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January 3, 2011

Via E-Mail:

Thomas G. Leahy  
Monaghan Leahy LLP  
95 Exchange Street  
P.O. Box 7046  
Portland, ME 04112

**Re: *Town of Cape Elizabeth-Driveway Entrance Appeal for  
6 Stonegate Road, Town Council Agenda Item 17-2011***

Dear Tom:

Pursuant to your request of December 15, 2010, enclosed please find a Brief on behalf of Public Works Director Robert Malley.

If you have any questions in regard to this matter, please let me know.

Sincerely,

Patricia M. Dunn

PMD/lts  
Enclosure

cc: Robert H. Stier, Jr. (via e-mail: [RStier@PierceAtwood.com](mailto:RStier@PierceAtwood.com))  
Robert C. Malley, Public Works Director (via e-mail: [robert.malley@capeelizabeth.org](mailto:robert.malley@capeelizabeth.org))  
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TOWN COUNCIL  
CAPE ELIZABETH, MAINE  
Agenda Item 17-2011

In re:

Appeal of Issuance of  
Driveway Permit No. 2010-12  
6 Stonegate Road

Brief of  
Public Works Director  
Robert Malley

**Introduction**

On October 28, 2010, Public Works Director Robert Malley (“Director”) issued a Driveway Entrance Permit to Early Bird Group, LLC for 6 Stonegate Road. The Director issued the permit based upon his conclusion that Early Bird Group had met the requirements of Article II of Chapter 17 of the Town’s ordinances. Pursuant to Section 17-2-1 of the Town’s ordinances, the decision of the Director to issue a driveway entrance permit can be appealed to the Town Council. Robert H. Stier, Jr., a property owner in the Stonegate subdivision, filed an appeal from the issuance of the driveway entrance permit for 6 Stonegate Road.

The Town Council heard the appeal at its meeting on December 9, 2010.

**Facts**

In October, 2010, the Director met with Graham Pillsbury, a representative of Early Bird Group, LLC, to review two proposed driveway entrances for two newly created lots on Stonegate Road. The lots in question both abut the public way known as Stonegate Road. Although the paved roadway of Stonegate Road is approximately 24

feet wide, the public way is approximately 135 feet wide. Construction of Stonegate Road commenced in 1987 and was conveyed to the Town in two sections. The first section was conveyed to the Town in 1987 and the second section, including the portion that abuts Stonegate Road was conveyed to the Town in December, 1989.

Mr. Pillsbury provided the Director with a sketch showing the approximate driveway entrance locations and the Director conducted a field review of the proposed entrances. The Director advised Mr. Pillsbury that he would need to move the location of the proposed entrance for 6 Stonegate Road slightly to the east to allow for a greater distance between the proposed driveway and Mitchell Road. While Mr. Pillsbury and the Director discussed the proposed location of two driveways, Early Bird, LLC only submitted an application for a driveway for 6 Stonegate Road.

After discussing the location of the proposed driveway for 6 Stonegate Road, the Director discussed the potential removal of trees and the trimming of vegetation to accommodate the new driveway. The Director specifically directed Mr. Pillsbury as to what could be removed and what had to be saved. Mr. Pillsbury was specifically directed not to remove or disturb any of the Stonegate Association's plantings.

After the Director determined the requirements of the ordinance had been met, he issued a driveway entrance permit for 6 Stonegate Road.

At the December 9, 2010 hearing, the Town Council determined that the requirements of subsections (a)-(f) of section 17-2-4 of the Town's ordinance had been

met, but the Council requested that the parties submit written briefs on the issues set forth in Thomas Leahy's letter of December 15, 2010.<sup>1</sup>

### **Issues and Argument**

**1. The phrase “shall be in compliance with all local regulations” in section 17-2-4 of the Town’s ordinances does not require the Public Works Director to review and find that the application for a driveway entrance permit complies with the General Standards of approval , specifically Section 16-3-1(c) of the subdivision ordinance.**

Chapter 17 of the Town’s ordinances addresses Town Ways (*See Exhibit 1*).

Section 17-1-1, Definitions, defines a “public way” as follows:

The words “public way” shall mean the entire width between the right-of-way boundaries of every public way, or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic, except for private roads and private ways.

Section 17-2-1 requires a property owner to obtain an entrance permit prior to constructing a driveway and states, in part:

No owner of property abutting upon any public way within the town shall construct, cause or permit to be constructed, altered or relocated, any driveway, entrance, or approach or other improvement within the right-of-way of such road or extending from such road onto his property except in accordance with an entrance permit issued upon his application to the Director Public Works. Section 17-2-4 requires that the location, design and construction of any driveway entrance be in accordance with all local regulations and with the specific requirements enumerated in subsections (a) – (f).

---

<sup>1</sup> The Director understood that these were the only issues the Council was addressing. The Appellant has raised an issue the Director believed had been resolved. That issue will be addressed later in this Brief.

While there is no definition of the term “local regulations” in the definition section of Chapter 17 of the Town’s ordinances, assuming for purposes of this matter that the term “local regulations” does include other Town ordinances, the Director was not required to determine whether Early Bird Group’s application for a driveway entrance permit complied with any provisions of the subdivision ordinance

As the Appellant has stated in his brief, not all “local regulations” will be relevant for any given permit application. In this matter, the ordinance that the Appellant is arguing should be applied to this matter is the subdivision ordinance. The subdivision ordinance is found at Chapter 16 and Section 16-1-1 (*See Exhibit 2*) states that the purpose of the subdivision ordinance is to evaluate any *proposed* subdivision of land within the Town. In this matter, the Director consulted with the Code Enforcement Officer as to the status of the lot at 6 Stonegate Road. The Director learned that the lot did not require subdivision approval and that it met the criteria for the issuance of a building permit. Because there was no requirement that the lot at 6 Stonegate Road be reviewed under the subdivision ordinance, it does not apply to this matter.

After the Code Enforcement Officer issued a building permit for 6 Stonegate Road, an abutting property owner filed an appeal. That appeal was heard by the Town’s Board of Appeals on December 28, 2010. The appellant in that matter argued the lot at 6 Stonegate Road was part of an illegal subdivision and a building permit could not issue without review by the Planning Board under the subdivision ordinance. The Board of Appeals denied the appeal of the building permit and found that there was no requirement

that the property at 6 Stonegate Road be reviewed under the Town's subdivision ordinance.

The Appellant further argues that the Director should have considered Section 16-3-1, General Standards of Subdivision Design (*See Exhibit 3*), and more specifically subsection (c), plants and vegetative cover, when reviewing Early Bird Group's application for a driveway entrance permit. However, the plain language of the ordinance makes it clear that these standards apply to subdivision design and subsection (c) clearly applies to *proposed* subdivisions. As there is no proposed subdivision to be reviewed, these provisions are not applicable.

The Director is obligated to ascertain whether any approvals required by the Planning Board under the subdivision ordinance have been obtained, thereby ensuring compliance with the subdivision ordinance. The Director met his obligation under Section 17-2-4- when he asked the Code Enforcement Officer about the status of the lot at 6 Stonegate Road and learned that no review under the subdivision ordinance was necessary and a building permit was in order to be issued.

Additionally, the requirements contained in subsections (a) (sight distance), (b) (grade) and (f) (paving) of Section 17-4-2 contain specific references to certain provisions of the subdivision ordinance and requires compliance with those provisions. If the Town intended that other requirements of the subdivision ordinance be considered, it would have included a reference to those provisions in this section.

It is clear that there was no requirement that the Director consider the provisions of the subdivision ordinance when reviewing application submitted by Early Bird Group

for a driveway entrance permit and that the proposed driveway fully complied with the provisions of Section 17-2-4.

**2. There were no conditions or restrictions imposed by the developer of the Stonegate subdivision or imposed by the Planning Board in its written approval or upon plans that prohibit or restrict the Director from issuing a driveway entrance permit.**

Stonegate Road is a public way that was conveyed to the Town by Stonegate Associates in two sections. The first section was conveyed in 1987 and the second section was conveyed by warranty deed dated December 5, 1989 and recorded in the Cumberland County Registry of Deeds at Book 9015, Page 16 (*See Exhibit 4*). The property located at 6 Stonegate Road abuts the section of Stonegate Road that was conveyed to the Town in 1989. That deed from Stonegate Associates to the Town recites, in part:

This conveyance is subject to the Declaration of Covenants, Conditions and Restrictions recorded in said registry of Deeds at Book 8016, Page 199, as amended at Book 8340, Page 45 and Book 8834, Page 125, subject to all noted, conditions and easements shown on said Plan...

