to approximately 63,000 square feet. Additionally the January "approximation" boundary markers have been (re) placed with permanent markers. With plan in hand, Nate Amsden walked the lines with me in late February. The current boundary markers are accurately placed per the plan.

Due to the remediation of the errors/issues, there is no longer a need for an independent surveyor. Thus I am requesting that the Happy Ave Plan be placed on a Planning Board agenda for final review prior to the expiration of the 90 day continuance.

Thank you for your consideration of my request.

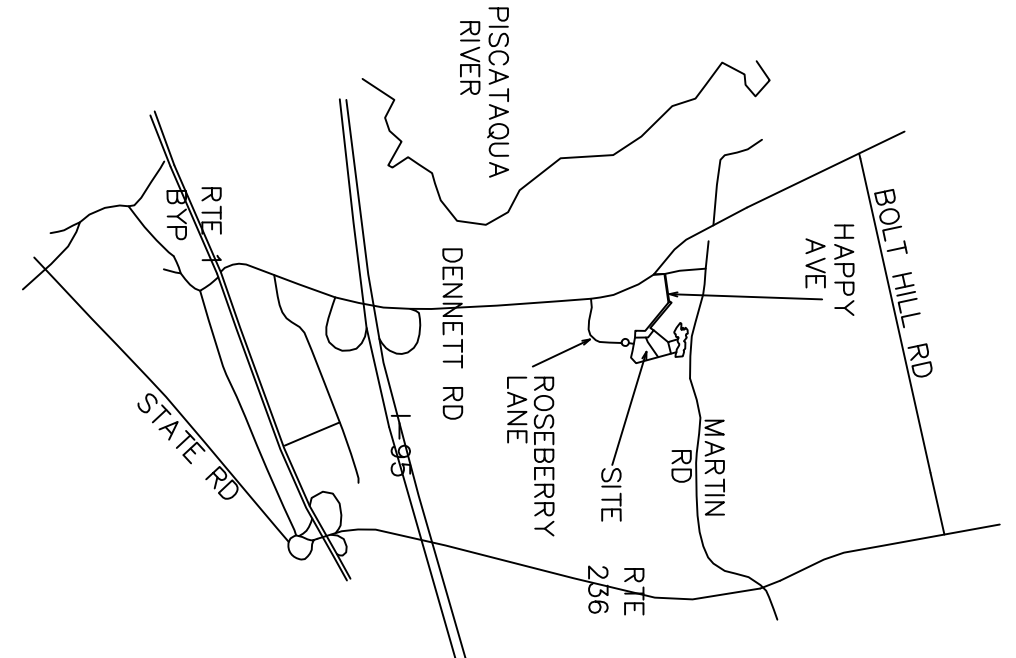
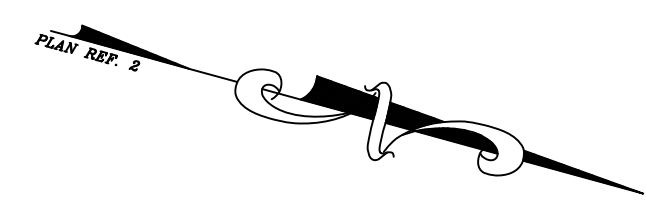
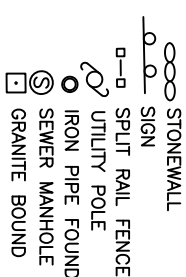
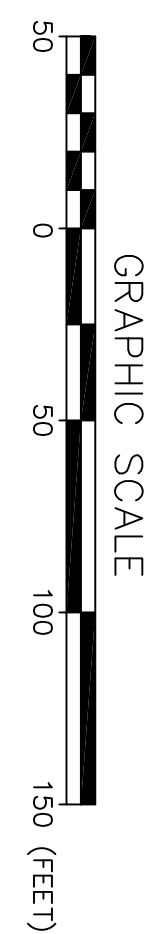
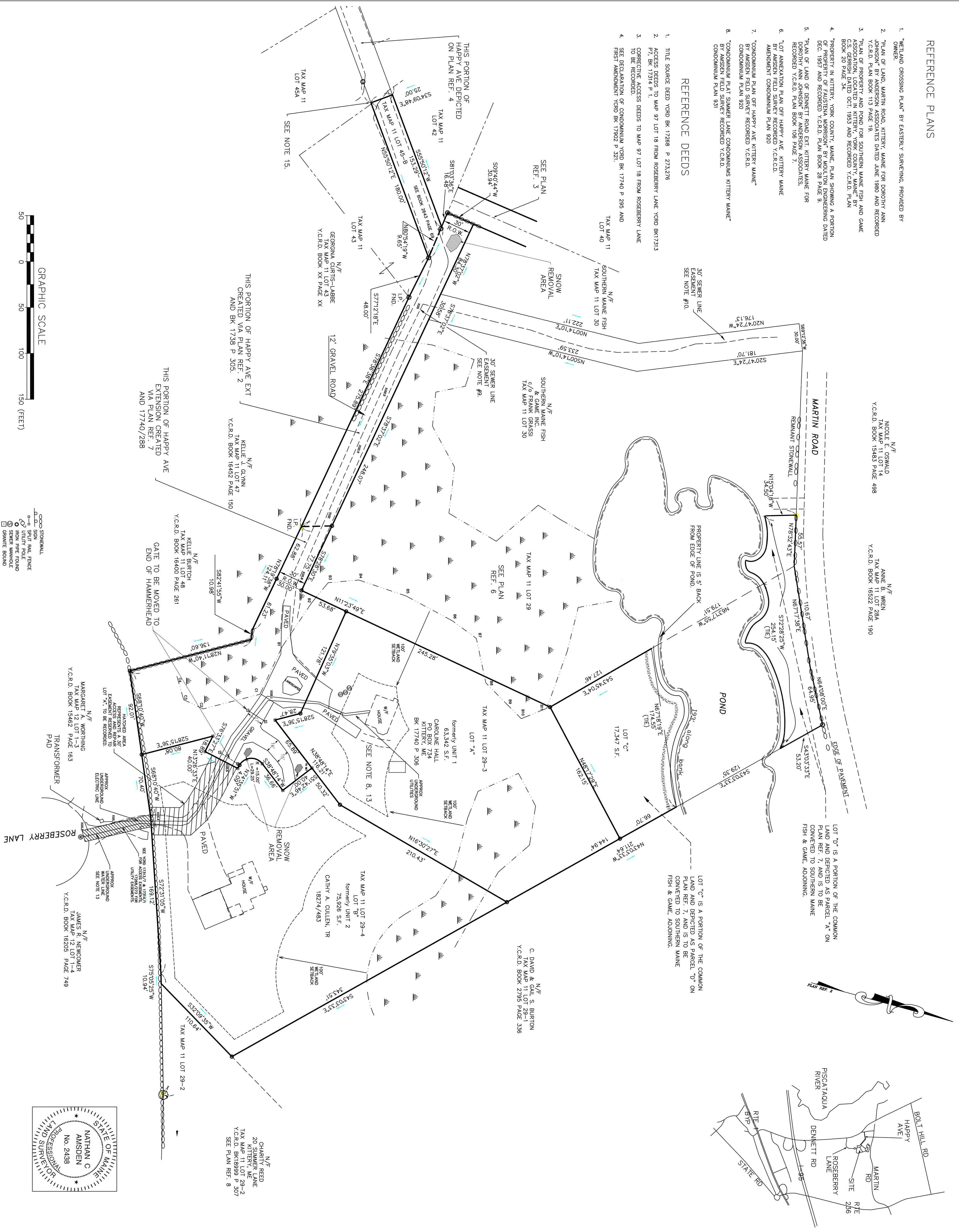
Caroline Hall

REFERENCE PLANS

1. "WETLAND CROSSING PLAN" BY EASTERN SURVEYING, PROVIDED BY OWNER.
2. "PLAN OF LAND, MARTIN ROAD, KITTEBY, MAINE FOR DOROTHY ANN JOHNSON" BY ANDERSON ASSOCIATES DATED JUNE 1989 AND RECORDED Y.C.R.D. BOOK 113 PAGE 19.
3. "PLAN OF PROPERTY AND POND FOR SOUTHERN MAINE FISH AND GAME ASSOCIATION LOCATED IN KITTEBY, VERMONT, MAINE, BY CAROLINE MORRISON" BY JACQUES & ASSOCIATES, INC. PLAN BOOK 20 PAGE 34.
4. "PROPERTY IN KITTEBY, YORK COUNTY, MAINE, PLAN SHOWING A PORTION OF PROPERTY OF FAUSTINA MORRISON" BY JACQUES ENGINEERING DATED DEC. 1957 AND RECORDED Y.C.R.D. PLAN BOOK 28 PAGE 9.
5. "DOROTHY ANN JOHNSON" BY ANDERSON ASSOCIATES, RECORDED Y.C.R.D. PLAN BOOK 108 PAGE 7.
6. "LOT ANNEEXATION PLAN OFF HAPPY AVE, KITTEBY MAINE BY ANDERSON ASSOCIATES RECORDED Y.C.R.D. AMENDMENT CONDOMINIUM PLAN 920
7. "CONDOMINIUM PLAN OFF HAPPY AVE, KITTEBY MAINE" BY ANDERSON FIELD SURVEY RECORDED Y.C.R.D. CONDOMINIUM PLAN 920
8. "CONDOMINIUM PLAN SUMMER LANE CONDOMINIUMS KITTEBY MAINE" BY ANDERSON FIELD SURVEY RECORDED Y.C.R.D. CONDOMINIUM PLAN 931

REFERENCE DEEDS

1. TITLE SOURCE DEED Y980 BK 17268 P 232,276
2. ACCESS DEEDS TO MAP 97 LOT 18 FROM ROSEBERRY LANE Y980 BK17313 P.7, BK 17354 P.1.
3. CORRECTIVE ACCESS DEEDS TO MAP 97 LOT 18 FROM ROSEBERRY LANE TO BE RECORDED.
4. SEE DECLARATION OF CONDOMINIUM Y980 BK 17740 P 295 AND FIRST AMENDMENT Y980 BK 17762 P 321.



