



PAUL R. LEPAGE
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

January 15, 2016

Brian & Catherine deLutio
124 North Main St.
Morrill, ME 04952

Subject: ADVISORY RULING AR 15-04, Dallas Plantation Tax Map 02, Lot #60,
Franklin County

Dear Mr. & Mrs. deLutio:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on a proposed division of land you own in Dallas Plantation, currently a 12.01 acre portion of lot #60 on Tax Map 02. The subject parcel is located along the north side of Depot Road. You acquired this parcel by a deed from Farm Credit East, ACA, dated October 20, 2015 and recorded in the Franklin County Registry of Deeds, Book 3776, Page 136. You now propose to divide your parcel into two lots, each approximately 6 acres in size.

You have asked whether your proposed land division would constitute a "subdivision," as defined by the Commission, requiring subdivision permit approval. 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 (hereinafter "Registry").

Land Division History:

Parent Parcel: November 21, 1989; Book 1141, Page 49: Based upon information you have presented, existing information in our files, and our review of the Registry's records, it appears that the parent parcel for your property is a 37.84 acre parcel formerly owned by Althea Mulholland. Ms. Mulholland acquired the parent parcel, among other non-contiguous properties, from Cary and Ann F. Wilber by the above referenced deed. The parent parcel is shown on a plan titled "Standard Boundary Survey of Land of Gary and Ann F. Wilber dated November 2, 1989," and recorded in the Registry as Plan #2412 (copy enclosed). The parent parcel consisted of Lot #1 shown on the plan, located on the north side of Depot Road. Ms. Mulholland also acquired Lot #2 being 0.72 acres in size and located south of Depot Road. Lots #1 and #2 on the plan are referenced as Parcels I and II, respectively, in the deed. Based upon the Commission's Advisory Ruling AR 05-26, issued to Joe Bessey on September 16, 2005, we believe that Lot #2 on Plan #2412 is physically separated from Lot #1 and thus Lot #2 is not considered part of the parent parcel for your property.

October 24, 1998; Book 1795, Page 131: Lester A. Williams, Jr. and Barbara B. Williams transferred Lots #31, #32, #57 and #58 on Tax Map 02 to Joseph and Nancy Bessey, comprising a total of approximately 209 contiguous acres.

October 24, 1998; Book 1795, Page 140: On the same day as the above referenced transfer, Ronald L. and Monika L. Taylor transferred Lot #30 (5.8 acres) on Tax Map 02 to the Besseys. This lot abuts the parcel the Besseys acquired from the Williams, and thus the Besseys' combined parcel totaled approximately 215 acres. The former Taylor lot appears to be the only prior out lot from the Williams' parcel between January 1, 1996 and October 24, 1998.

August 17, 2000; Book 1952, Page 172: Ms. Mulholland transferred Lot #1 on Plan #2412, among other non-contiguous properties, to Philip and Michelle Darnell.

June 20, 2002; Book 2152, Page 228: Ms. Darnell transferred all of her interest in the properties described in the above referenced deed (Book 1952, Page 172) to Mr. Darnell. With that transfer, Mr. Darnell became the sole owner of Lot #1 on Plan #2412.

April 29, 2004; Book 2441, Page 190: Mr. Darnell transferred a 12.01 acre portion of Lot #1 on Plan #2412 to Joseph and Nancy Bessey. This portion is Lot A on a plan entitled "Lot Division Plan for Phillip Darnell," dated April 21, 2004 and recorded in the Registry as Plan #4145 (copy attached). Lot A abutted the land previously acquired by the Besseys on October 24, 1998, as described above. Mr. Darnell retained the remainder of Lot #1 on Plan #2412, being 25.83 acres.

This transfer brought the Besseys' total contiguous ownership to approximately 227 acres, with their combined lot comprised of lots #30, #31, #32, #57, #58 on Tax Map 02 plus the southwesterly portion of Lot #60 on Tax Map 02 on the northwesterly side of Depot Street as shown on the attached tax map.