The Declaration referred to in the deed provides that the property shown on the subdivision plan of Stonegate is subject to the easements, restrictions, covenants and conditions set forth in the document, with the exception of certain parts of the property. Explicitly excluded from the restrictions, covenants and conditions is “those areas shown as roads on the Plan” (*See Exhibit 5, page 1*). As the property conveyed to the Town was an area shown as a road on the plan, it is not subject to the restrictions, covenants and conditions of the Declaration.

While Article III of the Declaration does provide that the Stonegate Association is responsible for maintaining, repairing and replacing the stone walls and landscaping within the road rights of way where such maintenance is not the responsibility of the Town, this provision does not impose any restrictions on the Town's right to grant access to a lot abutting the public way.

A review of the final plan of the Stonegate subdivision (*See Exhibit 6*) does not show any notes or restrictions that place any limits on the Town issuance of a permit for a driveway from the lot at 6 Stonegate Road across the abutting public way to the paved roadway.

It is important to note that all of Stonegate Road, including the unpaved area, is a public way and that the Town can permit a driveway across the unpaved public way to the paved portion of the public way.

### **3. Additional Issues**

#### **(a) Application submitted under Section 17-2-3**

The Appellant has alleged that the application submitted by Early Bird Group did not meet all the requirements of section 17-2-3 and was not complete because the Director did not have a sketch showing the setback of the building in relation to the center line of the traveled way. The Council did not request this issue be addressed, but because the Appellant has raised it, the Director will reply.

A review of this section of the ordinance shows that the list of requirements is modified by "if required by the Director of Public Works". The Director testified that he did not require a sketch showing the centerline as he had conducted a filed review of the



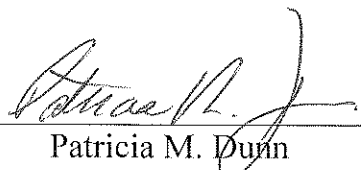
proposed driveway location. By conducting a field review, the Director was able to see exactly where the proposed driveway would be in relation to the location of the proposed house and in relation to the intersection with Mitchell Road. While the ordinance does not require a Director to conduct a field review, actually visiting the proposed site clearly provided the Director with the same, if not more information, than he would have received with only the information listed in the ordinance. There have been no questions raised that there were any concerns about to the location of the proposed driveway in relation to the centerline of the road. As the Director had all the information necessary to determine whether to issue the requested permit, there is no need for a formal sketch showing the relation of the centerline of the road to the location of the building.

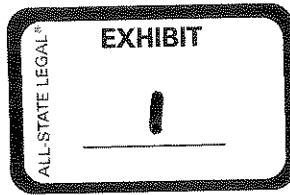
### **Conclusion**

Based on the foregoing, the appeal of the Director's issuance of a driveway entrance permit for 6 Stonegate Road should be denied.

Dated: January 3, 2011

Respectfully submitted,

By   
\_\_\_\_\_  
Patricia M. Dunn  
Attorney for Public Works Director  
Robert Malley



**CHAPTER 17  
TOWN WAYS**

(With amendments effective through 01/07/2009)

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## Article I. Definitions

### Sec. 17-1-1. Definitions.

(a) The words "public way" shall mean the entire width between the right-of-way boundaries of every public way, or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic, except for private roads and private ways. [Amended Eff. 1/07/09]

(b) The words "adequate sight distance" shall mean continuous and clear sight distance that meets the minimum requirements of Sec. 16-3-2 (a) (1) of this Ordinance.

(c) "Permittee" shall mean a person who has obtained a permit as required by this ordinance.

## Article II. Entrances to Public Roads.

[Adopted eff. 12/2/63 under R. R. 1954, C. 90-A, Sec. 3, (R.S. 1964, T. 30, Sec. 2151.

**Sec. 17-2-1. Entrance Permit Required.** No owner of property abutting upon any public way within the Town shall construct, cause or permit to be constructed, altered or relocated, any driveway, entrance, or approach or other improvement within the right-of-way of such road or extending from such road onto his property except in accordance with an entrance permit issued upon his application to the Director of Public Works and except for the bona fide purpose of securing access to his/her property and not for the purpose of parking or servicing vehicles within such right-of-way. Decisions of the Director of Public Works are appealable to the Town Council. A permit fee established by the Town Council shall be paid for each permit. [Amended Eff. 1/11/95 and 01/07/09]

**Sec. 17-2-2. Town Held Harmless.** The applicant shall hold harmless the Town of Cape Elizabeth and its duly authorized agents and employees against any action for personal injury or property damage sustained by reason of the exercise of an Entrance Permit.

**Sec. 17-2-3. Application.** Application shall be made by filing with the Director of Public Works together with an inspection fee established by the Town Council. The applicant shall furnish a copy of plans or sketches showing the proposed entrance locations, width and arrangement; distance between entrances; setback of building, gasoline pumps, etc., in relation to the center line of the traveled way; length, size and location of existing pipes, culverts, catch basins or manholes, curbing, curb and gutter, and/or sidewalks, and the proposed location of new pipes, culverts, catch basins or manholes, curbing, etc., if required by the Director of Public Works. [Amended Eff. 1/07/09]

**Sec. 17-2-4. Conditions of Permit.** The location, design and construction of any entrance permitted shall be in accordance with all local regulations and with the following requirements:

(a) **Sight Distance.** All entrances shall be so located that vehicles approaching or using the entrance will be able to obtain adequate sight distance that meets the minimum requirements of 16-3-2 (a) (1).

(b) **Grade.** Driveway and Private Way entrance grades shall be as provided in Sec. 16-3-2 (a) 10 of this Ordinance.

(c) **Number.** Not more than two entrances (or exits) shall be allowed any parcel of property the frontage of which is less than two hundred (200) feet. Additional entrances (or exits) for parcels of property having a frontage in excess of two hundred (200) feet shall be permitted only after showing of actual convenience and necessity. When frontage is fifty (50) feet or less, only one combined entrance and exit is permitted, the width of which shall not exceed thirty (30) feet.

(d) **Sidewalk and Curbs.** When sidewalk, curbing or curb and gutter is to be removed, it shall be replaced at the owner's expense at the break points of the entrance. All curbing at the side of entrance shall be rounded with a radius of not less than two (2) feet.

(e) **Drainage.** Drainage in road side ditches shall not be altered or impeded and suitable, approved drainage structures shall be provided at all entrances. Surfacing drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the road. Culverts or other provisions shall be made underneath the entrance or filled areas adjacent to the road adequate to carry the water in the road side ditches.

(f) **Paving.** The first ten (10) feet of the entrance extending from a Town Way shall be paved in accordance with the paving requirement for local roads in Sec. 16-3-2(b) 4 of the Subdivision Ordinance. (Added eff. 12/10/03)

**Sec. 17-2-5. Heavily-Used Entrances.** Application for entrances to drive-in theaters, shopping centers, ball parks or other large public gathering places may be granted only after approval by the Planning Board based upon the applicable standards under Site Plan Review, Sec 19-9. [Amended Eff. 1/11/95 and 12/10/03]

### **Article III. Excavation and Utility Installation**

#### **Sec. 17-3-1. Street Opening Permit Required.**

No person or utility shall make any excavation in any public road way without first obtaining a street opening permit from the Public Works Director or his/her designee. All such excavations are governed by 23 M.R.S.A., Sec. 3352 et seq. and this Ordinance.

(a) **Excavation Site** Prior to any excavation, applicants shall pre-mark the proposed area of excavation in white paint, in accordance with the applicable State of Maine and Dig-Safe requirements. Limits of pre-marked sites shall be within a reasonable area for purposes of the excavation. Excavators may identify pre-marked site, though it is not required by the "Dig Safe" legislation. Identification shall be done using company or utility initials, in letters no larger than six (6) inches in height. Identification shall be placed in the area to be excavated so that the identification will be eliminated after the job is completed. The Town of Cape Elizabeth is member of "Dig Safe", Inc. and requires

that "Dig Safe, Inc." be contacted for all excavations on any public road-way within the Town of Cape Elizabeth. [Amended Eff. 1/07/09]

(b) **Application** A Street Opening Permit shall be issued only after a written application on a form provided by the Town of Cape Elizabeth is submitted to the Public Works Director or his/her designated agent. The completed application shall state applicant's name, address, 24 hour emergency phone number and the purpose of the excavation. Applicants shall provide a "Dig-Safe" confirmation number on the application that is applicable to the proposed excavation site. The completed application shall also provide the name of location to be excavated, the beginning date of the proposed work, the completion date, the name of property owner for whom work is being done. The application shall be accompanied by a valid certificate of insurance, as outlined in Sec. 17-3-9, unless one is already on file with the Department of Public Works. [Amended Eff. 1/07/09]

(c) **Permit** Upon receipt of completed street and sidewalk opening applications, an opening permit will be issued. A fee established by the Town Council shall be paid for each permit or renewal thereof. Street opening permits shall only be issued from April 1 to November 30, unless an emergency or special circumstance exist. An explanation shall be given to the Public Works Director explaining the special situation or emergency prior to the issuance of a permit during the months of December 1 through March 31. Any oral explanation shall be followed up by a written explanation within two (2) working days.

