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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

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COMMISSIONER

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EXECUTIVE DIRECTOR

March 7, 2014

Stephen J. Wood
CORNERSTONE DEVELOPMENT CORP.
P.O. Box 272
Winthrop, Maine 04364

Subject: ADVISORY RULING AR 13-13, Schoodic Lake

Dear Mr. Wood:

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 land divisions and land use rules. We will attempt to provide our view on the matters as we understand them, pursuant to 5 M.R.S. § 9001 and section 4.02 of the LUPC's rules. I want to caution, however, that this is an informational response and not a legal determination. In providing our views on these matters, we have relied entirely upon the facts as they have been presented to us. This ruling is limited in application to the facts stated in your request. 4.02(1)(b).

Background

Based on your letter dated September 25, 2013 and the materials provided, including a letter dated September 14, 2013, Cornerstone Development Corp. ("Cornerstone") is the owner of lands on the east shore of Schoodic Lake in Lakeview Plantation. This plantation is located in the jurisdiction of the Land Use Planning Commission. Cornerstone is considering selling and/or creating residential lots on its land. We met to discuss this project on September 12, 2013 and your September 14, 2013 letter makes reference to portions of the conversations we had at that meeting.

You have raised a question about whether the drawing of a plan showing lots constitutes a platting of the land for immediate or future sale and, thereby, divides the parcel for the purpose of subdivision analysis. Specifically, Cornerstone wants to know if drawing lots on a plan in 2009, even though the plan was never approved by the LUPC or recorded and the lots were never leased or sold, started the clock for purposes of dividing a parcel into two lots in a five year period.

The relevant facts as we understand them are as follows:

- Cornerstone purchased 37.1 acres on Schoodic Lake on March 29, 2004.
- In June 2009, Cornerstone had a surveyor draw a "plan of survey" of the land that depicts lot lines, boundary markers, and other features of the land (a copy of the plan of survey we received,

dated June 17, 2009, is attached). This plan of survey shows a total of four lots with the following acreages and parenthetical notations: 3.84 (to be conveyed to Stephen J. Wood¹), 5.75 (to be conveyed), 7.21 (to be conveyed), and 20.30 (to be retained). For each of the four lots, the surveyor also marked the lot boundary lines on the ground and drafted potential deed language that included metes and bounds descriptions, as well as easement and appurtenant rights. Neither the document containing the draft deed language nor the plan of survey was recorded with the registry of deeds.

- Cornerstone then offered two lots for sale (the lots offered for sale are identified on the plan of survey as a lot of 7.21 acres and a lot of 5.75 acres).
- In August of 2010, Cornerstone conveyed to Stephen J. Wood the 3.84 acre lot depicted on the plan of survey.
- The 5.75 acre lot and the 7.21 acre lot never sold and, along with the 20.30 acre lot, remain in common ownership of Cornerstone.

You would like to create two additional lots from the 20.30 acre retained lot once five years have passed from the June 2009 “platting” of lots on the plan of survey. You believe Cornerstone should be able to create the additional lots without subdivision review based on the definition of “subdivision” in 12 M.R.S. § 682-B. You have also inquired about revising the boundaries of the lots depicted in the 2009 plan of survey. Specifically, you inquired whether expanding the two lots that were offered for sale but never conveyed would “interfere with the 5 year clock” and require a permit from the LUPC.

You have requested that we interpret these facts as presented, and the relevant criteria, to say “the 5 year clock” started in June 2009 “when the plat was completed, the pins were set and the deed descriptions were written” and that it is not necessary “that the lots must be sold or conveyed to start the clock.”

Relevant Standards

12 M.R.S. § 685-B states that “[a] person may not commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the commission.”

12 M.R.S. § 682 defines “subdivision” in relevant part 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.”

10.25,Q,1.f. clarifies the statutory definition of “subdivision.” It provides that “[f]or the purposes of the definition of subdivision in 12 M.R.S. § 682(2)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.”

10.25,Q,1.g.(3), which addresses transfers of lots to an abutter and contiguous lots, states that where “two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for lots that are part of a subdivision approved by the Commission.”

¹ The plan of survey indicates Stephen J. Wood owns a 1.23 acre lot abutting the 3.84 acre lot owned by Cornerstone.

