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December 9, 2011

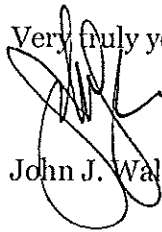
Leslie Lowry, III, Esq.
Jensen, Baird, Garner & Henry
P.O. Box 4510
Portland, ME 04112-4510

RE: Golden Ridge Lane, LLC v. Town of Cape Elizabeth

Dear Lee:

Enclosed please find the Acceptance of Service which I have executed on behalf of the Town of Cape Elizabeth.

Very truly yours,



John J. Wall, III

JJW/dmr
Enclosure
Cc: Michael McGovern

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Civil Action
Docket No. _____

GOLDEN RIDGE LANE, LLC, a Maine
Limited Liability Company,)

Plaintiff)

v.)

TOWN OF CAPE ELIZABETH, a body
corporate and politic, located in the County of
Cumberland and State of Maine,)

Defendant)

COMPLAINT

Facts

1. Plaintiff Golden Ridge Lane, LLC (herein, "GRL"), is a Maine limited liability company with a place of business in Cape Elizabeth, Maine.
2. GRL is the owner of a certain lot of land located on the southerly end of "Golden Ridge Lane", a private right of way, as well as the owner of the fee simple interest in Golden Ridge Lane itself, all in the Town of Cape Elizabeth, Maine, all of which is shown on the Town's current Tax Maps on Map U17, lot 5 and Lot 5-6 (the "Property").
3. Defendant Town of Cape Elizabeth (herein, "Town") is a municipal corporation organized and existing under the laws of the State of Maine.

4. The Town has adopted certain ordinances and regulations governing the use and development of land, including but not limited to provisions entitled "Subdivision Regulation" as set forth in the Town's ordinances.
5. The Subdivision Regulation includes a provision entitled "Open Space Impact Fee" located at §16-3-1 (q) of said ordinance (herein the "Impact Fee").
6. The Planning Board (the "Board") of the Town administers the Subdivision Regulation and is invested with authority to hear and decide applications for subdivision approval in the Town.
7. GRL filed a subdivision application with the Board seeking approval to divide the Property into 2 residential house lots in early 2011 (the "2 Lot Plan"), in accordance with the applicable Town ordinances.
8. In May, 2011, the Board granted its approval of the 2 Lot Plan, subject to certain conditions of approval, including the payment in money of an impact fee, but without any condition requiring the granting of any public trail easements or other private property to the Town of Cape Elizabeth. *no unserv. comments*
9. *3 lots /* In August, 2011, GRL filed a new subdivision application with the Town of Cape Elizabeth Planning Board, amending the 2 Lot Plan to divide its Property into 3 lots (the "3 Lot Plan"), seeking to increase the number of lots by one (1) residential house lot. *Plan approval was recorded - one set of plans*
10. The Board scheduled a hearing on the 3 Lot Plan for October 18, 2011.

11. The Town's Conservation Commission on or about October 11th, reviewed the proposed 3 Lot Plan and made a recommendation that the Board require GRL to grant a trail easement across its property to the Town as part of any approval of the 3 Lot Plan.

3 options for trail loc

12. The 3 Lot Plan as presented by GRL did not propose any trail easement, but GRL had agreed to pay \$8,640.00 in money to satisfy the Impact Fee as determined under the Town's Subdivision Regulation.

13. At the Board hearing on October 18, the Board granted approval of the 3 Lot Plan, subject to certain conditions, including a condition that the Impact Fee would be satisfied by GRL "provid[ing] a pedestrian easement to the town located across the northern boundary of lots 3 and 4 in a form acceptable to the Town Attorney and signed by the applicant. That the location of the easement be along the northern boundary line of lot 3 and 4, 15 ft. wide, and also an additional area of easement to equal 9260 sq. ft. located along the southeastern corner of Lot 4. And that the public access to the land be delayed until the connection to Route 77 is made" (as required by the Board, herein the "Public Easement").

14. Prior to and at the Board hearing on October 18, 2011, GRL, through its engineers and attorney, objected in writing and orally to the condition requiring the Public Easement.

