



Dean Bennett <economicdevelopment@hampdenmaine.gov>

FW: Letter Response

Edmond J. Bearor <ebearor@rudmanwinchell.com>

Sun, Apr 10, 2016 at 12:26 PM

To: "economicdevelopment@hampdenmaine.gov" <economicdevelopment@hampdenmaine.gov> ,

Angus Jennings <townmanager@hampdenmaine.gov>

Cc: "Lynn E. Brochu" <lbrochu@rudmanwinchell.com>

Angus / Dean: I have reviewed the letter from MRC's counsel, Jon Pottle, and the updated Site Plan with corrected abutters noted on this April 8, 2016 Plan, although I don't think those changes in the Plan have a bearing on the subdivision question. Based upon the representations made in Mr. Pottle's letter, namely that the road will be constructed and accepted by the Hampden Town Council before any construction on the parcel takes place and thus establishing a minimum 150 of frontage on the development parcel, I am satisfied that the scheme does not constitute a subdivision and that the contemplated construction will only occur after a town way has been constructed to the development parcel.

The conveyance of the 100 strip that will constitute the road to either MRC or directly from Hickory Development, LLC to the Town does not create a subdivision under the Maine Law Court's Bakala v. Stonington holding, as the original owner will retain the land on either side of the conveyed parcel (road). I recognize that the creation of the town road, assuming acceptance by the Council, will create a separately owned parcel, and that at the end of the day there will be three owners namely Hickory Development, LLC, Town of Hampden and MRC, but it has not been my experience to count a road as a lot in any development proposal. In this case, being consistent with what I suspect is the town's past practice (not counting a road as a lot) this proposal does not constitute a subdivision.

I do not have Peter Weatherbee's e-Mail address. Please send this along to him at your earliest convenience.

From: Pottle, Jonathan [mailto:JPottle@eatonpeabody.com]

Sent: Friday, April 08, 2016 4:55 PM

To: 'economicdevelopment@hampdenmaine.gov'

Cc: <glounder@mrcmaine.org> (glounder@mrcmaine.org); Edmond J. Bearor; 'Sean Thies'

Subject: RE: Letter Response

Dean,

As a follow-up to Sean's email below, attached please find additional correspondence addressing the subdivision and frontage questions raised during the preliminary peer review, together with referenced enclosures. As Sean notes below, please distribute these materials to the members of the Planning Board as well. (Note: I will also have paper copies dropped off at the Town office on Monday in the interest of efficiency.)

Best Regards,

Jon

Jonathan A. Pottle
Eaton Peabody
P.O. Box 1210
80 Exchange Street
Bangor, ME 04402-1210
Tele: 207.947.0111
Fax: 207.942.3040
Professional Profile | Website

Eaton
Peabody

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From: Sean Thies [<mailto:sthies@ces-maine.com>]
Sent: Friday, April 08, 2016 3:36 PM
To: 'economicdevelopment@hampdenmaine.gov'
Cc: Pottle, Jonathan; <glounder@mrcmaine.org> (glounder@mrcmaine.org)
Subject: Letter Response

Dean,

Attached is a pdf of a letter responding to some of the technical issues/comments raised in the Woodard & Curran review letter. Could you please distribute this letter to the planning board members prior to the meeting next Wednesday? Please let us know if you have any questions. Thanks

Sean Thies, P.E. ♦ Senior Project Manager

P 207.989.4824 | F 207.989.4881 | C 207.341.0588

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465 South Main St., P.O. Box 639, Brewer, Maine 04412 | www.ces-maine.com

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3 attachments



Ltr to Planning Board re. Subdivision and Frontage (02130720xAE394).pdf

117K

 **30-A M.R.S. 4401 (02130578xAE394).pdf**
134K

 **Overall Site Plan (April 8, 2016) (02130648xAE394).pdf**
2718K

Maine Revised Statutes Annotated
Title 30-a. Municipalities and Counties (Refs & Annos)
Part 2. Municipalities
Subpart 6-a. Planning and Land Use Regulation (Refs & Annos)
Chapter 187. Planning and Land Use Regulation (Refs & Annos)
Subchapter 4. Subdivisions (Refs & Annos)