(d) **Work Zone Signage** All excavations within any public way shall be posted and identified with the appropriate work zone signage and/or devices that conform to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the Director of Public Works, or his designee. [Added Eff. 1/07/09]

**Sec. 17-3-2. Excavation** Excavation work must be started no later than thirty (30) working days from the date of issuance of the Street Opening Permit. After the expiration of the thirty (30) day period, such street opening permit shall become null and void. Notification shall be made to the Public Works Department on the actual day the work will begin. No work shall be done under the permit on Saturdays, Sundays or Holidays, unless approved by the Public Works Director. During all street excavations, one-way traffic shall be maintained for emergency vehicles. Temporary exceptions may be made only by the Fire Chief and/or the Director of Public Works only when another means of access is available. [Amended Eff. 1/07/09]

**Sec. 17-3-3. Protection of Public Property.** In the course of any excavation, individuals and/or utilities shall not remove any trees or shrubs which exist in the street area without first obtaining the consent of the Tree Warden and/or Director of Public Works. [Amended Eff. 1/07/09]

**Sec. 17-3-4. Pavement Breaking in Streets.** All excavations on paved street surfaces shall be pre-cut in a neat straight line with pavement breakers or saws. Cutouts of the trench lines must be normal or parallel to the trench line. Pavement edges shall be

trimmed to a vertical face and neatly aligned with the center line of the trench. When three (3) or more street openings sequence fifteen (15) feet or less, center to center, between each adjacent opening, the individual and/or utility shall be charged for one (1) opening measured from the first to the last.

**Sec. 17-3-5. Pavement Breaking in Sidewalks.** All parts of Section 17-3-4 shall also apply to sidewalks in all cases except concrete sidewalks. Concrete sidewalks shall be saw cut. Use of pavement breakers will not be allowed. On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.

**Sec. 17-3-6. Backfilling.** Fine material (free of lumps and stones no larger than four (4) inches shall be thoroughly compacted around and under the substructure to the upper level of the substructure. Backfill material shall be placed and compacted in lifts of eight (8) to twelve (12) inches and thoroughly compacted by mechanical compactors approved by the Director of Public Works. Within eighteen (18) inches of the sub grade of the pavement, backfill shall meet MDOT specification Type B and be left three (3) inches below the surface. Within twenty-four (24) hours after the trench has been backfilled three (3) inches of cold bituminous concrete shall be placed over the gravel and compacted, or permanent repairs completed per Section 17-3-8.  
[Amended Eff. 1/11/95 and 01/07/09]

**Sec. 17-3-7. Inspections.** The Director of Public Works or his designee shall make such inspections as are necessary in the enforcement of this ordinance.

**Sec. 17-3-8. Restoration of Surface in Public Ways.** Permanent resurfacing of excavations shall be made by the Town of Cape Elizabeth. The Town, at its option, may allow the individual or utility to permanently resurface that portion of the street surface damaged by the excavation, in which event, permanent resurfacing shall be done in a manner and under the specifications of the Town of Cape Elizabeth's Subdivision Ordinance for pavement thickness. If such permanent repairs are made to the satisfactory completion of the Director of Public Works, or his/her designee, all charges for resurfacing will be canceled.

The Director of Public Works, or his/her designee may require any trench to be cold-planned and/or resurfaced due to settlement, defects in materials and workmanship related such resurfacing within three (3) years of the original excavation, at the expense of the permittee. [Amended Eff. 1/11/95 and 01/07/09]

**Sec. 17-3-9. Proof of Insurance.** Applicants for opening permits shall supply to the Department of Public Works a certificate of insurance listing the Town of Cape Elizabeth as an additionally named insured - \$400,000 minimum. Coverage shall be for not less than the following amounts:

a. General liability including comprehensive form, premises/operations, underground explosion and collapse hazard, products/completed operations, contractual, independent contractors, broad form property damage and personal injury.

1. \$1,000,000 Bodily Injury and Property Damage Each Occurrence

2. \$2,000,000 Bodily Injury and Property Damage Aggregate
3. \$2,000,000 Personal Injury Aggregate

b. Automobile liability including any auto, hired autos and non-owned autos - \$1,000,000 bodily injury and property damage combined.

c. Workers' Compensation and Employer's Liability

1. \$500,000 each accident
2. \$500,000 Disease - Policy limit
3. \$500,000 Disease - Each employee [Amended Eff. 01/07/09]

**Sec. 17-3-10. Excavations in Reconstructed or Repaved Roads.** After a public road has been reconstructed or repaved, no permit shall be granted to open such road for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not have been reasonably foreseen at the time of the reconstruction or repaving. This section shall be void unless the Town shall have given sixty (60) days notice by certified mail of the impending work to the owners of property abutting the road and to all public utilities serving the road. [Amended Eff. 01/07/09]

**Sec. 17-3-11. Penalty.** Any person, firm or corporation who shall violate any provision of this Article III shall upon conviction be fined for the use of the Town in a sum not less than \$500.00 and not more than \$1,000.00. Each day of continued violation shall constitute a new and separate offense. [Amended Eff. 1/11/95 and 01/07/09]

#### **Article IV. Construction of Streets.**

[Adopted eff. 11/12/76 under R.S. 1964, T. 30, Sec. 2151.]

**Sec. 17-4-1. Compliance with Subdivision Requirements.** Any way hereafter constructed within the limits of the Town, including any way serving more than one residential unit or serving two or more lots of land to which title is held in different ownership, shall be designed and constructed so as to satisfy the requirements imposed upon streets within subdivisions and shall be submitted for acceptance by the Town unless the Planning Board, after considerations of future traffic and the provision of municipal services over such street, its location with respect to the comprehensive plan and the adequacy of construction proposed, approves the construction of such street to lesser standards and with reasonable requirements as may be necessary to assure adequate access by municipal emergency vehicles, maximum utility in relation to objectives of the comprehensive plan, and continuing maintenance of such street. [Amended Eff. 01/07/09]

#### **Article V. Regulation of Heavy Loads.**

**Sec. 17-5-1. Heavy Load Limits.** The Town Manager may, upon the recommendation of the Director of Public Works, and after seven (7) days notice published once in a newspaper of general circulation in the community, post registered gross vehicle weight limits on any town public road. [Amended Eff. 01/07/09]

**Sec. 17-5-2. Penalty.** Any person, firm or corporation who shall violate a posted weight limit enacted under Sec. 17-5-1 shall, upon conviction, be fined, for the use of the Town, a sum not less than \$100.00 nor more than \$250.00 for each 1,000 pounds of registered gross vehicle weight over a posted weight limit. [Revised 11-11-88 and 01/07/09)





CHAPTER 16
SUBDIVISION REGULATION

[Adopted eff. 6/9/68, under R. S. 1964, T. 30, Sec. 4956] (With revisions eff. 7/13/93 and subsequent revisions eff. 2/12/94, 7/13/94, 1/10/96 and 12/10/03)]

Table listing sections: Article I. Purpose, Authority, Scope, Definitions (1-3); Article II. Review Procedures (6-14); Article III. Standards (16-36); Appendix A (37), Appendix B (40), Appendix C (44).

ARTICLE I. Purpose, Authority, Scope, Definitions.