15. By letter dated October 27, 2011, GRL, through its attorney, requested that the Board reconsider its decision of October 18, 2011, imposing the Public Easement condition, and setting forth certain concerns regarding the Public Easement condition.
16. GRL's request for reconsideration was placed on the Board's agenda for its November 15, 2011, meeting.
17. By letter dated November 8, 2011, the Town's attorney advised that the Public Easement condition was allowed as a lawful Impact Fee.
18. By letter dated November 14, 2011, GRL, through its attorney, responded to the Board with respect to the Town attorney's letter of November 8, and further articulated GRL's reasons why it believed the Board should undertake to reconsider and remove the October 18th decision imposing the Public Easement condition.
19. At the Board's meeting on November 15, 2011, no member of the Board who voted in the majority approving the 3 Lot Plan on October 18, 2011, made a motion to reconsider, and the matter ended before the Board.
20. If the Board had denied GRL's subdivision application for the 3 Lot Plan, then the Town would not be granted the Public Easement.

Count I
Rule 80B

21. Plaintiff repeats and re-alleges all of the matters set forth in paragraphs 1 through 20, inclusive, as if set forth in full herein.

22. The Board's decision to require the Public Easement contained errors of law, was an abuse of discretion and was not supported by substantial evidence in the record.

WHEREFORE, Plaintiff Golden Ridge Lane, LLC requests that this Court remand this matter to the Board with an order that the Board must remove the Public Easement condition and grant approval of the 3 Lot Plan with only a requirement for the payment of money in the amount of \$8,640.00 to satisfy the Impact Fee.

Count II
Violation of State Impact Fee Statute
30-A M.R.S. § 4354

23. Plaintiff repeats and re-alleges all of the matters set forth in paragraphs 1 through 22, inclusive, as if set forth in full herein.

24. Municipally imposed impact fees for off-site capital improvements are allowed under applicable laws of the State of Maine found at 30-A M.R.S.A. §4354 (the "Impact Fee Statute").

25. The Impact Fee Statute does not authorize a municipality to require the dedication or conveyance of land to a municipality as a satisfaction of impact fees.
26. The Town's Impact Fee grants the Board unfettered discretion to require the payment of money, the granting of land, or both, to the Town in order to "pay" the Impact Fee.
27. The Town's Impact Fee ordinance provision allowing the Board unfettered discretion to require the conveying of private property in the form of land or an easement to the Town is in violation of the Impact Fee Statute and is, therefore, invalid and unenforceable.

WHEREFORE, Plaintiff Golden Ridge Lane, LLC requests that this Court declare that the portion of the Town's Impact Fee ordinance that authorizes the Planning Board to require the dedication of private land for public use over the objection of the property owner be declared invalid and unenforceable.

Count III
Violation of Maine Constitution
ARTICLE I, SECTION 21

28. Plaintiff repeats and re-alleges all of the matters set forth in paragraphs 1 through 27, inclusive, as if set forth in full herein.
29. The Town's Impact Fee ordinance allowing the Board to require the conveying of land to the Town is in violation of the Maine Constitution, Article I, §21 as a taking of property without due process of law and without just compensation.

30. The Board's condition requiring the Public Easement is in violation of the Maine Constitution as a taking of property without due process of law and without just compensation.

WHEREFORE, Plaintiff Golden Ridge Lane, LLC requests that this Court:

- (1) Declare that the portion of the Impact Fee ordinance that purports to authorize the Board to require the dedication of private land for public open space purposes over the objection of a private property owner who has agreed to pay the impact fee is invalid and unenforceable;
- (2) Remand this matter to the Planning Board with instructions to amend the approval to delete the Public Easement requirement and to allow Plaintiff to pay the Impact Fee; and
- (3) Grant such other and further relief as this Court determines to be just in this case.

Count IV

Violation of United States Constitution

FIFTH AND FOURTEENTH AMENDMENTS

31. Plaintiff repeats and re-alleges all of the matters set forth in paragraphs 1 through 30, inclusive, as if set forth in full herein.
32. The Town's Impact Fee ordinance allowing the Board to require the conveying of land to the Town is in violation of the Fifth Amendment of the Constitution of the United States, as applied to the State of Maine through the Fourteenth Amendment, as a taking of property without due process of law and without just compensation.
33. The Board's condition requiring the Public Easement is in violation of the Fifth Amendment of the Constitution of the United States, as applied to the State of Maine

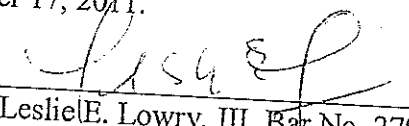
through the Fourteenth Amendment, as a taking of property without due process of law and without just compensation.

34. Defendant's unconstitutional taking of Plaintiff's property without due process of law and without just compensation has deprived Plaintiff of rights, privileges, or immunities secured by the Constitution, making Defendant liable to Plaintiff in this action brought pursuant to law and equity, pursuant to 42 U.S.C. §1983..

