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DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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May 30, 2018

VIA U.S. MAIL AND E-MAIL

Gordon Smith
Verrill Dana LLP
One Portland Square
Portland, ME 04112-0586

**Re: Advisory Ruling AR 18-5¹
Legally existing nonconforming lot – “Lot A”
Taunton and Raynham Academy Grant**

Dear Mr. Smith:

I am writing in response to your letter of March 22, 2018, in which you asked the Land Use Planning Commission (Commission) to review your presentation of facts and supporting documents related to a parcel of land owned by your client, Craig Pepin, and his wife. The approximately one-half acre parcel of land is located off Route 6/15 in Taunton and Raynham Academy Grant near Moosehead Lake. The parcel is referenced as “Lot A” or “Lot 7” in your letter and related documents. The key question is whether Lot A is legally existing nonconforming lot.

Background

On December 14, 2010, the Commission issued advisory ruling (AR) 08-14 to your client’s late father, W. Reid Pepin², the previous owner of Lot A. W. Reid Pepin acquired the lot on September 28, 1996. Advisory ruling 08-14 tackles a complex history of land divisions and mergers stemming from a 14-acre parent parcel owned by Dr. H. Kirk Watson. Commission staff concluded that by 1982 a 3-lot subdivision had been created from the parent parcel and that by 1989 a total of 5 lots had been created without a subdivision permit. Commission staff became aware of the unapproved subdivision in 1992 and subsequently worked with Dr. Watson to resolve the unapproved subdivision by reacquiring a parcel conveyed to Loon Enterprises Limited Partnership. The reacquired lot was then properly gifted to Dr. Watson’s children, a division that is exempt when counting lots for purposes of subdivision³. Additional details of the land division history are

¹ Typographical error in reference to AR number 08-5 was corrected to AR 18-5 on May 31, 2018.

² The advisory ruling is addressed to Johanna Babb, Esq., on behalf of W. Reid Pepin.

³ Chapter 10, section 10.25,Q,1,g,4.

discussed in AR 08-14; the summary provided here is adequate for purposes of addressing the key question.

Conclusions regarding Lot A in AR 08-14

Advisory ruling 08-14 acknowledges that W. Reid Pepin sought a staff determination as to whether Lot A constitutes a legally existing nonconforming lot. The AR documents that Mr. Pepin informed Commission staff that Lot A had been leased by Dr. Watson from 1974 until it was conveyed to him in 1996. In reaching the conclusions in AR 08-14 regarding whether Lot A was a legally existing nonconforming lot, Commission staff relied on information presented in a survey plan⁴. Staff concluded that there was no reference on the survey plan to Lot A as an existing separate lease lot and that Lot A was merged as undivided acreage with the parcel that was reacquired by Dr. Watson in 1992.

Reconsideration

You have requested reconsideration of the relevant facts related to Lot A asserting that the conclusion in AR 08-14 that Lot A is not a legally existing lot is incorrect. At issue appears to be that Commission staff did not have compelling information at the time AR 08-14 was issued to conclude that Lot A was created by lease and existed as a lease lot continuously until it was conveyed to W. Reid Pepin in 1996. Your request for reconsideration includes affidavits from prior lessees (John M. Clark and Bruce B. Woodward) and the lessor (Dr. H. Kirk Watson). The affidavits attest that Lot A was created by lease in 1974 and existed as a lease lot continuously through June 1997.

A nonconforming lot is a preexisting lot which, upon the effective date of adoption or amendment of Chapter 10 of the Commission's rules, does not meet the area, frontage or other dimensional requirements for a legally existing or proposed use. Chapter 10, section 10.02,136. The 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 the land or by leasing, is a subdivision. 12 M.R.S. § 682(2-A). The leasing of a parcel of land creates a lot for purposes of subdivision review.

Commission staff have consulted with Lauren Parker, Assistant Attorney General with the Office of the Maine Attorney General (AG), to whom your March 22 letter is copied, in consideration of these affidavits. Commission staff and the AG conclude that the leasing history described in the affidavits provides substantial evidence demonstrating that Lot A is a legally existing nonconforming lot.

General provisions for nonconforming lots

Chapter 10, section 10.11(E) of the Commission's rules governs nonconforming lots. You stated that the lot is developed with a pre-Commission residential dwelling. Structures on nonconforming lots may not be expanded without a permit, except as provided for accessory structures in Chapter 10, section 10.27,P. Nothing in the Commission's rules or statutes precludes the sale of Lot A.

⁴ Preliminary Plan of Standard Boundary Survey for H. Kirk Watson (Record Owner, 85 Seymour Street, Hartford, Connecticut) of Land in T1 R1 N.B.K.P. Taunton and Raynham Academy Grant, Somerset County, Maine, dated October 26, 1995, prepared by Muir Land Surveying.

In summary, Lot A, as described in W. Reid Pepin's deed⁵ is a saleable legally existing nonconforming lot. Previous discussion regarding Lot A and whether it is a legally existing nonconforming lot in AR 08-14 and subsequent correspondence is trumped by the discussion and conclusions reached in this advisory ruling.

Regards,



Bill Hinkel
Regional Supervisor
Land Use Planning Commission

cc via e-mail: Craig Pepin
Lauren Parker
Samantha Horn

⁵ Warrantee deed from Nancy Cummings, as custodian for Aubrey Henderson Watson and Beecher Avery Watson, to W. Reid Pepin, September 28, 1996. Somerset County Registry of Deeds, Book 2264 Page 001-002.