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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

April 16, 2014

Windledge LLC
Attn: Douglas J. Ringler, VMD
402 Baker Hill Road
Freeman Twp., ME 04983

Subject: ADVISORY RULING AR 14-05; Lots #125, #126, #127, #129 on Tax Plan 01, Freeman Twp.,
Franklin County

Dear Dr. Ringler:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on a proposed division of land in Freeman Township, currently designated as lots #125, #126, #127, and #129 on Tax Plan 01. These lots are all currently owned by Windledge LLC (hereinafter "Windledge") except for an 11-acre portion of Lot #126 owned by Don King. Windledge also owns adjacent Lots #2, #3 and #4 on Tax Plan 01 in Salem Township. The combined acreage of Windledge's two parcels in Salem and Freeman Townships is 353.4 acres, of which 73.8 acres is within Freeman Township. Windledge's property in Salem Township is developed with a dwelling and several accessory structures and agricultural buildings [reference: Building Permit BP 12131 and amendments]. Windledge's property in Salem Twp. is accessed by a driveway across Lot #129 in Freeman Twp. to Baker Hill Road in Freeman Twp. Lot #129 is not otherwise developed. Lot #127 in Freeman Township is developed with a pre-Commission dwelling with an attached garage. Lots #125 and #126 are undeveloped.

Attachment 1 to your request shows the current layout of the subject lots. The lots outlined in magenta are Windledge's original parcel in Salem and Freeman Townships, being 283.4 acres, including 3.8 acres in Freeman Twp. (Lot #129). The lots shaded in green and yellow on Attachment 1 is the land in Freeman Township acquired by Windledge from Jean Stout (hereinafter "Stout") on January 27, 2014. Attachment 2 to your request shows Windledge's proposed division of the Stout land it acquired in January of 2014. I have enclosed these two attachments from your request for your reference.

You have asked several questions about Windledge's proposed division of the Stout land as discussed in more detail below. We will attempt to provide our view on the matters as we understand them, pursuant to 5 M.R.S.A. 9001. I want to caution however, this is an informal response and not a legal determination. You may want to consult your attorney on this matter. In providing our views on these matters, we have relied upon the facts as you have presented them to us, supplemented by our research of our permit files and records available through the Franklin County Registry of Deeds.

Land Division History: Windledge Property, Freeman Township

Parent Parcel: Based upon our review of records at the Registry Deeds and historical tax listings, it appears that the parent parcel for the Windledge property in Freeman Township consisted of merged Lots #128 and #129, and some portion of, or interest in, Lot #131 on Tax Plan 01. Lots #129 and #131 are located on the north side of Baker Hill Road, and Lot #128 is located on the south side of Baker Hill Road. It appears that these lots were owned by Eldora M. Gilmore as of April 1, 1994.

November 10, 1989; Book 1131, Page 96: Warren W. Viles, Jr. transferred what appears to be some portion of, or interest in, what is now Lot #131 on Freeman Tax Plan 01 to Paul Greco [reference: Building Permit BP 9338].

October 10, 2000; Book 1962, Page 77: A probate document lists Alfred and George Gilmore as heirs of the estate of Ms. Gilmore, who died on January 6, 1999.

February 12, 2001; Book 1994, Page 153: Alfred and George Gilmore transferred Lot #128, being approximately 17 acres on the south side of Baker Hill Road, to Kelly Dexter.

February 4, 2002; Book 2129, Page 54: Alfred and George Gilmore transferred “Parcel 1”, being the 283.4 acre property in Freeman and Salem Townships now owned by Windledge, and “Parcel 2” that appears to be some portion of, and/or interest in, Lot #131 on Freeman Tax Plan 01, to Harry Gordon.

October 16, 2002; Book 2195, Page 314: Mr. Gordon transferred his interest in Parcel 2 that he acquired from the Gilmores by the deed listed above, to Paul Greco. It appears that this transfer was done to resolve a property line encroachment by Mr. Greco [Reference: Note #2 on plan titled “GPS Survey of Eldora Morse Gilmore Estate,” dated August 2002 and filed at the Registry as Plan #3839].

December 16, 2002; Book 2227, Page 302: Mr. Gordon transferred Parcel 1 of the land he acquired from the Gilmores to Leslie and Robin Jordan [reference: Building Permit BP 12131 and Amendments, now held by Windledge].

October 7, 2009; Book 3198, Page 309: Robin Jordan (now Robin L. Handrahan) acquired sole ownership of Parcel 1 by a divorce judgment.