WHEREFORE, Plaintiff Golden Ridge Lane, LLC requests that this Court:

1. Declare that the Town's Impact Fee, as applied in this case requiring the Public Easement, is unconstitutional under the Fifth and Fourteenth Amendments of the United States Constitution, and order that the Public Easement condition is invalid and unenforceable.
2. Award Plaintiff its reasonable costs and attorney's fees pursuant to 42 U.S.C. §1988.
3. Award Plaintiff such other relief as may be just in this case.

DATED at Portland, Maine, on November 17, 2011.



Leslie E. Lowry, III, Bar No. 2799
Attorney for Plaintiff Golden Ridge Lane, LLC

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(207) 775-7271; Direct: (207) 518-5917

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December 16, 2011

VIA HAND-DELIVERY

Sally Bourget, Clerk
Cumberland County Superior Court
P.O. Box 287
Portland, ME 04112-0287

RE: Golden Ridge Lane, LLC v. Town of Cape Elizabeth
Docket No. AP-11-50

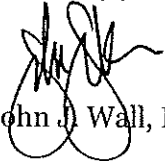
Dear Sally:

Enclosed for filing please find in the above-mentioned matter please find the following documents:

1. Answer and Affirmative Defenses of the Town of Cape Elizabeth; and
2. Defendant's Response to Plaintiff's Motion to Specify Future Course of Proceedings.

Thank you for your assistance. Please feel free to call me if you have any questions or concerns.

Very truly yours,



John J. Wall, III

JJW/dmr
Enclosures

Cc: Leslie Lowry, Esq.
Michael McGovern

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-11-50

GOLDEN RIDGE LANE, LLC,

Plaintiff

v.

TOWN OF CAPE ELIZABETH,

Defendant

ANSWER AND
AFFIRMATIVE DEFENSES
(TOWN OF CAPE ELIZABETH)

Defendant Town of Cape Elizabeth ("the Town"), by and through its undersigned counsel, hereby responds to Plaintiff's Complaint as follows:

Facts

1. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.
2. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.
3. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.
4. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.
5. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.
6. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.
7. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

8. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint. In further responding to this allegation, the Conservation Commission did not have an opportunity to review and comment upon the proposed subdivision prior to the Planning Board's decision.

9. The Town admits that the Plaintiff never recorded the approved 2-lot subdivision and that the Plaintiff subsequently applied to the Planning Board for approval of a 3-lot subdivision on the same parcel. The Town is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

10. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

11. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

12. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

13. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

14. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

15. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

16. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

17. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

18. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

19. The Town admits the allegation contained in this paragraph of Plaintiff's Complaint.

20. The Town is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

**Count I
Rule 80B**

21. The Town repeats its responses to paragraphs 1 through 20.

22. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

**Count II
Violation of State Impact Fee Statute
30-A M.R.S.A. § 4354**

23. The Town repeats its responses to paragraphs 1 through 22.

24. The allegations in this paragraph of Plaintiff's Complaint constitute legal assertions or conclusions to which no response is required. Alternatively, the Town is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

25. The allegations in this paragraph of Plaintiff's Complaint constitute legal assertions or conclusions to which no response is required. Alternatively, the Town is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

26. The allegations in this paragraph of Plaintiff's Complaint constitute legal assertions or conclusions to which no response is required. Alternatively, the Town is without

sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

27. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

**Count III
Violation of Maine Constitution**

28. The Town repeats its responses to paragraphs 1 through 27.

29. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

30. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

**Count IV
Violation of United States Constitution
FIFTH AND FOURTEENTH AMENDMENTS**

31. The Town repeats its responses to paragraphs 1 through 30.

32. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

33. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

34. The Town denies the allegation contained in this paragraph of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. In whole or in part, the Complaint fails to state a claim against the Town upon which relief could be granted.

2. In whole or in part, the Complaint should be dismissed for failure to state a claim that is ripe for judicial review.

3. In whole or in part, the Complaint should be dismissed for failure to state a justiciable claim.

4. In whole or in part, the Complaint should be dismissed for the Plaintiff's failure to avail itself of remedies under State law.

5. The Plaintiff has adequate remedies under State law, and therefore no action lies under 42 U.S.C. §1983 in the Maine Constitution or the United States Constitution.

WHEREFORE, Defendant Town of Cape Elizabeth respectfully requests this Honorable Court dismiss Plaintiff's Complaint and award the Town costs and fees, if appropriate, in an amount the Court deems honorable and just.

Dated at Portland, Maine this 16th day of December, 2011.