NOTES

1. THE PURPOSE OF THIS PLAN IS TO PERMIT A PRIVATE RIGHT-OF-WAY EXTENSION OFF THE END OF HAPPY AVE IN KITTEBY, ME. THE SITE IS IDENTIFIED IN THE TOWN OF KITTEBY TAX ASSESSING DATABASE AS MAP 11 LOT 45-B, AND IT EXTENDS INTO MAP 11 LOT 29-5.
2. MAP 11 29-5 IS CURRENTLY A CONDOMINIUM. SEE DECLARATION OF CONDOMINIUM RECORDED AS Y.C.R.D. BOOK 113 PAGE 19.
3. THE RIGHT-OF-WAY AND LOTS ARE IN THE R-5 ZONE (RESIDENTIAL-SUBURBAN). DISTRICT REGULATIONS ARE:
MIN LOT SIZE WITH/WITHOUT PUBLIC SEWER 30,000/40,000 S.F.
MIN LOT SIZE WITH/WITHOUT PUBLIC SEWER 40'
FRONT YARD SETBACK 15'
SIDE/REAR YARD SETBACK 15'
COVERED PORCH 20'
BUILDING HEIGHT 30'
4. THE TOTAL AREA OF THE RIGHT-OF-WAY TO BE RESERVED IS 44,094 S.F.
5. SEE REPORT BY OMA ENGINEERS, INC. DATED JUNE 13, 2022 AS SUBMITTED TO ADAM CAUSEY AND THE TOWN OF KITTEBY FOR INFORMATION CONCERNING THE AS-BUILT CONDITIONS OF HAPPY AVE (EXTENSION) PER PLAN REF. 1.
6. THE PRIVATE RIGHT-OF-WAY IDENTIFIED AS HAPPY AVE EXTENSION, CONSISTING OF LOTS 29-2, 29-3, 29-4, 29-5, 29-6, 29-7, 29-8, 29-9, 29-10, 29-11, 29-12, 29-13, 29-14, 29-15, 29-16, 29-17, 29-18, 29-19, 29-20, 29-21, 29-22, 29-23, 29-24, 29-25, 29-26, 29-27, 29-28, 29-29, 29-30, 29-31, 29-32, 29-33, 29-34, 29-35, 29-36, 29-37, 29-38, 29-39, 29-40, 29-41, 29-42, 29-43, 29-44, 29-45, 29-46, 29-47, 29-48, 29-49, 29-50, 29-51, 29-52, 29-53, 29-54, 29-55, 29-56, 29-57, 29-58, 29-59, 29-60, 29-61, 29-62, 29-63, 29-64, 29-65, 29-66, 29-67, 29-68, 29-69, 29-70, 29-71, 29-72, 29-73, 29-74, 29-75, 29-76, 29-77, 29-78, 29-79, 29-80, 29-81, 29-82, 29-83, 29-84, 29-85, 29-86, 29-87, 29-88, 29-89, 29-90, 29-91, 29-92, 29-93, 29-94, 29-95, 29-96, 29-97, 29-98, 29-99, 29-100, 29-101, 29-102, 29-103, 29-104, 29-105, 29-106, 29-107, 29-108, 29-109, 29-110, 29-111, 29-112, 29-113, 29-114, 29-115, 29-116, 29-117, 29-118, 29-119, 29-120, 29-121, 29-122, 29-123, 29-124, 29-125, 29-126, 29-127, 29-128, 29-129, 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7. LOT 'A' WILL HAVE 2814' OF FRONTAGE ON HAPPY AVE EXTENSION AND 2814' OF FRONTAGE ON HAPPY AVE EXTENSION.
8. LOT 'A' RETAINS THE REPAIR AND MAINTENANCE RIGHT TO THE EXISTING WATER AND ELECTRIC UTILITIES CROSSING LOT 'B' AS RESERVED IN THE 30' EASEMENT DEDICATED.
9. THIS PORTION OF LOT 'A' DENIED HERON AS LOT 'C' SOUTHERLY OF THE POND AND CURRENTLY SUBJECT TO A RECREATIONAL EASEMENT IS TO BE CONVERTED TO SOUTHERN MAINE FISH & GAME, ADJOINING.
10. LOT 'A' IS GRANTED THE RIGHTS OF ACCESS AND MAINTENANCE TO THE SEWER LINE AS INSTALLED ALONG HAPPY AVE, AND AS RESERVED IN THE 30' EASEMENT FROM SOUTHERN MAINE FISH & GAME, ADJOINING.
11. ACCESS TO LOT 'A' IS DEDICATED VIA HAPPY AVE.
12. ACCESS TO LOT 'B' IS DEDICATED VIA ROSEBERRY LANE.
13. THE LOCATIONS OF THESE UNDERGROUND UTILITIES ARE APPROXIMATE, AND SUBJECT TO FIELD RECORDS. ACCESS AND MAINTENANCE RIGHTS ARE RESERVED TO THESE UTILITIES EXTENDS TO THEIR PHYSICAL LOCATIONS AS MAY BE DETERMINED, IN ADDITION TO THE 30' EASEMENT DEDICATED.
14. AREAS AT THE BEGINNING AND END OF THE PRIVATE RIGHT-OF-WAY ARE DESIGNATED FOR SNOW STORAGE. SNOW SHALL NOT BE PLOWED INTO THE WETLAND AREAS.
15. THIS DENOTES THE END OF HAPPY AVE AS ACCEPTED BY THE TOWN OF KITTEBY. A SERIES OF CONTINUING ELEVATIONS ARE SHOWN ALONG HAPPY AVE EXTENSION, INTO LOT 'B', AND CONTINUING ONTO ROSEBERRY LANE, AS X100. THESE ELEVATIONS ARE DERIVED TO SHOW THE CHANGE IN ELEVATION FROM THE GENERAL AREA OF ASSOCIATED SUBDIVISION AND STORMWATER TREATMENT SYSTEM.
16. PLEASANT TO NOTE & THE OBJECT AND PURPOSE OWNERS OF LOT 'A' SOUTHERLY UNIT SHALL MAINTAIN AND REPAIR THE ROADS AND DRAINAGE STRUCTURES IN THEIR CURRENT STATE. THE ROADWAY AND DRAINAGE STRUCTURES ARE NOT TO BE PLACED ON THE ROADWAY OR DRAINAGE STRUCTURES ARE NOT TO BE PLACED ON THE ROADWAY OR DRAINAGE STRUCTURES.
17. THERE SHALL BE NO ADDITIONAL REQUIREMENT OF PARALLEL JUNGLE THIS RIGHT OF WAY AND THE USE OF IT SHALL NOT BE EXPANDED UPON BY ADJOINING PARCELS.
18. THE USE OF SALT AND SAND ON THE PROPOSED ROADWAY FOR COLD WEATHER MAINTENANCE IS PROHIBITED. PLOWED SNOW SHALL BE PLACED AT THE DESIGNATED AREAS FOR SNOW STORAGE AND SHALL NOT BE ALLOWED INTO THE WETLAND OR SNOW STORAGE AREAS.

