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October 21, 2016

Sent via email to: shastings@yorkmaine.org

York Planning Board
c/o Scott Hastings, Asst. Planner
186 York Street
York, Maine 03909

**RE: 7 Carriage Barn Lane, Tax Map/Lot 0051-0037-A
Review of Driveway, Building Envelope and Septic Location
Proposed by Philip Brown**

Dear Planning Board Members:

I am writing in my capacity as legal counsel to Ala Reid and Rozanna Patane, two individuals who own property abutting or in close proximity to the large wetland in which this applicant is seeking to develop a new house lot, including a septic system and a lengthy roadway. My clients will be particularly and uniquely impacted by development of this wetland adjacent to their properties.

Code Enforcement Officer Amber Harrison originally reviewed various development proposals for this property that were put forth by Mr. Brown through his representative, Timothy DeCoteau. As you know, she referred this matter to the planning board for review based upon the fact that this parcel is the wetland portion of a subdivision approved by the board in 1990. After an initial presentation by Mr. Decoteau in August, the town attorney weighed in on the matter of your jurisdiction and the case is now squarely before you for review.

BACKGROUND AND INTRODUCTION

Since this subdivision was approved some 26 years ago, Mr. Brown and other owners of this property have made futile attempts to develop the large wetland that you are now being asked to review. When and if this matter is presented for a full hearing, we will present aerial depictions taken from Google Earth showing the size of this wetland and its proximity to York Harbor, the nearby beaches, and its connection to other wetlands. As Ala Reid will describe in greater detail, this is a very high priority wetland

as categorized by your land use ordinance. The reason that no development proposal has thus far succeeded is very simple: it is the wrong use in the wrong location and cannot meet your zoning requirements. Rozanna Patane will speak to the lengthy history of ownership and proposed development on this parcel and we expect that other members of the general public - to include Richard Broadbent, a prior owner - will also supply additional relevant details.

In his presentations, Mr. DeCoteau repeatedly makes reference to a 1920 plan showing a "path" or "track" through the wetland and he holds this up as definitive "evidence" of an "existing road bed." As we will discuss below and demonstrate at any hearing that might be held, however, there are OTHER maps (from 1893, 1956 and 2016) showing the site with no improvement in this area whatsoever. At best, the area in question was a walking path that has long since been discontinued and it is quite evident that the surrounding wetland has now reclaimed it. Under these circumstances, this proposal is for a *new driveway* located entirely within the wetland.

As your assistant planner suggests in his memo issued today, my clients feel very strongly that this application should be denied outright at the first meeting as there is simply no way for the owner to comply with your land use regulations. As we will discuss below, bringing the area in question up to minimum standards for a "driveway" will very obviously require much more filling of this wetland than the 4,300 square feet allowed.

In the event the board decides there is some possibility of development on this wetland site, it is imperative that the applicant provide significantly more *detailed* information so that the board can conduct a meaningful review and in order for the public to be fully informed. Scott Hastings and Amber Harrison have both highlighted the lack of engineered drawings showing the road profile, sloping, grading, etc. We have engaged our own wetlands expert, Mark Hampton, whose attached letter makes the same, as well as additional, points. A site walk by the board (with the public presumably invited to attend) is clearly in order if the board is to properly appreciate the nature and scope of this application.

As I will outline below, we are strongly of the opinion that this proposal should be rejected outright by the board, but if further review is undertaken, given the nature and significance of this wetland, an *independent* wetlands analysis should be commissioned (using neither Mr. Frick nor Mr. Hampton) so that unbiased factual determinations can be presented regarding the wetland itself and the so-called "existing road bed" (the applicant's term, not ours). Mr. Hampton, in his letter, suggests that the U.S. Army Corps of Engineers is one possible resource to provide such an independent analysis.

LEGAL ARGUMENTS

Our reasons for requesting an outright denial of this application are as follows:

1. **Section 11.4.3 of the Zoning Ordinance cannot conceivably be met.** This ordinance provision states: *"The amount of wetland impact shall be calculated as the cumulative amount of all impacts over time, including those actions that pre-date this provision. Not more than 4,300 square feet of wetland shall be impacted on an individual lot."* The proposed access to this building lot is located entirely within the wetland – there is no "existing road bed" that extends to the site and any path or track that previously existed has been largely abandoned and reclaimed by the wetland. Any path or road in this area that previously existed (prior to the abandonment) was obviously the result of filling. Images taken from Google Earth shot on April 27, 2016 show NO "existing road bed" nor any similar improvement in this wetland. Given the minimum required width of the driveway itself and the necessary sloping and grading that will be required, Section 11.4.3 cannot be met. This, presumably, is why the applicant has elected not to even present road profile drawings. This proposal is for a *year-round dwelling* and, as such, maintenance and plowing will be a necessity. Plowing without impacting the wetlands would NOT be possible if the ordinance provisions regarding fill limits and setbacks are to be respected. (See Scott Hastings' memo).

While one old plan may show a "paper way" through this parcel, the fact is that the entire land mass is a wetland. The proposal to remove "vegetation and organic material" is a red herring designed to give the appearance that the area in question is somehow exempt as being an existing road bed. The Town of York has never approved a road at this location. At best, there is a walking path travelling through (and forming part of) the wetlands, but nothing more. Over time, with disuse, this path was RECLAIMED by the surrounding wetland. A site walk would clearly demonstrate this to the board members.

