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Sept. 16, 1974

Donaldson Koons, Commissioner

Conservation

Sarah Redfield, Staff Attorney

Attorney General

Qualifications for Executive Director of LURC pursuant to  
12 M.R.S.A. § 685

This is in response to your memo of September 10, 1974, with its enclosures. According to your memo, Mr. Richard W. Billings has applied for the position of Executive Director of LURC. He has furnished to you and you have furnished to us, a resume, a transcript from his college, and a brochure related to his resume. These materials are attached to this opinion and we have relied upon them in expressing this opinion. According to the resume Mr. Billings has a bachelor's degree in English, a master's degree in education and practical experience as executive director of various YMCA programs, of the Fellowship of Christian Athletes, and of Association Island Recreational Corp., described in the attached brochure.

The LURC statute provides that the Executive Director of LURC shall have "a professional degree in planning or in a related field or must have at least 3 years practical experience in the field of planning or land use management, or both" 12 M.R.S.A. § 685.

An applicant for the position of Executive Director of LURC can meet the statutory requirements by fulfilling the education prerequisite of a professional degree in planning or a related field or by fulfilling the practical prerequisite of 3 years experience in the field of planning or land use management. To determine if Mr. Billings complies with the statutory criteria, it is crucial to analyze the meaning of "planning" as it is used in § 685 of the LURC statute.

The general definition of "plan" is to "devise or project as a method or course of action" (Webster's International Dictionary, 1953). The general definition is extremely broad and, to that extent, somewhat ambiguous. For example, if the definition were read literally, Mr. Billings would have some 26 years of "planning" experience. However, anyone who devises courses of action with regard to any number of problems, goals, or other matters in life would also comply with such a general definition. In order to give some specific effect to the words of the statute, and the intent of the legislature, it is necessary to outline a more specific meaning of planning as it is used in the LURC statute.

According to the principles of statutory construction, an ambiguous term is to be interpreted with reference to the context of the statute as a whole, including the preamble and title. See 2A Sutherland, Statutory Construction, § 47.02 (1973). In the context of Chapter 206-A of Title 12, the word "planning" connotes land use planning. The title of the statute is "Land Use Regulation." The purpose section of the statute declares it to be in the public interest to "encourage the well

planned and well managed multiple use of land resources and to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping," 12 M.R.S.A. § 681.

More significantly, the entire concept of LURC is land oriented. Section 685-A of the LURC statute directs the Commission to act "on principles of sound land use planning and development" and to determine various "land use districts" and establish "land use standards" for these areas. This is essentially a zoning function, and zoning is clearly land use regulation, see Smith v. Township Committee of Township of Morris, 101 N.J. Super. 271, 244 A.2d 145, 150 (1968).

Section 685-B outlines a second major function of LURC: to review and approve development. This section requires that a permit be obtained from the Commission for building a structure (§ 685-B.1.A), for sale, development or construction of a lot in a subdivision (§ 685-B.1.B), or for construction or operation of any development (§ 685-B.1.C). The definitions of these terms indicate that LURC's concern is with land uses: "Subdivision" is "a division of an existing parcel of land. . . ."; "Structure" is anything with "a fixed location on or in the ground. . . ." and "Development" is "any land use activity or activities directed toward using, reusing or rehabilitating air space, land, water or other natural resources . . . .", 12 M.R.S.A. § 682.

Section 685-C prescribes the third major function of LURC: to adopt a comprehensive land use plan.

Thus, the title, purpose, and entire concept of the LURC statute relate almost exclusively to the use of land. Read in this context, the use of the word "planning" by the Legislature in § 685 must be fairly taken to mean land use planning.

This meaning is confirmed by the general use of the word planning in the field of land development or regulation. In his treatise, The American Law of Zoning, Anderson devotes an introductory section to the concepts of "planning" and "planners," (Anderson, § 1.03) As indicative of the scope of this field, and of the nature of "planners," Anderson cites the American Institute of Planners' definition of planning as follows:

"The 'planning' with which the profession is concerned is 'the planning of. . . unified development. . . as expressed throughout the determination of the comprehensive arrangement of land uses and land occupancy and the regulation thereof.'"

"Planning" then, is a term of art. When used in connection with other land-oriented concepts such as zoning, it takes on a specific connotation similar, though not identical, to zoning, (see Smith, supra at 150). Indeed, the case law which elucidates the definition of planning is generally derived from cases where the distinction between planning and zoning is relevant, e.g., Stoker v. Town of Irvington, 71 N.J. Super. 370, 177 A. 2d 61, 66 (1961). Within this context, state courts which have defined "planning" have outlined some of the elements of the term. First, the courts emphasize that planning includes zoning, which itself involves regulation of the immediate use of property (see Smith, Supra at 150). Other elements of the planning process, as elucidated by the courts, include a concern for the physical development of an area, [Angermeier v. Borough of Sea Girt, 27 N.J. 298, 142 A.2d 624, 629 (1958)]; for the transferability and future use of property [Stoker, supra, at 66]; and for the growth pattern of an area [Incorporated Village of Nissequoque v. Meixsell, 287 N.Y.S. 2d, 555, 559, 65 Misc. 2d 1069, (1968)].

In summary, "planning", as the term is used in § 685 of the LURC statute means land-related planning. The courts have supported this definition and have delineated various elements of such planning based upon the physical development of an area. Recently, planning has come to be regarded as dealing with the use of natural resources, not merely land; but even natural resource planning ordinarily connotes those resources commonly associated with land and land use activities, (see Smith, Conservation of Natural Resources (1971) at 619, Chapin, Urban Land Use Planning (1972) at 357).

Based upon the materials with which you have supplied us, Mr. Billings does not appear to satisfy the requisite statutory criteria for executive director of LURC, in the following respects:

1. He does not have a professional degree in planning.
2. He does not have a degree in a related field. His master's degree is in education with a major in "group work and community organization". This appears to be within the general field of sociology, but does not seem to bear any direct relationship to the use of, or to planning for the use of land.
3. Mr. Billings does not have 3 years practical experience in land use management or in land use planning. Although his administrative experience with the YMCA is, admittedly, "planning" experience, it is not the type of planning experience required by the LURC statute. Nor does his experience at Association Island satisfy the statute. Based upon the material we have been supplied, it appears that the

Obviously, no fixed or absolute rule can be enunciated which specifically delineates what human activities are "planning" even as that term is construed by this opinion, or what fields of academic discipline are "related" to planning. The qualifications of each applicant must be analyzed individually. It appears to us that Mr. Billings' past experience and degree are not within or related to "planning" as that term is used in the LURC statute, partly because, as a practical matter, if they are, what experience or degrees would not be? Of necessity, we are constrained to read the statutory job description of the executive director of LURC with deference to the peculiarities of the statute involved. Accordingly, we are of the opinion that Mr. Billings has not, based upon the material we have been supplied, met the requisite statutory criteria necessary to become the executive director of LURC.

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SARAH REDFIELD  
Staff Attorney

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