² 10.25,Q,1.f. clarifies the definition of subdivision that now appears in 12 M.R.S. § 682(2-A).

Opinion

You have proposed that drawing a plan of survey constitutes the “platting” of land, as that term is used in the statutory definition of subdivision, and that platting of land is a formal division. Specifically, you contend that because the definition of “subdivision” separates the clause “by sale of the land” from the clause “platting of the land for immediate or future sale,” each action creates a division. The Commission recognizes that either the sale or lease of a portion of a parcel creates a division (unless otherwise exempt). It also recognizes that a parcel may be divided through platting. The Commission, however, does not regard the simple creation of a plan of survey as dividing a parcel or, if showing three or more lots, creating a subdivision. Splitting an existing parcel of land held under common ownership by the platting of the land for immediate or future sale does not divide that land until a plan showing potential future lots is formally approved by the Commission.

The subdivision provisions of the LUPC statute are designed to ensure that development in the unorganized and deorganized areas of the State is undertaken in a thoughtful and well-planned manner. See 12 M.R.S. § 681. Thus, if any person wants to subdivide their property, they must first obtain approval from the LUPC in order to develop, convey, or offer to convey the lots in a subdivision. 12 M.R.S. § 685-B(1)(B). The definition of “subdivision” makes clear that certain circumstances must exist to trigger the subdivision requirements of the LUPC statute and rules. 12 M.R.S. § 682(2-A). It requires that there be (1) a division of an existing parcel of land and (2) the creation of 3 or more lots in 5 years.³ *Id.* An “existing parcel” is a contiguous area of land situated within one locality that is “owned or leased by one person or a group of persons in common ownership.” 10.25,Q.1.f (clarifying the statutory definition of “subdivision” by defining “existing parcel”).

Drawing up a survey plan is not sufficient to divide a parcel or create a subdivision.⁴ If the mere drawing of a survey plan were, without more, sufficient to create cognizable lot divisions, then any land owner who has drawn up a survey plan showing three or more lots would have created a subdivision and be required to obtain subdivision approval before developing, selling, or offering for sale any one of those lots. 12 M.R.S. § 685-B(1)(B). Failure to obtain subdivision approval would violate the LUPC’s statutory provisions. This would foreclose the ability of that landowner to sell up to two of the lots shown on the plan in a five year period without going through subdivision review. Using Cornerstone’s reasoning, this person who reduced his plan for his property to a plan of survey would be treated differently than a person who has an identical vision for his property and either never puts the plan for the future on paper or does so with words alone, as opposed to a plan of survey. The result, under Cornerstone’s reasoning, is that the first individual could not sell 2 lots within a 5 year period, but the second could. This result is nonsensical and undermines Cornerstone’s suggested interpretation and extrapolation of the definition of subdivision.

Additionally, if Cornerstone’s rationale for being allowed to further divide the retained lot were correct (*i.e.*, that drawing a plan for potential future use of the land effectuates a land division), then it would also apply to each of the lots depicted on the 2009 plan of survey. Cornerstone’s plan showed 4 lots. In an unapproved plan, the Commission can give no legal weight to statements of future intent (e.g. intent to convey to an abutter or retain a lot in accordance with the retained lot exemption). Thus

³ The term “subdivision” also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period. The instance addressed by this AR does not involve the division, placement or construction of a structure or structures.

⁴ Note that governmental bodies that administer land records, land transactions, and land use regulations (including subdivision law), as well as those that collect taxes - such as the registry of deeds, the permitting agency with jurisdiction over the land, and the tax assessing authority - would have no notice of the purported land division.

the lots shown on Cornerstone's plan, if Cornerstone's rationale is accepted, would have constituted a subdivision requiring approval. Pursuant to this interpretation, Cornerstone would be in violation of the LUPC's statutory provision and rules because it never sought nor received a subdivision permit from the LUPC for those lots.