September 27, 2010; Book 3283, Page 252: Robin L. Handrahan transferred Parcel 1 to Robin L. Handrahan Revocable Trust.

February 12, 2012; Book 3421, Page 29: Robin L. Handrahan Revocable Trust transferred Parcel 1 to Windledge.

It is our understanding from you that Windledge has not transferred any land from its original 283.4 acre parcel since acquiring it in 2012, nor has it acquired any abutting land since 2012 other than the Stout property as described below. Windledge’s original 283.4 acre parcel is highlighted in magenta on Attachment 1.

Land Division History: Stout Property, Freeman Twp.

Parent Parcel: July 17, 1987; Book 980, Page 118: George and Janice Adams transferred approximately 91.2 acres to Caroline Worthington and Nielsen Gabel-Jorgensen, consisting of Lots #125 and #127 on the north side of Baker Hill Road, and Lot #126 and Lot #126.1 on the south side of Baker Hill Road as shown on Attachment 1. Lot #127 is developed with a pre-Commission dwelling with an attached garage.

November 3, 1997; Book 1711, Page 81: Caroline Worthington, as surviving joint tenant with Mr. Gabel-Jorgensen being deceased by then, transferred the entire 91.2 acre parcel to Mae Ann Martin. The Commission issued Development Permit DP 4463 to Ms. Martin in 1998 for a hair salon in the garage as a home occupation.

November 13, 2000; Book 1968, Page 333: Ms. Martin transferred 81 acres of her lot to George and Jean Stout, being Lots #125, #126 and #127 as shown on Attachment 1, and retained Lot #126.1 being approximately 10 acres.

November 22, 2000; Book 1971, Page 232: Ms. Martin transferred all of her retained Lot #126.1 to Rodney Searles. This lot has been transferred several times since Mr. Searles acquired it, but it remains in its original configuration to date.

January 22, 2014; Book 3619, Page 206: Jean Stout, as surviving joint tenant with George Stout being deceased, transferred an approximately 11-acre portion of her lot to Don King. This lot is drawn in on Attachment 1 at the northwest corner of Lot #126.

January 27, 2014; Book 3619, Page 188: Ms. Stout transferred all of her remaining property, being approximately 70 acres, to Windledge. The property transferred to Windledge is comprised of Lot #125 and #127 on the north side of Baker Hill Road, and Lot #126 on the south side of Baker Hill Road except for that portion previously conveyed to Mr. King.

Windledge's Current Property & Proposed Land Division

With Windledge's acquisition of the portion of the Stout property described above, Windledge's property now consists of Lots #2, #3 and #4 on Salem Tax Plan 01, totaling 279.6 acres; and Lots #125, #126, #127 and #129 on Freeman Twp. Tax Plan 01, totaling 73.8 acres. Windledge's current property includes the magenta-outlined, yellow-shaded and green-shaded areas on Attachment 1. Windledge proposes to sell 2 acres out of Lot #127 in Freeman Township, including the house and garage, along with all of that part of Lot #126 owned by Windledge to another party as a single parcel. Windledge would retain the remaining portion of Lot #127 and all of Lot #125, comprising approximately 28 acres. This would bring Windledge's total ownership in Freeman Township to approximately 31.8 acres, including Windledge's original 3.8 acre Lot #129.

Relevant Standards

- Section 10.02(186) of the Commission's Land Use Districts and Standards states that "except as provided in 12 M.R.S.A § 682-B, "subdivision" means a division of an existing parcel into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing."

- Under provisions of Section 10.25,Q,1(f) of the Commission’s Standards, for the purposes of the definition of subdivision in 12 M.R.S.A. §682(2) and in these rules, an “existing parcel” shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.
- Under provisions of Section 10.25,Q,1,g(8) of the Commission’s Standards, a lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
 - a) approval of the subdivision under 12 M.R.S.A §685-B was denied by the Commission and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S.A. §685-B and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - c) The Commission has filed a notice of violation of 12 M.R.S.A. §685-B with respect to the subdivision in the appropriate registry of deeds; or
 - d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S.A §682-B(5)
- Under provisions of Section 10.25,Q,1,g(2) of the Commission’s Standards, A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
 - (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3); and
 - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

Only one retained lot exempt under this Section 10.25,Q,1,g,(2) may be created from any one existing parcel
- Under provisions of Section 10.25,Q,1,g(3) of the Commission’s Standards, a lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the abutter’s contiguous property is maintained as a single merged parcel of land for a period of 5 years. Where a lot is transferred to an abutter, or two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for:
 - a) lots that are part of a subdivision approved by the Commission;
 - b) a land division certified by the Commission as qualifying under 12 M.R.S.A. §682-B; or
 - c) as provided in Section 10.11.

