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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
191 MAIN STREET
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WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

February 8, 2016

Katahdin Timberlands, L.L.C.
c/o Howard Weymouth, Land Use Forester
P.O. Box 38
Millinocket, ME 04462

Subject: ADVISORY RULING AR 15-6

Penobscot County (T4 Indian Purchase Township)

Dear Mr. Weymouth:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on some complex issues with respect to selling existing leased lots. Further, within your request you have indicated that you have modified/enlarged some lots as practical to meet current LUPC lot requirements. We will attempt to provide our view on the matters as we understand them, pursuant to 5 M.R.S. § 9001. I want to caution, however, this is an informal response and not a legal determination. In providing our views on these matters, we have relied entirely upon the facts as you have presented them to us in the information submitted to the Commission and in conversations with Commission staff.

Background

It is our understanding that Kathadin Timberlands, L.L.C. (hereafter referred to as KTL) owns nine (9) leased camp/cottage lots on Middle Jo Mary Lake and seven (7) leased camp/cottage lots on Turkey Tail Lake in T4 Indian Purchase Township, Penobscot County. These sixteen (16) lots were established and leased prior to September 23, 1971. All of the subject lots have been surveyed within the last 5 years. Some of the existing leased lots were modified/enlarged in an effort to bring them into compliance with, or as close to, current dimensional size requirements when possible. The lots are depicted on plats entitled *Middle Jo Mary Lake and Turkey Tail Lake Final Survey Plan*.

KTL has authorized for sale certain lots contained within extensive holdings in the area described above. The above referenced lots, which are listed in the table below, represent the entirety of KTL's land holdings located around Turkey Tail Lake and Middle Jo Mary Lake and represent sixteen (16) lots of an ongoing sale of nearly seven hundred (700) lots over the past and next few years. The land areas subject to this Advisory Ruling and currently owned by KTL are identified by Maine Revenue Services as portions of Lots 1 and 1.2 on Plan 01 in T4 Indian Purchase Township.



For the purposes of the definition of subdivision in 12 M.R.S. § 682(2-A) and in accordance with Section 10.25, Q, 1, f of the Commission's Land Use Districts and Standards, an "existing parcel" of land shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.

Review Findings

Using the information provided, we have performed a review of the lots in question. Issues that may have consistently arisen are categorized below:

Unauthorized Subdivision (US) – Section 10.25, Q.1.g(8) of the Land Use Districts and Standards discusses how the Commission considers lots that may have required subdivision approval when created, but have existed for at least 20 years as now being exempt from subdivision review.

Nonconforming Lots (NL) – Lots which do not meet the current dimensional requirements for residential development contained in Section 10.26 of the Commission's Land Use Districts and Standards are considered to be nonconforming. These legally existing nonconforming lots may be conveyed in their present configuration, or in a configuration that makes them less nonconforming provided that the method that makes them less nonconforming does not create a new, non exempt lot.

Nonconforming Contiguous Lots (NCL) – Section 10.11, E.5 of the Commission's Land Use Districts and Standards discusses the manner of conveyance for nonconforming contiguous lots. In all cases, said lots shall be combined to extent necessary to meet dimensional requirements except where each lot has a legally existing conforming dwelling.

Conforming Lots (CL) – Several lots within the Advisory Ruling request meet current dimensional requirements. These lots do not require additional modification and may be conveyed in their current configuration.

The lots in question are listed below with applicable review findings:

ID	Lot #	Lease#	Acres	Former Lot #'s	INITIAL	LAPSE	REISSUED	REVIEW CRITERIA
MJ	1	4082	2.72	1MJ,2MJ,3MJ & 4MJ	6/21/1966			CL
MJ	2	4084	1.24	5MJ	6/21/1966			NL (frontage)
MJ	3	4085	1.33	6MJ & 7MJ	6/21/1966			CL
MJ	4	4086	0.82	8MJ	6/21/1966			NL (size, water frontage)
MJ	5	716	0.72	9MJ	6/27/1957			NL (size, water frontage)
MJ	6	4087	1.52	10MJ & 11MJ (200' eff.)	6/21/1966			NL (size, water frontage)
MJ	7	4089	1.51	13MJ & 14MJ	6/21/1966			CL
MJ	8	4097	1.07	15MJ	6/29/1966			NL (water frontage)
MJ	9	4366	0.72	16 & 1/2 OF 17	6/19/1968			NL (size, water frontage)
TT	1	2638	0.85	22T	6/27/1957			NL (size, water frontage)

