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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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January 21, 2014

John Elman, Esq.
P.O. Box 1815
Standish, ME 04084

Subject: ADVISORY RULING AR 13-16, T4 Indian Purchase Township, Penobscot County

Dear Mr. Elman:

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 use rules. 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. Of course, in providing our views on these matters, we have relied entirely upon the facts as they have been presented or are otherwise known to us.

Proposal/Inquiry

The requestor (applicant) has asked the Land Use Planning Commission to document that a proposed division of land will not create a subdivision as defined in the Commission's Land Use Districts and Standards, and that the parcels created as a result of the proposed land division will conform to the Commission's Land Use Districts and Standards.

Background Information

Your clients have purchased a parcel of land on South Twin Lake in T4 Indian Purchase Township, Penobscot County. The 0.57 acre lot (24,829.2 square feet) was previously owned by Katahdin Timberlands, LLC. The lot was originally established by lease as two (2) separate leased lots prior to September 23, 1970, identified at that time as lots #148 and #149. At that time, each lot contained approximately 0.28 acres and approximately 100 feet of shoreline frontage on South Twin Lake. Each lot was developed with a dwelling, well and septic system. Prior to September 23, 1971 the individual leased lots were combined into a single leased lot of the current 0.57 acres and having approximately 200 feet of shoreline frontage, now identified as lot ST 21 on a *Final Survey Plan of South Twin Lake Lots* by Katahdin Timberlands, LLC, April 17, 2013.

Your clients now propose to divide lot ST 21 into two separate lots, each containing approximately 0.28 acre (approximately 12,200 square feet) of land, such that each lot contains one single dwelling, well and septic system, and having approximately 100 feet of shoreline frontage.

Review Criteria

Under Chapter 10 of the Commissions Land Use Districts and Standards it is stated that:

Under Section 10.02 (182) Definitions: "subdivision" means 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. 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.

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Under Section 10.25,Q,1,a Counting Parcels, Lots, or Dwelling Units Under the Definition of Subdivision, Lots Created by Dividing a Parcel: when a parcel is divided, the land retained by the person dividing land is always counted in determining the number of lots created unless the lot retained qualifies for any of the exemptions listed in Section 10.25,Q,1,g.

Under Section 10.26,A,1 Minimum Lot Size: "Residential Uses. The minimum lot size for residential uses is 40,000 square feet per dwelling unit except where each dwelling unit is to use a common or community sewer and not on site-subsurface waste water disposal, the minimum lot size shall be 20,000 square feet.

Under Section 10.26,B,1, Minimum Shoreline Frontage: For lots fronting on a flowing water draining 50 square miles or more or a body of standing water 10 acres or greater in size, the minimum shoreline frontage shall be:

- a. 200 feet per dwelling unit for residential uses; and
- b. 300 feet for commercial, industrial, and other non-residential uses involving one or more buildings.

Under Section 10.26,C,1, Minimum Road Frontage: Except as provided in Section 10.26,C,6, the minimum road frontage shall be: (a) 100 feet per dwelling unit for residential uses.

Under Section 10.26,D,1, Minimum Setbacks: The minimum setbacks for structures, other than those described in Section 10.26,D,2 and except as provided in Section 10.26,G are:

- a. 75 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a tidal water, and from the upland edge of wetlands designated as P-WL1 subdistricts;
- b. 100 feet from the nearest shoreline of a flowing water draining 50 square miles or more and of a body of standing water 10 acres or greater in size;
- c. 50 feet from the traveled portion of all roadways except as provided for in Section 10.26,D,1,d and e or Section 10.26,D,5 below;
- d. 75 feet from the traveled portion of the following roadways: Routes 1, 2, 2A, 4, 9, 27, 163, 201, 161 from Caribou to Fort Kent, 157 in TA R7 (Penobscot County), and 6 in Orneville Township (Piscataquis County), except as provided for in Section 10.26,D,5;
- e. 20 feet from the traveled portion of all roadways on coastal islands; and
- f. 15 feet from side and rear property lines.

Under Section 10.11 E. Nonconforming Lots (subsection 10.11 E,5 Contiguous Lots): two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements, except where:

- a. Such lots are part of a subdivision approved by the Commission, or
- b. Each lot has a legally existing dwelling unit that conformed to the Commission's rules at the time each lot was developed.

Under these two circumstances the lots may be conveyed separately or together.

Under Section 10.11 E, 2 Creation of Nonconforming Lots: A lot which has an established use or structure to which

dimensional standards apply may not be divided or altered in a manner that makes the lot, or any structure or use, nonconforming or more nonconforming.

Interpretation

Based upon the information that has been provided, the proposed division of lot ST 21 into two separate lots as described above is permitted by the Commission's Land Use Districts and Standards because each of the previously individual lots was developed with a legally existing dwelling unit that was established prior to the inception of the Land Use Planning Commission's (formerly Land Use Regulation Commission) Land Use Districts and Standards on September 23, 1971.

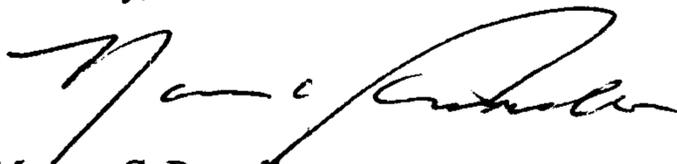
In order to conform with section 10.11 E,2 of the Commission's Land Use Districts and Standards, the lot must be divided such that a minimum 15 foot setback is maintained between the existing garage and the property division line to be established.

Additionally, the proposed land division will not constitute a division of land by Katahdin Timberlands, LLC. The proposed division does, however, constitute the creation of two (2) lots by your clients as described in section 10.25,Q,1,a of the Commission's Land Use Districts and Standards, unless or until otherwise exempt under section 10.25,Q,1,g.

Please note that this Advisory Ruling does not address other state law regulations that may apply to the division of the lot, such as the State of Maine Subsurface Wastewater Disposal Rules and Minimum Lot Size law. You are advised to contact the State of Maine Department of Health and Human Services, Division of Health Engineering for more information on the possible applicability of those regulations. You may contact that Division's Subsurface Wastewater Unit at (207) 287-5672 or visit their website at Subsurface Wastewater Unit, Division of Environmental Health, Maine CDC.

I hope this addresses your inquiry. Should you have any further questions on this matter, please contact me at our ~~East~~ Millinocket Office at (207) 746-2244 or by email at marc.russell@maine.gov.

Sincerely,



Marcus C. Russell,
Regional Representative
Land Use Planning Commission

Cc: geofile