May 30, 2007; Book 2906, Page 258: Pursuant to the divorce decree discussed below, Joseph and Nancy Bessey transferred ownership of Lot A on Plan #4145 to Joseph Bessey's sole ownership. Lot A is described as Parcel 1 in this deed. With this transfer, Mr. Bessey's ownership consisted of the southwesterly portion of Lot #60 on Plan 02 on the northwesterly side of Depot Street as shown on the attached tax map.

May 30, 2007; Book 2908, Page 58: Pursuant to the divorce decree discussed below, Joseph Bessey transferred ownership of Lots #30, #31, #32, #57 and #58 on Dallas Plantation Tax Map 02 to Nancy Bessey, comprising approximately 215 acres. This is the same contiguous parcel formerly owned by both parties as of October 24, 1998 as described above.

June 26, 2007; Book 2920, Page 201: An abstract of divorce decree was filed by the Maine District Court, certifying that the decree of divorce between Nancy Bessey and Joseph Bessey became final on May 30, 2007. The divorce decree specified the disposition of the real estate in Franklin County held by the Besseys, including the 227 acre contiguous parcel containing Lot A on Plan #4145.

August 19, 2015; Book 3761, Page 24: Farm Credit East, ACA acquired Lot A on Plan #4145 through a judgment of foreclosure and sale.

October 20, 2015; Book 3776, Page 135: Farm Credit East, ACA transferred Lot A on Plan #4145 to you, being the same property described in the deed recorded in Book 2441, Page 190, discussed above.

Existing Development on the Bessey, Darnell and Your Lots

Lot #32 on Tax Map 02, currently owned by Ms. Bessey, is developed with a single family residence pursuant to Building Permit BP 8301. The southwesterly 12.01 acre portion of Lot #60 on Tax Map 02 that you own is developed with a single family residence authorized under Amendment A to Building Permit BP 6598, issued to Philip and Michelle Darnell on December 11, 2000. The northwesterly portion of Lot #60, currently owned by Mr. Darnell, is developed with a single family residence authorized under Amendment B to Building Permit BP 6598, issued to Mr. Darnell on May 26, 2004.

Proposed Land Division

You now propose to divide your 12.01 parcel into two lots:

- 1) A 6.0 acre lot with approximately 420 feet of frontage along Haley Pond and approximately 480 feet of frontage along Depot Street, and including the single family residence permitted under Building Permit BP 6598-A.
- 2) A 6.01 acre undeveloped lot with approximately 420 feet of frontage along Haley Pond and approximately 800 feet of frontage along Depot Street.

You would keep one lot and sell the other lot to Mr. deLutio's sister and brother-in-law, Michelle and Anthony Stewart. You have asked whether your proposed land division would constitute a "subdivision," as defined by the Commission, requiring prior subdivision permit approval from the Commission.

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(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.

- Under provisions of Section 10.25,Q,1,g(4) of the Commission's Standards, divisions of land accomplished solely by inheritance, or by court order, to a person related to the donor by blood, marriage, or adoption are not counted as lots for the purposes of this subsection. A division of land accomplished by bona fide gift, without any consideration paid or received, to a spouse, parent, grandparent, child, grandchild or sibling of the donor of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division.

Interpretation

In providing an answer to your question we first determined the status of your existing 12.01 acre parcel. To do this we traced your lot back more than 20 years (January 1, 1996) pursuant to Section 10.25,Q,1,g(8) of the Commission's standards in order to determine the parent parcel for your lot. We then tracked the parent parcel for your lot, and the former Bessey lot with which your lot was merged at one time, to the present to determine whether more than two "subdivision" lots had been created out of either the parent parcel or the Bessey 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" section above.

Commission staff conclude that the former Bessey lot was legally existing as of October 24, 1998 when it was approximately 215 acres in size, in that the only transfer out of its parent parcel (the former Williams lot) was the Taylor lot which was merged back into the former Williams lot on October 24, 1998 when the Besseys acquired both lots. Based upon our research it also appears that there were no divisions of the former Wilber lot (parent parcel of your lot), prior to its transfer to Mr. Darnell and Ms. Darnell on August 17, 2000. The only division of the original 38.5 acre Darnell lot was the transfer of the 12.01 acre portion of that lot to the Besseys on April 29, 2004.

