

Isle au Haut Planning Board
Minutes of Meeting of April 21, 2016

Regular Members Present: Bob Gerber (Chair), Dan MacDonald, Bill Clark, Bill Calvert (phone), Steve Shaffer (phone)

Alternate members present: Waylan Small (phone); Jeff Burke (phone)

Public Members Present: none

The Meeting was called to order by the Chair, Bob Gerber, at 7:00 PM at the Town Offices.

Old Business:

Approval of the Minutes of the March 22, 2016, Meeting

It was moved by Bill Clark and seconded by Bill Calvert to accept the minutes of the March 22, 2016, meeting as printed. Motion carried: 5-0.

Report of Chair on matters he has dealt with since the previous meeting:

1. Emails to Matthew Skolnikoff concerning next meeting date and outstanding issues over evidence of right, title & interest for the Pomeroy (Birch Point) road construction application.
2. Emails to Nicholas Filler and Wendy Pomeroy obtaining copies of Birch Point surveys and discussing the need to agree on a location of the proposed Pomeroy driveway across the Filler and Mathias properties. Received emails from Charles and Robert Mathias and from Filler approving a new plan from Wendy for driveway location. More correspondence about need to follow up with formal easement agreements. Follow-on correspondence about what cutting can be done prior to getting the permit for the driveway.
3. Provided Selectman with draft report of Planning Board activities over the past year for inclusion in the next Town Annual Report. The Chair asked if there were any questions or suggestions for changes on the draft and there were none.
4. Responded to questions from Fedosh on procedure and accuracy for coordinate survey of his property.
5. Send Tina Tully PDF copies of proposed changes to Town Zoning Ordinance and model FEMA Floodplain Management Ordinance.
6. Correspondence with Carl Wilson, agent for The Wilson Family Trust, about permits required for a tent platform. In response to this item of discussion, Steve Shaffer mentioned that there was something in the agreement with the National Park Service that related to campgrounds. The Chair said he would go back and look at that agreement but did not think it applied here as this is just an accessory use to a single-family dwelling and not a "campground".
7. Selectmen appointed Robert Gerber as the Town CEO at a Selectmen's meeting on April 18th.

New Business:

1. The Chair asked if there were any comments or questions on the FEMA model Floodplain Management Ordinance that had been marked up by the Chair with suggested changes and additions. There were none, so it was moved by Dan MacDonald and seconded by Bill Clark to authorize the Chair to send our suggested changes to FEMA and the State Emergency Management Agency to start a negotiation on ordinance language that would be acceptable to the Town. Motion carried 5-0.

2. Dan MacDonald mentioned that there was a bill in the State legislature that, if passed, could prevent boards like ours from using conference call-ins to get a quorum for meetings. Those not physically present at the meeting would not be able to vote on issues requiring resolution at the meeting. The Chair said he was aware of it and very concerned about its potential impact on small island towns like Isle au Haut and he would report back to the Board once the issue has been dealt with at the legislature.

There being no other business to come before the Board it was moved by Dan MacDonald and seconded by Bill Clark to adjourn the business meeting at 7:40 PM. Motion carried 5-0. The next meeting date will be set once business that requires us to act is properly brought to the Board for review and action. There are no active issues pending at this time.

Respectfully submitted,

Robert G. Gerber, Chair (and Secretary)

Attachments as noted above



Robert Gerber <aframe73@gmail.com>

Pomeroy PB application

Bob Gerber <aframe73@gmail.com>

Sun, Mar 27, 2016 at 11:53 AM

To: mattsko@tds.net

Matthew,

The Planning Board received your "right, title, and interest" submission the day before our meeting last week. But, as noted in the attached draft meeting minutes, I didn't have time before the meeting to make sense of them and try to plot them on the standard base maps. Also, you were not present at the meeting to answer questions from the Board. So the application was tabled to the next meeting on April 21st.


If you are representing a client and are unable to attend a meeting in person because you are off-island, you can call in on the conference line as long as you let me know in advance. Then I'll give you the conf number and code to dial in on the meeting.

The deeds and easements you sent to us have been readily available on the State of Maine's online Registry of Deeds website since at least mid-January. I thought you were taking all this time to have a survey plotted. If you don't know how to use the online registry, I'd be glad to show you how when I get to the island for the summer which will be generally starting the 3rd week of April. That would save you some time in the future.

Bill Stevens and I were going to go to the site yesterday to come up with the sediment and erosion control plan, but Bill decided at the last minute that he had other more pressing matters to attend to so our site visit will have to wait until I come out in April. Meanwhile, I'll finish the review of completeness of the application (which will basically consist of putting your road on a plan that has the deed boundaries plotted) and we should be able to give conditional approval for the cutting at the next meeting if everything plots ok and you can be present either in person or by phone to answer questions.

Best regards,

Bob Gerber, IAH PB Chair

 Draft Minutes 3-22-16 IAH PB mtg.pdf
2602K

Memo of Bob Gerber to Nicholas Filler

April 3, 2016

Re: Application of Pomeroy for driveway across your land at Birch Point, Isle au Haut

Nicholas, thank you very much for the preliminary surveyor's plan that you emailed to me. Without it, I could not have reconstructed the location of the lands you bought from Pomeroy.

I have reviewed the deeds and easement agreements along with the plan that you sent to me and it raises several questions, particularly when I view it next to the sketch plan submitted by Pomeroy to the Planning Board for the new driveway construction.

The first issue I see is that the property plan submitted by Pomeroy does not show your western property line properly. It shows the line as being what is shown on the plan you sent to me as the "proposed division" line that starts at your southwest corner on the north side of the salt pond and angles off to the northeast. It should have shown the blue line drawn on your plan, which is the line clearly called out by the deed from Pomeroy to you. I will get back to the applicant and ask that the plan be revised to correct that error.

The second issue has to do with where the new driveway would lie to the north and west of the "garage" that is on your property. The plan you sent to me showed a 4640 (?—your PDF is a little blurry, making it hard for me to discriminate all the text) square foot parcel being deeded from Pomeroy to Ann Mathias. In fact the Knox Registry records show it was conveyed at Book 4992, page 161, to Charles and Robert Mathias with an area of 4610 square feet. But beyond this small discrepancy which obviously resulted from a change between the time the sketch you sent to me was made and the time the deeds were recorded, is an issue of where the 20-ft wide driveway easement reserved by Pomeroy should be located. Your sketch seems to suggest by the parallel red lines that the road would run all on your property, just south of the new conveyance to Charles and Robert Mathias. But on the deed of Pomeroy to you, it states:

Grantor hereby excepts and reserves and the Property is conveyed with benefit of, on the terms set forth herein, a 20' wide easement, to be used in common with Grantee, for a driveway to be located behind the existing garage on the Property and on the parcel conveyed to Charles B. Mathias and Robert F. Mathias by deed to be recorded herewith, together with an easement over the existing roadway leading from a public road, across the causeway and across the Property to the point of commencement of the proposed driveway. The easement shall be appurtenant to the

The part of this that bothers me is the piece that says, "...and on the parcel conveyed to Charles B. Mathias and Robert F. Mathias by deed to be recorded herewith..." The language "on the parcel" means to me that, to the extent practical, the new driveway should leave the existing drive, cut across a short piece of your property and go north of the garage, and then pass mostly through the new 4610 square foot parcel of Charles and Robert Mathias, to emerge again through a small stretch of your land in the northwest corner and then onto the land retained by Pomeroy. The parallel red lines on the sketch that you sent to me suggest the driveway would be jammed south of the Mathias parcel, all on your land. I don't believe that was the intent of either conveyance to Mathias or the easements reserved by Pomeroy on that parcel or the language of the deed to you. As a civil engineer that has done a fair amount of road design in my life, I have to say that it would be really difficult, if not impossible to maneuver any large trucks around the back of your garage (which is less than 20' from the property line of Mathias on the northeast and northwest sides) and stay on your property.

I strongly suggest that you have a surveyor prepare and record a standard boundary survey for the property that you bought. A surveyor should also prepare and record a plan that meets the requirements for the driveway agreement expressed in the deed from Pomeroy to you:

The location of the driveway is subject to prior reasonable approval of Grantor and Grantee and shall be depicted on a survey prepared by a licensed Maine surveyor mutually agreeable to Grantor and Grantee and at Grantor's expense. Construction by Grantor of any such driveway shall be in accordance with all applicable laws, rules, regulations, codes and ordinances.

I am going to demand from the Applicant that at least the driveway location plan be prepared before the Planning Board acts on the Shoreland Zone application, unless you notify me by return email that the sketch plan of the road location submitted by the Applicant is satisfactory to you. Please note that the plan shows the driveway being located quite a bit south of your northerly property line.