PLANNING BOARD APPROVAL

CHAIR

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

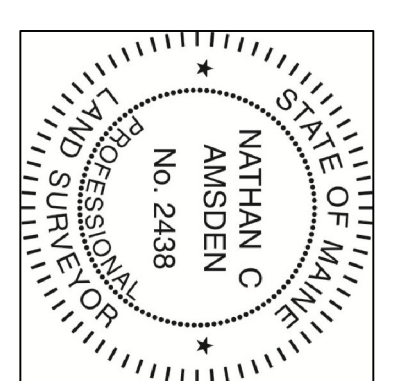
PREPARED FOR
WILLIAM & CATHY CULLEN CAROLINE HALL
12 ROSEBERRY LANE 21 HAPPY AVE
KITTEBY, ME 03904 KITTEBY, ME 03904

OWNER OF RECORD:
WILLIAM & CATHY CULLEN
Y980 BK. 16369 P. 346

BY
AMSDEN FIELD SURVEY
103 FRANCESTOWN RD.
GREENFIELD, NH 03047

SCALE 1"=50'

DATE 4/6/23



11p → BERGEN & PARKINSON, LLC
Attorneys at Law J6A
62 Portland Road - Suite 25
Kennebunk, ME 04043

DEBRA L. ANDERSON, REGISTER OF DEEDS



Bk 17740 PG 295
Instr # 2018023588
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DECLARATION OF HAPPY AVE CONDOMINIUM
WITH COVENANTS, RESTRICTIONS AND CONDITIONS

This Declaration is made and executed by **WILLIAM CULLEN** and **CATHY CULLEN**, both individuals residing in the Town of Kittery, and State of Maine (jointly hereinafter referred to as "Declarant"), for the purposes and upon the terms and conditions hereinafter set forth:

1. **RECITALS.** Declarant is the owner of certain lots of land, together with common areas and roadways, all as set forth below ("Premises"). The Declarant desires to provide for the preservation of the character and value of said community and to create an Association for the purposes of administering the roadways and common areas set forth on the Plans, and imposing and enforcing the covenants and restrictions set forth herein.

2. **PROPERTY.** The Property subjected to this Declaration consists of the property shown on a Plan entitled "Condominium Plan off Happy Ave Kittery, ME 03904, Tax Map 11, Lot 29" Kittery, York County, Maine" dated May 27, 2018 and recorded of even date herewith in the York County Registry of Deeds in Condo File ("Plan") (said Plan shall be referred to hereinafter as "Plan", and the property depicted on said Plan may be referred to at times herein as "Premises"). The Property is subject to and shall have the benefit of all easements, rights of way and matters affecting title described or referred to in Exhibit A or in the surveys and/or plans to which reference is hereafter made.

3. **ASSOCIATION.** Initially the Association shall be a non-profit corporation entitled "Happy Avenue Condominium Association" (the "Association"). The Association shall adopt By-laws for the operation of the Association whereby all unit owners shall be members of the Association. At some point in time, the members may opt to operate the Association as an unincorporated association subject to the restrictions and covenants set forth herein and pursuant to the Association's By-Laws.

4. **PURPOSES AND POWER.** The Association, whether incorporated or not, shall have all powers of a non-profit corporation organized pursuant to 13 M.R.S.A. section 13-B and is organized and will be operated for the purpose of administering the premises shown on the Plan, including without limitation, maintenance and preservation of the same, and enforcement of all covenants and restrictions set forth herein. It shall have the power to enforce the terms, conditions and restrictions hereinafter set forth, including, without limitation, collecting and disbursing the assessments and charges as hereinafter provided and taking such other actions as are deemed necessary and proper to fulfill its purpose. It shall have the power to promulgate rules and regulations and to take such actions and fulfill such other purposes as voted by the

members. Without limitation, the Association shall be responsible for providing for such items as the Board of Directors of the Association may determine in their discretion.

5. **DURATION.** The Association shall commence its existence upon the execution hereof and shall remain in full force and effect whether incorporated or unincorporated, in perpetuity unless sooner terminated by vote of the members as set forth below.

6. **MEMBERSHIP.** Every person who is an owner of a unit shown on the Plan shall be a Member of the Association. Acceptance of a deed to any unit or property on the Plan shall have the effect of making that person a Member in the Association without regard to whether or not said membership is provided for specifically in the deed of conveyance. For purposes of this paragraph, owner of a unit on the Plan is not intended to include those parties who hold title merely as security for the performance of some obligation.

7. **VOTING RIGHTS.** The Association shall have one class of voting membership whether incorporated or not. Members shall be entitled to one vote for each Unit owned by that party. When more than one person holds ownership to a Unit, or if ownership is held in a manner other than as an individual, then only one vote shall be cast with respect to any said Unit, and the Association shall have the right to require that any Unit owner or owners execute and deliver to the Association a Certificate of Vote, which authorizes one party to cast said vote, which Certificate shall be conclusively binding upon all ownership interests in said Unit.

8. **RESERVED DECLARANT RIGHTS.** The Declarant shall hold and be considered the owner of all voting rights in and to the Association from the date of execution of this Declaration until the date of the last Unit sale. The Declarant may, at any time release said voting rights to some or all of the then current unit owners. The Declarant reserves the right to change any of the provisions hereof, including the covenants, restrictions, and conditions, without vote by unit owners until sale of the last unit.

9. **EASEMENTS, RIGHTS AND RESERVATIONS.**

a. Utilities, Pipes and Conduits. Each Unit Owner shall have the right in common with the other Unit Owner to use all pipes, wires, well, well shaft, septic leach fields, ducts, cables, conduits, public utility lines, septic systems as set forth on the Plan. Each Unit shall be subject to the rights in favor of the Unit Owner to use the pipes, well and well shafts, ducts, septic lines, cables, wires, conduits, public utility lines and other Common Elements located in such Unit serving the other Unit that are specifically set forth on the Plan. The Association shall have the right to grant to third parties such utility easements as shall be deemed reasonable by the Association in connection with the supply of utility services to the Units and/or the Common Elements.

b. Ingress and Egress. Each Unit Owner shall have a means of ingress to and egress from the Premises, the Common Elements and the adjoining public street via the roadway set forth on the Plan. Each Unit Owner shall have the exclusive use of the driveway appurtenant to his Unit, and the driveway appurtenant to each Unit running from the Unit to the adjoining public roadway shall be considered a part of each Unit as

depicted on the Plan. In the event that the driveway appurtenant to a unit utilizes an easement for access to a public roadway which benefits the Premises, the Unit Owner who owns the unit appurtenant to that driveway shall also be entitled to use of such easement. The Executive Board shall not establish any rule or regulation depriving any Unit owner of reasonable ingress to and egress from his Unit, the Premises, and the adjoining roadways are not a part of the Condominium, but Unit owners shall have a non-exclusive easement over, under, and on it for ingress, egress and utilities. For the avoidance of doubt, the owner of Unit 1 shall not have access over an easement running from Roseberry Lane into Unit 2 of the Condominium, except in cases of emergency ingress or egress.

10. EXECUTIVE BOARD. The Members may adopt By-laws which specify the operation on management details of the Association as set forth above. Until the Declarant releases its voting rights in and to the Association or termination of those rights after the sale of the last Unit, the Declarant shall control the Association including the Executive Board as set forth below. After the Declarant has released its Declarant's rights or the same terminate, the Association shall be governed by an Executive Board consisting of two (2) persons, all of which shall be Unit Owners. The initial Executive Board shall be appointed to the position by the Declarant and shall serve for a period of one (1) year after the initial appointment. Thereafter, the Members of the Executive Board shall consist of two (2) Members elected by the majority vote of the membership. The Executive Board shall have full authority to take all actions necessary for the administration of the affairs of the Association and shall have all powers and duties to do all such actions and things as are necessary and proper to be done to effectuate the purposes hereof. Unless otherwise specified herein, the vote of the Executive Board is binding upon all Members of the Association and any one Executive Board member shall have the power to bind the entire Board. All Members agree to indemnify and hold Executive Board members harmless from any and all actions taken in good faith pursuant hereto.

11. BUDGET / ASSESSMENTS. The owners of Units covenant and agree to pay as dues to the Association, such sums per year which are levied pursuant to an annual assessment or special assessment. The annual assessment shall be based upon a proposed budget which shall be reduced to writing by the Executive Board by January 15th of each year. The total amount of said budget shall be divided by the number of units and each member shall be obligated to pay to the Association their assessment for total Units owned on or before February 15th of each year. Failure of the Executive Board to promulgate or distribute a written budget shall not invalidate the Association's assessments to members. Regular annual assessments shall require a majority vote of Unit owners entitled to vote and Special Assessments shall require 75% majority of votes entitled to be cast. Both annual and special assessments are to be used for the accomplishment or fulfillment of the purposes and objectives of the Association as stated herein. All special assessments are due and payable within 30 days of receipt of the special assessment invoice.

12. LIEN FOR ASSESSMENTS. The assessments authorized hereunder or pursuant to any By-laws promulgated pursuant hereto shall be a charge on the units shown on said Plan and shall be and constitute a continuing lien upon the unit of the member against whom, such assessments are levied, including any buildings or improvements thereon. If such assessments are not paid in a timely fashion then said sums shall be deemed delinquent and the Association

shall, in any event, have the right to charge interest, fines, and late fees on said sums at such rate and in such amounts as determined by the Executive Board. Additionally, the Association shall be entitled to collect all costs of collection, including reasonable attorneys' fees, pursuant to the collection of any delinquent sums. In the event any sum assessable to a Unit shall become delinquent, the Association may bring an action at law against the member obligated to pay the same or foreclose the lien against such member's unit or units. Such foreclosure process shall be the same procedure as for foreclosure of a mortgage pursuant to Title 14 of M.R.S.A. which statutes are incorporated herein by reference.

