



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
191 MAIN STREET
EAST MILLINOCKET, MAINE 04430

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

July 27, 2016

Sacket & Brake Survey, Inc.
c/o Stephen W. Gould, President
P.O. Box 207
Skowhegan, ME 04976

Subject: ADVISORY RULING AR 16-5

Franklin County (Dallas Plantation)

Dear Mr. Gould:

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 land. 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 your client, South Branch Land & Gravel, L.L.C, owns a 3,911 acre parcel of land in Dallas Plantation, Franklin County. The parcel is further identified as a part of Dallas Plantation Tax Map 01, Lot 1.

Previously, on February 12, 1991, prior owner of the lot, Georgia-Pacific Corp., had created a plan of 37 lots bordering Quill Lane (so-called) adjacent to South Branch of the Dead River, entitled Georgia-Pacific Corp. Birch Hill-Camp Lots (hereinafter Birch Hill Plan). A note on this plan states that the plot of lots was redrawn from an original survey plan drawn by Stanley C. Pease on November 23, 1970 (hereinafter Pease Plan). Neither of the plans were recorded in the Franklin County Registry of Deeds, and the so-called Pease Plan has not been found.

Within the subject parcel are 5 existing leased lots with seasonal residential development on each lot. You have stated in your letter requesting this advisory ruling that these leases were established prior to February 12, 1991. Four of the leased lots are based on the lotting plan as depicted on the Birch Hill Plan. These lots are referred to as the "Moulton, Welch, and Cummings" lots.¹ One lease, the "Randall" lease, is not based on the Birch Hill Plan.

¹ The "Welch" lease contains two of the lots as platted on the Birch Hill plan

One additional lot that is based on the Birch Hill plan and was previously leased (Damon Lot), was sold on March 17, 1994. All 6 of the lots abut the South Branch of the Dead River. No subdivision permit has been issued by the Commission for the subject land area.

Documents submitted with your application materials, and additional evidence obtained during our review of this matter, confirm that at least two of the leased lots were established prior to September 23, 1971. Furthermore, you have submitted affidavits from the current lessees of three of the existing lots that state that the lots have been continuously leased since prior to 1996. The remainder of the 3,911 acre lot is undeveloped and is used for forest management purposes.

Inquiry

You have asked the following questions regarding the applicability of the Commission's rules to the possible sale of the existing leased lots and the remaining lots as depicted on the Birch Hill plan:

1. May the Cummings lot be conveyed as the first parcel in 5 years and as shown on exhibit A of your application for Advisory Ruling.
2. Can the remaining leases be conveyed without needing to obtain a subdivision permit?
3. Can the remaining lots shown on the "Birch Hill" plan be conveyed without needing to obtain a subdivision permit?

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.

In accordance with Section 10.25,Q,1,e of the Commission's Land Use Districts and Standards, 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. 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.

In accordance with Section 10.25,Q,1,g(2)b of the Commission's Land Use Districts and 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 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.

In accordance with Section 10.25,Q,1,g(8) of the Commission's Land Use Districts and 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.

Analysis

Existing lots

The 4 existing leased 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 Commission² on September 23, 1971 and continuously leased without a lapse in being leased exceeding two years. Documentation submitted confirms that the Cummings and the Randall lots fall into the pre-Commission category, and thus may be conveyed without being counted as a subdivision lot.

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 may have had a lapse in being leased exceeding two years, or leased lots that may have been created by lease after creation of the Commission. No documentation was provided that indicates the Moulton, Welch, or Damon lots were created by lease prior to September 23, 1971. However, affidavits submitted state that the Moulton and Welch lots have been in existence as leased lots and continuously leased since prior to 1996. The Damon lot was sold in 1994, more than 20 years ago. The Commission accepts the affidavits as substantial evidence that the Moulton and Welch lots were created by lease in excess of 20 years ago, and thus these lots would be exempt as subdivision lots in accordance with Section 10.25,Q,1,g(8) of the Commission's Land Use Districts and Standards, and may be conveyed without being counted as a subdivision lot.

Remaining Birch Hill Lots

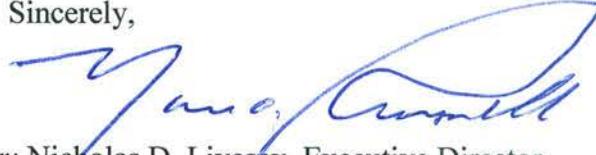
The remaining lots as depicted on the Birch Hill plan have never been leased, and thus are considered combined for regulatory purposes with the remaining 3,911 acre parent parcel of land. These lots may only be leased or sold in accordance with the provisions of 12 M.R.S. § 682 and Section 10.25,Q of the Commission's Land Use Districts and Standards. Hereinafter, the further creation of 3 or more lots, whether by lease or sale, in any 5 year period, except as provided in

² The name of the Land Use Regulation Commission was subsequently changed to the Land Use Planning Commission.

Section 10.25,Q,1,g (Exempt lots) of the Commission's Land Use Districts and Standards, would require that a subdivision permit first be obtained by the land owner.

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

Sincerely,



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

xc: Geo File