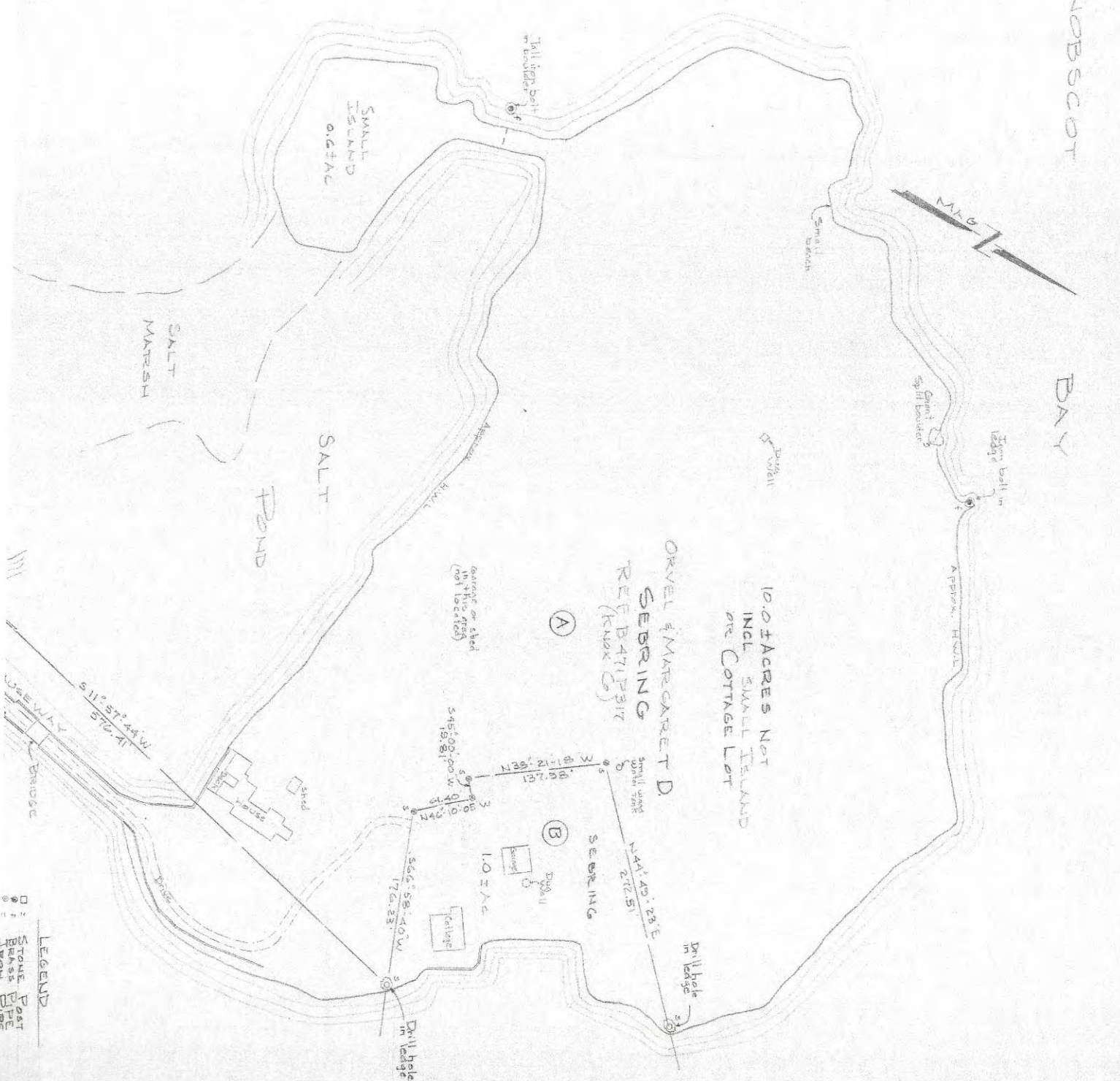
The deeds as written are very convoluted and contain at least one scrivener's error in the metes and bounds description. Without a survey, it would be extremely difficult for any third party to reproduce a plan that shows your property lines correctly. If you ever sell this, you will need this survey to show to potential buyers. Given that Pomeroy is planning a driveway and house construction on her retained land, it will also be very helpful to the Planning Board to know exactly where your property lies so setbacks and other zoning issues can be accurately determined.

One other question: Pomeroy has retained rights to water from "the well" on your property. I see something on the sketch you sent to me that shows a "drilled well" about 70' west of the western corner of the garage. Is this the well referred to in the deed?

