




TOWN OF FREEPORT, MAINE

Town Manager's Office
30 Main Street
Freeport, ME 04032

Phone: 207-865-4743
Email: pjoseph@freeportmaine.com

ITEM # 87-21

MEMORANDUM

TO: Freeport Town Council
FROM: Peter Joseph, Town Manager 
DATE: 05/13/21
RE: **Harmony Lane Consent Agreement**

A proposed multi-party consent agreement to address subdivision issues on property located on Harmony Lane (off Baker Road) is attached to this memo.

There is one substantive issue that is still outstanding that will require Town Council input to resolve. Also attached to this memo you will find a communication from Attorney Sarah McDaniel on behalf of her clients requesting that the Town attorney's fees not be included in the proposed agreement. Staff is proposing an amount of \$4,000 be included in the proposed agreement for reimbursement of a portion of the Town's attorney's fees.

This amount does not represent the entire amount that the Town has incurred on this matter, rather it represents the amount that the Town incurred to negotiate and develop the consent agreement document before you for consideration. We believe this amount is justified because the pursuit of a consent agreement represents an additional cost to taxpayers that was undertaken only because it was the preferred resolution of the non-Town parties.

It is important to note that the Town is not proposing any fines, reimbursement of staff time costs, or reimbursement of attorney's fees for "non-consent agreement" costs related to this case.

■ ■ ■ ■
**DOUGLAS MCDANIEL
& CAMPO LLC, PA**
ATTORNEYS AND COUNSELORS AT LAW

May 12, 2021

VIA EMAIL ONLY: ATchao@dwmlaw.com

Freeport Town Council
c/o Amy K. Tchao, Town Attorney

Re: Harmony Lane Consent Agreement

Dear Councilors,

I represent Debra Brackley and Scott Fraser who each inherited property from their mother on Harmony Lane. On the May 18, 2021 Town Council Agenda you will be presented with a proposed consent agreement involving my clients as well as the Palmers, Delta Properties, Paul Brackley and Valerie Fraser – who are the other current-owners of lands that were devised by my clients' mother, Ruth when she passed away in 2017.

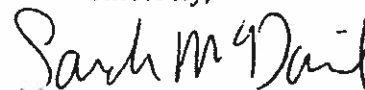
The parties have all put great effort into the language of the agreement to provide clarity to the landowners on Harmony Lane. The dispute is not an issue of any one person's wrong-doing. It is an honest disagreement as to the application of the subdivision statute following the creation of lots exempt by devise. We understand that Freeport would like to have its attorneys' fees covered by the other parties to the consent agreement. **I am writing to ask the Town to share in the burden by covering its own legal fees that it has incurred in assessing this dispute.**

All of the current landowners are innocent parties here. Ruth Fraser had legal advice when she prepared her will. The non-family members had legal advice from two different attorneys when they purchased their lots, and would not have purchased property that they didn't believe would be entitled to a building permit. Once the town's hesitation to issue the building permits on Lots C1 and C2 revealed a potential issue, Ruth's heirs ceased marketing their own divisions and engaged two other different attorneys for guidance. All four of the attorneys involved vigorously disagree with the Town's position that the division of Lot C was a violation.

In this instance, all parties have already incurred their own substantial legal fees as each party has tried to convince the other of the correct way to interpret the state subdivision statute. It is a fair resolution of this dispute for all parties to bear their own legal costs, including the Town.

I will be in attendance at the Council meeting to answer any questions you may have. Thank you for your attention to this letter.

Sincerely,



Sarah A. McDaniel

Ec: Attorney Paul Weinstein (Delta Properties)
Attorney Amy McNally (the Palmers)
Attorney Alan Wolf (Paul Brackley)

Thomas L. Douglas Sarah A. McDaniel Benjamin P. Campo, Jr.

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PROPOSED 05/13/21

(space above for recording information)

Consent Agreement

This Consent Agreement is entered into this ____ day of May 2021 by and between Jamie and Christopher Palmer of Gray, Maine (the “Palmers”) and Paul Brackley of Groveland, Florida, (“Paul”), Scott Fraser of Brunswick, Maine (“Scott”), Debra Fraser-Brackley of Groveland, Florida (“Debra”), Valerie Fraser of Brunswick, Maine (“Valerie”), Delta Properties, LLC, a Maine Limited Liability Company with a principal place of business in Westbrook, Maine (“Delta”) (herein collectively referred to as the “non-Town Parties”), and the Town of Freeport, a Municipal Corporation, located in Freeport, Maine (the “Town”) (herein collectively referred to as the “Parties”)