The platting language in the subdivision definition exists to provide a mechanism for a landowner to plan, and get approval for, a systematic division of the land. It makes clear that if you plan a subdivision, and seek subdivision approval in order to sell off approved subdivision lots, platting – including the approval and recording of the approved plan – constitutes a legal subdivision of the land.⁵ This allows a property owner to offer for immediate or future sale 3 or more lots within a 5 year period. By platting a parcel, a landowner knows what he can sell and a prospective buyer knows the lot he may buy meets subdivision standards. The platting language also provides a mechanism for an agency charged with regulating the use and division of the land to apply its standards before any separate legal interest in a particular lot is created by sale or lease of land. Without a platting process that includes approval of subdivision plans, the review agency's recourse for applying its standards to land divisions, would be after-the-fact permits or enforcement actions. This would create unpredictability and unfairness for landowners and the public, and would hamper the administrative functions of the agencies and courts charged with oversight of the land.

The municipal subdivision statute differs from the LUPC statute but embodies many of the same principles and strives to accomplish similar goals. Therefore, it can be instructive when interpreting the LUPC statute. The definition of a subdivision in a municipality "applies whether the division is accomplished by sale, lease, development, buildings or otherwise" (30-A M.R.S. § 4401(4)). The "division" for this definition means the "splitting off of a legal interest ... of sufficient dignity."⁶ Although the municipal statute's definition of subdivision does not include the term "platting," it recognizes subdivision plats, equates them with subdivision plans, and requires review and approval before such plat has any legal effect.⁷

This is similar to the LUPC's statute. It is notable, however, that the comparable language in the LUPC statute requiring plats to be approved by the Commission states: "A registrar of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide real estate located within the unorganized and deorganized lands of the State unless the commission's approval is evidenced thereon." 12 M.R.S. § 685-B(6). This language makes clear that the difference between a plat of a purported subdivision and a plat of an actual subdivision (e.g., the division of an existing parcel of land into 3 or more lots within a 5 year period where the division is accomplished by the platting of land for immediate or future sale) is Commission approval. Thus, and for the additional reasons stated above, Commission approval of the planned division is required to create a legal division through the platting of land.

⁵ The simple drawing of a plan (which may never leave the drafter's office) does not provide public notice of the intent to create separate legal interests in land. In contrast, platting and recording a subdivision provides public notice of the intent to create separate legal interests in land. All approved subdivision plans (i.e., those that are platted) must be recorded and only approved subdivisions may be recorded. 12 M.R.S. § 685-B(6).

⁶ *Town of York v. Cragin*, 541 A. 2d 932 (Me. 1988)

⁷ "No register of deeds may record any subdivision plat or plan that has not been approved under this subchapter." 30-A M.R.S. § 4406(1)(A)

Therefore, we interpret these facts as presented, and the relevant criteria, to mean that the June 2009 plan of survey for Cornerstone did not create separate legal lots or otherwise divide Cornerstone's existing parcel and, in the absence of the sale or lease of the lots shown on the plan, Commission approval would have been required to constitute a platting of land for immediate or future sale sufficient to divide the parcel. The land at issue remains in the common ownership of Cornerstone and is one parcel for regulatory purposes.

Pursuant to the subdivision provisions of the LUPC statute and rules, Cornerstone could immediately divide two lots from this parcel through a sale or lease without subdivision review or approval, provided any retained land qualifies for the retained lot exemption in Section 10.25,Q,1,g,2. Cornerstone may not, without subdivision review and approval, convey two "additional lots" from the 20.3 acre "retained lot," unless the additional lots are conveyed to an abutter as allowed by the retained lot exemption. Section 10.25,Q,1,g,2,a.

Because the boundaries of the lots depicted in the 2009 plan of survey were not reviewed or approved, and no legal interest in those lot configurations was ever conveyed, there is no reason based on the facts presented why the boundaries depicted on the 2009 plan of survey could not be revised. Such revision would not require a permit from the LUPC but the lot configurations should conform to any applicable LUPC dimensional standards if they are intended to be used for structural development.

This Advisory Ruling only refers to the specific request being made and the opinion rendered by staff of the Commission is based solely on the information submitted.

Should you have any further questions, please feel free to contact me at (207) 287-2662.