The transfer of the 12.01 acre lot to the Besseys did not constitute the creation of a lot for subdivision purposes under Section 10.25,Q,1,g(3) of the Commission's Standards at the time of the transfer in that the Besseys were owners of abutting land at the time. The abutter exemption no longer applied once the Bessey lot was divided within 5 years by their 2007 divorce decree. However, the division of the former Bessey 227 acre parcel into the 215 acre lot transferred to Ms. Bessey and the 12.01 acre lot transferred to Mr. Bessey by the May 2007 still did not create any lots for subdivision purposes in that that division was done by court order and thus exempt under Section 10.25,Q,1,g(4) of the Commission's Standards.

Accordingly, we conclude that your proposed division of land would create only two lots within a 5-year period and thus would not create a "subdivision" requiring prior permit approval from the Commission. Please note, however any future division of either your retained lot or the other proposed lot within 5 years of the date of the currently proposed transfer may be counted as an additional lot for the purposes of subdivision and may require a subdivision permit from the Commission. Therefore we recommend that deeds transferring either currently proposed lot include a warning or restriction regarding further division within this 5 year period.

Other Considerations

New property boundary lines should be located at least 15 feet from existing structures, parking areas and driveways. Please note that we have made no determination in this ruling as to the suitability of either proposed lot for future development.

Please also 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. Lastly, please 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

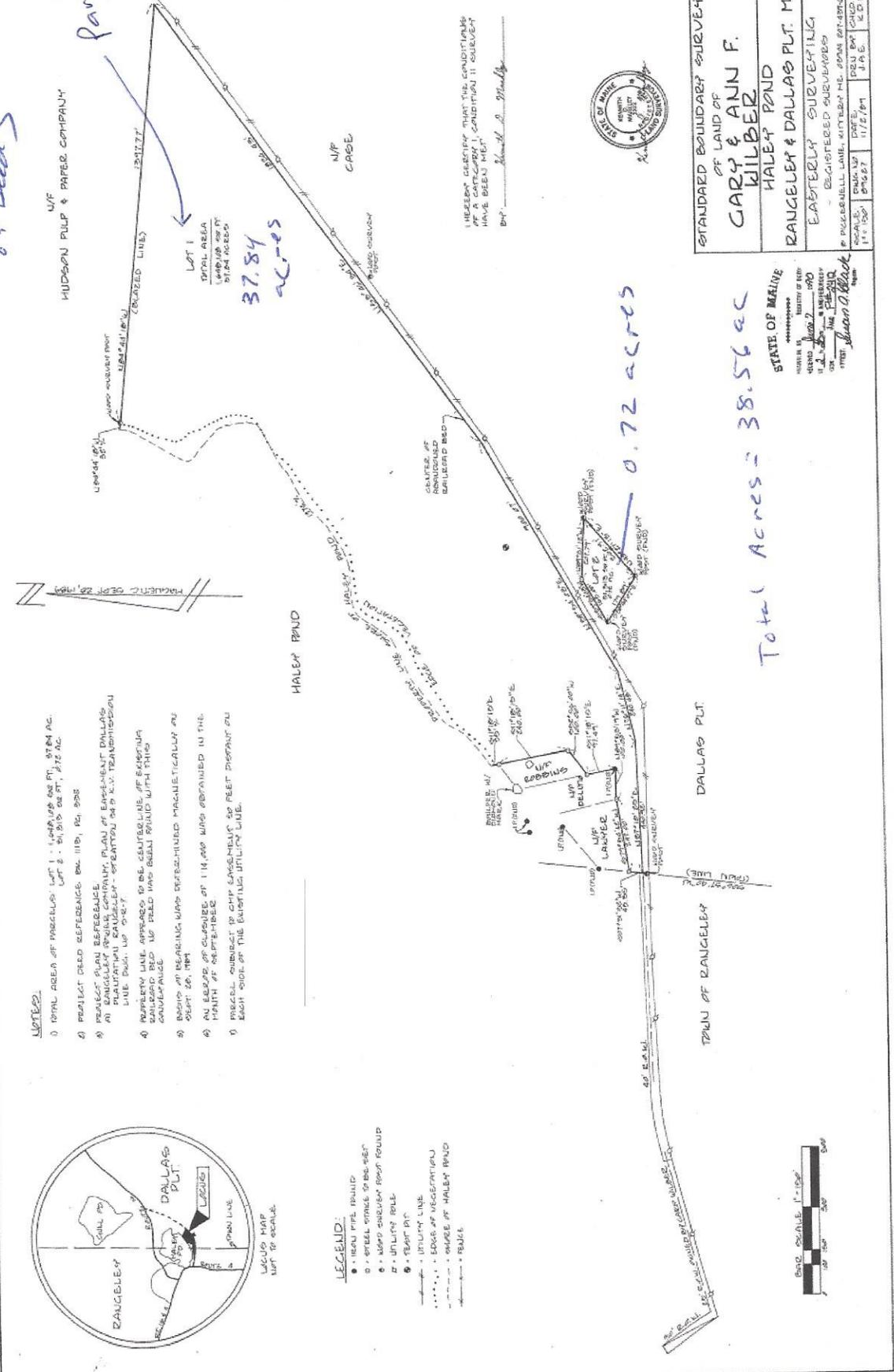
Enclosures: Plan #2142
Plan #4145
Excerpt Dallas Plt Tax Map 02