WHEREAS, Ms. Ruth E. Fraser once owned approximately 32 acres adjacent to Baker Road in Freeport, Maine; and

WHEREAS, Ms. Ruth E. Fraser sold 2.5-acres of the 32 acres on April 29, 2019; and

WHEREAS, Ms. Ruth E. Fraser passed away in July 2019 and pursuant to the terms of her will, her remaining 29.5 acres land was bequeathed to her two children and their spouses. The distribution resulted in four lots, “Lot A”, which was devised to Scott, “Lot B”, which was devised to Debra, “Lot C”, which was devised to Paul, and “Lot D”, which was devised to Valerie; and

WHEREAS, Scott’s “Lot A” is described in deed dated May 4, 2020 and recorded in the Cumberland County Registry of Deeds in Book 36670, Page 286; and

WHEREAS, Debra’s “Lot B” is described in deed dated May 4, 2020 and recorded in the Cumberland County Registry of Deeds in Book 36670, Page 281; and

WHEREAS, Paul’s “Lot C” is described in deed dated May 4, 2020 and recorded in the Cumberland County Registry of Deeds in Book 36670, Page 283; and

WHEREAS, Valerie’s “Lot D” is described in deed dated May 4, 2020 and recorded in the Cumberland County Registry of Deeds in Book 36670, Page 288; and

WHEREAS, Paul then sold a portion of his lot ("Lot C2") to Delta and sold the remainder of his parcel ("Lot C1") to the Palmers; and

WHEREAS, Delta's parcel more commonly referred to as "Lot C2" is described in deed dated October 17, 2020 and recorded in the Cumberland County Registry of Deeds in Book 37312, Page 16; and

WHEREAS, The Palmers parcel more commonly referred to as "Lot C1" is described in deed dated October 27, 2020 and recorded in the Cumberland County Registry of Deeds in Book 37358, Page 211; and

WHEREAS, the Palmers and Delta subsequently applied to the Town for building permits to construct single-family dwellings on their respective parcels; and

WHEREAS, upon receipt of the building permit applications for Lots C1 and C2, the Town advised Delta and the Palmers that it viewed the division of Lot C as a non-exempt division, and thus a violation of the Town's subdivision ordinance requirements and state subdivision law pursuant to 30-A M.R.S. §4401 (4) (being the second division within five years of Ruth Fraser's 2019 sale), although creating a subdivision was never Paul's intention when he sold the parcels to Delta and the Palmers; and

WHEREAS, Delta and the Palmers were not advised of Ruth Fraser's 2019 sale, which created a potential subdivision issue, before closing on their respective parcels; and

WHEREAS, upon advice of their individual legal counsel, all of the non-Town Parties dispute the Town's position that the division of Lot C created a non-exempt division requiring subdivision review and approval by the Project Review Board, in light of the exemption established in 30-A M.R.S. §4401 (4) (D-1) which imposes no time-limitation for either ownership or subsequent division upon lots legally created by devise; and

WHEREAS, Lot B and Lot D appear to be large enough under current zoning regulations to potentially each be divided, and Debra and Valerie had intended to market a portion of each such lot prior to becoming aware of the disputed legal interpretation of 30-A M.R.S. §4401 (4) (D-1); and

WHEREAS, the Town rejects the non-Town Parties' arguments that the division of Lot C and any potential future division of Lot B and Lot D within five years of 2019 is or would be exempt from subdivision review but does not believe the parties acted in bad faith, and the conditions as they exist are the result of innocent and unintentional error; and

WHEREAS, the Town has agreed to enter into this Consent Agreement to resolve this matter for all Parties; and

WHEREAS, Delta is entering into this Consent Agreement in an effort to mitigate its damages arising out of the failure of third parties to disclose Ruth Fraser's 2019 sale and the potential subdivision issue resulting therefrom;

WHEREAS, the Town has communicated to the parties that one option for resolving the inadvertent creation of the non-exempt division is for some or all of the parties to apply for subdivision approval with the Project Review Board, but the parties have apparently rejected this option;