PENOBSCOT

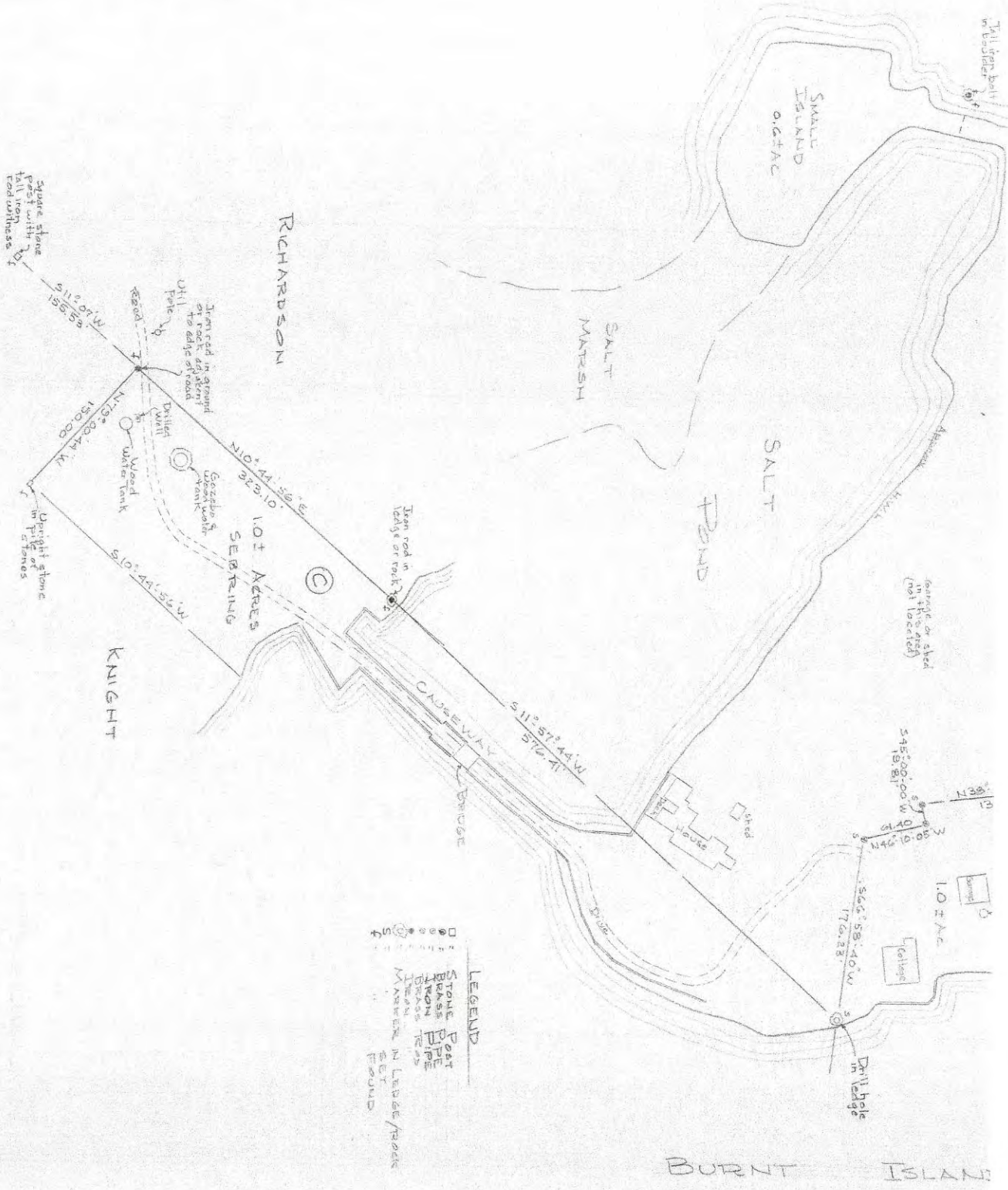
BAY

BURNT ISLAND THOROFARE



LEGEND

- : STONE POST
- : IRON BALL
- : DRILL



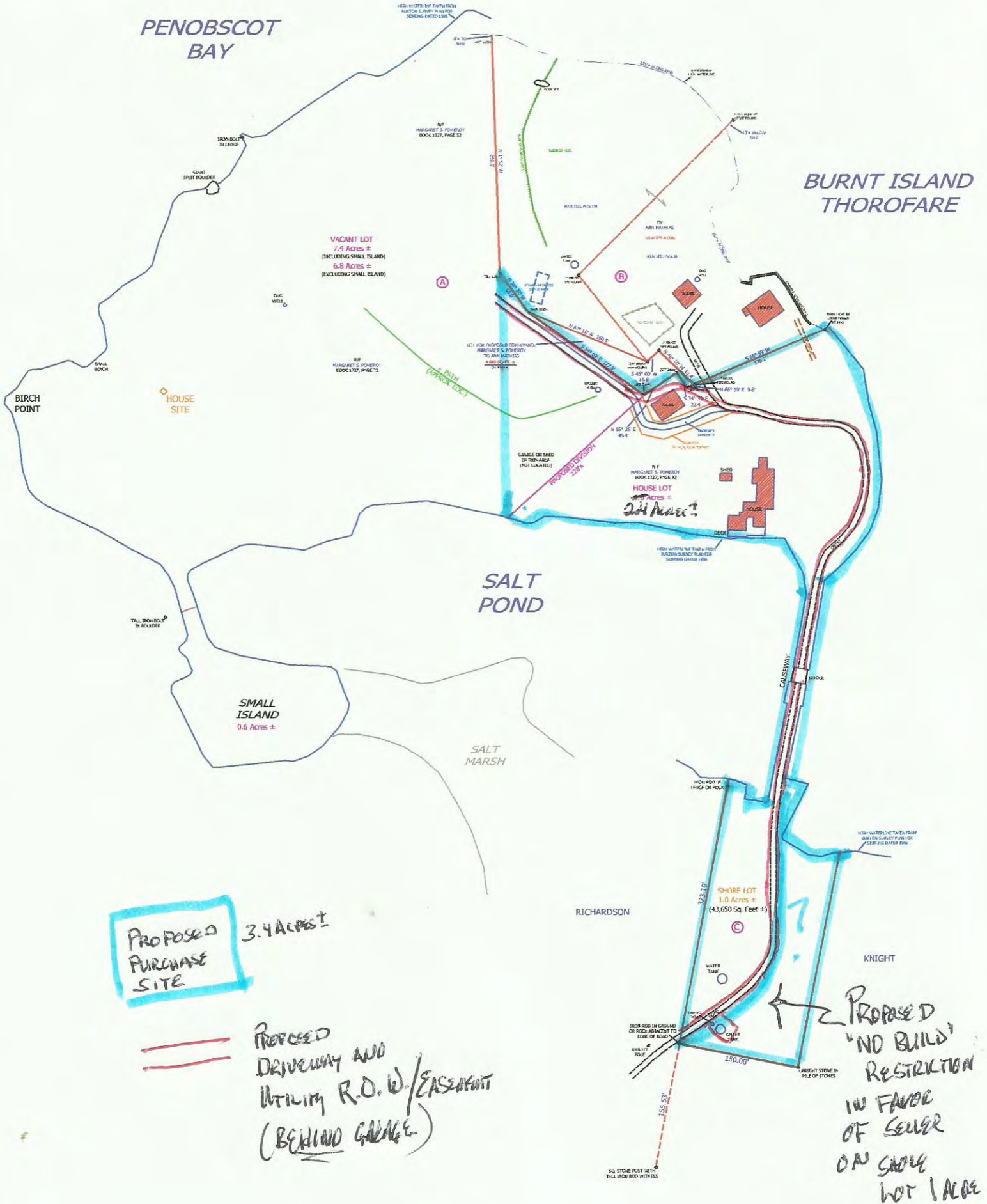
- LEGEND**
- Stone Post
 - Brass Pipe
 - Iron Pipe
 - Brass Rod
 - Iron Rod
 - Markers in Levee/road
 - E.T.
 - FOUND



PROPERTY
 Surveyed For
ORVEL & MARGARET D. SERRING
 BIRCH POINT MAINE
 ISLE AU HAUT MAINE
 Scale 1" = 60'
 REVISED
 OCT 1988
 RAY NEVINS

PENOBSCOT BAY

BURNT ISLAND THOROFARE



PROPOSED PURCHASE SITE 3.4 ACRES ±

PROPOSED DRIVEWAY AND UTILITY R.O.W./EASEMENT (BEHIND GARAGE)

PROPOSED "NO BUILD" RESTRICTION IN FAVOR OF SEWER ON SHORE LOT 1 ACRE

PROPERTY OF
MARGARET S. POMEROY
BOOK 1327, PAGE 32

PROPERTY OF
MARGARET S. POMEROY
BOOK 1327, PAGE 32

N/F
ANN MATHIAS
BOOK 2392, PAGE 234

N/F
ANN MATHIAS
BOOK 1327, PAGE 26

N/F
ANN MATHIAS

PROPERTY OF
MARGARET S. POMEROY
BOOK 1327, PAGE 32

PROPOSED OUT LOT
3.1 ACRES ±

SALT
POND

PROPERTY OF
MARGARET S. POMEROY
BOOK 1327, PAGE 32

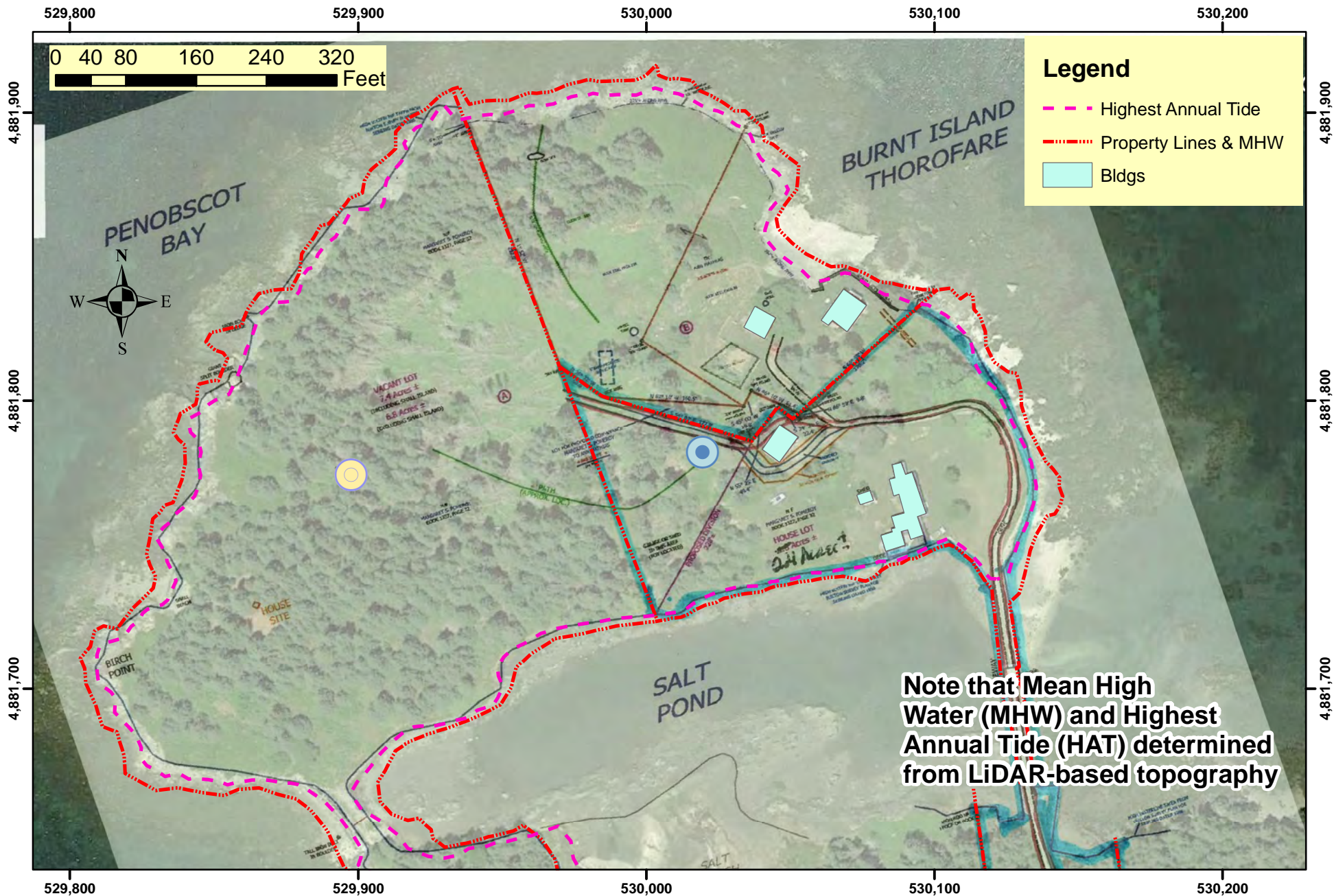
N/F
T. J. KNIGHT
BOOK 1954, PAGE 190

BURNT ISLAND
THOROFARE

BURNT ISLAND
THOROFARE

N/F
KNIGHT





Pomeroy lines on Google Earth 6/22/14 photo
 Property lines georeferenced from Sage Collins undated survey plan
 Grid is UTM NAD83, Zone 19N (m)
 RGG 4/3/16

Birch Point
 Town of Isle au Haut



Robert Gerber <aframe73@gmail.com>

Pomeroy driveway application

Bob Gerber <aframe73@gmail.com>

Sun, Apr 3, 2016 at 4:26 PM

To: mattsko@tds.net

Update:

I obtained the surveys I was looking for from Nicholas Filler. So you can stop looking for those.