xc: Geo File, Dallas Plt.
BP 6598 File

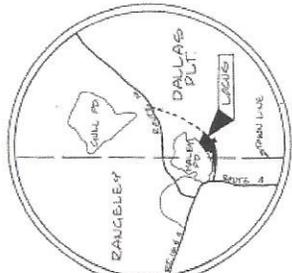
Dallas Tax Map 02
 Lot 60

Plan # 2412
 Franklin Co. Registry
 of Deeds

Parent Parcel



- NOTES:**
- 1) TOTAL AREA OF PARCELS: LOT 1 - 37.84 AC. (PT. 1878 AC. LOT 2 - 0.72 AC. (PT. 212 AC.
 - 2) PROJECT DEED REFERENCE: BK. 1181, P. 528
 - 3) PROJECT PLAN REFERENCE: PLATIFICATION RANGELEY COMPANY, PLAN OF EASEMENT DALLAS PLANTATION RANGELEY - CREATION OF E.V. TRANSMISSION LINE, P. 10, W.P. 528-7
 - 4) PROPERTY LINE APPEARS TO BE CENTERLINE OF EXISTING DALLAS BED 10 FEET WIDE BUILT BOUND WITH THIS CONFORMANCE
 - 5) BOUNDS OF BEARING WAS DETERMINED MAGNETICALLY ON SEPT. 28, 1994
 - 6) AN ERROR OF CLOSURE OF 114.00 WAS OBTAINED IN THE MONTH OF SEPTEMBER
 - 7) PARCEL SUBJECT TO CHIP EASEMENT, 50 FEET DISTANT ON EACH SIDE OF THE EXISTING UTILITY LINE.



- LEGEND:**
- - IRON PIPE FOUND
 - - STEEL STRAP TO BE SET
 - - WOOD SURVEY POINT FOUND
 - - UTILITY POLE
 - - TREAT PIT
 - - UTILITY LINE
 - - EDGE OF VEGETATION
 - - CHASE AT HALEY RIND
 - - BUILT