TT	2	579	0.62	21T	6/27/1957			NL (size, water frontage)
TT	3	3992	1.31	2T & 3T	11/4/1965			CL
TT	4	4660	1.85	20T	6/30/1970			NL (water frontage)
TT	5	4659	0.8	17T	6/30/1970	11/3/1971	8/3/1981	NL (size, water frontage)
TT	6	4658	0.94	16T	6/30/1970			NL (water frontage)
TT	7	4657	0.72	15T	6/30/1970			NL (size, water frontage)

Inquiry

You inquire as to whether the referenced lots are currently salable. You want to know whether this proposal would create a subdivision as defined under provisions of section 682(2-A) of the Commission's Statutes, 12 M.R.S.

Analysis

Existing leased lots

The 16 lease lots fall into one of two general categories. The first category is pre-Commission lots; these are lots created by lease prior to the establishment of the Land Use Regulation Commission¹ on September 23, 1971 and continuously leased without a lapse in being leased exceeding two years. Fifteen (15) of KTL's lots fall into the pre-Commission category.

The second category is post-Commission lots; this category includes lots initially created by lease prior to the creation of the Commission on September 23, 1971 but with a lapse in being leased exceeding two years, before leasing of the lot was resumed after creation of the Commission. One (1) of KTL's lots fall into the post-Commission lot category, having been created by lease in 1970 but discontinued in 1971, reissued in 1981, and continually leased since then (Lot TT 5). This lot is treated as having been created in 1981.

Relevant Statutory and Regulatory Provisions

In accordance with Section 10.02 (197) of the Commission's Land Use Districts and Standards and 12 M.R.S. § 682 (2-A), a "Subdivision" is defined as a division of an existing parcel of land 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.

For the purposes of the definition of subdivision in 12 M.R.S. § 682 (2-A) and in accordance with Section 10.25,Q,1,f of the Commission's Land Use Districts and Standards, an "existing parcel" of land shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.

¹ The name of the Land Use Regulation Commission was subsequently changed to the Land Use Planning Commission.

For the purpose of counting lots under the Commission's definition of subdivision, the renewal of a lease within two years of its expiration shall not be counted as the creation of a lot. Section 10.25, Q, 1, e. Thus, lots continuously leased since before establishment of the Commission without a gap of more than 2 years between lease renewals are not counted as lots for subdivision purposes. All of the lots addressed in this Advisory Ruling, except for Lot TT 5, are pre-Commission lots that are captured by this provision.

Lot TT 5, having been created by lease in 1981 constituted a countable lot under subdivision law at the time of its creation. At that time, it was the sole division from the parent parcel within Indian Purchase Township within a five year period and, as a result, was not part of a subdivision.² The lot was created through a lawful division and conforming at the time of creation.

By application of the above referenced statutory and regulatory provisions, and in consideration of the fact that 15 of the 16 lots are pre-Commission and the remaining lot is a lawfully divided post-Commission lot, the proposed sale of the sixteen (16) subject lots will not create a subdivision or any new divisions. All 16 lots may be offered for sale in accordance with the Commission's Land Use Districts and Standards.

Filing Plats

Please note that final plats showing the subject lots should be submitted to the Commission for signature and subsequent filing in the appropriate Registry of Deeds. We also suggest that this Advisory Ruling be recorded at the Registry. We will need to receive one mylar and three paper copies of all the final plats. All plats must be sealed and signed by the Licensed Surveyor who has prepared the plats.

Should you have any further questions, please contact Jean Flannery, Manager for Permitting & Compliance, in our Bangor office at (207) 941-4590.

Sincerely,



Nicholas D. Livesay, Executive Director
Maine Land Use Planning Commission

xc: Geo File

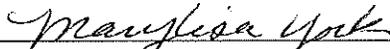
² In April 2013 KTL created, by platting, two countable subdivision lots from the parent parcel identified as Tax Plan 01, Lot 1 (Lots 128A and BL9). Ref. Advisory Ruling AR 13-05 and a plat entitled Final Survey Plan South Twin Lake. There have been no other known divisions of the parent parcel within 5 years of the creation of Lot TT5 in 1981.

STATE OF MAINE
County of Kennebec, ss,

Date: 2/8/16

Personally appeared the above named Nicholas D. Livesay, in his capacity as Executive Director of the Maine Land Use Planning Commission, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of the Maine Land Use Planning Commission.

Before me,



Marylisa York, Notary Public

My Commission expires September 11, 2018

MARYLISA YORK
Notary Public • State of Maine
My Commission Expires September 11, 2018