Your sketch plan has the boundary line between Pomeroy and Filler shown incorrectly. Your plan shows the line as being what is shown on the plan Filler sent to me (attached) as the "proposed division" line that starts at Filler's southwest corner on the north side of the salt pond and angles off to the northeast. The line, according to the recorded deed, is the line shown in faint blue drawn on the attached plan on the line that is an extension of the Mathias westerly boundary line.

Now that I have been able to get a reasonable fit of the boundary lines with the orthophotos, I have been able to transfer the Mean High Water Line and the Highest Annual Tide line to the plan. The Town Zoning Ordinance is tied to the Mean High Water Line and the Shoreland Zoning Ordinance is tied to the Highest Annual Tide line. These two elevation contours were taken from the LiDAR-based contour map from the 2-meter Digital Elevation Model available from the Maine Office of Geographic Information Systems.

The piece we are missing is the survey plan for the location of the driveway through the Filler and Mathias property according to the requirements of the deed from Pomeroy to Filler:

The location of the driveway is subject to prior reasonable approval of Grantor and Grantee and shall be depicted on a survey prepared by a licensed Maine surveyor mutually agreeable to Grantor and Grantee and at Grantor's expense. Construction by Grantor of any such driveway shall be in accordance with all applicable laws, rules and regulations.

The plan that Filler sent to me which contained his understanding of where the road would be located is quite a bit different from your plan. So Mathias, Pomeroy, and Filler need to come to agreement on the location; otherwise, you don't meet the "right, title, and interest" test for the portion of the road on Mathias and Filler. Incidentally, the Collins preliminary survey shows the small "Mathias" piece just north of the Filler garage as being conveyed to Ann Mathias; however, the actual deed indicates that the land was conveyed to Charles and Robert Mathias.

I suppose we could deal with the portion of the driveway that is located west of the Filler and Mathias properties, but it would help to have some idea as to how to tie that part of the driveway into the piece that will come across from the current driveway to Mathias.

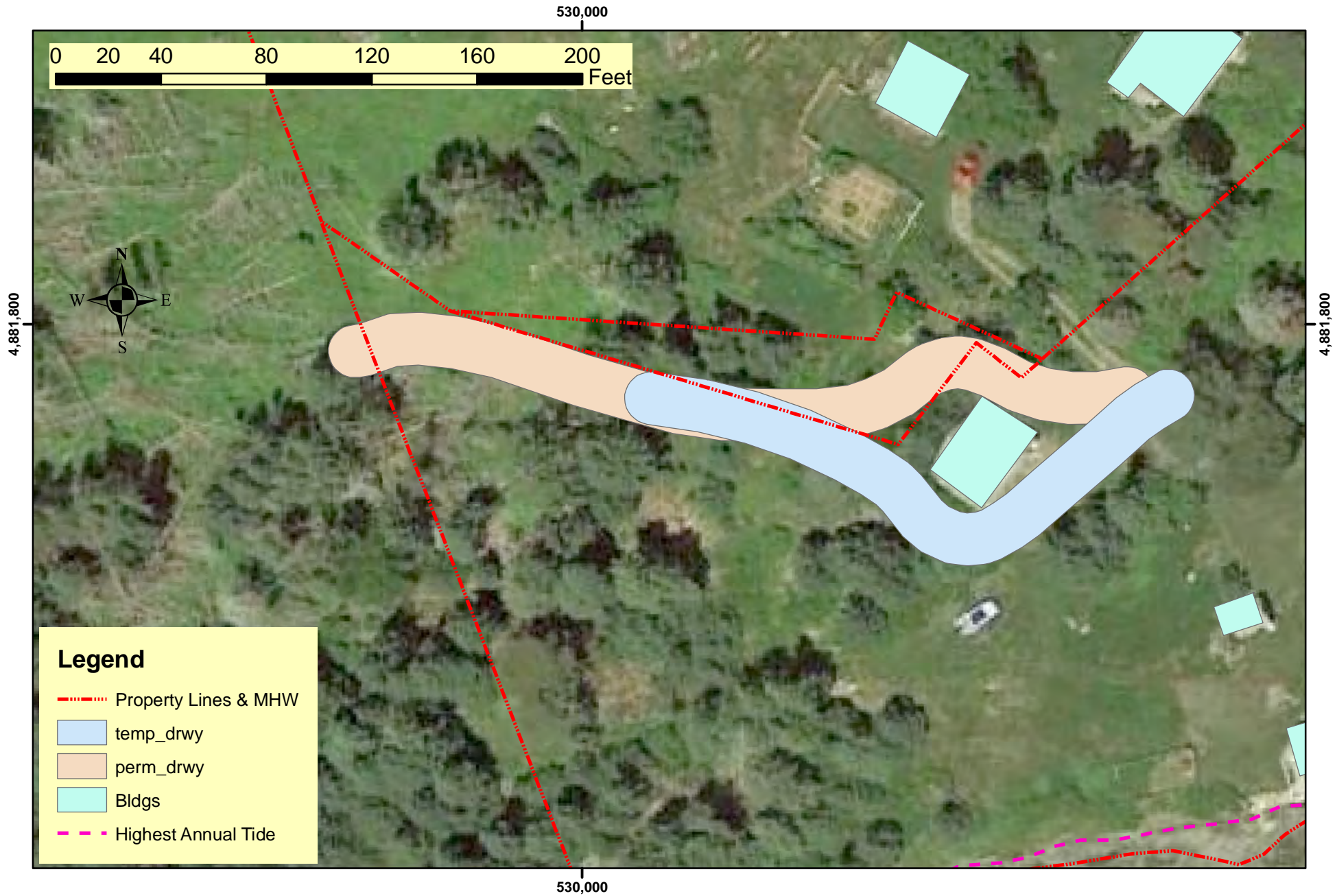
Let me know how you want to proceed. For now, the application is on hold.

Best regards, Bob Gerber, IAH PB Chair



Birch Pt Property Plan 4-3-16.pdf

1198K



Proposed Permanent and Temporary 20' driveway Easements
Property lines georeferenced from Sage Collins undated survey plan
Grid is UTM NAD83, Zone 19N (m)
RGG 4/7/16

Birch Point
Town of Isle au Haut

Nicholas Filler

Apr 1 (11 days ago)

to me

Bob,

This is what I have. I will look for any additional surveys and send along anything I find.

Thanks,

Nick

Nick Filler
455 Mathews Road
Conway, MA 01341

Home Phone: [413-369-4748](tel:413-369-4748)

Cell Phone: [413-522-4011](tel:413-522-4011)

-1-



Nicholas Filler

Apr 1 (11 days ago)

to me

Bob,

Here are some more. The "Plan Highlighted" supercedes the one I sent you a few minutes ago, reflecting some property deeded by Margaret Pomeroy to Townsend Knight on the east side of the road, south of the causeway and bridge.

Cheers,

Nick

-2-

2 Attachments



Bob Gerber <aframe73@gmail.com>

Apr 3 (9 days ago)

to Nicholas

OK. I just saw the latest two plans, but they don't change the memo I am sending you as an attachment. Please review the memo and advise me as to your answers and how you want to proceed.

Best regards, Bob

Nick Filler

Apr 6 (6 days ago) ☆



to Wendy, me ▾

Bob,

I have been traveling and unable to access plans of the property. Nonetheless, I will attempt to answer you concerns as follows:

1. Our western property line - it is the line shown on the second plan I sent you going more or less due North from the Salt a Pond up to a point northwest of the garage.
2. It is Wendy's and my expectation that she will be able to construct her new driveway entirely over our property north and northwest of our garage before it enters her retained property. If it needs to partly cross land she recently deeded to the Mathias's, that may have to be, depending on the physical constraints of that area. We have told Wendy that if an occasional construction-related vehicle needs to pass to the South of our garage (such as the truck delivering her lumber requirements, or a truck needed for foundation work) that is fine with us. We wanted the long-term access to her house to leave us free to use the land in front of (south of) the garage as we please, so that is why her legal access goes behind or north of the garage. I believe a final survey showing this has been prepared and I will check with Sage Collins to see if he can send it electronically to me.
3. The well refers to the drilled well south of the causeway and the bridge up the hill, across from the old well house and on the east side of Birch Point Road on a small piece abutting the Knight land. It is not on the Point at all.