If the property exempted under this paragraph is transferred within 5 years to another person without all of the merged land, or without satisfying either subparagraph (a), (b), or (c) above, then the previously exempt division creates a lot or lots for purposes of Section 10.25,Q.

Interpretation

In accordance with the provisions of Section 10.25,Q,1,f of the Commission's standards, our analysis and interpretation considers only Lot #129 in Freeman Township as being the original Windledge parcel for the purposes of this advisory ruling that pertains to land transfers in Freeman Township. Furthermore, language in the Stout deeds indicate that the right-of-way for Baker Hill Road is only under public easement, and is not owned in fee by the entity that maintains it. Accordingly, Commission staff consider lots under the same ownership in Freeman Township that are contiguous across Baker Hill to be merged into a single parcel under Section 10.25,Q,1,f.

In providing the answers to your questions below we first determined the status of Windledge's and Stout's lots. To do this we traced each lot back more than 20 years pursuant to Section 10.25,Q,1,g(8) of the Commission's standards in order to determine the parent parcel for each lot. We then tracked the parent parcels to the present to determine whether more than two "subdivision" lots had been created out of either the Windledge or the Stout lot within any 5-year period as defined by the Commission's statutes and rules. Summaries of our research are provided under the "Land Division History" sections above.

Regarding the Windledge lot, it appears that there were only two divisions of the parent parcel since 1994. One of the three lots created was exempt as a transfer to an abutter, resulting in a total of two lots being created from the parent parcel. Specifically, the first division of the parent parcel occurred in February of 2001 with the transfer of Lot #128 on the south side of Baker Hill Road to Kelly Dexter. This transfer created two lots: Ms. Dexter's lot and the lot retained by the Gilmores. The second land division occurred in October of 2002 when Mr. Gordon transferred his interest in Lot #131 to Mr. Greco but this division did not create any additional lots under Section 10.25,Q,1,g(3) since this was a transfer to an abutter.

Similarly, it appears that, at most, only two lots have been created out of the parent parcel for the Stout property within any 5-year period. Specifically, Lot #126.1 was the only other lot transferred out of the Stout's parent parcel prior to the transfers that occurred in January of 2014, and Lot #126.1 was transferred out more than 5 years prior to January of 2014. The transfer of the 11-acre lot to Don King on January 22, 2014 created two lots: the lot transferred to Mr. King and the lot retained by the Stouts. With the transfer of contiguous lots #125, #127 and the remainder of #126 to Windledge as an abutting landowner, the lot originally retained by Ms. Stout is now considered exempt under Section 10.25,Q,1,g(3). Accordingly only one lot has been counted towards subdivision purposes out of the original Stout parcel, being Mr. King's lot.

Below are our responses to the specific questions in your request:

1) *Is the proposed retained lot and land division acceptable to the Commission?*

Windledge's proposal to transfer 2 acres out of Lot #127 in Freeman Township, including the house and garage, along with all of that part of Lot #126 now owned by Windledge to another party as a single parcel would create three lots in a five year period out of the original Stout parcel (the King lot, the lot proposed for sale and the lot retained by Windledge), potentially creating a subdivision requiring prior Commission permit approval. However, if the remaining Windledge lot (merged Lots #125, #129 and the remainder of Lot #127) was retained in its entirety for a period of at least five years by Windledge in accordance with the requirements of Section

10.25,Q,1,g(2) of the Commission's standards, it would qualify as an exempt retained lot and not be counted as a lot towards subdivision. That would leave only two lots out of the original Stout parcel (the King lot and the lot proposed for sale) as counting towards subdivision, and thus not creating a subdivision as defined by the Commission. In order to qualify as an exempt retained lot under Section 10.25,Q,1,g(2), the lot retained by Windledge must be retained by Windledge and, for a period of at least five years, not be sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g(3), and be used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes. Only one exempt retained lot may be created from any one existing parcel under Section 10.25,Q,1,g(2).

2) Must Lots #125 and #129 be merged together in order for the proposed land division to be exempt from being considered a subdivision?

In order to comply with the retained lot exemption under Section 10.25,Q,1,g(2), Windledge would have to retain not only Lots #125 and #129, but also the remainder of Lot #127 for at least 5 years after the currently proposed land division. Furthermore, the retained lot could be used only for forest or agricultural management activities and associated structures and development consistent with forest or agricultural management activities, or used for natural resource conservation purposes (i.e., not developed other than for the existing driveway).