13. ELIGIBLE MORTGAGE HOLDERS. An eligible Mortgage Holder shall be defined as any Mortgage Holder whose lien affects property shown on the Plan and who gives notice in writing to the Association by forwarding a copy of their mortgage instrument to the Association. The lien referenced above for delinquent assessments shall under no circumstances supersede the lien of an Eligible Mortgage Holder who has recorded their Mortgage instrument prior to the recording of a Notice of Lien. Every eligible Mortgage Holder shall be entitled to written notice of any delinquencies pertaining to the unit upon which they hold a Mortgage, but failure to so notify an eligible Mortgage Holder shall not invalidate the lien.

14. AMENDMENT. Subject to the Reserved Declarant Rights, this Declaration shall be amended only by a written instrument and any amendment shall require a majority vote equal to or greater than sixty-seven percent (67%) of the votes entitled to be cast. Notwithstanding anything contained in the preceding sentence, in the event that the municipality in which this Condominium is declared determines that the Condominium may be re-cast in the form of an approved two-lot subdivision, then all of the Members shall execute such documentation as may be required to terminate this Condominium and to allocate such rights as between the units-cum-lots as may be required by the municipality.

15. COVENANTS, RESTRICTIONS AND CONDITIONS. Premises are hereby subjected to and will be conveyed with the following covenants, conditions and restrictions, which shall be considered as real covenants running with the land, to be binding upon the within Grantor, its successors and assigns, and all Grantees, their heirs and assigns, and enforceable in law or equity by the within Grantor, its successors and assigns, the Association, or by the owner of any Unit within the subdivision of which the subject premises form a part:

a. That all sewerage and septic waste disposal shall be undertaken in conformity with applicable State and Local authorities.

b. When the construction of the buildings on the premises is once begun, work thereon must be prosecuted diligently and must be completed within a reasonable time. No building shall be occupied during construction, except in the case of an unfinished level to be completed at a later date.

c. No unsightly growths shall be permitted to remain on any part of the Premises and no refuse pile or unsightly inorganic objects shall be allowed to be placed or permitted to remain on any part of the Premise. Dead trees may be retained on the Premises if they are deemed to provide potential wildlife habitat.

d. No Owner of a Unit shall do or permit to be done, any act upon the Premises which may be or is, or may become, a nuisance or unreasonable interference with another Unit Owner.

e. In the event that the Town of Kittery deems the "30' ROW" or "Happy Avenue" as shown on the Plan to meet the requisite "Minimum Street Frontage" (as defined in the Town of Kittery Land Use Zone Regulations) for each of Unit 1 and Unit 2 as if they were individual "Units", the Owners of the Unit Agree to take any and all actions appropriate and necessary required by the Maine Condominium Act to:

i) Convey to Southern Maine Fish & Game Inc. all of the Common Elements shown as Parcels A, C, and D on the Plan; and

ii) Terminate the Condominium pursuant to the terms set forth in Section 14 herein.

By acceptance of a deed to the Unit, the Grantee, its heirs, successors and assigns agree to be bound hereby. The aforesaid covenants and conditions shall run with the land. They are imposed upon these premises for the benefit of the remaining land of the Grantor, as well as for the benefit of any and all persons owning land shown on said plan and holding a deed with similar covenants or restrictions given or to be given by the Grantor, his successors and assigns; that in all future conveyances of land situated on the plan herein referred to will contain substantially similar restrictions; and it is further understood, covenanted and agreed that said restrictions, covenants and conditions are intended as equitable servitudes upon each and every parcel of land affected, and that the Grantee, its heirs, successors and assigns, shall have full right, in common with the Grantor, his successors and assigns, as well as the Association, to enforce the same, insofar as the same are enforceable, by any applicable legal process or in any other lawful manner. The erection and use of any structure or the occupation of the land hereby conveyed contra to these conditions and restrictions, or any part of them, shall be conclusively deemed a nuisance for which the Grantor, his successors and assigns, other Unit Owners, or the Association, may have remedy by due process of law or may, at its option, by its agents, enter and remove and abate such nuisance at the expense of the Grantee, its successors and assigns, without being responsible for trespass therefor. The Association shall have the power to levy fines for violations of the Covenants, Restrictions and Conditions.

16. MISCELLANEOUS:

a. Conflict. If any provision of this Declaration, the Bylaws or the rules and regulations of the Association, or any section, sentence, clause, phrase, or word herein or therein, or the application thereof in any circumstances be judicially held in conflict with any applicable laws, including, but not limited to, the subdivision approval, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and rules and regulations of the Association, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

b. Interpretation.

i) The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

ii) The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

iii) No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches that may occur.

iv) The use of words such as "herein" or "hereunder" shall refer to this entire Declaration and not merely the section, paragraph or provision in which such words appear.

c. Invalidity. If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, any deed to a parcel, or the rules and regulations of the Association is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

d. Municipal Ordinances. This Declaration is independent of any requirements or restrictions imposed by the Ordinances of the Town of Kittery. Nothing in this Declaration relieves any person of any obligation to comply with such ordinances. The Town of Kittery has no authority or responsibility to enforce the provisions of this Declaration. However, it has the authority to require maintenance of those items set forth on the approved Plan, which shall be the duty of the Association to maintain. These items are generally set forth in Paragraph 15.

e. Notices. Any notice required or given pursuant to this Declaration to the Association or to any Unit owner may be delivered to any Association director or officer or to such Unit owner respectively either by delivering it in person, by sending it to his/her Unit by first-class mail, postage prepaid, or by delivering it to the Unit by hand, or as otherwise permitted by the Bylaws.

f. Amendment. Any provision contained within this Declaration may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owner of the ROS and the Homeowners Association.

g. Effective Provisions of Declaration. Each provision of this Declaration and any agreement promise, covenant, and undertaking to comply with each provision of this Declaration, shall be deemed a land use restriction running with the land as a burden and upon title to the ROS.

h. Governing Law. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.

[Space Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, **William Cullen** and **Cathy Cullen** have caused this instrument to be executed as of this 7th day of June, 2018.

[Signature]
WITNESS

[Signature]
William Cullen

[Signature]
WITNESS

[Signature]
Cathy Cullen

STATE OF MAINE
COUNTY OF YORK

6/7/18, 2018

Then personally appeared before me the above-named William Cullen and Cathy Cullen :
acknowledged the foregoing instrument to be their free act and deed.

[Signature]
Notary Public JASON G. HOWE
Print Name: ATTORNEY - AT - LAW
My Commission Expires: _____
Official Seal or Notary Stamp: _____

Exhibit A

Property Description

Legal Description Condominium at Happy Ave

Parcel 1: Units 1 & 2

Beginning at the unit boundary between Unit 1 and Unit 2 at the northerly sideline of a reserved right-of-way;

S 29°53'20" E 150.01' along the reserved right-of-way to a point in a stone wall at land n/f of Margaret Worthing;

N 66°33'00" E 70.40' along the stone wall;

N 70°53'20" E 169.12' along the stone wall;

N 73°27'40" E 132.27' along the stone wall to a nail in a 3" yellow birch found in the stone wall;

N 44°41'20" W 428.98' by land n/f of David & Gail Burton to the southeast corner of the unit boundary between Unit 1 and Unit 2;

N 44°41'20" W 144.94' by n/f Burton to a point marking the boundary of Common Land and a Recreational Walking Easement;

Continuing N 44°41'20" W 66.71' to a point 5' from the edge of a pond;

Westerly along a course 5' from the pond 193' to a point at land recently conveyed to Southern Maine Fish & Game, , said point being found S 66°30'40" W 175.56' as a tie course from the previous point;

S 45°22'50" E 130.20' to a point;

S 9°46'10" W 245.28' by land recently conveyed to Southern Maine Fish & Game to a point marking the northerly edge of a proposed right-of-way;

S 81°12'50" E 121.78' by said proposed right-of-way to a point;

S 29°53'20" E 28.47' to the point of beginning.

Containing 170,921 s.f. ±.

Parcel 2: Referred to as Parcel A

Beginning at an iron pipe found at the northeast corner of land of Southern Maine Fish & Game, on the southerly side of Martin Road, said point also marking the northwest corner of the parcel described:

N 76°55'00" E 55.57' along a stone wall and the sideline of Martin Road to a point;

S 45°22'50" E 38.35' to a point found 5' from the edge of the pond;

Westerly following a course that is 5' from the edge of the pond 98' to a point at land of Southern Maine Fish & Game, said point being found S 75°21'40" W 73.91' from the previous point as a tie line course;

N 16°42'50" W 34.50' by land of Southern Maine Fish & Game to the point of beginning.