Hope this helps.

Nick

Nick Filler
455 Mathews Road
Conway, MA 01341

Home: [413-369-4748](tel:413-369-4748)
Cell: [413-522-4011](tel:413-522-4011)

My question to you is whether the surveyor has prepared the plan. I feel that it is necessary to have this survey plan before approving the location of the driveway because otherwise Matthew may cut out the trees before getting your approval.

Thanks for any help you can give me.

Best regards, Bob Gerber

<Memo of Bob Gerber to Nicholas Filler 4-3-16.pdf>

Pomeroy wendy <wmpom@comcast.net>

Apr 6 (6 days ago) ☆



to Filler, me ▾

Nick and Bob,

I have been concerned about the progress being made clearing for the driveway to my land. I am glad to be in touch with you both.

I think what I need to do at this point is to meet with Nick on the land and agree on the route of the driveway, and plot it on a plan.

This would include plotting across my land also, I assume, Bob, that you will require this? I would appreciate your help doing this with your mapping expertise. So for now, I think the permitting is stalled until I can get up there and officially map out the driveway.

Do you see any other way to do this sooner? Any advice would be a great help.

All the Best,

Wendy

Wendy M Pomeroy
One Salt Marsh Lane
Kittery Point, ME 03905

Landscape Design and Consultation
Garden Structures

Bob Gerber <aframe73@gmail.com>

Apr 7 (5 days ago) ☆



to Nick ▾

Yes, I got the western boundary line right. That is what the deed text describes. Matthew turned in a plan showing the wrong location for your western line.

I get your general intent on the location of the driveway. Do I have it right to assume that the driveway location shown on the first plan that you sent to me is what you assume will be the route? As I noted in my last email, that location is quite a bit north of where Matthew's sketch plan shows it in the northwestern corner of your property. Also, as I noted, it is really impractical and impossible to put a 20' wide easement on a space wrapping around your garage where the distance from the garage to your boundary is less than 20'. I will send a suggested slight revision to you and Wendy in an email that I will send soon to both you and Wendy. But I would like to see what Sage has come up with. Maybe he recognized the engineering constraints and has a reasonable plan.

Thanks for the info on the well. I'll make a note of that.

I'll get back to you and Wendy soon. And contact Sage to see what he has come up with.

Best regards, Bob

Bob Gerber <aframe73@gmail.com>

Apr 7 (5 days ago)



to Pomeroy, Filler ▾

Hi, Wendy. I have sent an email to Nick asking for a few more details but I want to keep this moving forward and I have a proposed solution that is shown in the attachment. Nick has expressed to me his general intent on where the permanent easement would be located and where a temporary construction period easement would be located. I have put those on the attached map, both shown as 20-ft wide easements. The location of the permanent easement flows somewhat onto the recently deeded Mathias piece because it has to do that to work from an engineering and survey point of view since there is less than 20' between the garage and the Mathias property line and there is a reasonable limit to how tight a curve a residential driveway can turn.

Now, if this is satisfactory to you two and you can get the Mathiases to agree to this general scheme that I show here, each of you should email me that you agree and we can move forward while Sage Collins puts this understanding on a more formal survey plan.

Wendy, you and Matthew can decide where you want to take the rest of the driveway on your property beyond where I end it on the attachment and give me a revised plan that we can take up at the Planning Board (or I can produce the plan for you that the Planning Board needs once you give me a general indication of how the driveway will run on your property).

Let me know if this works.

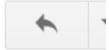
Best regards, Bob Gerber



PDF RGG proposed dr...

Pomeroy wendy

Apr 10 (2 days ago) ☆



to me, Filler ▾

Hi Bob,

Thank you for your email.

The Mathias's have given their permission to allow my driveway to cross into their property. This can be seen on part of the Deed that you have.

I take responsibility for providing Matthew with all plans that have been forwarded to you. So, my error in forwarding the one that had an old property line.

Sorry about that, but wanted you to know. Plus I had promised to send him a copy of the Deeds, and was unaware that they were so easy to get on-line.

My apologies for that, too.

Your mapping of the drive looks about right, although I would like to see it farther away from the Mathias property line. They would prefer that.

As far as the drive on my retained land, I am thinking that it should be walked again with you, this spring, so that you can see my intent, and can help map the location.

I can also do this by myself with GPS, I think.

So, yes, with minor adjustments, the mapping is good.

Thanks,

Wendy

Hi Bob,

I have just looked through the Deed and addendum, and, in fact, there is no right of way described to run the driveway through the Mathias property. However, they are in agreement that it may need to encroach onto their recently acquired sliver of property.

Last summer we measured the area behind the Fillers garage and determined a good route for the drive that encroaches the very least onto the Mathias property.

I will draw that path and send it in the next couple of days. It is similar to the route you have drawn here, but is closer to the back of the garage, allowing as much space as possible between the edge of the drive and the Mathias property.

Thank you for all your efforts towards sorting this out,

Wendy

<RGG proposed driveway locations.pdf>

Bob Gerber <aframe73@gmail.com>

Apr 11 (1 day ago) ☆



to Pomeroy, Filler ▾

Just a reminder: If you want the driveway moved from where I show it, show the new location on the map and get me emails from all three parties involved saying they agree with it. Words are not adequate to describe the location. "Farther away from the Mathias property line" has no meaning to me. We are not moving forward until the driveway is shown on a map like the one I sent to you and all parties agree on that route and the route makes sense from an engineering point of view.

I am moving up to Isle au Haut for most of the summer on April 20th. I'll have to leave the island for business on and off, but should be around most of the time. I have a GPS that is fairly accurate and from which I can easily copy a route to my ArcGIS mapping program. Let me know when you would like to walk the route on your land, Wendy.

Pomeroy wendy

8:02 PM (23 hours ago) ☆



to me, Filler ▾

Hi Bob,

Yes, absolutely, I agree with you that it should be on paper with all in agreement. I am slammed with work for the next few days, but will get a drawing to you as soon as I am able.

We have not made a plan to get up to IaH at the moment, but if we can get up soon after the 20th for a day trip, it would be great to meet there and map the driveway properly and send it to the Mathias's and Filler's for their approval.

Thank you,

Wendy



Robert Gerber <aframe73@gmail.com>

New Driveway

3 messages

Pomeroy wendy <wmpom@comcast.net>

Mon, Apr 18, 2016 at 5:40 PM

To: Bob Gerber <aframe73@gmail.com>

Cc: Filler Nick <j.nicholas.filler@gmail.com>, Mathias Charlie <cbmathias@yahoo.com>, Mathias Rob <robert.mathias@ogilvy.com>

Hi All,

I am in the process of getting a permit to clear for the driveway that goes behind the Filler's garage.

Bob Gerber has requested that I get your approval in regard to the attached drawing of the driveway proposal. I am required to have the approval of the three concerned parties:

The Fillers, and Charlie and Rob Mathias. I agree with this requirement.

The route shown in the drawing is arranged to be as far from the Mathias property as possible, especially at the back of the garage, and is hopefully, a respectful distance from the Fillers. It is shown in the thick red lines.

Please take a look at the drawing, and if it is good with you, send an email to Bob Gerber

<aframe73@gmail.com>

stating that you approve.

What is shown on the drawing is a 20' wide right-of-way, which is apparently required. Within that ROW there will be a road,

considerably smaller in width. The planning board meets tomorrow night. It would be great if you could reply by then.

If you have questions, and want to review the drawing, that is also fine. This may then be reviewed at the following Planning Board meeting.

And to Bob, I am unable to be by the phone tomorrow night for questions during the meeting. This may make acceptance of this plan difficult. I hope, if you hear back from the Fillers and Mathias family, that you would consider moving forward on this anyway. Please let me know your thoughts.

Thank you, Thank you,

Wendy

Wendy M Pomeroy
One Salt Marsh Lane

Kittery Point, ME 03905

Landscape Design and Consultation
Garden Structures

 BirchDRIVE4-18-16.pdf
64K

Charles Mathias <cbmathias@yahoo.com>

Mon, Apr 18, 2016 at 8:40 PM

To: Pomeroy wendy <wmpom@comcast.net>

Cc: Bob Gerber <aframe73@gmail.com>, Filler Nick <j.nicholas.filler@gmail.com>, Mathias Rob
<robert.mathias@ogilvy.com>

The Mathias family is in full support of this plan! Please let us know if you need anything else.

Sent from my iPhone

+1.202.236.9399

[Quoted text hidden]

> <BirchDRIVE4-18-16.pdf>

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> Wendy M Pomeroy

> One Salt Marsh Lane

> Kittery Point, ME 03905

>

> Landscape Design and Consultation

> Garden Structures

>

Robert Mathias <robert.mathias@ogilvy.com>

Mon, Apr 18, 2016 at 9:11 PM

To: Charles Mathias <cbmathias@yahoo.com>

Cc: Pomeroy wendy <wmpom@comcast.net>, Bob Gerber <aframe73@gmail.com>, Filler Nick
<j.nicholas.filler@gmail.com>, Sarah Mathias <samathias@me.com>

agree!

