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C. Wesley Crowell  
1954-2015

September 13, 2017

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**VIA FIRST CLASS MAIL AND E-MAIL**

Matthew Sturgis, Town Manager  
Town of Cape Elizabeth  
320 Ocean House Road  
Cape Elizabeth, ME 04107

**Re: Surf Side Avenue, Atlantic Place, and Lighthouse Point Road – Response to Received Correspondence**

Dear Matt:

In correspondence dated July 19, 2017, we provided a brief overview of Maine law as it pertains to paper streets, and how these statutes affect the Town's plans for Surf Side Avenue, Atlantic Place, and Lighthouse Point Road (the "Paper Streets"). Since that time, it is our understanding that the Town has continued its consideration of these issues, and as is often the case, has received correspondence from numerous residents, both abutters to these Paper Streets and otherwise. In particular, the Town received correspondence on August 25, 2017 from Andrew Sommer, a resident of Pilot Point Road (the "Sommer Letter"), who raised a number of legal arguments regarding the Town's consideration of these Paper Streets. In this regard, the Town has requested a brief response to the *legal* (rather than policy) issues raised by the Sommer Letter.

**I. Current Rights of the Public in the Paper Streets**

Maine law is clear that once a subdivision plan is recorded within the registry of deeds, "the public acquires rights of incipient dedication to public use of the ways laid out in the plan." 23 M.R.S.A. § 3031; *see also Bartlett v. City of Bangor*, 67 Me. 460, 464-465 (1878). These rights of incipient dedication allow the Town to formally accept a paper street at a later date. However, these rights of incipient dedication do not confer additional public access rights. In this regard, we do not dispute the argument put forward by the Sommer Letter.

## **II. Town's Continuing Rights in the Paper Streets**

The Sommer Letter also raises the issue of whether the Town retains the ability to accept the Paper Streets, arguing that the Town's ability to do so may have already lapsed. As we have discussed previously, the Maine Paper Streets Act (the "Act") gave towns and cities until 1997 to accept previously dedicated paper streets, or delay such a decision until September 29, 2017. The Town acted accordingly, to extend *all* paper streets in 1997, and *some* paper streets in 2016, as prescribed by the Act.

The Sommer Letter is correct that under Maine common law—as opposed from the statutory regime of the Act—a Town's rights of acceptance may be lost if acceptance does not occur "within a reasonable time." See *Harris v. City of South Portland*, 118 Me. 356, 108 A. 326, 327 (1919). The analysis of whether or not a period of time is "reasonable" focuses on the use of dedicated street between the time of dedication and the time of acceptance. While the use of the street by another party, *i.e.* as a patio, or to house a structure, "the mere non-use [of a paper street] or use that is not inconsistent with the premise that the public may later open [the paper street] will not cause incipient dedication to expire. *Ocean Point Colony Trust, Inc. v. Town of Boothbay*, 1999 ME 152, ¶ 8, 739 A.2d 382. However, this analysis is fact intensive, as the court in *Ocean Point Colony Trust* points out, and should not distract from the well-founded presumption that the Town's ability to accept the Paper Streets as town ways still continues.

## **III. Use of Paper Streets as Public Walking Trails**

Finally, the Sommer Letter raised the issue of whether the Town can use any dedicated paper streets as public walking paths, rather than as ways designed for vehicular traffic. As the Town is aware, and as our previous correspondence of February 3, 2015 points out, the Shore Acres Subdivision plan was created in 1911, when very few (if any) automobiles would have used the dedicated ways. Thus, it stands to reason that the Town retains the ability to use the dedicated paper streets as vehicular ways, or for a similar purpose of lesser impact. To the best of our knowledge, no Maine case law contradicts this notion.

## **IV. Conclusion**

We appreciate this opportunity to review this correspondence and provide our thoughts. Please let us know if we can be of more assistance in this matter, or provide any clarification to the above.

Very truly yours,

  
Durward W. Parkinson