Meaning and intending to convey a portion of the property lying northerly of the pond and southerly of Martin Road.

Parcel is subject to a Recreational Walking Easement in favor of Southern Maine Fish & Game.

Containing 2,432 s.f. ±.

Parcel 3: Referred to as Parcel C

Beginning at an iron rod found on the southerly sideline of Martin Road at the northwesterly corner of land of n/f Burton, and the northeasterly corner of the property described herein:

S 44°31'00" E 52.56' by Burton to a point found 5' from the edge of a pond;

Southwesterly following a course 5' from the edge of the pond 208' to a point at property to be conveyed to Southern Maine Fish & Game, said point being found S 68°50'00" W 180.16' as a tie course from the previous point;

N 45°22'50" W 38.35' by land to be conveyed to Southern Maine Fish & Game to the southerly sideline of Martin Road;

N 65°40'00" E 110.67' by a stone wall and Martin Road to a point;

N 62°30'20" E 64.95' by Martin Road to the point of beginning.

Containing 7,442 s.f. ±.

Parcel is subject to a Recreational Walking Easement in favor of Southern Maine Fish & Game.

Parcel 4: Referred to as Parcel D

Beginning at the northeasterly corner of property conveyed to Southern Maine Fish & Game at a point 5' from the edge of a pond, said point being the northwesterly corner of the property described herein;

Northeasterly following a course 5' from the edge of the pond 193' to a point at land of n/f Burton, said point being found N 66°30'40" E 175.56' as a tie course from the previous point;

S 44°41'20" E 66.71' by land of Burton to a point;

S 45°18'40" W 162.10' to a point at land recently conveyed to Southern Maine Fish & Game;

N 45°22'50" W 130.20' by land recently conveyed to Southern Maine Fish & Game to the point of beginning.

Containing 17,037 s.f. ±.

This parcel is subject to a Recreational Walking Easement in favor of Southern Maine Fish & Game, and is subject to a designation of Common Land found in a Condominium Declaration to be recorded.

Unit 1, but not Unit 2, is benefitted by those certain easements to access from Roseberry Lane granted to William and Cathy Cullen over and across land of now or formerly of James R. Newcomer, Jr. and Rhonda L Millet (as the same has been corrected), and also over land now or formerly of Margaret A. Worthing (as the same has been corrected).

Units 1 & 2 are benefitted by a certain access easement over the land of William Cullen recorded prior hereto, of even date herewith, in this said Registry of Deeds.

Units 1 & 2 are benefitted by a certain sewer easement over the land of both Southern Maine Fish & Game, Inc., and of William Cullen, all as granted of even date herewith and recorded prior hereto in this said Registry of Deeds.

For the avoidance of doubt, in the event that adequate road frontage and access are established by way of Happy Avenue, so called, and the town provides written confirmation and approval of the same, it is the intent, that this Condominium shall be converted by action of the Unit Owners into land held in fee simple, with the bounds of Unit 1 and Unit 2 establishing the bounds of each said lot. In such an instance, all other rights of ingress, egress, and other sewer easement rights shall remain. Additionally, in such an instance, the owners of Units 1 & 2 shall cause Parcels A, C, and D as described above to be transferred to Southern Maine Fish & Game, Inc. for no further monetary consideration.

22 → After recording return to:
Jason G. Howe, Esq.
Bergen & Parkinson, LLC
62 Portland Road, Suite 25
Kennebunk, ME 04043

DEBRA L. ANDERSON, REGISTER OF DEEDS
Bk 17740 PG 306
Instr # 2018023589
06/25/2018 04:13:24 PM
Pages 2 YORK CO

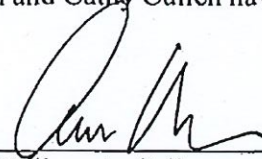
----- (Space Above This Line For Recording Data) -----

WARRANTY DEED
(Condominium Unit)

KNOW ALL PERSONS BY THESE PRESENTS, that **WILLIAM A. CULLEN** and **CATHY CULLEN**, both of Eliot, Maine, FOR CONSIDERATION PAID, hereby grant to **CAROLINE G. HALL**, whose mailing address is P.O. Box 731, Kittery, Maine, with Warranty Covenants, a certain Condominium Unit commonly known and designated as Unit 1 of Happy Avenue Condominium, located in the Town of Kittery, County of York, State of Maine, as declared by a Declaration filed immediately prior hereto in this Registry of Deeds, and as shown on a plan filed in the Condo Plans of this said Registry on the same day hereof.

IN WITNESS WHEREOF, William A. Cullen and Cathy Cullen have hereunder set hands and seals as of this 13 day of June, 2018.

WITNESS 


William A. Cullen

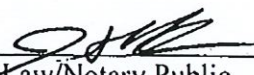
WITNESS 


Cathy Cullen

STATE OF MAINE
York County, ss.

Date: 6/13/18

Personally appeared the above-named William A. Cullen and Cathy Cullen and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Attorney at Law/Notary Public
Print: Jason G. Howe
[SEAL] ATTORNEY AT LAW

Maine R. E. Transfer Tax Paid

Happy Ave Condominium Unit 1

Beginning at the unit boundary between Unit 1 and Unit 2 at the northerly sideline of a reserved right-of-way;

N 29°53'20" E 28.46' along the reserved right-of-way to a point;

N 81°12'50" W 121.78' to land recently conveyed to Southern Maine Fish & Game;

N 9°46'10" E 245.28' to a point;

N 45°18'40" E 162.10' to l/o Burton;

S 44°41'20" W 144.94' to Unit 2;

S 14°52'40" W 210.43' to a point;

S 37°10'30" W 116.21' to the point of beginning.

Containing 63,652 s.f. ±.

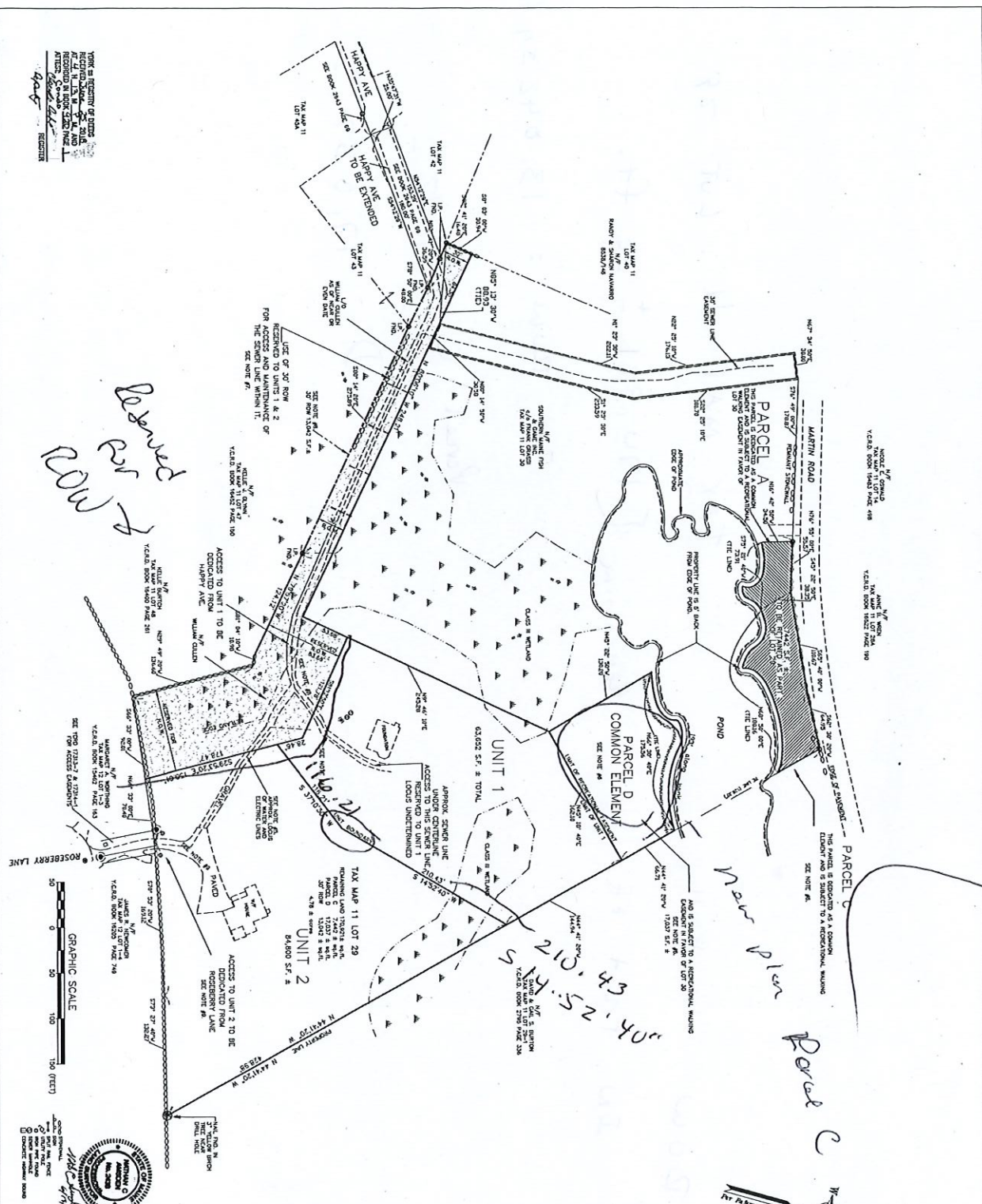
Unit 1 retains the rights to connect to the existing sewer line as it may be found approaching the property from a 30' right of way running from the end of Happy Ave, so-called, to Unit 1.