Sent from my iPhone

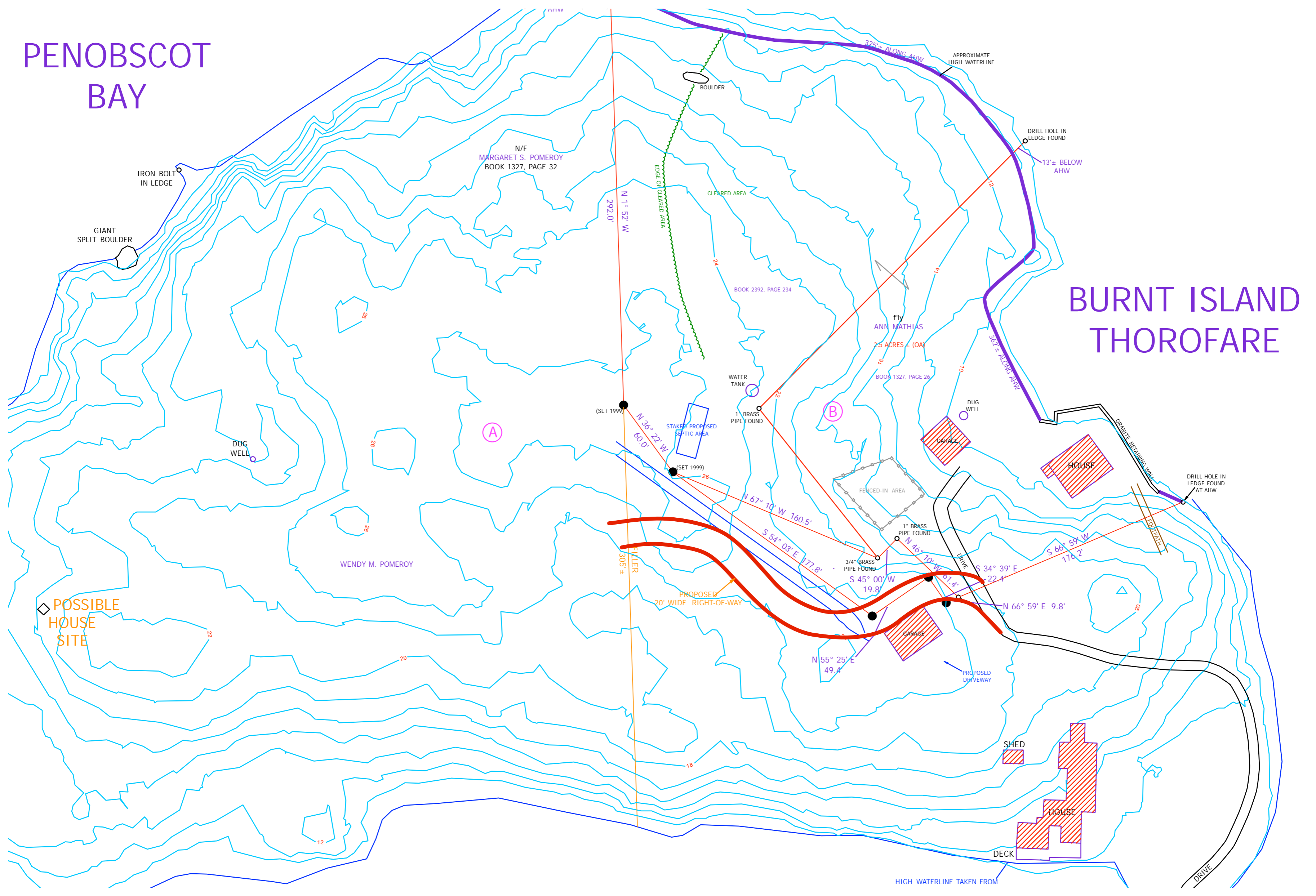
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[https://assets.ogilvy.com/truffles_email/wwit_signatures/canneslion-12-13-14-15.jpg]

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PENOBSCOT BAY

BURNT ISLAND THOROFARE





Robert Gerber <aframe73@gmail.com>

Pomeroy Driveway

J NICHOLAS FILLER <jnicholas.filler@icloud.com>

Tue, Apr 19, 2016 at 12:14 PM

To: aframe73@gmail.com

Cc: Pomeroy wendy <wmpom@comcast.net>, Charles Mathias <cbmathias@yahoo.com>

Bob,

Colleen and I are in agreement with Wendy Pomeroy (and the Mathias's) on the location of the driveway within the easement as shown on Wendy's plan sent to you.

Thanks,

Nick

Nick Filler

455 Mathews Road
Conway, MA. 01341

Home: [413-369-4748](tel:413-369-4748)

Cell: [413-522-4011](tel:413-522-4011)

Pomeroy wendy

Apr 19 (3 days ago)



to me

Bob,
I think that I may be able to get out of the commitment I have tonight for a call. When is the meeting?
This is dependent on Nick Filler getting a positive response to the drawing I sent.
Let me know if you think this is a go for tonight.
You should have received positive responses from Charlie and Rob Mathias.
Thank You,
Wendy

Wendy M Pomeroy
One Salt Marsh Lane
Kittery Point, ME 03905

Landscape Design and Consultation
Garden Structures

Bob Gerber <aframe73@gmail.com>

Apr 19 (3 days ago)



to Pomeroy

The meeting is Thursday night at 7 PM. I'll let you know if you'll be on the agenda based on whether I get Mathias and Filler concurrence. I would also send you the conference call instructions. If the route is acceptable to them, the best we can do is give a conditional approval for cutting only. We need to receive an acceptable plan for sediment and erosion control before any earthmoving or filling can take place. Matthew told me Bill Stevens will prepare this plan after Bill and I walk the route and decide on the approach. Bill has not been able to do the field check with me yet and it won't happen before Thursday night.

...

Pomeroy wendy

Apr 19 (3 days ago) ☆



to me ▾

Thank you Bob,

You should have received emails from Nick Filler, and Rob and Charlie Mathias, each agreeing it is OK with them to put the drive where I have marked it on the plan I sent you.

Please confirm you got these.

Thank you in advance for sending the conference call instructions.

I understand that you and Bill will need to meet and develop an erosion plan.

Thanks for your time on this,

Wendy

...

Bob Gerber <aframe73@gmail.com>

Apr 19 (3 days ago) ☆



to Pomeroy ▾

OK, I got the emails from the two Mathias men (brothers I presume--I have never met them) and Nick Filler.

You have now shown the 20-ft driveway easement going over a corner of Ann Mathias's property so I will also need her confirmation that it is ok to cross that corner of her land (does that right already exist in her deed? If so, please send me a copy with that right highlighted).

Also, you don't show where the driveway will go in the area west of the Filler property and on your residual property. Please submit a revised plan with that portion of the driveway shown. I can't monitor compliance nor help Bill Stevens develop a sediment and erosion control plan without knowing where this is going on the face of the earth.

Assuming you get the two above things to me before the meeting, I also need you to clean up any deed/easement issues with the 2 Mathias men and Ann Mathias. I must admit I really couldn't follow the "amendment" to the easement agreement with the Mathiases that was in one of the Registry documents sent to me. You say you interpreted it as saying that no easement for this new driveway exists in that document, although I thought it did agree to the driveway easement (but I did not go back to the Registry to pull out all the former deed references contained within the document you sent to me). If that is the case, I want you to get that easement amended and filed in the Registry. I'll let the driveway construction proceed for now on the basis of the informal emails, but before the Board gives you a permit to build a house on that lot, I want these easements created/cleaned up, including with Ann Mathias, for cutting across the corner of her property.

Can you also please tell me the status of Matthew now? You gave us a written document making him your agent on this and the Planning Board would normally only deal with the authorized agent and not copy the actual applicant. Are you rescinding Matthew's status as formal agent or what? Either he is your agent or he is not. If you are going to deal directly with me and the Board now, I am going to assume, unless told differently by you, that the agent agreement has been put aside.

Conference call instructions attached. They have not changed for a year and I expect that unless TDS wants to change them, they can be used for future meetings, too.

Best regards, Bob

...



Pomeroy wendy

Apr 20 (2 days ago) ☆



to me ▾

Thank you, Bob,

Some history: Ann Mathias, who passed away 2 or three years ago, left her land, house, and all within the boundaries called the Mathias property, to her 2 sons, Charlie and Rob. They have now given permission to have the easement for my drive on their property. This should solve that problem and remove it as an obstacle in the way of clearing an area in which a drive can be constructed up to the point where the property becomes mine.