30-A M.R.S.A. § 4401

§ 4401. Definitions

Effective: October 9, 2013

Currentness

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Densely developed area. “Densely developed area” means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

2. Dwelling unit. “Dwelling unit” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.

2-A. Freshwater wetland. “Freshwater wetland” means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

2-B. Farmland. “Farmland” means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources

Conservation Service within the United States Department of Agriculture; or

B. Used for the production of agricultural products as defined in Title 7, section 152, subsection 2.

3. Principal structure. “Principal structure” means any building or structure in which the main use of the premises takes place.

4. Subdivision. “Subdivision” means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single-family residence that has been the subdivider’s principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

C. A lot of 40 or more acres must be counted as a lot, except:

(1) Deleted. Laws 2001, c. 651, § 1.

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality’s shoreland zoning ordinance.

D. Repealed. Laws 2001, c. 359, § 2.

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than $\frac{1}{2}$ the assessed value of the real estate.

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as

stringent as that required under this subchapter.

H. Repealed. Laws 2001, c. 651, § 2.

H-1. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

(1) Expands the definition of “subdivision” to include the division of a structure for commercial or industrial use; or

(2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of “subdivision” except as provided in this subchapter. A municipality that has a definition of “subdivision” that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003 for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located.

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person’s successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

5. New structure or structures. “New structure or structures” includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

6. Tract or parcel of land. “Tract or parcel of land” means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

7. Outstanding river segments. In accordance with Title 12, section 402, “outstanding river segments” means:

A. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.;

- B. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;
- C. The Crooked River from its inlet into Sebago Lake to the Waterford and Albany Township town line;
- D. The Damariscotta River from the Route 1 bridge in Damariscotta to the dam at Damariscotta Mills;
- E. The Dennys River from the Route 1 bridge to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;
- F. The East Machias River, including the Maine River, from $\frac{1}{4}$ of a mile above the Route 1 bridge to the East Machias and T.18, E.D., B.P.P. town line, from the T.19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake, and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;
- G. The Fish River from the bridge at Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line, and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;
- H. The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;
- I. The Kennebec River from Thorns Head Narrows in North Bath to the Edwards Dam in Augusta, excluding Perkins Township, and from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;
- J. The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line;
- K. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line, and from the Reed Plantation and Bancroft town line to the East Branch in Haynesville;
- L. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town lines, excluding Beddington Lake;

M. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

N. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line;

O. The Pleasant River from the bridge in Addison to the Columbia and T.18, M.D., B.P.P. town line, and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake;

P. The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

Q. The Saco River from the Little Ossipee River to the New Hampshire border;

R. The St. Croix River from the Route 1 bridge in Calais to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line, and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

S. The St. George River from the Route 1 bridge in Thomaston to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

T. The St. John River from the Van Buren and Hamlin Plantation town line to the Fort Kent and St. John Plantation town line, and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

U. The Sandy River from the Kennebec River to the Madrid and Township E town line;

V. The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

W. The West Branch of the Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line; and

X. The West Branch of the Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

Credits

1989, c. 104, § A, 45; 1989, c. 326, § 1; 1989, c. 404, § 1; 1989, c. 497, §§ 1 to 3, eff. June 29, 1989; 1989, c. 772, § 2; 1991, c. 500, §§ 1, 2, eff. June 24, 1991; 2001, c. 359, §§ 1 to 5; 2001, c. 523, § 1, eff. March 12, 2002; 2001, c. 651, §§ 1 to 3; 2007, c. 49, § 1; 2009, c. 356, § C-1; 2013, c. 126, § 1, eff. Oct. 9, 2013.

Notes of Decisions (18)

30-A M. R. S. A. § 4401, ME ST T. 30-A § 4401

Current with emergency legislation through Chapter 423 of the 2015 Second Regular Session of the 127th Legislature. The Second Regular Session convened January 6, 2016. Statutory Adjournment is April 20, 2016.

End of Document

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