Sec. 16-1-1. Purpose. This ordinance is designed to promote the health, safety, convenience and general welfare of the Inhabitants of the Town of Cape Elizabeth by encouraging and ensuring sound planning, the use of the environment under healthful conditions, the imaginative and orderly use of land, compliance with the goals and objectives of the Comprehensive Plan, and development that fits harmoniously into the existing natural environment and rural character. To this end, in evaluating any proposed subdivision of land within the Town of Cape Elizabeth, the Planning Board shall determine whether such subdivision will meet the standards set forth in this Chapter and:

- (a) Will not result in undue water or air pollution. In making this determination it shall consider at least: the elevation of land above sea level and its relation to the flood plains, the nature of soils and sub-soils and their ability too adequately support waste disposal; the slope of the land and its effect on effluents; the

availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;

- (b) Has sufficient water available for the reasonably foreseeable needs of the subdivision;
- (c) Will not cause an unreasonable burden on an existing public water supply, if one is to be utilized;
- (d) Will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- (e) Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads, alone or in conjunction with existing or contemplated road use;
- (f) Will provide for adequate sewage waste disposal;
- (g) Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;
- (h) Will not have an undue adverse effect on the scenic or natural beauty of the area, scenic vistas, aesthetics, wildlife habitat, historic sites or rare and irreplaceable natural areas; or any public rights for physical or visual access to the shoreline;
- (i) Is in conformance with these Subdivision Regulations, the Zoning Ordinance, Comprehensive Plan for the Town of Cape Elizabeth and the requirements for building and development in flood hazard areas set forth in Article VI of Chapter 6 of this Code of Ordinances;
- (j) The applicant has adequate financial and technical capacity to meet the above stated standards;
- (k) Whenever situated, in whole or in part, within 250 feet of any water body, stream, brook, wetland as defined in the Zoning Ordinance, or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;
- (l) Will not, alone or in conjunction with existing activities, adversely affect the quality of ground water;
- (m) The applicant will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan

shall include a condition of plat approval requiring that principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation; and

- (n) Will promote energy conservation and efficiency.

**Sec. 16-1-2. Authority** These regulations shall apply to all land within the limits of the Town of Cape Elizabeth, Cumberland County, Maine. They shall be administered by the Planning Board of the Town of Cape Elizabeth, hereinafter called "the Board", and the Town's code enforcement staff, and the registered professional engineer employed or retained by the Town who shall be its lawful agents.

**Sec. 16-1-3 Scope.**

- (a) Any person, firm, corporation or other legal entity proposing to sell, lease or convey, or to offer or agree to sell, lease or convey, any land in a subdivision any portion of which is within the limits of the Town of Cape Elizabeth, including without limitation any unit within multiplex housing, as defined herein, shall first submit such subdivision for approval by the Board in accordance with these Regulations and shall record in the Cumberland County Registry of Deeds a plan thereof bearing the approval of the Planning Board.
- (b) No utility installations; no ditching, grading or construction of roads; no grading of land or lots; and no construction of buildings shall be done on any part of the proposed subdivision until a subdivision application has been submitted, reviewed and finally approved as provided by this Ordinance.

**Sec. 16-1-4 Definitions.**

In general, words and terms used in these Regulations shall have their customary dictionary meanings, but the following words and terms as used in these Regulations are defined as follows:

**"Applicant"** - the record owner, or a person having an interest in the land either through written option or contract.

**"Access Road"** - any road which includes (1) an 18' wide traveled way, (2) deeded and actual rights of public emergency access, and (3) year-round maintenance, including snow plowing of the road, the responsibility of which is documented in a binding written agreement if the road is not located within a public right-of-way.

**"Arterial"** - a road which is a major link with other communities. This road typically averages in excess of 3,000 trips per day with an average length of each trip of more than one mile. Arterials accommodate residential, agricultural and most of the Town's commercial development. Direct access by residential development should be discouraged, and commercial access should be combined with adjacent commercial uses where feasible.

**"Board"** - shall refer to Planning Board.

**“Building Envelope”** - The area within a lot where the main and accessory buildings shall be located.

**“Cluster Development”** - A type of subdivision development for single family detached dwellings or a combination of single-family detached dwellings and multiplex dwellings where lot sizes, lot widths, and building setbacks are reduced below the minimum requirements of this ordinance and the land gained thereby is set aside as open space.

**“Code Enforcement Administrator”** - the staff person designated to administer the Town’s code enforcement operations.

**“Collector”** - a road which collects traffic from the most densely settled areas and typically connects to an adjacent community. This road averages in excess of 2,000 trips per day with an average length of each trip over more than one mile. Collectors are located in areas with a dense, suburban pattern of development. The design of collectors must provide heavy traffic flow capacity and protect sensitive scenic areas and neighborhoods. Direct access by single driveway should be discouraged.

**“Dead-end road”** - a road with a single, common means of ingress and egress.  
[Rev. eff. 7/13/94]

**“Ditch”** - a channel for conveying surface water outside the traveled way.

**“Emergency Access Lane”**- a public or private paved road with a minimum width of 18’ which is not open to through vehicular traffic. This type of road may provide secondary emergency access to an area served by a dead-end road. [Rev. eff. 6/12/91]

**“Esplanade”** - a landscaped strip of land located between a road and a sidewalk or between two roads.

**“Feeder”** - a road which connects local roads to other roads. This road is typically densely developed and serves more than 100 dwellings or approximately 1,000 trips per day. Feeders primarily serve residential traffic where access by single driveway is common.

**“Final Approval”** - The status of an application once there has been a Planning Board Decision, any conditions on the approval have been met, the recording plat has been signed and a performance guarantee has been accepted by the Town.

**“Gutter”** - a channel for conveying surface water along the edge of pavement.

**“Local Road”** - a road which provides direct access to adjacent residential land or the Town center area. The local road is the most common road classification and carries a low volume of trips in residential areas, although higher volumes are also common in the Town center area. Local roads should be designed for slow speeds and frequent pedestrian travel.

**“Lot”** - an area of land in one ownership, regardless of the dates or sources of acquisition thereof and regardless of the buildings and uses existing thereon, having definite boundaries by recorded plan or deed and having an area of less than 40 acres.

**“Manufactured Housing Unit”** - structures, transportable in one or two sections, which were constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

**“Manufactured Housing Park”** - a parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

**“Manufactured Housing Park Lot”** - the area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

**“Multiplex Housing”** - attached dwelling units, as defined in the Zoning Ordinance (Chapter 19).

**“Performance Guarantee”** - any security that may be accepted by the Town to assure that improvements required as part of an application for development will be completed in compliance with the approved plans. **“Planner”** - that person designated from time to time by the Town to assist the Planning Board in its subdivision and site plan review.

**“Planning Board Decision”** - the Planning Board vote to approve or conditionally approve the preliminary or final plan.

**“Principal Structure”** - any building other than one which is used for purposes wholly incidental or accessory to the use of another building on the same premises.

**“Private Road”** - a road or way which provides access to more than one principal structure and which is not owned by the Town.

**“Resubdivision”** - the replatting of all or part of the land included in a subdivision plan already approved by the Planning Board.

**“Road”** - a public or private way for vehicular traffic however designated, serving more than one residential unit or more than one lot.

**“Rural Connector”** - A road which handles trips between different parts of Town and connects rural residential development to arterials. This road typically carries less than 1,000 trips per day with an average length of more than one mile. Rural connectors are located in primarily rural residential areas and the rural character should be maintained. Access by residential 7 development should preferably be by a local road, but may be from a single driveway.

**“Sight Distance”** - continuous and clear sight distance that meets the minimum requirements in Section 16-3-2 (a) (1) of this Ordinance.

**“Site Improvement”** - all changes and construction required of a development to be in compliance with Planning Board approval and Town Standards.

**“Subdivision”** - the division of a tract or parcel of land into 3 or more lots within any 5 year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this Ordinance, or by transfer of any interest in land to the owner of land abutting thereon,

shall not be considered to create a lot or lots for the purpose of this Ordinance. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of said first two lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create a 3<sup>rd</sup> lot, unless both such dividings are accomplished by a applicant who shall have retained one of such lots for his own use as a single family residence for a period of at least 5 years prior to such 2<sup>nd</sup> dividing. Lots of 40 or more acres shall not be counted as lots. For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

**“Subdivision Major”** - A subdivision containing more than five lots, or requiring extension of municipal facilities, or requiring any new street extension, or falling under the cluster provisions of the Zoning Ordinance, or multiplex housing as defined in the Zoning Ordinance or a manufactured housing park as defined herein.

**“Subdivision Minor”** - A subdivision containing not more than five lots and is not otherwise defined above as a major subdivision.

**“Through road”** - a road with more than one means of ingress or egress. Both means of ingress and egress must, at a minimum, meet the standards of an access road. [Rev. eff. 7/13/94]

**“Traveled Way”** - that portion of a right-of-way which is regularly used for vehicular traffic.

## **Article II. Review Procedures**

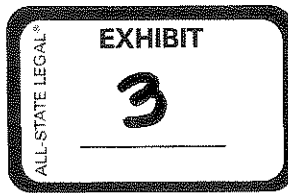
**Sec. 16-2-1. General Procedures.** In all stages of the subdivision review process, the burden of proof shall be upon the applicant proposing the subdivision.