I do not know where exactly the drive will continue across my land. I need to come up there and walk the spot that Matthew and I marked with yellow tape. Some of the area is hard to navigate through due to all the blowdowns. What I want now, is to be able to do some clearing in order to see exactly where the drive should go, and that clearing is mostly dead spruce from blowdowns. I have traversed the area for hours, and have found what I think is a route that has minimal impact to terrain, wetlands and

vegetation. All I want is to be able to do some clearing so that I can plan the drive. In order to plan the drive I will need to be on the premises. So, How can I proceed with your blessings?

My husband Deane and I are happy to meet with you this spring to come up with a plan for the drive. Fortunately, Deane is an architect and can draw the plan.

Matthew is no longer my agent for this portion of my planning board needs.

I will contact my attorney and begin drawing up the easement for the drive on the Mathias property.

Thank you,
Wendy and Deane

<TDS Conference call dial in instructions for participants.docx>

Bob Gerber <aframe73@gmail.com>

Apr 20 (2 days ago) ☆



to Pomeroy ▾

I am just leaving now to travel to IAH today so cannot reply in detail. The Planning Board will only approve what is shown on the plan. You can do some cutting in the Shoreland zone without a permit. I'll send the state regs to you tonight.

Bob Gerber <aframe73@gmail.com>

Apr 20 (2 days ago)



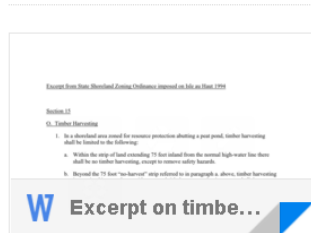
to Pomeroy

You can do some cutting in the Limited Residential Zone of the State shoreland zone without a permit. For now, stay out of that part that is less than 75' from the Highest Annual Tide line (Elev. 6.1' NAVD88 is the default but it could be higher in some areas exposed to major wave action). You can do general "timber harvesting" in the Limited Residential Shoreland Zone at greater than 75' from Highest Annual Tide without a permit if you follow the standards I have attached, which I took directly out of the Ordinance. I have highlighted in yellow the important points for you. There is a different standard for cutting associated with constructing a driveway or building a house, which is under a following section of the standards that I did not reproduce here. A 10-ft wide road that is 600' long would be a clearcut of 6000 square feet and you can see that under the "timber harvesting" standard, you can only create a single maximum clearcut opening of 5000 square feet before leaving a 100 foot undisturbed zone to another clearcut opening. But if you just stick to selective cutting and don't create "clear-cut" openings, you should be able to clean out your deadwood and open up lines of sight that give you a better feel for what you have. This project has always been presented to the Planning Board as "cutting for a driveway," and that does require a permit. If you follow the attached standards, you don't need a permit. Matthew should have known that as this Ordinance has been in effect for 22 years.

Notice also that there is a general prohibition of not clearing more than 40% by volume within the next 10 years of what is currently out there. And that restriction will include any cutting you do for the driveway and house construction, so don't cut all the 40% right now or you will lose your flexibility. We get orthophotos about every 2 years now so I can keep track roughly of what people are cutting from year to year. So don't get carried away.

I suggest that you go in and do your selective cutting now and hold up on coming to the Planning Board for the driveway permit. Once your selective cut is done, then you can locate the rest of the driveway and hopefully by that time the easement issues can be put to bed at the Registry and you can come in for the driveway construction permit.

Best regards, Bob



Excerpt from State Shoreland Zoning Ordinance imposed on Isle au Haut 1994

Section 15

O. Timber Harvesting

1. In a shoreland area zoned for resource protection abutting a peat pond, timber harvesting shall be limited to the following:
 - a. Within the strip of land extending 75 feet inland from the normal high-water line there shall be no timber harvesting, except to remove safety hazards.
 - b. Beyond the 75 foot “no-harvest” strip referred to in paragraph a. above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 1 inch in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.
2. Except in areas as described in Paragraph 1 above, timber harvesting shall conform with the following provisions:
 - a. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - i. Within one-hundred (100) feet, horizontal distance of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - ii. At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.
 - b. Timber harvesting operations exceeding the 40% limitation in paragraph a. above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of

Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.

- c. No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.
- d. Timber harvesting equipment shall not use stream channels as travel routes except when:
 - i. Surface waters are frozen; and
 - ii. The activity will not result in any ground disturbance.
- e. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.“
- f. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- g. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from tire normal high-water line of a water body or upland edge of a wetland.

Report of the Isle au Haut Planning Board

During the period February 1, 2015, through January 31, 2016, the Planning Board met 5 times to conduct regular Board business and held two public hearings on proposed zoning changes. No subdivision proposals were acted upon in this time period, but eight building permits were issued and one subdivision condition was satisfied. The Board developed proposals for revisions to the Town Zoning Ordinance and two separate hearings were held to explain those and gather public input. Three members of the Planning Board were reappointed by the Selectmen after their terms expired when the 2015 Annual Town Meeting was not held in March 2015. In 2016 the Board will hold a hearing on a Floodplain Management Ordinance required by the Federal Emergency Management Agency to enable homeowners and businesses to purchase federally-subsidized flood insurance (the first official flood maps for Isle au Haut become Effective on July 2016). Also in 2016 the Board will negotiate proposed changes with the Maine Department of Environmental Protection (DEP) to the Shoreland Zoning Ordinance and hold a hearing on these changes once agreement with DEP is reached. Planning Board meeting notices, Planning Board minutes, general information on Planning Board issues, and proposed land use planning ordinances and related information are now posted in the Planning Board section of the Town website which holds the complete records of the Planning Board activities for the year.

Only one building permit (under both Town and Shoreland Zoning Ordinances) for a new house was issued in 2015: to the Chamberlains for a log cabin on the east side of Long Pond on a previously-approved subdivision lot. This house was constructed during 2015.

A sediment and erosion control condition (under both Town and Shoreland Zoning Ordinances) on the Leone lot on the east side of Long Pond was satisfied and construction began there on a house for which subdivision approval and the building permit had been previously issued.

Permits for small additions to two existing houses were issued under the Town Zoning Ordinance to Van Doren on the east side and Breeze-Williams in the village area.

A permit for a new well (Shoreland Zoning Ordinance) was issued to Watts/Wurzburg at Sheep Thief Gulch on the southeast side. A permit was granted for the extension of power poles and electric and communication lines on the east side of Head Harbor (under both Town and Shoreland Zoning) to DeWitt/Chubbuck.

Three after-the-fact permits were issued, all of which required both Town and Shoreland Zoning approval: 1) to Maine Coast Heritage Trust for a replacement footbridge at Head Harbor; 2) to Leone for a tent platform at Long Pond; 3) to William and Bernie Barter for a wood shed at the west end of the Thoroughfare.

A request was made to the Planning Board by Laura Jacobus to construct a septic system in the Moore's Swale Resource Protection buffer area. The Planning Board denied the request based on its interpretation of the wording of the Town Zoning Ordinance. Jacobus has appealed the ruling to the Board of Appeals but the appeal has not yet been heard.

Public hearings were held on August 27th and November 12th on changes proposed by the Planning Board to the Town Zoning Ordinance. The changes would update the Ordinance to bring it into compliance with current statutes and create several new commercial and marine-related industry zones on the Thoroughfare. Currently, no new business uses are permitted in the Shoreland zone (250' back from the shore) and changes to the Town Ordinance are needed before the Shoreland

Zone Ordinance can be changed. The Board completed the hearing process and forwarded proposed Town Meeting Warrant articles to the Selectmen for a vote at Town Meeting. The Planning Board will propose and hold hearings in 2016 on a Floodplain Management Ordinance (which interacts with the Shoreland Zoning Ordinance) and on changes to the Shoreland Zoning Ordinance. Follow the information on these two ordinances on the Planning Board section of the Town website.

Respectfully submitted,

Robert G. Gerber, Chair

Fedosh lot split

2 messages

Mike Fedosh <mikedefosh@gmail.com>
To: Robert Gerber <aframe73@gmail.com>

Mon, Apr 4, 2016 at 9:43 PM

Hi Bob,

I thought I'd let the excitement of the town meeting diminish if you attended. I just got the paper & can imagine the debates that were had. 8 hours for that agenda?? anyway.

I appreciate your last email indicated that you went the distance on the data we had from years ago. I've spoken with Sage & he'll do the GPS acquisition to get the data you are looking for. I will let out a groan for having to fuel this task with \$\$ but recognize the importance of the quasi-unofficial (?) endpoint letter which you indicated would still have validity with the Board years later when we are gone.

reading your last email you are just needing survey-quality GPS coordinates of the corner monuments in a typical Maine coordinate system that Sage uses. If there is more that he needs to acquire which I missed please correct me. He told me something of sending an email to you to confirm your desired information. I don't know if that is necessary. your call if you feel you need to reiterate your needs. If you're good I'll tell him to find a day to go out there.

getting closer.
Mike Fedosh.

