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September 9, 2024

Geoffrey Bowley
Salt Pond Road Development, LLC
PO Box 261
Kennebunk, ME 04043

Re: Salt Pond Road Subdivision
Blue Hill, Maine

Dear Geoff:

You requested that I review several aspects of the Salt Pond Road subdivision application (the "Application") now pending before the Planning Board of the Town of Blue Hill.

Subdivision Review Criteria

The Blue Hill Subdivision Ordinance, Section VI, incorporates the review criteria found in the state subdivision statute (30-A M.R.S. §4408).

I understand that criterion no. 8, "Aesthetic, cultural and natural values," has been the subject of some discussion during review of the Application. Under this standard, the Planning Board must determine that the "proposed subdivision 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," (emphasis added).

All development has an adverse effect on scenic or natural beauty to some extent. However, as the courts have made clear, this provision cannot be interpreted to ban all development. See *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶15. The question is whether it is an "undue" adverse effect, and whether the circumstances of the project and the proposals of

the developer mitigate any undue effect. *Conservation Law Forum v. Town of Lincolnville*, 2001 ME 175, ¶5, 9.

In the case of the Salt Pond Road project, Attachment 3 of the Application does a good job of going through each of those criteria to set forth how the criteria are met. In particular, the Application goes to great lengths to review and address concerns about the matters in Item no. 8:

- The natural topography renders very little of the existing site visible from public roads or lands, and there is no public access to the property.
- The site plan is designed to complement the natural features.
- The subdivision lots will be subject to covenants, restrictions and easements to mitigate impact.
- Multiple state agencies were consulted for review and recommendations if appropriate, including Maine Inland Fisheries & Wildlife; Maine Historic Preservation Commission; and the Maine Natural Areas Program.

This level of review, consultation and developer concessions compares favorably with reported cases in which the planning board or court found that the applicant satisfactorily met the burden of showing no undue adverse effects.

Comprehensive Plan; Scenic Inventories

The Town of Blue Hill Comprehensive Plan (1999) lists the Allen Point area (which includes the project land) as a scenic area. However, this is not a basis for the Planning Board to deny a subdivision application.

The Comprehensive Plan is not an ordinance. Rather, one of its stated purposes is to “provide policy guidelines and direction for the administration of the Town’s land use regulations and ordinances” (Comprehensive Plan, pg. 1). In a significant case decided by the Maine Supreme Judicial Court on the relationship between comprehensive plans and land use ordinances, the Court stated, “The comprehensive plan and the land use ordinance are complementary, but their purposes are different. The plan sets out what is to be accomplished; the ordinance sets out concrete standards to ensure that the plan’s objectives are realized. The two are not meant to be interchangeable. A comprehensive plan imposes an obligation on the town, not on private citizens or applicants for permits.” *Nestle Waters N. Am., Inc., v. Town of Fryeburg*, 2009 ME 30, ¶24).

Therefore, the Planning Board must base its decision on whether the Application meets the requirements of the Subdivision Ordinance, not whether it adheres to policy goals set forth in the Comprehensive Plan which the Town has not incorporated into the Ordinance.

Similarly, the inclusion of Allen Point on various scenic inventories compiled over the years are not criteria or restrictions enforceable at the Planning Board level. The “Downeast Coastal Scenic Inventory” prepared by the Hancock County Planning Commission and Washington County Council of Governments (2010) includes among its purposes “comprehensive planning at the municipal level” (page 2). The “Scenic Inventory, Mainland Sites of Penobscot Bay” prepared for the Maine State Planning Office (1990) was intended as a resource for use by state agencies, local governments, and land trusts, and to offer

recommendations (see Introduction). These documents, like the Comprehensive Plan, offer guidance to towns, but do not act as ordinances or regulations. Neither document creates an obligation upon an applicant before the Planning Board.

Based on the foregoing, there would be compelling grounds for appeal should the Planning Board deny the Application based upon these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Zdunczyk", with a stylized flourish extending to the right.

Jeffrey S. Zdunczyk, Esq.
jsz@woodedlaw.com

cc: Michael Tadema-Weilandt