**Sec. 16-2-2. Pre-Application Process.** Prior to submitting a subdivision review, the applicant shall meet with the Planning Board at least once to discuss the proposal generally, acquaint the board with the nature of the proposal and the location, topography and other attributes of its site, and obtain preliminary classification of the proposal as either a minor or major subdivision.

### **Sec. 16-2-3. Review and Approval of Minor Subdivisions**

#### **(a) Procedures .**

1. The subdivision applicant or an agent duly authorized in writing, shall submit to the Town Planner a subdivision application for consideration by the Planning Board together with the fee therefore as prescribed by the Town Council, and fourteen (14) complete copies of the proposed subdivision plans and materials. All plans and materials shall be submitted at least 18 calendar days prior to the Board's next scheduled meeting. Prior to the first meeting with the Planning Board, the applicant shall also establish a Review Escrow Account under the terms in Sec. 16-2-4 (a) (1).



within the period specified in the performance guarantee, he shall then so notify the applicant and the Town Manager, who shall take all necessary steps to preserve the rights of the Town under the performance guarantee, including authorization to the Town Engineer to stop the construction of said improvements.

(d) **Modification** . If at any time before or during the construction of the required improvements the applicant demonstrates to the satisfaction of the Town Engineer that unforeseen conditions make it desirable to modify the design of such improvements, such engineer may, upon approval by the Planning Board, authorize modifications provided that they are within the spirit and intent of the Planning Board approval and do not constitute waiver or substantial alteration of the function of any improvements required by the Planning Board. The Town Engineer shall issue any authorization under this section in writing, and he shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

(e) **Completion and Acceptance**. As built drawings consisting of two paper copies and one reproducible copy shall be submitted to the Public Works Director prior to public acceptance of public improvements by the Town Council. The as-built drawings shall include an engineer's seal, distances, angles and bearings for complete and accurate determinations of locations on the ground, right-of-way monuments and as set, as-built profiles of the centerlines of traveled ways, ledge elevations encountered during construction and information on the locations, size, materials and elevations of storm drains, sanitary sewers and other underground utility lines, including but not limited to water, electric, telephone, natural gas, cable television. Upon approval of such as-built plans by the Town Engineer, the applicant may initiate municipal acceptance of any improvements to be dedicated or transferred to the Town, and may initiate any other permanent arrangements for the management, maintenance and operation of any other required improvements. There shall be no final release of any performance guarantee until the as-built plans have been received and approved by the Town Engineer. A set of the final plans shall be submitted to the Town Manager. The applicant shall be required to maintain all improvements and to provide for snow removal on roads and sidewalks, until their acceptance by the Town or the assumption of those responsibilities under such other approved arrangements. (Revised eff 12/10/03)

### Article III. Standards

#### Sec. 16-3-1. General Standards of Subdivision Design

- (a) The proposed road(s) conform to the Comprehensive Plan as adopted in whole or in part by the Town Council. The Board may require provision for the projection of roads or for access to adjoining property, whether subdivided or not.
- (b) All roads within a subdivision and roads providing access to a subdivision shall be designed so that they will provide safe vehicular travel and traffic patterns. Access roads shall not be placed within 125 feet of an intersection. The Planning Board may require that local roads be laid out so that their use by through traffic will be

discouraged. The board shall require that roads be designed so as to provide safe, convenient and attractive access from the subdivision to previously existing or proposed public ways, which may include two or more means of such vehicular access; it may require that such roads be constructed in their entirety and be finally accepted prior to the issuance of any building permits for construction of dwellings thereon; and it may withhold approval of preliminary or final subdivision plans until such access is provided for by the applicant over his own and/or other abutting property.

- (c) Plants or other types of vegetative cover shall be preserved or placed throughout and around the perimeter of any proposed subdivision to provide for an adequate buffer, reduction of noise and lights, separation between the subdivision abutting properties, and enhancement of its appearance.
- (d) Off-road parking lots, storage areas, rubbish disposal areas, or similar improvements exposed to public roads or to residential areas shall be screened by walls, earth berms, fences, or vegetation, and shall be properly landscaped.
- (e) Proposed roads shall be laid out in an attractive manner, in order to enhance the livability and amenity of the subdivision. Insofar as possible, roads shall conform to existing topography, and high cuts and fills shall be avoided.
- (f) Consideration shall be given by the applicant and the Planning Board to the sensitivity of the proposed subdivision design for the purpose of protecting and assuring access to direct sunlight. Insofar as possible, the subdivision design shall locate structures so as to minimize shading of either existing or proposed structures.
- (g) Block lengths shall not exceed 1,000 feet except where a greater length suits the topography or character of the subdivision and does not result in an awkward road pattern or detrimental effect to adjacent property.
- (h) Road names shall not be used which will duplicate or may be confused with the names of existing roads. Road names shall be subject to the approval of the Planning Board and Town Council.
- (i) For any subdivision involving more than 10,000 square feet of impervious surface, paving, clearing or vegetative alteration, the provisions and improvements for the control of storm water runoff shall be governed by the provisions of Chapter 18, Article II, Storm Water Control Ordinance. In the case of any subdivision involving less than 10,000 square feet of such impervious surfaces, where a subdivision is traversed by a stream, drainage way or other watercourse, or where the Planning Board with the advice of the engineer feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right-of way conforming substantially with the lines of such watercourse, and culverts, catch basins or other means of channeling surface water within such subdivision and



over the property of owner abutting upon it of such nature, width and location as the Planning Board with the advice of the engineer, deems adequate.

- (j) Provision of pedestrian easements or other types of pedestrian accessways not less than 10 feet wide may be recommended to the applicant, where a pedestrian accessway would add to the Town's Greenbelt System or where the Planning Board deems it important for pedestrian enjoyment or to provide access to but not limited to schools, playgrounds, shopping centers, recreation areas, open space, trails, shore frontage, and other facilities. Where feasible, the easements shall connect to existing and proposed recreation trails. The Town shall have the right but not the obligation to plow and otherwise maintain such easements.
- (k) The area and width of lots shall conform to the requirements of the Zoning Ordinance. Side lot lines shall be substantially at right angles or radial to road lines.
- (l) Each property shall be provided with vehicular access to each lot by an abutting public or private road. A private road shall be protected by a permanent easement which shall conform to the Road Classification Standards Table and which shall be shown on the plan.
- (m) Multiplex housing and cluster developments shall be so designed, sited and laid out as to minimize disturbance of existing topography and ground cover, provide maximum usable natural or improved open space, reflect imaginative use of the site, and be compatible with any surrounding land uses and their character. The minimum lot size and density requirements for any proposed multiplex housing or cluster development shall be as set forth in Sec. 19-3-1 (d) of the Zoning Ordinance.
- (n) The Planning Board may require sidewalks and/or curbing on either or both sides of any road, where they are or may be necessary for maintenance and/or public safety, as determined by the Board.
- (o) The applicant, whenever practical, shall be required to preserve natural features such as water courses or bodies, existing trees of 10 inches or more in diameter (base height), marshes, swamps or other areas identified on the official wetlands map, open space, scenic points, historic spots, and unusual or striking topographic features which, if preserved, would add to the attractiveness of the subdivision. The Planning Board may require the applicant to dedicate such features to joint ownership and management by the owners of individual lots within the subdivision. In lieu of dedication to a homeowners association/condominium association, the Planning Board may accept dedication to the Town itself, or an appropriate non-profit third party group or organization, such as the Cape Elizabeth Land Trust. Any dedications must be conveyed through appropriate legal instruments, reviewed by the Town Attorney, and approved by the Town Council.
- (p) Consideration shall be given by the applicant and the Planning Board to the impact of the proposed development on scenic vistas and view corridors to and from significant

natural features, historic sites, and important topographic features as identified in the Town's Comprehensive Plan. Structures in the proposed subdivision shall not materially obstruct existing scenic vistas and view corridors. The Planning Board may consider the impact of other design features such as building bulk, architectural style and landscaping to ensure visual harmony between views to and from the proposed development and the surrounding neighborhood.