Attorneys for Defendant
Town of Cape Elizabeth
MONAGHAN LEAHY, LLP
95 Exchange Street, P.O. Box 7046
Portland, ME 04112-7046
(207) 774-3906

By:



John J. Wall, III, Bar No. 7564

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-11-50

GOLDEN RIDGE LANE, LLC,

Plaintiff

v.

TOWN OF CAPE ELIZABETH,

Defendant

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO SPECIFY
FUTURE COURSE OF
PROCEEDINGS**

Pursuant to Maine Rule of Civil Procedure 7, Defendant Town of Cape Elizabeth ("the Town"), by and through its undersigned counsel, hereby responds to Plaintiff's Motion to Specify the Future Course of Proceedings as follows:

1. Count II alleges a statutory violation which, upon information and belief, will likely be resolved by a decision on the Plaintiff's Rule 80B appeal.
2. Therefore, separate consideration of the claim asserted in Count II would appear to be unnecessary, or at least premature.
3. In addition, Counts III and IV allege takings claims under the Maine and United States Constitutions.
4. Resolution of the Rule 80B claim may obviate the need for the Court to address a just compensation question under the Maine Constitution.
5. In addition, the United States Supreme Court has held that a takings claim under the federal Constitution is not ripe until an aggrieved property owner has "unsuccessfully attempted to obtain just compensation through the procedures provided by the State for obtaining such compensation." *Williamson Cty. Reg. Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195, 87 L.Ed.2d 126, 105 S.Ct. 3108 (1985).

6. The Rule 80B process and the State's just compensation provision both provide the Plaintiff with procedures to redress alleged takings.

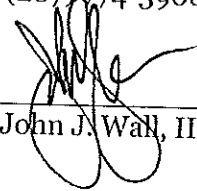
7. In light of these considerations, it is both legally correct and fiscally prudent to address and decide the Rule 80B issue first, and then to permit discovery and further proceedings with regard to the other counts in the Complaint, if necessary.

WHEREFORE, Defendant Town of Cape Elizabeth respectfully requests that this Court defer discovery and other proceedings with regard to Counts II through IV of the Complaint until after a decision is rendered on the Rule 80B appeal set forth in Count I of the Complaint.

Dated at Portland, Maine this 16th day of December, 2011.

Attorneys for Defendant
Town of Cape Elizabeth
MONAGHAN LEAHY, LLP
95 Exchange Street, P.O. Box 7046
Portland, ME 04112-7046
(207) 774-3906

By:



John J. Wall, III, Bar No. 7564

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Conservation Commission
DATE: October 12, 2011
SUBJECT: Golden Ridge Lot 5 Subdivision Amendment

At the October 11, 2011 meeting, the Conservation Commission reviewed the Golden Ridge Subdivision Lot 5 Amendment. John Mitchell, representing the applicant, described the project and explained the applicant's desire to pay a fee instead of providing a pedestrian easement.

The Conservation Commission reviewed the location of the existing private snowmobile trail and its potential as a public greenbelt trail connector. The Conservation Commission voted 6-0 on an amended motion to recommend that a pedestrian easement be provided to satisfy the open space impact fee requirement. The Conservation Commission was strongly influenced by the potential for creating a greenbelt trail connector that would serve to connect the Rudy's area and Broad Cove neighborhood with Great Pond.

The Conservation Commission discussed alternative locations for the pedestrian easement on the Golden Ridge Subdivision property. These options are listed in order of preference.

Option 1: The preferred option provides the most direct connection to Great Pond from the Rudy's/Broad Cove neighborhood by establishing a 15' wide pedestrian easement along the north property line of lots 3 and 4. This area is dry and the easement could fit within the existing 30' wide setback for the lots.

Option 2: The second option utilizes the alignment of the existing private snowmobile trail between lots 4 and 5, but then crosses the new section of Golden Ridge Lane and extends along the southern end of lot 3. Again, a 15' wide easement would fit within the 30' wide setback and also be placed on the same side of the lot as the septic system. With this option, a further pedestrian connection would be needed to the existing Great Pond Trail from the Sprague Corporation.