Subject to the rights of Unit 2 to extend such sewer lines as found lying on property of Southern Maine Fish & Game, and lying within a 30' right of way running from the end of Happy Ave, so-called, to Unit 1.

Unit 1 retains the rights to extend water and utility lines across Unit 2.

Unit 1 has Common Element rights in Parcels A, C, and D as depicted on Condominium Plan.

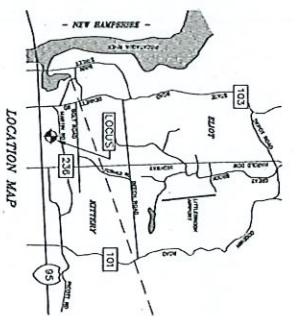
YORK & COUNTY OF DEWITT
 RECEIVED FOR RECORD
 DEPARTMENT OF TAXATION
 RECORDS IN BOOK 2380 PAGE 1
 ATTORNEY: *W. C. ...*
 4-2-78



*Revised
 Plan C*

*210.43
 5.2.40*

New Plan Parcel C



File 6/25/18 @ Registry

- NOTES**
1. THE PURPOSE OF THIS PLAN IS TO SHOW A RECONSTRUCTION OF THE CONDOMINIUM OF LOT 29, AND NEIGHBORING LOTS OR PORTIONS OF LOT 28, THE SITE OF WHICH IS THE "NEW PLAN" CONDOMINIUM UNIT NO. 1.
 2. SEE RECONSTRUCTION OF CONDOMINIUM UNIT NO. 1.
 3. SEE RECONSTRUCTION OF CONDOMINIUM UNIT NO. 2.
 4. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.
 5. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.
 6. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.
 7. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.
 8. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.
 9. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.
 10. UNIT 1, UNIT 2, AND UNIT 3 ARE SUBJECT TO THE SEWER LINE.

- REFERENCE DEEDS**
1. TITLE SOURCE DEED, VOLUME 1878 PAGE 218.
 2. ACCESS DEED TO MAP 97.17 IN FROM HOSPITALY LANE, VOLUME 1873 PAGE 218.
 3. ACCESS DEED TO MAP 97.17 IN FROM HOSPITALY LANE TO THE SEWER LINE.
 4. SEE RECONSTRUCTION OF MAP 97.17 IN FROM HOSPITALY LANE.
- REFERENCE PLANS**
1. "NEW PLAN" CONDOMINIUM UNIT NO. 1, VOLUME 1878 PAGE 218.
 2. "NEW PLAN" CONDOMINIUM UNIT NO. 2, VOLUME 1878 PAGE 218.
 3. "NEW PLAN" CONDOMINIUM UNIT NO. 3, VOLUME 1878 PAGE 218.
 4. "NEW PLAN" CONDOMINIUM UNIT NO. 4, VOLUME 1878 PAGE 218.

HAPPY AVE CONDOMINIUMS

CONDOMINIUM PLAN
 OF HAPPY AVE
 IN THE TOWN OF DEWITT
 DEWITT COUNTY, NEW YORK

PREPARED FOR
 WILLIAM C. CHALLEN
 12 REGENCY LANE
 KITTERY, ME 03904

OWNERS OF RECORD:
 WILLIAM C. CHALLEN
 VENDOR BK 1099 P. 246

BY
 AUGUSTINE FIELD SURVEY
 ELLIOT, ME 03903

SCALE 1"=40'

DATE 5/27/78

PROPERTY TAX BILL



Town of Kittery
200 Rogers Road
Kittery, ME 03904
207-439-0452

\$ 1872.46

Caroline Owes 718.13

Bill + Cathy Owes 1154.33

627 1 AV 0.378 E0148X I0157 D4062368874 S2 P5737226 0001:0003



CULLEN, WILLIAM
CULLEN, CATHY A.
12 ROSEBERRY LN
KITTERY ME 03904-1081

| CURRENT BILLING INFORMATION | | |
|------------------------------|--|---------------------|
| Bill Number: 190276 | Bill Date: 09/26/2018 | |
| Book/Page: 17268/276 | Location: 12 ROSEBERRY LANE + 21 Hap Ave | |
| Parcel ID: 11-29 | | |
| Tax Distribution | Due Dates | Amount |
| School \$3,515.76 | 10/31/2018 | \$1,872.46 |
| County \$196.57 | 02/15/2019 | \$1,871.89 |
| Municipal \$1,903.91 | 05/31/2019 | \$1,871.89 |
| Total \$5,616.24 | | |
| Land Value | | \$61,700.00 |
| Building Value | | \$272,600.00 |
| Total Exemptions | | \$0.00 |
| Personal Property | | \$0.00 |
| Taxable Valuation | | \$334,300.00 |
| Subtotal Tax | | \$5,616.24 |
| Sewer Lien (Tax Abt) | | \$0.00 |
| Total Tax | | \$5,616.24 |
| Payments | | \$0.00 |
| Amount Due 10/31/2018 | | \$1,872.46 |

Fiscal Year July 1, 2018 - June 30, 2019

Tax Rate \$16.80 per \$1,000

TAXPAYER INFORMATION

County, school and municipal tax was committed for collection on September 10, 2018. State reimbursements and State Revenue Sharing has already reduced your tax bill by 6%.

| TAX DUE DATES | INTEREST* BEGINS |
|-------------------|-------------------|
| October 31, 2018 | November 1, 2018 |
| February 15, 2019 | February 18, 2019 |
| May 31, 2019 | June 3, 2019 |

*Annual rate of 7% on taxes unpaid by due dates.

Kittery's bonded indebtedness as of June 30, 2018 totals \$25,830,942.

Per state law, the ownership and taxable valuation of all real estate and personal property is fixed on April 1 of each year. If you have sold your real estate since April 1, 2018, it is your obligation to forward this tax bill to the new property owner.

If the Amount Due is enclosed in () you have a credit balance, and no payment is currently due on the due date noted. Partial payments are accepted if you are unable to make a full payment. However, interest will accrue on any unpaid balance.

You may email change of address / questions / comments to the office of the Tax Collector: payment@kitteryme.org

REMITTANCE INSTRUCTIONS

Make checks payable to the Town of Kittery and include the PARCEL ID on your check.

CHECKS: (1) Mail to the Payment Center in the enclosed envelope with the bill portion below; (2) deliver to Town Hall; or (3) drop in the Town Hall collection box at the main entrance.

RECEIPTS: Include a self-addressed, stamped envelope with your payment.

BANK PAYMENT SERVICE: If paying via online bill pay through your bank **DO NOT USE THE VERMONT ADDRESS** below. Include your **PARCEL ID** (above) on your check and use the physical address:

Town of Kittery Tax Department
200 Rogers Road
Kittery, ME 03904

ONLINE PAYMENTS: Go to www.kitteryme.org homepage and follow link.

MORTGAGE COMPANY PAYMENTS: Provide a copy of this bill to advise the company of due dates, payment amounts, and mailing instructions.

CREDIT, DEBIT, E-CHECKS OR PHONE: Call 800-272-9829, press '3' and enter code 2923, and follow instructions. You will enter bill year, 2019. You will need your bill number to complete the transaction.

TO ENSURE PROPERTY CREDIT. PLEASE RETURN BOTTOM PORTION OF BILL IN THE ENCLOSED ENVELOPE

If you have a change of address, please check here and write the change on the back of the payment stub.