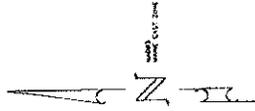
Sincerely,



Hugh Coxe
Senior Planner
Maine Land Use Planning Commission
Department of Agriculture, Conservation & Forestry
Division of Land Use Planning

Attachments:

Plan of Survey for Cornerstone Development Corp. and Stephen J. Wood, dated June 17, 2009



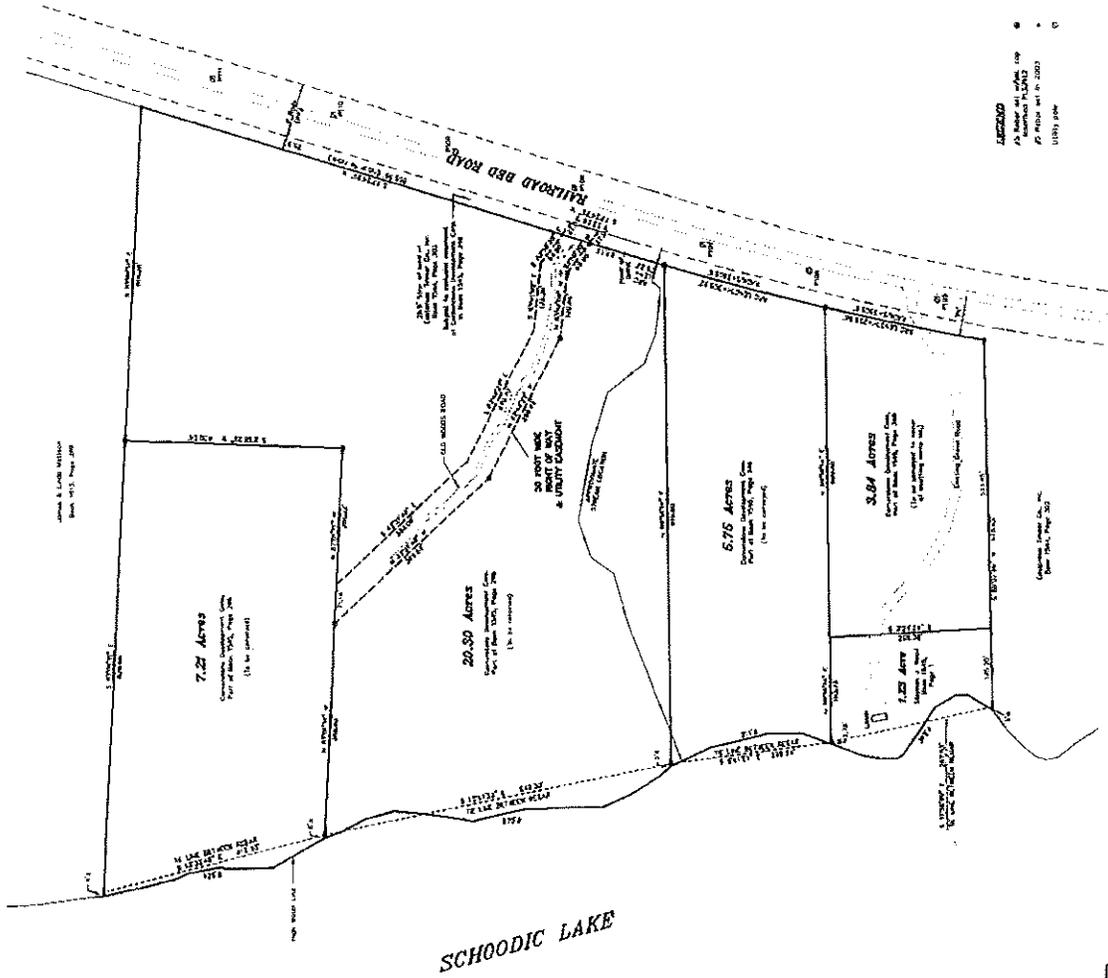
- NOTES:**
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**PLAN OF SURVEY FOR
CORNERSTONE DEVELOPMENT CORP.**

**AND
STEPHEN J. WOOD**

**ON RAILROAD BED ROAD & SCHOODIC LAKE IN
LAKEYVIEW PLT., PISCATAQUIS COUNTY, MAINE**

June 17, 2009



WILSON SURVEYING
INCORPORATED
1000 WILSON ROAD
LAKEYVIEW, MAINE 04457