

Attorneys At Law

Peter S. Plumb
John C. Lightbody
Thomas C. Newman
John C. Bannon
Susan D. Thomas
Drew A. Anderson
Richard L. O'Meara
Christopher B. Branson
Michael D. Traister
Barbara L. Goodwin
Timothy H. Boulette
John B. Shumadine
Sarah A. McDaniel
Thomas L. Douglas
Staci K. Converse
Kelly W. McDonald
Nicole L. Bradick

Of Counsel:

Peter L. Murray
Amy M. Sneirson
Barbara T. Schneider

E. Stephen Murray
(1941-2001)

75 Pearl Street
Post Office Box 9785
Portland, Maine
04104-5085

Telephone:
207.773.5651

Facsimile:
207.773.8023

E-Mail:
info@mpmlaw.com

WWW:
mpmlaw.com

March 1, 2007

Katherine Braid
Planning Board
Town of Edgecomb
P.O. Box 139
Edgecomb, ME 04556

RE: Midcoast Cohousing Building Permit Applications

Dear Katherine:

You have asked this firm to provide an answer to the issues that Attorney Eliot Field raises in his February 26, 2007 letter about the four Midcoast Cohousing building permit applications. In his letter, Attorney Field states that although his clients want to construct more than three dwelling units on the Midcoast Cohousing property, they nonetheless intend to submit a proposal to construct those dwelling units that “would **not** require subdivision review.” Attorney Field asks for guidance about how Midcoast Cohousing might accomplish that goal and raises issues about an alleged conflict between the advice that his clients received from the Edgecomb Code Enforcement Officer versus the opinion that this firm offered to the Planning Board in a letter dated February 7, 2007.

As an initial matter, Attorney Field’s letter requests—at least in part—that the Board issue an advisory opinion. Attorney Field asks that the Board advise Midcoast Cohousing about how it could design its project so that the project would not trigger subdivision review. In a second February 7, 2007 letter to the Board from this firm, we strongly advised the Board not to provide advisory opinions. That same advice applies to Midcoast Cohousing’s request that the Board serve as a design partner and suggest ways to avoid subdivision review. The Board lacks jurisdiction to issue advisory opinions. The Board is empowered only to interpret the Edgecomb Land Use Ordinance in the context of a specific application.

Moreover, even the question that Midcoast Cohousing poses raises a number of problems. Midcoast Cohousing asks how it may avoid subdivision review. A simple answer is to suggest that they limit their project. A project with only a single dwelling unit does not require subdivision review. 30-A M.R.S.A. § 4401(4).

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Of course, that is not what Midcoast Cohousing is asking. Midcoast Cohousing wants to know how they might put multiple dwelling units on their property without going through subdivision review. There is no simple or easy answer to that question. More importantly, it is not the Board's job to find ways for an applicant to exempt himself from the Town's various regulations. If Midcoast Cohousing wants to pursue that goal, it needs to ask its own professionals those questions.

Instead, the Board should analyze and evaluate any applications that appear before it. By ruling on those applications, the Board provides guidance to applicants. With respect to Midcoast Cohousing, the Board has been asked to evaluate whether four specific building permit applications require subdivision and/or site plan review. This firm's February 7, 2007 letter analyzing those applications explains why the Board should find that the building permit applications require subdivision review but do not require site plan review. Although I appreciate that Attorney Field disagrees with the conclusion about subdivision review, his letter does not persuade me to change my opinion that subdivision review is required here. For instance, Attorney Field argues in footnote 1 of his letter that when there is an "expansion of an existing structure, [he] would agree that the expanded structure would be a "new structure," but the does **not** create a **division** of that structure." However, those new structures would create a division of the *lot* and—equally—result in the construction or placement four dwelling units on the Midcoast Cohousing property. Because Midcoast Cohousing proposes four new structures within a five year period, its applications require subdivision approval. The Board is not required to provide any additional guidance about how the project could be changed to reach a different conclusion—and, as discussed above, the Board should not provide such guidance.

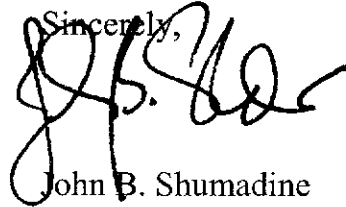
Finally, Attorney Field and some of the other members of Midcoast Cohousing have raised issues about the advice that they received from the Edgecomb CEO. Attorney Field suggests that the Board may be "revising" the CEO's answers. However, the Board is not bound by the CEO's statements. When the Board takes up this matter, it should reach its own decision on the issues presented by the four building applications in front of it.

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Thank you for your attention. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "J.B. Shumadine", written over the word "Sincerely,".

John B. Shumadine

jshumadine@mpmlaw.com

JBS/dmw

cc: Eliot Field, Esq.