BILL NUMBER: 190276

LOCATION: 12 ROSEBERRY LANE
PARCEL: 11-29

Pers. Prop. ID:

TOWN OF KITTERY, MAINE
PROPERTY TAX BILL

Fiscal Year July 1, 2018 - June 30, 2019

| | |
|---------------|------------|
| AMOUNT DUE : | \$1,872.46 |
| DUE DATE : | 10/31/2018 |
| AMOUNT PAID : | |

MAKE CHECK PAYABLE TO: TOWN OF KITTERY

CULLEN, WILLIAM
CULLEN, CATHY A.
12 ROSEBERRY LN
KITTERY ME 03904-1081

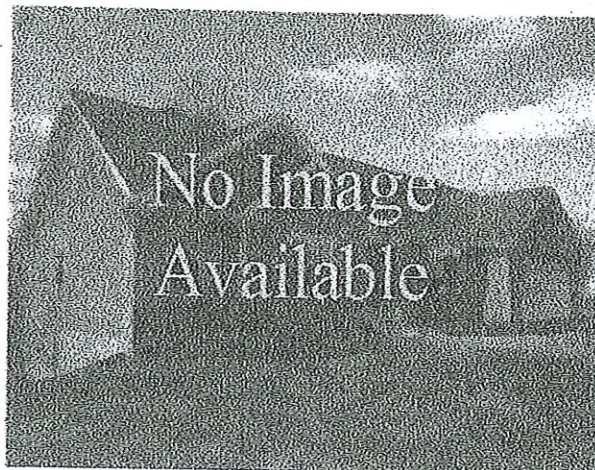
Please send payment to:
TOWN OF KITTERY
PAYMENT CENTER
PO BOX 1491
BRATTLEBORO, VT 05302

14952082019800190276600001872464

Replacement Cost

Less Depreciation: \$160,600

Building Photo



(http://images.vgsi.com/photos/KitteryMEPhotos//default.jpg)

Building Layout

Building Layout

(http://images.vgsi.com/photos/KitteryMEPhotos//Sketches/1123_1156.j)

| Building Attributes | |
|---------------------|----------------|
| Field | Description |
| Style | Ranch |
| Model | Residential |
| Grade: | Average +10 |
| Stories: | 1 |
| Occupancy | 1 |
| Exterior Wall 1 | Vinyl Siding |
| Exterior Wall 2 | |
| Roof Structure: | Gable/Hip |
| Roof Cover | Asph/F Gls/Cmp |
| Interior Wall 1 | Drywall/Sheet |
| Interior Wall 2 | |
| Interior Flr 1 | Hardwood |
| Interior Flr 2 | |
| Heat Fuel | Electric |
| Heat Type: | Hot Air-no Duc |
| AC Type: | Ductless AC |
| Total Bedrooms: | 2 Bedrooms |
| Total Bthrms: | 2 |
| Total Half Baths: | |
| Total Xtra Fixtrs: | |
| Total Rooms: | 4 |
| Bath Style: | Average |
| Kitchen Style: | Average |
| MHP | |

| Building Sub-Areas (sq ft) | | | Legend |
|----------------------------|---------------------------|------------|-------------|
| Code | Description | Gross Area | Living Area |
| BAS | First Floor | 1,164 | 1,164 |
| FEP | Porch, Enclosed, Finished | 130 | 0 |
| FGR | Garage, Framed | 336 | 0 |
| FOP | Porch, Open, Finished | 90 | 0 |
| UBM | Basement, Unfinished | 996 | 0 |
| | | 2,716 | 1,164 |

Building 2 : Section 1

Caroline

Year Built: 2018
 Living Area: 1,430
 Replacement Cost: \$172,246
 Building Percent Good: 65
 Replacement Cost
 Less Depreciation: \$112,000

OWLS
 1/3 for Oct 31
 \$718.13

| Building Attributes : Bldg 2 of 2 | |
|-----------------------------------|-------------|
| Field | Description |
| Style | Cape Cod |
| Model | Residential |
| Grade: | Average +10 |
| Stories: | 1.5 |
| Occupancy | 1 |

Building Assessment

Bill and Cathy \$160,600
 Caroline \$112,000

Tax rate is \$16.80/thousand

B&C Building
 $160.60 \times 16.80 = 2698.08$
 Caroline Building
 $112.00 \times 16.80 = 1881.60$

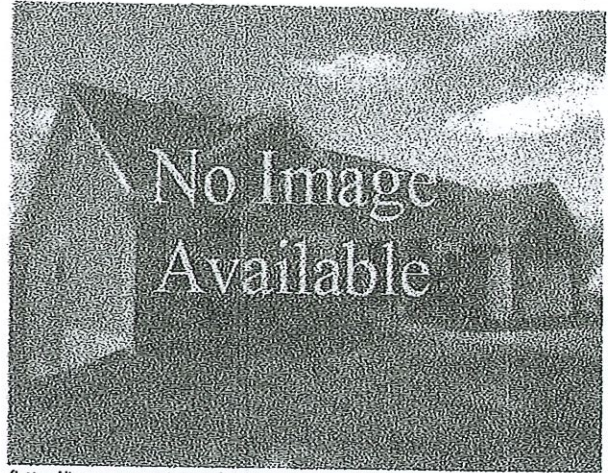
Building + Land - Caroline

112,000
 16,237

 $128,237 \times 16.80/\text{thousand} = 2154.38$

| | |
|--------------------|----------------|
| Exterior Wall 1 | Vinyl Siding |
| Exterior Wall 2 | |
| Roof Structure: | Gable/Hip |
| Roof Cover | Asph/F Gls/Cmp |
| Interior Wall 1 | Drywall/Sheet |
| Interior Wall 2 | |
| Interior Flr 1 | Hardwood |
| Interior Flr 2 | Carpet |
| Heat Fuel | Gas |
| Heat Type: | Forced Air-Duc |
| AC Type: | None |
| Total Bedrooms: | 4 Bedrooms |
| Total Bthrms: | 2 |
| Total Half Baths: | |
| Total Xtra Fixtrs: | |
| Total Rooms: | 6 |
| Bath Style: | Average |
| Kitchen Style: | Average |
| MHP | |

Building Photo



(<http://images.vgsi.com/photos/KitteryMEPhotos//default.jpg>)

Building Layout

Building Layout

(http://images.vgsi.com/photos/KitteryMEPhotos//Sketches/1123_10452)

| Building Sub-Areas (sq ft) | | | Legend | |
|----------------------------|----------------------|------------|-------------|--|
| Code | Description | Gross Area | Living Area | |
| BAS | First Floor | 894 | 894 | |
| FHS | Half Story, Finished | 894 | 536 | |
| UBM | Basement, Unfinished | 894 | 0 | |
| WDK | Deck, Wood | 120 | 0 | |
| | | 2,802 | 1,430 | |

Extra Features

| Extra Features | | Legend |
|----------------------------|--|--------|
| No Data for Extra Features | | |

Land

Land Use

| | |
|------------------------|-------------------|
| Use Code | 1090 |
| Description | MULTI HSES MDL-01 |
| Zone | R-S |
| Neighborhood | |
| Alt Land Appr Category | No |

Land Line Valuation

| | |
|-----------------|----------|
| Size (Acres) | 5.7 |
| Frontage | 0 |
| Depth | 0 |
| Assessed Value | \$61,700 |
| Appraised Value | \$61,700 |

Bill + Cathy
84,800 SF + other parcels
Caroline
63,652

Price per acre = 10,824.56

63,652 / 42,350 = 1.5 acres

Caroline's land assessment

Outbuildings

| Outbuildings | | Legend |
|--------------|--|-------------|
| | | \$16,236.84 |

Planning Board
Town of Kittery
200 Rogers Road
Kittery, Maine 03904

Members of the Board,

We request the following waiver to the existing ROW standards.

1. ROW width; From 40' to 30' as shown on plan dated 3/9/1999
2. Roadway length; Exceeds current road length (400') by 305'
3. Travel way width; from required 18' to existing 12'
4. Sidewalk Waiver
5. Stormwater Management; Built according to plan in 2000 and was currently reviewed by CMA for compliance with the approved plan.

The reason we are requesting the above waivers is the ROW/driveway plan was prepared by Easterly Survey in 1998 and approved by the Kittery Planning Board on July 8, 1999. The ROW was built in 2000 according to the plan. The plan was reviewed by CMA and found it complies with the plan. It is impossible to widen the driveway or construct sidewalks given the plan does not have the space and, in addition, it would be a huge disturbance to the wetlands. It is currently used as a driveway for the Hall residence (Lot A) and Cullen (Lot B) accesses Roseberry through an easement given by abutters. This ROW will give frontage to Hall and Cullen and allow parcels "C" and "D" to be conveyed to the Southern Maine Fish and Game.



