

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
Docket No. AP-04-6

FILED & ENTERED
SUPERIOR COURT
OCT 19 2004
PENOBSCOT COUNTY

JOHN WILSON, et al.,
Plaintiffs,)
)
)
v.)
)
)
LAND USE REGULATORY)
COMMISSION, et al.,)
Defendants.)

DECISION AND JUDGMENT

The Plaintiffs commenced parallel actions seeking, *inter alia*, judicial review of an administrative decision, declaratory judgment, and equitable relief. On April 27, 2004, this court granted a stay of all proceedings to allow the parties to submit the declaratory and equitable issues to the court for disposition.

The Plaintiffs Myers and Zentgraf move for summary judgment on Counts III, IV, V, VII, VIII, IX, X, XIII, XIV, XV and XVI. Plaintiffs did not initially file a statement of material fact as required by Rule 56. Instead, they filed a document styled as "Request for Judicial Notice, Statement of Material Facts, and Affidavit of Ted Kurtz." Regardless of the state of compliance with the rule, the parties seem to be in agreement with the facts and the court will accept all parties' submissions - motions to allow such are hereby granted.

Although the parties have advanced numerous arguments and theories regarding the three rights of way which appear to service the Walsh property, the court is satisfied that a commercial use upon the Walsh property does not *ipso facto* render the use of an easement which accesses the property a commercial use. This decision is fact-driven, and the court concludes that the circumstances presented herein do not justify a conclusion that the easement(s) are commercial in nature. The facts suggest that the access roads are simply access roads and their use to travel to the sporting camp on the Walsh property does not overburden the easement(s). Although this conclusion resolves many of the principal issues raised in this matter, the court also rules as follows:

Counts II¹ and III - the easements over Lot 13 are not subject to the Declaration of Restrictions imposed by the Sysladobsis Realty Trust.

¹ Although the motion for summary judgment did not specifically invoke this count, judgment is nonetheless entered as noted herein.

Count IV – The right of way over lots other than Lot 13 was not extinguished by later deeds or conveyances.

Count V – The Zentgraf property is not burdened with any easement for access to southerly properties.

Count VII – The easement across Lot 13 is not subject to use restrictions beyond ordinary pedestrian and vehicular travel.

Count VII(I) - The easement across lots other than Lot 13 is not subject to use restrictions beyond ordinary pedestrian and vehicular travel.

Count IX – No easement exists across the Zentgraf property.

Count X – The court declines to order injunctive relief.

Count XIII - The court declines to order injunctive relief.

Count XIV - The court declines to order injunctive relief.

Count XV - The court declines to order injunctive relief.

Count XVI – The court awards costs to the Defendants.

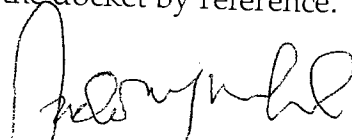
The court declines to order injunctive relief or further declaratory relief on counts XI or VI, respectively.

The docket shall reflect that summary judgment is granted in favor of Defendants Deschaine and Walsh on all counts enumerated above.

The Plaintiff shall file the record on the 80C action (Count I) within 60 days. Petitioner's Brief shall be due 30 days thereafter. Respondents shall then have 30 days to file responsive briefs. Finally Petitioner shall have 10 days thereafter for a reply brief.

The Clerk may incorporate this Order upon the docket by reference.

Dated: October 18, 2004



Andrew M. Mead
JUSTICE, MAINE SUPERIOR COURT

Date Filed 3/12/04

Penobscot

Docket No. AP-2004-6

County

Action RULE 80C APPEAL (TITLE TO REAL ESTATE IS INVOLVED)
ASSIGNED TO JUSTICE ANDREW M. MEAD

JOHN WILSON, AND DOUGLAS M. MYERS, and
SUE ELLEN P. MYERS, CO-TRUSTEES U/A/D
MAY 7, 1997, PETITIONERS,
DOUGLAS M. MYERS, and SUE ELLEN P. MYERS,
CO-TRUSTEES U/A/D MAY 7, 1997, and JOHN K.
ZENTGRAF, and JEANETTE M. ZENTGRAF,
Plaintiffs

VS.

vs.

LAND USE REGULATION COMMISSION,
RESPONDENT, AND

MICHAEL W. DESCHENES, AND JOSEPH P. WALSH
AND ELIZABETH R. WALSH,
Defendants

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FOR: PLAINTIFFS DOUGLAS M. MYERS,
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ZENTGRAF, AND JEANETTE M. ZENTGRAF

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BY: DEAN A. BEAUPAIN, ESQ. and
MICHAEL HARMAN, ESQ.
FOR: MICHAEL DESCHENES

Date of
Entry

3/12/04

Petition for Review of Final Agency Action Pursuant to ME.R.Civ.P. 80C filed by Petitioners.

3/12/04

Complaint for Injunctive Relief and Declaratory Judgment filed by Plaintiff (Titile to Real Estate Involved)

3/15/04

Notice of Assigned Justice filed. Pursuant to Administrative Order, Single Justice Assignment of Civil Cases, Docket No. SJC-323, the above reference case is specially assigned to Justice Andrew M. Mead. /s/ Margaret Gardner Clerk. Copy forwarded to Petitioners and Plaintiffs' Attorneys.

3/17/04

Entry of Appearance by Roger L. Huber, Esq. as to Defendants Joseph P. Walsh and Elizabeth R. Walsh filed.

3/19/04

Acknowledgement of Receipt of Complaint by Roger L. Huber, Esq. on behalf Defendants Joseph P. and Elizabeth R. Walsh filed. (Undated)

3/22/04

Notice of Assigned Justice forwarded to Roger L. Huber, Esq., attorney for Defendants Joseph P. Walsh and Elizabeth R. Walsh.

3/25/04

Officer's Return of Service filed as to Michael Deschenes. (s.d. 3/18/04)

4/5/04

Defendants Joseph P. Walsh and Elizabeth R. Walsh's Motion to Extend Deadline for filing Answer filed.

4/7/04

Defendant Michael W. Deschenes' Motion to Extend Deadline for Filing Answer filed.

4/14/04

Motion to Specify Future Course of Proceedings filed by Petitioners.

4/15/04

Order on Defendant Michael W. Deschenes' Motion to Extend Deadline (30 day for filing Answer is hereby Granted. (Mead, J.) Copy forwarded to attorneys of record.