Bob Gerber <aframe73@gmail.com>
To: Mike Fedosh <mikedefosh@gmail.com>

Tue, Apr 5, 2016 at 11:35 AM

What you describe to me is the same thing I described to you and Sage in my last email. Once Sage picks up the points it will be easy to check his accuracy by comparing calculated distance across the corners from his existing survey with calculated distance based on this field coordinate capture. As long as that error is within a foot or two I'll be happy. I expect the actual error will probably be more like a tenth of a foot if it is what I am used to seeing. The accuracy increases as a function of how long the receiver sits on a point and how far away the secondary station(s) is located and what the satellite array is at the time of collection.

Best regards, Bob

Mike Fedosh

5:08 PM (2 hours ago) ☆



to me ▾

Hi Bob,
I hate to ask you this question since I got an answer from Al Gorden (verbal).

Al said a stairway in the shore zone does NOT need a Board approval. I've been running with that answer for years.
Sage Collins said no state permit is needed either.

I'm just getting to the phase of a stairway & I dont want you telling me something different after construction. rather know now if something changed.

back to packing for a Friday UHaul run. heading off Saturday morning back south. feeling like a trucker.
Sage scheduling a site visit for the corner pt GPS
thanks

Bob Gerber <aframe73@gmail.com>

7:19 PM (21 minutes ago) ☆



to Mike ▾

I have had that question before in connection with another application. My reading of both the Town and Shoreland Zoning Ordinance suggests that outdoor stairways down from a building or outdoor deck do not need a permit and do not count in calculating square footage of a building.

Best regards, Bob

Wilson, Carl

Apr 14 (8 days ago) ☆



 to me ▾

Great, I will attempt to get something in the mail before we strike out this weekend.
Thanks for your prompt response.
Carl

Carl Wilson, Maine Department of Marine Resources
[207.633.9538](tel:207.633.9538) W [207.592.1422](tel:207.592.1422) C

Sent from my iPad managed by BlackBerry Enterprise Service

----- Original Message -----

From: Bob Gerber <aframe73@gmail.com>
Date: April 14, 2016, 10:13 AM EDT
To: Wilson, Carl <Carl.Wilson@maine.gov>
Subject: Re: tent platform on IAH

A permit for a tent platform is required under the Shoreland Zoning and I think it is also required under the Town Ordinance, although I have to check that later tonight when I get a chance. Shoreland Zoning applies within 250' of Highest Annual Tide. Town Zoning applies everywhere. The Planning Board issues these permits and we only meet about once a month. Next meeting is April 21st at 7 PM. Permit applications need to be sent to me before the meeting (via PDF emailed to me) so I can determine if the application is complete. See attached generic application. We need a plan of the location, in addition to a narrative.

Last year the Planning Board had to do an after-the-fact permit for the Leones who put up a tent platform without a permit and I spotted it on Google Earth photos.

The full Town and Shoreland Zoning Ordinances are on the Town website under the Planning Board section.

Best regards, Bob

On Wed, Apr 13, 2016 at 9:53 AM, Wilson, Carl <Carl.Wilson@maine.gov> wrote:

Hi Bob,

Got your email from my father. We are heading out to the island this weekend, with the intent to set up a tent platform behind my parents' house. It would be on cement pads, with a plywood deck. In our conversation we wanted to make sure we follow any permit applications that may be needed, and I am told you are the man to speak to.

Hope this email finds you well,
Carl

Carl Wilson
Director, Bureau of Marine Science
Maine Department of Marine Resources
PO Box 8, 194 McKown Point Rd.
West Boothbay Harbor, ME 04575 USA
[207.633.9538](tel:207.633.9538) w
[207.633.9579](tel:207.633.9579) f
[207.592.1422](tel:207.592.1422) c

Bob Gerber <aframe73@gmail.com>

Apr 15 (7 days ago) ☆



to Carl ▾

The Town Ordinance also requires a permit for "accessory structures". Except in Resource Protection zones, the CEO is supposed to issue the permit; however, the Town has been without a CEO for over a year and has not acted to appoint one, so the PB has issued the permit although the legality of doing this is questionable.

You probably shouldn't start the construction without receiving your permit since you have been notified of the need for a permit. There are fines prescribed in both ordinances if the town should decide to and is successful in enforcing the ordinances. The courts are harder on willful violations than on violations done out of ignorance.

...

Wilson, Carl

Apr 15 (7 days ago)

 to me 

Hi Bob,
Appreciate the advice. We will see what happens this coming week.
Carl

Carl Wilson
Director, Bureau of Marine Science
Maine Department of Marine Resources
[207.633.9538](tel:207.633.9538) w
[207.592.1422](tel:207.592.1422) c

From: Bob Gerber [mailto:aframe73@gmail.com]
Sent: Friday, April 15, 2016 8:47 AM
To: Wilson, Carl

...

Wilson, Carl

Apr 15 (7 days ago)

 to me 

So I understand, was there a fine included for the after-the-fact permit for the Leones?

Carl Wilson
Director, Bureau of Marine Science
Maine Department of Marine Resources
[207.633.9538](tel:207.633.9538) w
[207.592.1422](tel:207.592.1422) c

From: Bob Gerber [mailto:aframe73@gmail.com]
Sent: Thursday, April 14, 2016 10:13 AM
To: Wilson, Carl
Subject: Re: tent platform on IAH

A permit for a tent platform is required under the Shoreland Zoning and I think it is also required under the Town Ordinance, although I have to check that later tonight when I get a chance. Shoreland Zoning applies within 250' of Highest Annual Tide. Town Zoning applies everywhere. The Planning Board issues these permits and we only meet about once a month. Next meeting is April 21st at 7 PM. Permit applications need to be sent to me before the meeting (via PDF emailed to me) so I can determine if the application is complete. See attached generic application. We need a plan of the location, in addition to a narrative.

...

Bob Gerber <aframe73@gmail.com>

Apr 17 (5 days ago) ☆



to Carl 

No, because Albert erroneously told them that no permit was required.

...

Wilson, Carl

Apr 19 (3 days ago) ☆



to me ▾

Hi Bob,

Congratulations, I heard the news that you are the new CEO for Isle Au Haut. Picking up from our thread of last week. We have all the materials in place to make the tent platform on the island, but have held off the assembly. I understand that you will be on the island thursday (?). Would it be possible to swing by the site and hopefully give us a conditional approval? I have the permit application, and will complete it to the best of my ability.

Best,
Carl
335-2581

Carl Wilson, Maine Department of Marine Resources
[207.633.9538](tel:207.633.9538) W [207.592.1422](tel:207.592.1422) C

Sent from my iPad managed by BlackBerry Enterprise Service

headharbor@gmail.com

Apr 19 (3 days ago) ☆



to me, Carl ▾

Hi Bob,

Not sure if my earlier email got through my remote system for state emails. Regardless, I understand you are the new CEO and will be coming to the island on Thursday. Would it be possible to swing by and evaluate the site. We have staged everything that we can, without breaking ground, but would like to get the platform up before Saturday PM.

Best,
Carl
335-2581

Sent from my iPad

Bob Gerber <aframe73@gmail.com>

Apr 19 (3 days ago) ☆



to headharbor ▾

I got the first email. Make sure you have a survey of the property or a copy of the deed (right, title, or interest proof) and if you are going to do any filling or digging of soil, you need to prepare a sediment and erosion control plan. Come over to my house tomorrow night, about 8 PM, to go over things.

...

headharbor@gmail.com

Apr 19 (3 days ago) ☆



to me ▾

that sounds like a plan, pretty sure we will not have a copy of the deed but we will see where we can get. there will be no digging, as the platform will be sitting on cement pads.

Sent from my iPad

James Wilson

Apr 19 (3 days ago)

to me, carl

Hi Bob,

Carl asked me to send you this sketch of our boundary lines and the location of the platform. As you can see it is almost equidistant from our property lines.

Yours,

Jim

B



PDF Northern part of H.

Bob Gerber <aframe73@gmail.com>

Apr 19 (3 days ago)

to James

OK. When you get a chance, please send me a copy of your deed for our records. We always require either a stamped surveyor's property plan or a copy of the deed that is recorded in the Registry. I presume, also, that you are authorizing Carl to act as your agent on this? Please confirm.

Bob

Bob Gerber <aframe73@gmail.com>

Apr 19 (3 days ago)

to Head, James

I just realized that I have a copy of your deed. It was with the Chubuck/DeWitt power line extension application. Are parcels 1, 2, and 3 all contiguous (I haven't re-read the deeds yet)?

James Wilson

Apr 19 (3 days ago)

to me, carl

Bob, I do not have a copy of the deed but if my memory serves me correctly the property was described as 3 contiguous parcels. The Google sketch I sent is pretty close to the actual lines. And, yes, Carl will act as my agent on this. Jim