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:

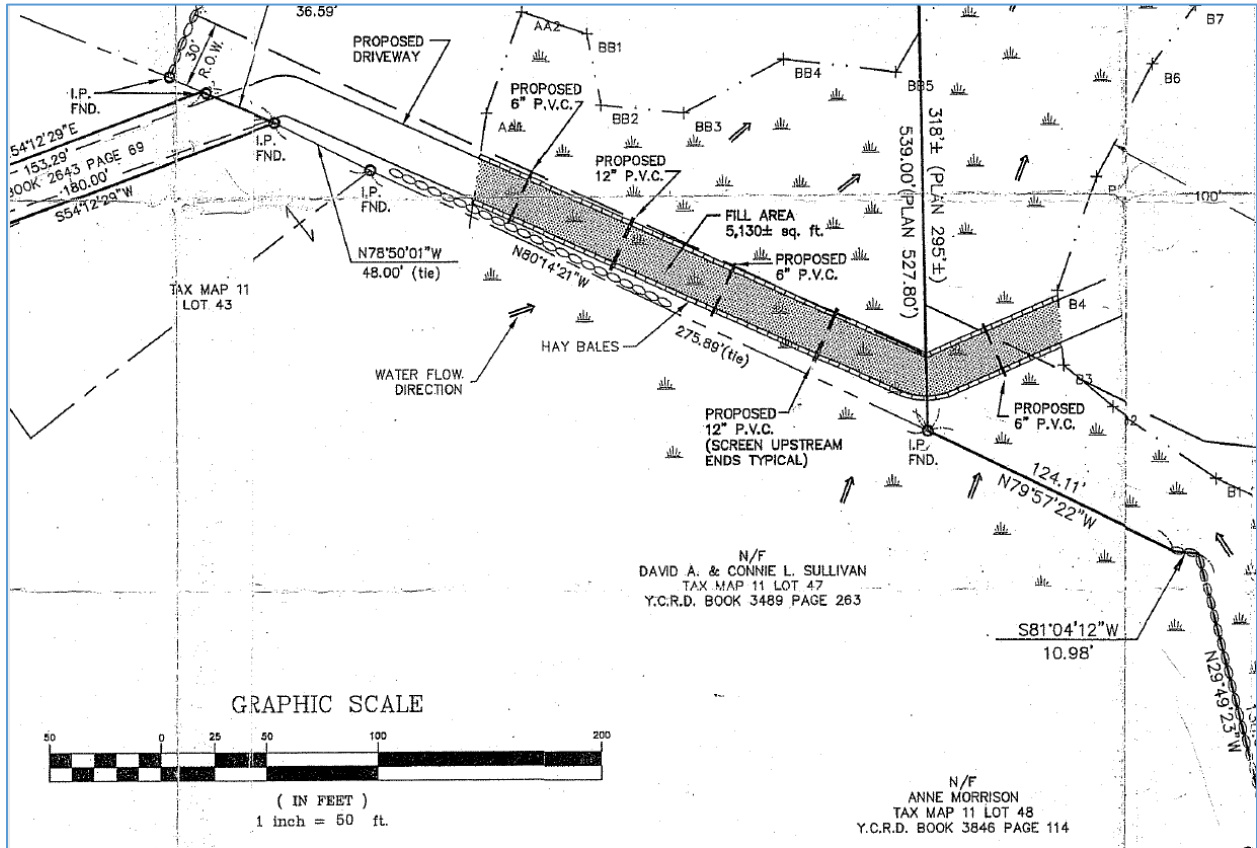
- Plan titled *Wetlands Crossing Plan for Property at Martin Road Kittery Maine dated March 9, 1998* and prepared by Easterly Survey, and approved by the Kittery Planning Board July 8, 1999;
- *Right-of Way Plan off Happy Avenue Kittery Maine Tax Map 11, Lot 29*, dated October 29, 2019, Prepared by Amsden 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.

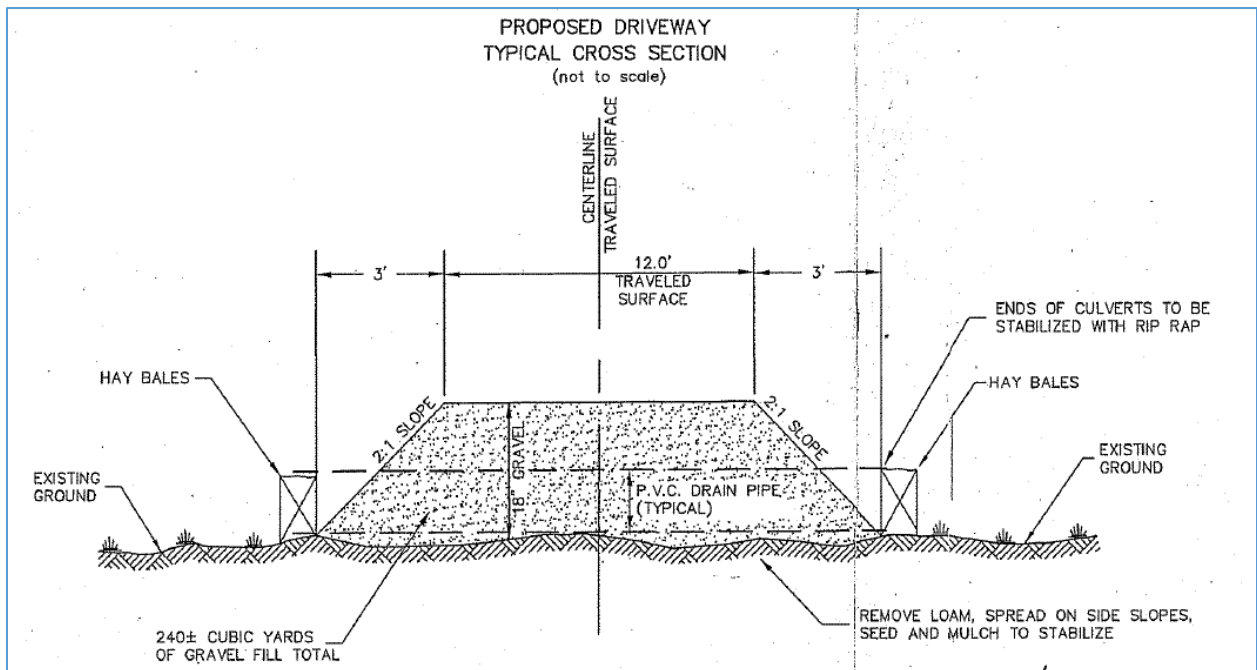
The 1998 wetland crossing plan depicts a 12-foot-wide driveway, with side slopes, constructed over approximately 250 feet of wetlands to access Tax Map 11, Lot 29. A residence has since been constructed on the lot and has been accessed off Happy Avenue for many years. There were four proposed pipes crossing 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.*)

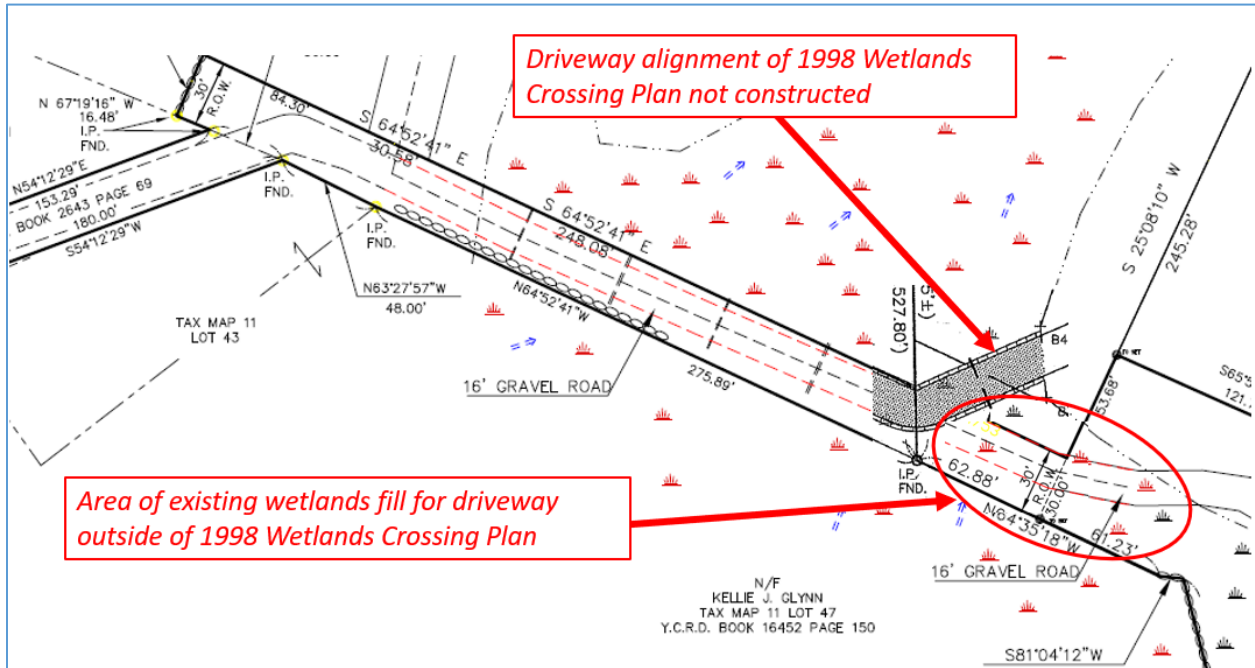
Segment of the 1998 Wetlands Crossing Plan



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