

**City of Hallowell**  
**Board of Appeals**  
**June 17, 2019**  
**7:00 pm**

**1. Call to Order**

Mr. Platt called the meeting to order.

**2. Roll Call / Quorum**

Mr. Platt took the roll call and established a quorum.

Present:

Board of Appeals: Philip Davidson, Joshua Platt, David Young Jr., Teresa Cloutier

Appellant: Hallowell Overlook Homeowners Association

Defendant: Doug Ide, Code Enforcement Officer

**3. Election of a Chair**

Mr. Platt opened the floor for nominations. Mr. Davidson nominated Mr. Platt; Mr. Young seconded the nomination. There were no additional nominations and Mr. Platt was elected unanimously.

**4. Administrative Appeal of the Code Enforcement Officer's Issuance of a Driveway Permit for Map 2 Lot 4-B**

Mr. Platt asked Mr. Ide to summarize the decision prompting the appeal. Mr. Ide explained that the opinion of the City regarding driveways on Overlook Drive was that the fifteen-lot maximum on dead-end streets established in the Subdivision Ordinance barred any additional driveway entrances on Overlook Drive. When he was approached by the new owner of Map 2 Lot 4B, he reexamined the issue and consulted the legal team at Maine Municipal Association. The MMA team agreed with his revised opinion that the fifteen-lot limit applied only to the subdivision and not to lots outside the subdivision. Since Overlook Drive is a City road, he issued the driveway permit that is being appealed. He pointed out that this is an unusual situation where a public street bisects a private lot and then enters a privately held subdivision with a homeowners' association. Mr. Platt asked if the lot was landlocked; Mr. Ide said the lot had frontage and access on Winthrop Street, but an oil pipeline easement makes construction of a driveway arguably cost prohibitive. Mr. Ide cited Section 9-803(2) which states: "The provisions of this subchapter shall pertain to all land and buildings proposed for subdivision within the boundaries of the City of Hallowell."

Mr. Platt invited the Homeowners Association to summarize its opinion. Matt Morrill represented the Association. He explained that the subdivision was originally denied, then appealed, and the appeal denied. He then worked with the Ordinance Review Committee to revise the Subdivision Ordinance. He pointed out that the fifteen-lot limit was a safety issue. He limited the subdivision to fifteen lots even though there was enough land for ten or twelve more lots. He maintained that the limit was for the whole road and stressed that the limit was imposed for safety. He added that he did not purchase Lot 4B when it was offered to him because he was told it could not be developed with access from Overlook Drive due to the fifteen-lot limit. He pointed out that he was required to meet the road standards in the Subdivision Ordinance even for that section of the road.

The Board invited Paul Blouin, the owner of Lot 4B, to speak. He explained that he bought the land and divided it with a right-of-way to access Mr. Blanche's driveway. He pointed out that Overlook Drive was designed to be taken over by the City as a street. He added that he has been quoted a figure of \$10,000 to construct a driveway over the oil pipeline. He said that MMA's opinion is that you cannot deny a property owner access to a public road that bisects his property. Mr. Platt asked Mr. Blouin to locate the oil pipeline and his proposed driveways on the map; Mr. Blouin complied.

The Board discussed the issues and formulated questions for the parties to the appeal.

Mr. Davidson asked Mr. Morrill where the subdivision begins and asked if the sign by Winthrop Street is part of the subdivision; Mr. Morrill said the lot adjacent to Winthrop Street is a separate lot and is not part of the subdivision. Mr. Davidson observed that this was cut and dried until MMA supplied its interpretation. Mr. Ide explained that he had begun to question the interpretation he had inherited and asked MMA for its opinion; a lawyer at MMA concurred with his interpretation. Ms. Cloutier observed that the Board's duty is to interpret the Ordinance and decide whether the CEO made an error of law; she asked if Mr. Ide's sole basis for concluding that the dead-end provision does not apply is the language in 9-803. Mr. Ide said it was.

Mr. Platt invited comments from the Public.

Jay Sharp, a member of the Homeowners Association, said that it seems reasonable that if Mr. Ide's decision is different from what he told Mr. Morrill at the time approached him, he should have informed Mr. Morrill of the change.

Jack Richards, a member of the Homeowners Association, said that the statute regarding subdivisions is not in conflict with the Ordinance governing dead-end streets. He cited ordinance section 9-848.3.B(7) which excludes corner lots which can be accessed from another street from the fifteen-lot limit. He maintained that Lot 4B can be accessed from Winthrop Street.