3) If Windledge were to sell the remainder of its property in Salem Township, would it be able to also sell Lot #129 to the buyer of Windledge's Salem Township property, or would it have to wait 5 years from the date of the proposed transfer described above? If Windledge would have to wait 5 years, would it have to put its retained lot in Freeman Township on a separate deed from the Salem Township portion of its lot? Would the transfer of Windledge's Salem portion of its ownership to another entity create a lot for subdivision purposes?

Windledge would have to retain merged Lots #125, #129 and remainder of #127 together for at least 5 years after the currently proposed land division under the provisions of Section 10.25,Q,1,g(2). Section 10.25,Q,1,g(2)(a) does allow for transfers out of the retained lot to an abutter, however a transfer of Lot #129 in Freeman Township to the owner of adjacent Lot #4 in Salem Township would not be considered a transfer to an abutter under Section 10.25,Q,1,f since Lot #4 is in a different township. If Windledge transfers the Salem Township portion of its parcel to another entity, Windledge would not necessarily need to create another deed for its retained lot at the time of such transfer, it would just have to reserve the retained lot from the description of the parcel being transferred to the other entity. You may wish to consult with an attorney for assistance in writing the deed should Windledge transfer the Salem Township portion of its property within the 5-year period in order to ensure that Windledge retains the Freeman Township portion of its lot.

The transfer of Windledge's Lots #2, #3 and #4 in Salem Township would not create any lots for subdivision purposes provided that all three lots are transferred together as a merged parcel to the same owner. Even though such a transfer would split the land that Windledge acquired in its 2012 deed described above, it would not be considered a "division" by the Commission because these lots are already viewed by the Commission as being separated by the township line from Lot #129 in Freeman Township under the provisions of Section 10.25,Q,1(f).

Windledge could grant a right-of-way easement across the existing driveway on Lot #129 to the new owner of the Salem portion of the Windledge property so that the new owner could access their property. The right-of-way easement would not create a lot for subdivision purposes.

4) *If Windledge were to transfer Lot #126 and merged with the 2-acre portion of Lot #127 to a different legal entity would that “start the clock” for the retained lot exemption?*

Yes, this would start the clock for the 5-year period under Section 10.25, Q,1,g(2). At the time of transfer to another legal entity, the merged Lot #126/ 2-acre portion of lot #127 would be counted as a lot for subdivision purposes, but would not create a “subdivision” at that point as discussed under Item 1) above. However, please note that a transfer of merged lots #125, #129 and portion of #127 to another legal entity within 5 years of the proposed land division would disqualify those merged lots from the retained lot exemption under Section 10.25,Q,1,g(2).

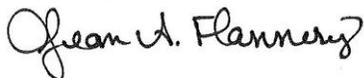
Other Considerations

Please also be advised that any future division of the parcel currently proposed to be transferred by Windledge, being 2 acres out of Lot #127 merged with the remaining portion of Lot #126, within 5 years of the date of the proposed transfer may be counted as an additional lot for the purposes of subdivision and may require a subdivision permit from the Commission. Accordingly, we recommend that deeds transferring the proposed merged parcel of a portion of Lot #127 combined with the remaining portion of Lot #126 include a warning or restriction regarding further division of this parcel within this 5 year period.

Please note that our interpretation is based upon the Commission’s current statutes and standards. The status of the proposed land division may change in the future should relevant statutes and/or standards be amended. Please also be aware that any land division activities other than those which you have described within your request may, or may have, require(d) prior Commission review and/or rezoning, or may be prohibited under provisions of the Commission’s Land Use Districts and Standards. Please contact the Commission if you plan any changes.

Should you have any further questions, please contact Ms. Sara Brusila at our West Farmington Office at (207) 670-7493.

Sincerely,



Jean A. Flannery, Permitting and Compliance Manager
Department of Agriculture, Conservation & Forestry
Division of Land Use Planning

JF/slb

Enclosures: Attachments #1 & #2, AR 14-05 Request

xc: Geo File, Freeman Twp.



Legend

- Island
- Lot

RECEIVED
MAR 19 2014
LUPC - RANGELEY

1 inch = 1,000 feet

AR 14-05

ATTACHMENT 2 - WINDLEDGE LLC BP 12131



Imagery Date: 9/3/2013 44°53'16.17\" N 70°14'03.93\" W elev: 1065 ft eye alt: 5546 ft

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Google earth

Proposed lot 01-127 = 2500' x 150' = 275,000 sq. ft.