I HEREBY CERTIFY THAT THE CONDITIONS OF A CERTAIN CONDITION II SURVEY HAVE BEEN MET.
 BY: Susan A. Black

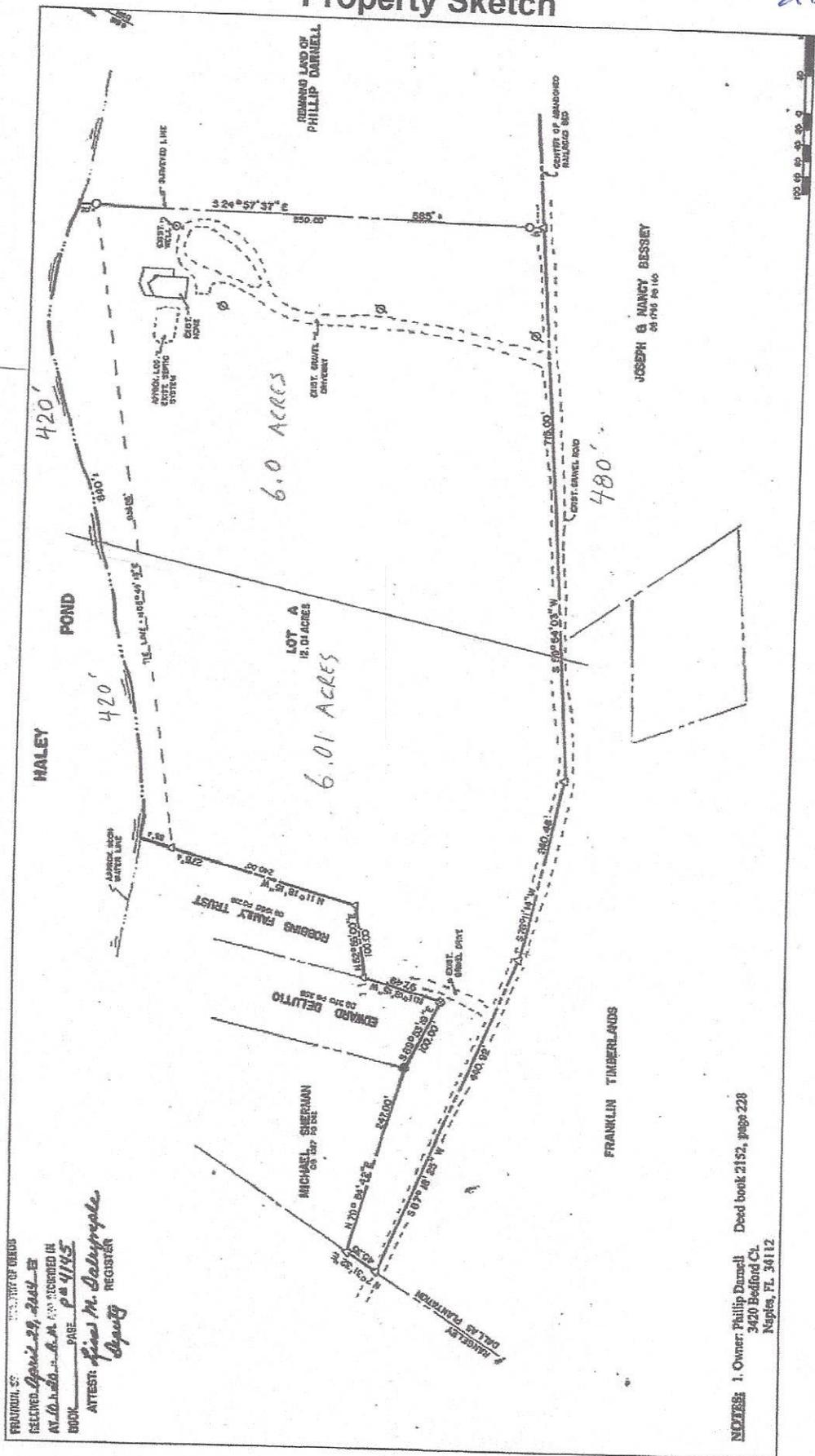
STANDARD BOUNDARY SURVEY	
OF LAND OF	
CARY & ANN F. WILBER	
HALEY RIND	
RANGELEY & DALLAS P.L.T. ME.	
EASTERLY SURVEYING	
- REGISTERED SURVEYORS	
SCALE: 1" = 100'	DATE: 11/2/94
BY: Susan A. Black	DEW BY: COLBY J. B.

STATE OF MAINE
 SUSAN A. BLACK
 LICENSE NO. 11284
 REGISTERED SURVEYOR
 11/2/94
 TOTAL ACRES = 38.56 AC

AR 15-04
 Brian + Catherine DeLotto

AK 15-04
 Brian + Catherine
 deLutio

Property Sketch



FRANKLIN, FL
 RECEIVED April 29, 2004
 AT 10:10 A.M. AS REQUIRED IN
 BOOK PAGE 4195
 ATTEST: *James M. Dalrymple*
 REGISTER

NOTES: 1. Owner: Phillip Darnell
 3420 Bedford Ct.
 Naples, FL 34112
 Deed book 2152, page 228

Proposed Land Division