**(q) Open Space Impact Fee**

- i. Purpose.** In order to accommodate the expected needs of the subdivision for open space and recreational areas without diminishing the community standard of public open space, the applicant shall be required to donate land or a cash contribution in lieu of actual land dedication, or a combination of both, at the option of the Board.
- ii. Community Standard.** Public open space shall include the inventory of open space for which there is legal public access, including:
  - (1) Open space owned by the Town;
  - (2) Open space encumbered by an easement owned by the Town which allows public access;
  - (3) Open space owned by the Cape Elizabeth Land Trust; and
  - (4) Open space encumbered by an easement owned by the Cape Elizabeth Land Trust which allows public access. The Community Standard of public open space shall be defined as the total acreage of open space divided by the Town's population, as of the most recent U.S. Census.
- iii. Land donation .** The required land donation shall be calculated by multiplying the number of lots/units in the proposed subdivision by the average number of persons per household as published in the most recent U.S. Census, and then multiplying the resulting number by the Community Standard of public open space. At least twenty percent (20%) of the land donated shall be land which is not a Resource Protection Zone or buffer and has a slope not to exceed fifteen percent (15%).
- iv. Fee .** If the resulting land dedication would be too small to be useful, or inappropriately located, the Planning Board may require the applicant to pay a fee in lieu of all or part of the required land dedication. The fee shall be calculated by multiplying the amount of acreage which otherwise would have been required to be donated with the proposed subdivision (rounded to the nearest one-hundredth of an acre) by the average fair market value of one acre of vacant land (rounded to the nearest dollar) determined by the Town Assessor using accepted professional valuation methods.
- v. Administration .** Land donation and land conveyance shall be consistent with the land included in the town inventory. Open space impact fees shall be segregated from the Town's general revenues and expended only for the acquisition or improvement of public open space. The Town shall refund to the applicant that portion of the collected open space impact fee that is not expended within ten (10) years from the date of receipt. The Community Standard of public open space, average fair market value of one acre of vacant land, and open space impact fee

therein derived shall be published in the Fee Schedule approved and periodically updated by the Town Council. The Fee Schedule shall be available for inspection at the office of the Town Clerk. Any required fee shall be paid prior to the commencement of construction of the subdivision and/or issuance of a building permit.

- (r) Common open space, recreation areas or other such areas to be dedicated by the applicant shall be maintained to ensure that its use and enjoyment is not diminished or destroyed, with the applicant submitting written documents identifying which individual, group or organization shall be responsible for said maintenance.
- (s) All systems proposed for the disposal of sewage for developments regulated by this Ordinance shall be governed by the provisions of Chapter 15, Sewer Ordinance.
- (t) The Planning Board shall review all subdivision proposals to assure that: (1) they are designed to minimize flood damage; (2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage; (3) adequate drainage is provided so as to reduce exposure to flood hazards; and (4) the proposed subdivision otherwise meets the standards of the Town's floodplain requirements.
- (u) Any proposed alteration of wetlands shall adhere to the requirements and standards of Section 19-2-8 and Section 19-3-9 of the Zoning Ordinance.
- (v) The applicant shall make adequate provision for the protection of wildlife habitat and fisheries areas, which may include but are not limited to maintenance of wildlife travel lanes, and the preservation and buffering of wildlife habitat areas from proposed development activities.
- (w) The numbering of the individual residential dwelling units must be clearly visible and shall be required to be reviewed and approved by the fire chief and police chief. For any development with more than one set of attached or multiplex dwelling units, signs clearly identifying the house numbers in each set of dwelling units shall be required to be placed along the road leading to each set of units and shall be subject to approval of the fire chief and police chief.
- (x) All utilities, including but not limited to the provision of water, gas and electricity, and the provision of solid waste disposal, shall be demonstrated to be adequate for the proposed development.
- (y) The applicant shall demonstrate adequate technical and financial capability to complete the project as proposed. In the case where the applicant asserts that public disclosure of confidential financial information may prove detrimental to the applicant or to the success of the subdivision, the Town Manager may review the financial records of the applicant and recommend to the Planning Board that financial capability is adequate.

### **Sec. 16-3-2. Road Design and Construction Standards**

The purposes of the subdivision road standards are to minimize traffic safety hazards and the cost of municipal maintenance and reconstruction, to insure that roads are consistent with the Town's rural character, to promote a sense of community, and to be consistent with the Comprehensive Plan. The standards shall be flexible where an applicant can demonstrate that alternative approaches will meet the above stated purposes. Roads within a subdivision shall be classified by the Planning Board in accordance with their



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ITEM #70

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that STONEGATE ASSOCIATES, a Maine limited partnership whose mailing address is 594 Congress Street, Portland, Maine 04101, does hereby GIVE, GRANT, BARGAIN AND CONVEY, with WARRANTY COVENANTS, unto the TOWN OF CAPE ELIZABETH, whose mailing address is 320 Ocean House Road, Cape Elizabeth, Maine, its successors and assigns, the following real estate:

A certain lot or parcel of land located in Cape Elizabeth, County of Cumberland, Maine being that portion of Stonegate Road contained within Phase II of Stonegate Subdivision as shown on a Plan entitled "Subdivision Plat, Stonegate, Cape Elizabeth, Maine" by Owen Haskell, Inc., revised August 6, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 158, Pages 4 and 5,

Being a portion of one or more of the properties described in deeds to Stonegate Associates and recorded in the said Registry of Deeds at Book 7201, Page 40 and Page 43 and Page 46.

This conveyance is subject to a Declaration of Covenants, Conditions and Restrictions recorded in said Registry of Deeds at Book 8016, Page 199, as amended at Book 8340, Page 45 and Book 8834, Page 125; subject to all notes conditions and easements shown on said Plan; and is subject to easements granted by the said Stonegate Associates to Central Maine Power Company, New England Telephone Company and Portland Water District all for the purpose of installing utilities serving the subdivision.

IN WITNESS WHEREOF, the said STONEGATE ASSOCIATES has caused this instrument to be duly executed by Robert H. Taylor, Jr., its Managing General Partner, this 5th day of December, 1989

STONEGATE ASSOCIATES

Walter H. McLaughlin  
Witness

Robert H. Taylor, Jr.  
By Robert H. Taylor, Jr.  
Its Managing General Partner

STATE OF MAINE  
CUMBERLAND, SS.

Dec 5, 1989

PERSONALLY appeared the above-named Robert H. Taylor, Jr. and acknowledged the foregoing to be his free act and deed and the free act and deed of Stonegate Associates.

Before me,

Barbara B. Ray 12/5/89  
Notary Public

RECEIVED  
REGISTRY OF DEEDS  
1989 DEC -8 PH 2:47  
CUMBERLAND COUNTY

My Commission Expires Aug. 21, 1995

SEAL



STONEGATE

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

This Declaration, made on the date hereinafter set forth by STONEGATE ASSOCIATES, a Maine limited partnership, hereinafter referred to as "Declarant".

W I T N E S S E T H:

Whereas, Declarant is the owner of certain property in the Town of Cape Elizabeth, County of Cumberland and State of Maine, more particularly shown on a Plan entitled "Subdivision Plat, Stonegate, Cape Elizabeth, Maine" by Owen Haskell, Inc., revised August 6, 1986 and recorded in the Cumberland County Registry of Deeds in Plan Book 158, Pages 4 and 5 (the "Plan").

NOW THEREFORE, Declarant hereby declares that the property described above, excepting Lot No. 52, that area shown as "Common Open Space" on the Plan, and those areas shown as roads on the Plan shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

-/-

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to STONEGATE HOME OWNERS ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to those numbered building sites, excepting Lot #52, shown upon the Plan.

Section 5. "Declarant" shall mean and refer to STONEGATE ASSOCIATES, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the Cumberland County Registry of Deeds.

Section 7. "Phase" shall mean and refer to those areas designated "PHASE I", "PHASE II" and "PHASE III" on the Plan.

## ARTICLE II

### USE AND OCCUPANCY REGULATIONS

Each lot conveyed in Stonegate shall be subject to the following covenants and restrictions which shall run with the land:

1. The lot conveyed hereby shall be used only for single family residential purposes and shall not be subdivided. No one shall reside in trailers, mobile homes or other temporary structures on said land. No trade, business or commercial activity of any nature shall be conducted on said land except those of a limited professional use which would not have as a natural consequence of said professional use an increase in flow of traffic.

2. No building or other structure or installation, including fences, swimming pools or storage buildings with the exception of lamp posts, mailboxes, stone walls no more than four (4) feet high and appurtenances to underground utility installations, shall be erected, placed, constructed, altered or maintained on the land within twenty-five (25) feet of any lot sides or rear line or forty (40) feet of a street line or such greater distances as given in Table II-2, all as indicated on the Plan. Only one (1) single family residential dwelling shall be permitted on any individual lot and in addition to a garage only one (1) other detached building shall be permitted. No structure shall exceed thirty-five (35) feet in height and all residential dwellings shall have a minimum of

fifteen hundred (1500) square feet of heated, finished living space, counting both floors in two-story homes, but not including porches, screened, glassed-in or otherwise, stoops, garages, carports, or other outside living spaces. All buildings or other structures shall have the roof and outside finish completed within one (1) year after construction is begun. All landscaping and driveway surfacing shall be completed within nine (9) months of occupancy of the dwelling.

