Gmail

David Strock <[redacted]>

Town of Baldwin - Planning Board Question

Legal Services Department <legal@memun.org> Thu, May 28, 2020 at 8:48 AM
To: '[redacted]'

David,

My thoughts are as follows:

(1) Assume an LLC owns a parcel of property (Parcel A). Parcel A is divided two times within 5 years. One of the sales is to a relative of the primary member of the LLC. The relative also happens to be a minor member of the LLC. Under our subdivision ordinance, a transfer to a "blood relative" does not trigger a division:

A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality or by transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations.

(Page 7 in Definitions). The Baldwin Subdivision Ordinance can be found online at https://www.baldwinmaine.org/policies---ordinances.html For the purposes of a donor who is an LLC, can the transfer to a relative of the primary member of the LLC constitute a "person related to the donor by blood"?

No. First, the definitions of subdivision in the state subdivision law really control here. The town ordinance does seem to track the statutory definitions, but to the extent that they are different, the town cannot create broader exceptions than the state law allows and it cannot say that a situation is not a subdivision if the state law says that it is. The applicable exemption in the state subdivision law is 30-A MRS § 4401(4)D-4)(http://legislature.maine.gov/statutes/30-A/title30-Asec4401.html). In my opinion, an LLC cannot use the gift to relative exemption because an LLC is not a person and has no relatives. An LLC is a corporate entity.

(2) Baldwin has a subdivision ordinance that is not completely the same as the state statute. In some places, Baldwin's ordinance is more restrictive, in other places it is arguable less restrictive that the state statute. Which provisions should the Planning Board apply/follow?

As mentioned above, the state law definitions of subdivision would control. Also, the required criteria that must be addressed by an applicant (30-A MRS § 4404) would apply even if Baldwin's ordinance does not include them all. It is hard to give you a blanket answer as much depends on the specific differences between your ordinance and state law. Generally though, the town ordinance can impose additional procedures and additional specific requirements, but it cannot be less stringent than the state law. For example, many municipal subdivision ordinances include detailed road and street standards that are not part of the state law.

(3) A landowner owns a 100 acre lot (called the Mother Lot). The landowner divides the lot into three parcels, Lot A (80 acres), Lot B (10 acres) and Lot C (10 acres). Lot B divides the land such that Lot A and Lot C are not contiguous. The three-lot configuration was created when Lot B was sold to an individual across the street from the Mother Lot and, therefore, the individual is an abutter under Baldwin's land use ordinance:

ABUTTING PROPERTY: Any lot which is physically contiguous with the lot in question even if only at a point and any lot which is located directly across a public street or way from the lot in question.

As noted in the quoted part of the Subdivision Ordinance above, the sale to an abutter does not create a new lot for the purposes of the subdivision ordinance. This means that separating the Mother Lot into Parcels A, B, and C did not trigger the subdivision ordinance. However, Lot C is subsequently sold to a non-abutter, and the owner of Lot C wants to divide the property into two parcels C-1 and C-2. Assume that the division of the Mother Lot through the sale of Lots B and C all occurred within 5 years and the proposed division of Lot C into C-1 and C-2 again would occur within the same 5 year period. Would an application for a subdivision by the owner of Lot C have to include the entire Mother Lot (i.e., encompass all of Lots A, B, and C), or would it need to take into consideration only Lots C-1 and C-2?

There is also a court decision, *Bakala v. Stonington*, 647 A.2d 85 (Me. 1994), which addressed a situation very similar to the one you present. In that case, the court ruled that three lots are not created when one lot is conveyed from the middle of a large parcel. When you say that lot C is going to be divided, I assume you mean part of lot C will be sold to a third party. Merely "dividing" a lot on paper does not create a division if the same person owns the contiguous pieces of the lot. It is still one lot for subdivision purposes. However, if C-1 or C-2 is sold to a third person within the same 5 year period that Lot C was split off from the parent parcel, there would be a subdivision.

The subdivision law specifically addresses our question at 30-A MRSA § 4401(4)(B), which states:

"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."

What this means is that even though a nonexempt lot previously created can be counted for purposes of determining whether 3 or more lots have been created within a 5-year period, the previously created lot is not itself part of the subdivision. This is generally construed to mean that the previous lot must be shown on the plan, but it would not be numbered or otherwise subject to restrictions that would apply to proposed new lots. The lot's existence must be "considered" by the Board in reviewing the new lots. I think this means that the Board can consider that it exists when reviewing the other proposed lots, and criteria such as total traffic, etc. However, the Board has no jurisdiction to require anything of that previously created lot or to impose the same standards it will impose on the new lots.

In your situation, the parent lot (A) would definitely need to be shown on the plan pursuant to the provision quoted above. It is not as clear whether the exempt lot (B) must be shown, but I think it probably does need to be shown on the plan as it was part of the parent parcel within the last 5 years. Also, in your situation, there really is no way to not show it, as it exists in between the other lots. It can be marked as an exempt lot transferred to an abutter. Since the transfer to abutter exemption in the law would claw back that lot if any of it was conveyed to anyone else within 5 years, it would be good to show it on the plan. Again, lot A and B would not be subject to the board's jurisdiction, but the board could consider their existence when thinking about needs for roads, etc. for the lots that are subject to subdivision review.

I hope this answers your questions. Please let me know if you need anything further.

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