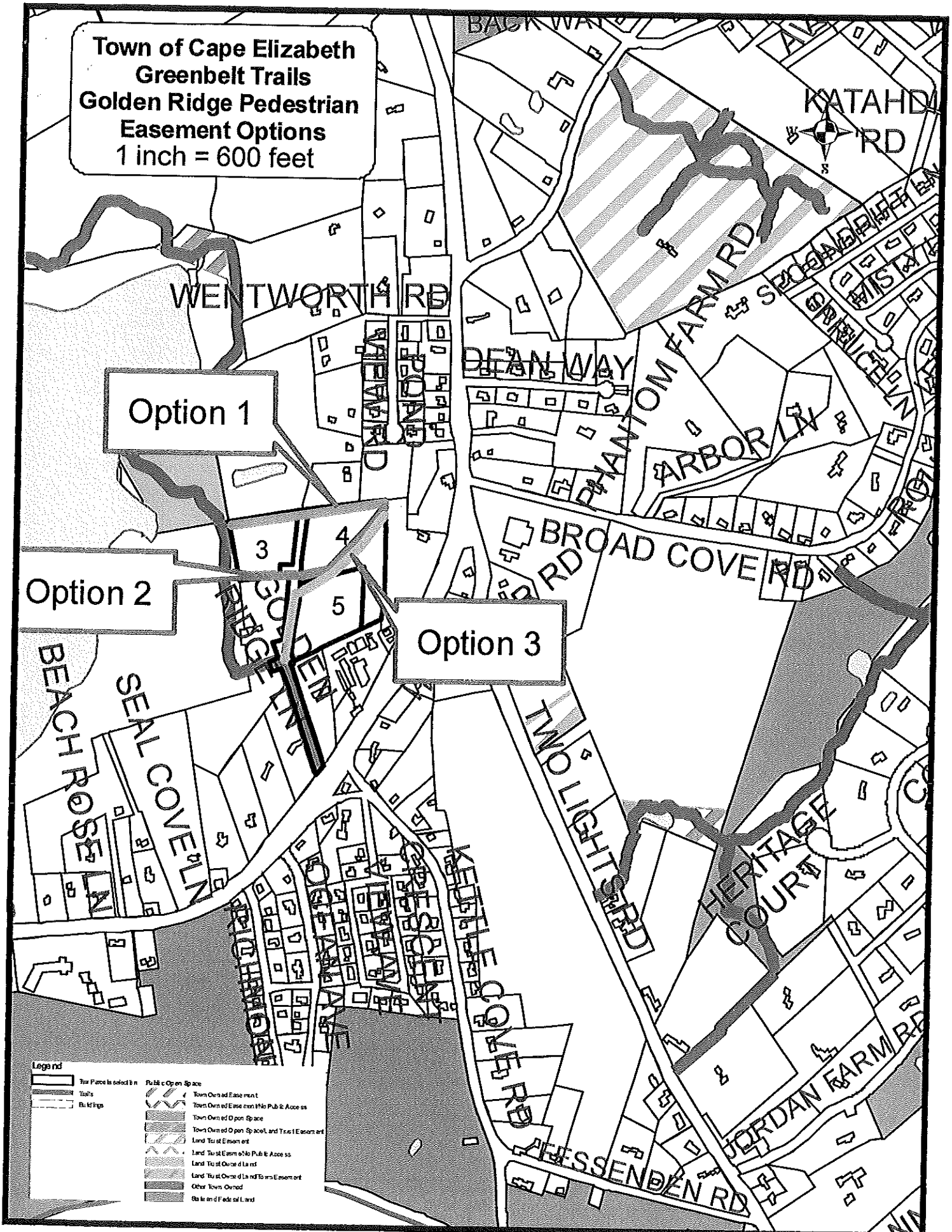
Option 3: This option again uses the same alignment as the existing private snowmobile trail, but then extends down the new extension of Golden Ridge Lane and connects to the greenbelt trail at the turnaround. This was the least preferred of the three options because it was a less direct route for trail users.

The Conservation Commission believes that Options 2 and 3 will require a boardwalk of some sort to traverse the wetlands, along with a considerably higher level of regular maintenance to keep the trail desirable for public use.

The attached map also shows the location of the options.

The Conservation Commission appreciates this opportunity to comment and a representative of the Commission will be attending the October 18, 2011 Planning Board meeting to answer any questions.

**Town of Cape Elizabeth
Greenbelt Trails
Golden Ridge Pedestrian
Easement Options**
1 inch = 600 feet



Legend	
	Town Parcel to be sold to
	Trails
	Buildings
	Public Open Space
	Town Owned Easement
	Town Owned Easement (No Pub & Access)
	Town Owned Open Space
	Town Owned Open Space, and Trails Easement
	Land To be Easement
	Land To be Easement (No Public Access)
	Land To be Owned by Land
	Land To be Owned by Land To be Easement
	Other Town Owned
	Remainder of Federal Land