TABLE II-2  
SPECIAL SETBACK REQUIREMENTS  
(FEET)

LOT	FROM COMMON OPEN SPACE BOUNDARY	FROM REAR BOUNDARY	NOTES
11-15	-	50	-
16-17	-	80	From common rear corner, per plan
18-22	-	70	-
35	50	-	Per plan
36-37	50	-	-
39-40	50	-	-
41	50	-	Northern boundary only, per plan
42-47	100	-	Southern boundary only, per plan

3. All structures shall have brick, wood or other natural siding on the exterior. The use of simulated or artificial brick or stone composition siding shall not be permitted.

4. No garbage, trash, noxious or offensive objects, or junk vehicles, which do not pass the State of Maine Motor Vehicle Inspection laws, shall be kept on any lot.



5. No trees in excess of eight (8) inches caliper shall be cut within fifteen (15) feet of any lot side or rear line or within thirty (30) feet of any street line except:

- a. For the purposes of constructing, replacing and maintaining the roads, walks, driveways and utilities serving each lot and the Property;
- b. Clearing or restoration of trees damaged by the forces of nature or disease.

6. Lots shown on the Plan as being affected by a slope easement shall be subject to the rights of the Declarant, its successors and assigns to construct, maintain, alter and repair a slope for the support of the roadbed and maintenance of the shoulders and sight lines. The lot owner shall be prohibited from disturbing in any manner the soil located within the slope easement, including but not limited to its excavation and removal.

7. Lots shown on the Plan as being affected by a drainage easement shall be subject to the rights of the Declarant, its successors and assigns to construct, maintain, alter and repair any culverts, swalls, pipes or other facility necessary for adequate drainage.

8. Lot 25 and Lot 9 shall be subject to a landscape easement as shown on the Plan and shall be subject to the rights of the Declarant, its successors and assigns to erect, maintain and repair a stone wall and to perform any associated landscaping activity including, but not limited to planting and cultivating, lawns, plants, flowers, shrubs or trees.

9. Within the area shown on the Plan as being affected by the Wetland Easement, no alteration shall be made to the surface of the easement area other than that caused by the forces of nature, or unless required to maintain the property and streambed located therein as a drainage course to ensure the unobstructed flow of surface water across said premises. No commercial, residential, industrial, quarrying or mining activities shall be permitted on the easement area. There is, however, retained in the Declarant, its successors and assigns, the following rights:

i. the right to excavate in connection with the installation, maintenance, improvement, alteration or replacement of water, sewerage, drainage, electric, telephone and other underground utility services related to the residential use of the premises provided such activity is performed in conformance with all local, state and federal laws and regulations governing such activity and further provided that the land and vegetation be thereafter restored, as nearly as possible, to its prior undisturbed state;

ii. the right to construct and maintain foot trails and fire protection lanes; and

iii. the right to construct roads, utilities and drainage facilities as approved by the Cape Elizabeth Planning Board.

10. Lot 40 and Lot 41 shall be subject to a watermain easement as shown on the Plan and shall be subject to the right

of the Declarant, its successors and assigns to install, repair, maintain, alter and operate a watermain and appurtenances in, over, across and under the area as shown on the Plan.

11. Prior to commencement of construction of the dwelling to be constructed initially on each Lot, the Lot owner shall submit to Declarant the following: (a) a site plan showing the location on the Lot of the dwelling, the garage, the driveway, the walks, the drainage features and utility locations, (b) floor plans for the dwelling, and (c) elevation plans showing all facades of all buildings on the Lot. Declarant shall approve such plans provided that they conform to this Declaration, are of regionally traditional character, and the Declarant determines, in its sole discretion, that construction in accordance with such plans will not be detrimental to Stonegate. The initial dwelling on each lot shall be constructed only in conformity with such approved plans. Upon completion, all dwellings shall be deemed to have complied with this paragraph.

12. The wholesale cutting or clearing of trees on a Lot, whether for commercial lumbering purposes or otherwise, is prohibited. Subject to Section II. 5., this does not prevent a Lot owner from cutting trees to construct or enhance the homesite on the Lot, to provide a view from his Lot or to preserve the wooded environment of his Lot.

13. Construction on lots within Stonegate shall meet the following requirements:

- a. A site plan prepared by a licensed Professional Engineer or Landscape Architect at a scale of 1" = 40', shall be submitted to the Town for review by the Building Inspector and/or the Town Engineer.
- b. Driveway gradient shall be a minimum of 0.5% and a maximum of 10.0%;
- c. The site shall be graded around principal structures to slope away from the structure at a minimum gradient of 3% for 15 feet or 5% for 10 feet;
- d. Drainage swales shall have a minimum gradient in the direction of flow of 2% and shall not direct flow over drives or walks;
- e. Water and sewer services shall be protected against frost;
- f. Where basements are constructed, foundation drains shall be provided which shall discharge to daylight or the storm drainage system; if connected to a storm drain, the foundation drains shall be equipped with a backflow preventer.

14. No motor home, boat or trailer in excess of twenty-four (24) feet in overall length may be stored on any Lot, except by the Declarant for construction purposes.

15. Each Lot owner shall be a member of the Stonegate Home Owners Association, a nonprofit corporation organized under the laws of the State of Maine. Membership shall be appurtenant to the lots, and the transfer of title to a lot shall automatically transfer the membership.

16. In any voluntary conveyance of a Lot deed, it shall be the duty of the seller to furnish the buyer with a copy of this Declaration.

The provisions of this Declaration and the rights and obligations established thereby shall be deemed to be covenants, running with the land, and shall inure to the benefit of and be binding upon each and all of the Lot Owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any interest therein, or any ownership interest in the property whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration.

### ARTICLE III

#### ASSOCIATION

The Association shall be responsible for maintaining, repairing and replacing the stone walls within that area shown on the Plan as the landscape easement as well as stonewalls and landscaping within the road rights of way where such maintenance is not the responsibility of the Town of Cape Elizabeth. The Association shall be authorized to assess each lot owner its proportionate share of the expense of such maintenance, repair and replacement and each lot owner hereby covenants and agrees to pay to the Association any such

assessment levied. The Association shall be governed by the By-Laws of the STONEGATE HOME OWNERS ASSOCIATION.

#### ARTICLE IV

##### RIGHTS OF DECLARANT

The Declarant reserves the right until the construction, marketing and sale of all Lots is completed to:

(a) Change the size, number and location of Lots and other improvements, and the size, layout, and location of any Lot for which a purchase and sale agreement has not been executed by the Declarant or with respect to which the purchaser is in default. The change or changes shall be effective upon the recording of an amendment to this Declaration and/or the filing of modified site plan indicating the changes made.

(b) Locate on the premises, even though not depicted on the Plan, and grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of, utility lines, wires, pipes, conduits, and facilities, including, but not limited to, water, electric, telephone and fuel oil and sewer.

(c) Connect with and make use of utility lines, wires, pipes and conduits located on the property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of service so used.

(d) Utilize any lot or structure thereon controlled by

the Declarant for construction, development or marketing purposes.

(e) Connect with any and all roads shown on the Plan for the purpose of serving adjacent developments and providing pedestrian, vehicular and utility access to such adjacent developments.

#### ARTICLE V

##### AMENDMENT

The provisions of Article II, Sections 1, 2, 5, 6, 7, 9, 12, 13 and 15 and the provisions of Article III shall not be amended without the approval of the Cape Elizabeth Planning Board. The provisions of Article II, Section 11, and Articles IV, V and VI shall not be amended prior to January 1, 2000 without the approval of the Declarant.

This Declaration may be amended by a vote or by written approval of the Lot Owners to whom sixty-seven percent (67%) of the votes are allocated. Lot Owners, other than the Declarant, shall be entitled to one vote for each lot owned; in no event shall more than one vote be cast with respect to any lot owned by other than Declarant. The Declarant shall be entitled to three (3) votes for each lot owned until the occurrence of either of the following events, whichever occurs earlier:

- a) the conveyance by the Declarant of thirty-six (36) lots to purchasers;
- b) three (3) years from the date of conveyance of the first lot by Declarant to a purchaser.

Thereafter, the Declarant shall be entitled to one (1) vote for each lot owned by the Declarant.