Mr. Platt asked Mr. Blouin if there would be a driveway from Winthrop Street for the lower lot; Mr. Blouin said there would be if it sells. Mr. Platt asked if there was a reason the two lots couldn't share a driveway from Winthrop Street; Mr. Blouin said that the easement is written to permit that, but it is his understanding that it is difficult for a town to deny access to a public street from his own land. He suggested that who owned the land and who had a chance to buy it are all in the past, and we must deal with the present right now. He pointed out that he has agreed for the top lot to be treated as part of the development regarding the size of the home, type of architecture, underground power, and some other provisions, but they have not worked out any details. He noted that he had contracts for two deals which fell through because of this appeal. Mr. Ide added that each lot has to have its own driveway.

Mr. Platt asked Mr. Ide if it were common practice for MMA to provide legal advice over the phone without any written opinion. Mr. Ide said his experience is not long enough to answer that. He said he should have requested the information in writing. In any case, MMA is not determinative in interpreting our Ordinance: the Board of Appeals and the Code Enforcement Officer are.

Nathan Pierce, 74 Overlook Drive, said that regardless of the technicality of the road crossing through land that is not part of the subdivision, the original reason for the limit was safety. He cited the road design standards table in Section 9-848.

Mr. Ide observed that this may appear as a technicality or loophole within the Ordinance, but the Ordinance is what he has to go on, so he is bound to interpret things with the strictest interpretation of the Ordinance that he can. That is why he issued the driveway permit. The standards that have been cited are all part of the Subdivision Ordinance. He pointed out that the Floodplain Ordinance places many requirements on development in the floodplain that do not apply to development outside the floodplain.

Mr. Morrill cited Section 9-848 subsection 2 dealing with access control. He pointed out that the statement "If the street design and construction standards of Division B of Chapter 6 of the Code of ordinances conflict with the standards in this subsection, the standards of this section shall apply." He maintained that this includes the fifteen-lot limit.

In response to a previous comment Mr. Ide noted that he has been in communication with Mr. Morrill throughout this process about this change of interpretation. Mr. Morrill concurred.

Mr. Davidson asked Mr. Ide if you subdivide a lot and want to make more than fifteen lots, would you have to make the road wider; Mr. Ide said that without research he would say that you could not do more than fifteen lots on a dead-end road regardless of any road standard.

Mr. Platt asked Maureen AuCoin, the previous Code Enforcement Officer, if MMA provided opinions in written form or over the phone. Ms. AuCoin said that in her experience advice was provided strictly over the phone. Mr. Ide noted that he had not consulted the City Solicitor to avoid the expense. Mr. Davidson asked why the

City Solicitor was not present at the meeting and suggested having the City Solicitor present would be helpful to the Board. Mr. Ide said he was not familiar with past practice of the Board having the City Solicitor present. It is not required under statute.

There was discussion of the status of the portion of Overlook Drive that is outside the boundary of the subdivision.

Mr. Platt asked if it would be feasible to have two driveways with a single access point onto Winthrop Street. Mr. Ide said the intent is for each driveway to have frontage on a public road.

Ms. Cloutier cited the definitions of collector and local streets. There was discussion about the status of the portion of Overlook Drive which is outside the subdivision boundary.

Mr. Platt asked the Board if its desire was to seek legal counsel and reconvene when the City Solicitor can be present.

Motion to seek legal counsel and reconvene when the City Solicitor can be present.

Moved: Cloutier

Seconded: Davidson

Unanimously approved

There was discussion regarding the procedure for formulating questions the Board might have for the Solicitor. Mr. Ide advised the Board that it is always best to do things in a public setting so that everything is as transparent as possible. He said he will work with the Board members' schedules and the City Solicitor to schedule a meeting. Mr. Platt said it was important to have the meeting as soon as possible in the interest of all the parties present and respect everyone's time-line on this. The Board discussed the process. Ms. Cloutier pointed out that the broad question is whether the standards in §9-848.3 apply to the portion of Overlook Drive outside the subdivision boundary and whether allowing this permit is a violation of the ordinance. She also requested information on the impact, if any, of the fact that the town has historically held one position and is now changing that and whether there are any sort of estoppel issues the Board should be worried about.

Mr. Ide said he would forward the information about the appeal and the Board's general questions to the Solicitor right away and will forward any additional questions the Board members send him.

## 5. Adjournment

Motion to close the meeting and have the Code Enforcement Officer schedule another meeting as soon as possible.

Moved: Platt

Seconded: Cloutier

Unanimously approved