The applicant, who has the burden of proof before the board, has submitted no evidence regarding the total amount of historic fill on this 26-acre site. As stated, we believe it is plainly obvious that the new construction necessary to build a driveway/road bed in compliance with your ordinance will far exceed the 4,300 limit of fill, but there is additional obvious evidence of fill that must also be counted; most importantly Woodbridge Road and Sentry Hill Road, both of which cut through the original, larger wetland and border this parcel.

2. **The applicant cannot meet the private right of way standards set forth in the ordinance.** As Scott Hastings points out in great detail in his memo, the location and construction of driveways in this zone are heavily regulated and designed to protect adjacent. We concur with the analysis set forth in Section 3.B of his memo, which speaks for itself and forms the basis for his

opinion/recommendation that the application be denied (albeit without prejudice). There is simply no way for this applicant to "set back" from this wetland as the entire land mass is within it. If the applicant wants to create a building envelope on this site, he must create an entirely new road through an existing high value wetland. This is an impossible task.

3. **Any right of way or other legal right of passage through this passage was extinguished when Mr. Brown purchased all of the surrounding land.** To the extent that the applicant argues that a legally recorded right of way over this wetland entitles him to improve it and build a driveway or road, as a legal matter, such rights are extinguished once a property owner acquires all land surrounding the area in question. Mr. DeCoteau has produced old maps showing paper rights of way through this wetland, but they are irrelevant. As stated above, no road way was ever legally developed and the rights were extinguished once Mr. Brown acquired all the surrounding property. There can be no artificially created legal right entitling a property owner to develop land that lies within a high priority wetland such as this. The land use ordinance "trumps" any legal rights that a property owner may have regarding access, etc.

CONCLUSION

For the reasons set forth above, we urge the board to reject this application and deny the building proposal presented. In the alternative, before making any decision, the applicant should be required to submit engineered drawings of the proposed driveway (as noted by Ms. Harrison and Mr. Hastings) and provide an updated, independent wetlands analysis of this particularly sensitive and important site. A site walk of this entire 26-acre site should be scheduled if the application is permitted to proceed.

Sincerely,

SHEPARD & READ

A handwritten signature in black ink, appearing to read 'B. M. Read', with a long, sweeping horizontal flourish extending to the right.

Bruce M. Read, Esquire

BMR:rf

REC'D OCT - 7 2016



MARK HAMPTON ASSOCIATES, INC.

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4676

October 3, 2016

Ms. Ala H. Reid
P.O. Box 738
York Harbor, ME 03911

Ms. Rozanna Patane
P. O. Box 592
York Harbor, ME 03911

Re: Application for 7 Carriage Barn Lane, York ME to Town of York Planning Board

Dear Ms. Reid and Ms. Patane,

On your behalf, I have reviewed information, which you have provided me, pertaining to an application pending before the Town of York planning board regarding the possible development of a single family home to be located off the end of Carriage Barn Lane. It is my understanding that the applicant is proposing to "upgrade" remnants of an old path that seems to be in some deteriorated condition since it was first established about 1920, to access an upland island, which is located in the middle of a wetland of special significance. While I have not seen any proposed development plans regarding this project, I do have a few concerns I wish to express to you and hopefully, ultimately the planning staff and planning board members for the Town of York.

In my review of the materials thus far I have the following concerns:

- a. I believe that there must be potential wetland impacts in upgrading remnants of an old path to a single family driveway. Again, I have not seen any proposed plans to detail how this upgrade will occur.
- b. Because there are no plans to show exactly how this upgrade will occur, I am concerned about the possible implications of this driveway acting as a dam for stormwater flows through this wetland. Much of the land surrounding this wetland has been developed, yielding large amounts of stormwater runoff at a quick rate. How will this driveway potentially impact adjacent and downstream properties, could it possibly cause additional flooding problems. Considerable information could be gathered by completion of a site walk of the property by members of the planning board.
- c. To date no professional plans have been submitted for this application. There is no plan and profile of the proposed driveway, there is no site grading plan for the proposed house and garage and septic system to be constructed.
- d. There needs to be an accounting and documentation of past fill activities which have occurred within

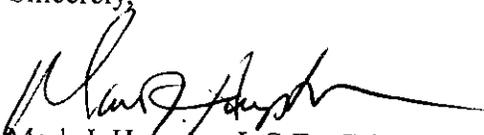
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this wetland to see if as much or more than 4300 square feet have already been impacted to determine if this proposed site development is even possible under the Town of York Shoreland Zoning Ordinance. There are quite a number of homes located on Eldredge Road and Sentry Hill Road which back up to this wetland. With all the developed parcels abutting this wetland, there must have been some approved and some unauthorized fringe filling of this wetland over the past several decades. Also, the construction and later upgrades to Sentry Hill Road and Woodbridge Road would possibly have had wetland impacts to this wetland. A third party review of the wetland delineation would be best served by the U.S. Army Corps of Engineers. They provide this service at no cost and the U.S. Army Corps of Engineers are the governing body in the State of Maine for wetland delineations.

In my professional opinion, insufficient information has been submitted by the applicant to allow the planning board to be properly review the current application.

Sincerely,



Mark J. Hampton L.S.E., C.S.S.
Licensed Site Evaluator #263
Certified Soil Scientist #216