NOW THEREFORE, in consideration of the mutual covenants declared herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The recitals set forth above are incorporated herein and made a material part of this agreement.
2. The Parties agree there was never an intention to create an illegal subdivision or to avoid the objectives of the subdivision statute.
3. Delta shall re-convey Lot C2 to Paul and withdraw its building permit application in accordance with the terms of a separate agreement between Delta and Paul of near or even date herewith.
4. Lot C1 shall be treated as a legal lot under the subdivision regulations. All of the additional substantive standards have been met by the Palmers' application and the building permit shall issue immediately upon execution of this Agreement.
5. The earliest date that an application can be made for a building permit on Lot C2 is April 30, 2024, five years after the 2019 sale by Ruth E. Fraser. After such date, Lot C2 shall be treated as a legal lot under the subdivision regulations and the owner of Lot C2 may then apply for a building permit.
6. Lot C2 may be conveyed or reconveyed (but not divided) prior to April 30, 2024, provided that the deed identifies that no building permit may issue or be applied for prior to April 30, 2024.
7. Lots A, B, and D are to be treated as legal lots under the subdivision regulations and may be sold as entire lots without delay. The Town agrees that its interpretation of the subdivision statute with respect to the timing and sequence of the creation of Lots A, B, C and D as exempt lots by devise under 30-A M.R.S. §4401(4)(D-1) shall not be the cause for a building permit denial on Lots A, B and D.
8. On or after May 1, 2024, Lots A, B and D, if not previously divided by way of an exempt transfer or transfers, shall be independent "tracts or parcels of land", as defined in 30-A M.R.S. §4401(6) so that the timing of any subsequent division of one of the three lots will not impact the timing of any subsequent division of the other lots.

9. In the event parcels A, B, C2 and/or D come before the Project Review Board for subdivision review before May 1, 2024, Lot C1 shall be excluded from that review process and any conditions imposed by subdivision approval.
- 10 The Town agrees that it will not now, or in the future, file suit against the non-Town Parties, or any successor in title or interest, based on the existence of an illegal subdivision resulting from the creation of Lots A, B, C and D as exempt lots by devise under 30-A M.R.S. §4401(4)(D-1) on the herein described premises, provided that no further lot divisions occur before April 30, 2024.
- 11 The Parties intend by the recording of this Consent Agreement that future owners of Lots A, B, C1, C2 and D may be assured that the existence of an alleged subdivision violation concerning the sequence of divisions of the Ruth Fraser parcel from 2019 through the present will not be enforced as against the non-Town Parties, its successors or assigns, unless a party violates the conditions outlined herein. Nothing in this Consent Agreement should be construed by any of the non-Town Parties or their successors to relieve any of them from their obligation to comply with all other applicable subdivision, zoning and land use standards and requirements pertaining to the lot(s) owned by each of them.
- 12 The non-Town Parties shall pay the Town of Freeport \$4,000 in legal costs. These fees are due at execution.

IN WITNESS WHEREOF, the Parties have executed this agreement on the date first written above.

[signatures on following pages]

TOWN OF FREEPORT:

By: John Egan

Its: Town Council Chair

STATE OF MAINE
CUMBERLAND, ss.

May____, 2021

Then personally appeared before me _____, who gave oath and acknowledged the foregoing to be their free act and deed, and the free act and deed of the TOWN OF FREEPORT, and of his authority herein to act on its behalf.

Before me,

Notary Public/Attorney At Law

Jamie Palmer

Christopher Palmer

STATE OF MAINE
CUMBERLAND, ss.

May____, 2021

Then personally appeared before me Jamie Palmer who gave oath and acknowledged the foregoing to be her free act and deed.

Before me,

Notary Public/Attorney At Law

STATE OF MAINE
CUMBERLAND, ss.

May____, 2021

Then personally appeared before me Christopher Palmer who gave oath and acknowledged the foregoing to be his free act and deed.

Before me,

Notary Public/Attorney At Law

Paul Brackley

Debra Fraser-Brackley

STATE OF FLORIDA
_____, ss.

May____, 2021

Then personally appeared before me Paul Brackley who gave oath and acknowledged the foregoing to be his free act and deed.

Before me,

Notary Public/Attorney At Law

STATE OF FLORIDA
_____, ss.

May____, 2021

Then personally appeared before me Debra Fraser-Brackley who gave oath and acknowledged the foregoing to be her free act and deed.

Before me,

Notary Public/Attorney At Law

Valerie Fraser

Scott Fraser

STATE OF MAINE
CUMBERLAND, ss.

May ___, 2021

Then personally appeared before me Valerie Fraser who gave oath and acknowledged the foregoing to be her free act and deed.

Before me,

Notary Public/Attorney At Law

STATE OF MAINE
CUMBERLAND, ss.

May ___, 2021

Then personally appeared before me Scott Fraser who gave oath and acknowledged the foregoing to be his free act and deed.

Before me,

Notary Public/Attorney At Law

DELTA PROPERTIES, LLC

By: Justin Dore
Its: Member

STATE OF MAINE
CUMBERLAND, ss.

May __, 2021

Then personally appeared before me Justin Dore, duly authorized, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of the Company.

Before me,

Notary Public/Attorney At Law