ARTICLE VI

ANNEXATION

Additional abutting land may be annexed by the Declarant without the consent of members.

IN WITNESS WHEREOF, the said STONEGATE ASSOCIATES, has caused this instrument to be signed by Robert H. Taylor, Jr., its General Partner, thereunto duly authorized, this 14<sup>TH</sup> day of OCTOBER, 1987.

WITNESS:

Marjorie Slagter

STONEGATE ASSOCIATES

BY: Robert H. Taylor, Jr.

General Partner

STATE OF MAINE  
CUMBERLAND, ss.

October 14, 1987

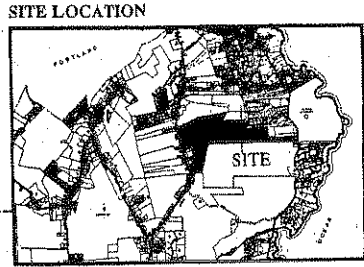
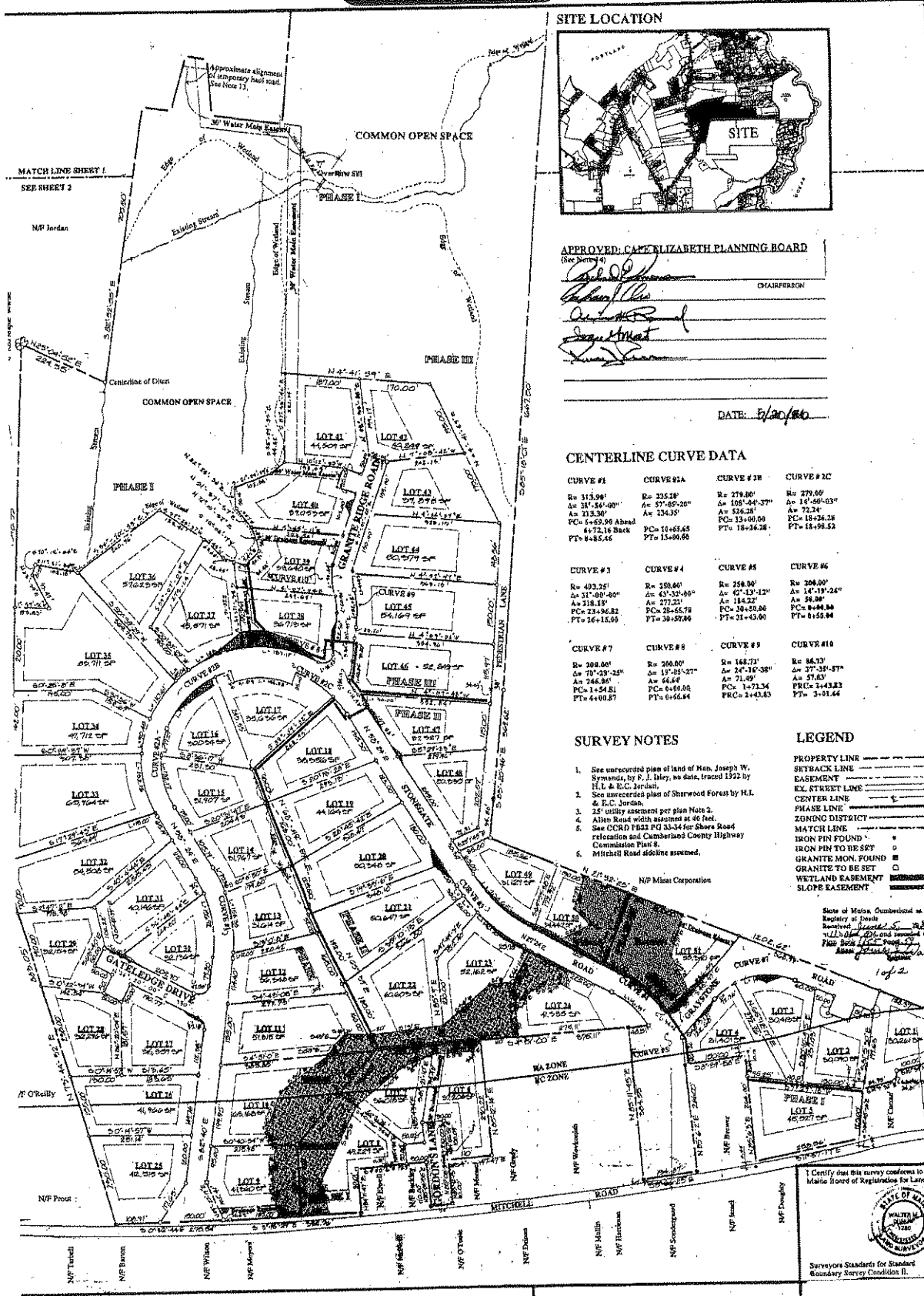
Personally appeared before me the above named Robert H. Taylor, Jr., of said STONEGATE ASSOCIATES, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said STONEGATE ASSOCIATES.

Before me,

Linda Anne Curran  
Notary Public

LINDA ANN CURRAN  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES NOVEMBER 10, 1988





APPROVED: CAPE ELIZABETH PLANNING BOARD  
 (See Note 3)  
 [Signature]  
 CHAIRPERSON  
 [Signature]  
 [Signature]

DATE: 5/20/86

**CENTERLINE CURVE DATA**

CURVE #1	CURVE #2A	CURVE #2B	CURVE #2C
R= 315.00' A= 38°54'00" A= 213.30' PC= 5+69.50 Ahead 4+72.16 Back PT= 8+85.46	R= 235.28' A= 57°05'20" A= 234.35' PC= 6+69.50 Ahead 4+72.16 Back PT= 13+09.60	R= 279.00' A= 108°04'37" A= 536.25' PC= 13+09.50 PT= 18+26.28	R= 279.00' A= 14°50'03" A= 72.24' PC= 18+26.28 PT= 18+98.52
CURVE #3	CURVE #4	CURVE #5	CURVE #6
R= 403.25' A= 31°00'00" A= 218.15' PC= 23+96.82 PT= 16+15.09	R= 180.00' A= 67°32'00" A= 277.23' PC= 28+65.78 PT= 30+07.09	R= 158.50' A= 47°13'12" A= 184.23' PC= 10+02.80 PT= 31+43.00	R= 206.00' A= 14°19'24" A= 34.90' PC= 04+00.00 PT= 0+55.94
CURVE #7	CURVE #8	CURVE #9	CURVE #10
R= 208.00' A= 70°29'25" A= 246.80' PC= 1+54.81 PT= 4+00.87	R= 208.00' A= 17°05'27" A= 64.64' PC= 0+60.00 PT= 0+66.64	R= 148.73' A= 27°35'38" A= 71.49' PC= 1+72.34 PT= 2+43.85	R= 86.73' A= 27°35'38" A= 51.83' PC= 2+43.83 PT= 3+01.64

**SURVEY NOTES**

- See unrecorded plan of land of Men. Joseph W. Symonds, by F. J. Foley, as date, traced 1922 by H. L. & E. C. Jordan.
- See unrecorded plan of Sherwood Forest by H. L. & E. C. Jordan.
- 25' utility easement per plan Note 2.
- Allen Road width maximum at 40 feet.
- See CUMD FILED PG 18-44 for Shore Road relocation and Cumberland County Highway Commission Plan 8.
- Mitchell Road decline assumed.

**LEGEND**

- PROPERTY LINE
- SETBACK LINE
- EASEMENT
- EX. STREET LINE
- CENTER LINE
- PHASE LINE
- ZONING DISTRICT
- MATCH LINE
- IRON PIN FOUND
- IRON PIN TO BE SET
- GRANITE MON. FOUND
- GRANITE TO BE SET
- WETLAND EASEMENT
- SLOPE EASEMENT

State of Maine, Commission of  
 Registry of Deeds  
 Received Records 5/20/86  
 11/10/86 10:00 AM  
 Fee \$25.00  
 Book 11/10/86  
 Page 11/10/86

I Certify that this survey conforms to the  
 Maine Board of Registration for Land  
 Surveyors Standards for Standard  
 Boundary Survey Conditions II.

**STONEGATE**  
**CAPE ELIZABETH, MAINE**

**DIVISION PLAT APRIL 15, 1986**  
 DEVELOPER Ibis Corporation  
 594 Congress Street Portland, ME 04101  
 LANDSCAPE ARCHITECT Mitchell-DeWane Associates  
 386 Fore Street Portland, ME 04101  
 SURVEYOR Owen Haskell, Inc.  
 9 Broadway South Portland, ME

6/86