"Subdivision" 38 MRSA § 482(5)
terms defined ↑

STATE OF MAINE

Inter-Departmental Memorandum Date August 25, 1976

To Hollis McGlauflin, Chief Dept. Enforcement, Bureau of Land Quality

From Cabanne Howard, Assistant Dept. Attorney General

Subject Sales to abutting owners under the Site Law

You have asked whether the sale of a lot to an abutting owner constitutes a sale to the general public for purposes of determining whether such sale counts towards the creation of a subdivision as that term is defined by Section 482(5) of the Site Location of Development Law, 38 M.R.S. §§481 et seq. The answer is that, assuming such sale is not part of a scheme on the part of the parties to the transaction to avoid the Site Law, such a sale is not a sale to the general public and would not count toward the creation of a subdivision under the Site Law.

Section 482(5) of the Site Law provides that in determining whether a subdivision has been created within the meaning of the statute, the requisite five lots must have been "offered for sale or lease to the general public." The entire definition of a subdivision, including the "general public" provision, was added by amendment on the floor of the House of Representatives as part of a general revision of the Site Law in 1972. House Amendment "A" (H-620), adopted at 1971 Maine Legislative Record, 885 (1972). The sponsor of this amendment, Mr. Marstaller, made it clear when introducing it that its general purpose was to limit the application of the Site Law to real estate developments and to exclude occasional sales of land by landowners not engaged in the real estate business. 1971 Maine Legislative Record, 798 (1972). The phrase "offered for sale or lease to the general public" must be read in light of this intention. While Mr. Marstaller did not specifically mention the situation where a landowner might sell a piece of land to his neighbor, he did indicate that the situation in which a farmer sells a lot or two to his children or to others so as to preserve his land was the kind of transaction he was trying to exempt from the law. Thus, the words "sale to the general public" must be read to exclude private transactions where no advertisement or other communication with the public is made, an interpretation which is consistent with the prevailing interpretation of public offering requirements of other statutes. See, e.g. Section 4(2) of the Securities Act of 1933, 15 U.S.C. 77d (1970), and the discussion of it in SEC v. Ralston Purina Co., 346 U.S. 119 (1953) and Loss, Securities Regulation, 653-665 (1961). The only time in which the sale to an abutter might be considered part of a sale of a lot for purposes of the Site Law is if it is not a bona fide transaction between neighbors, but is part of a

.eme to avoid the law.*/ In such a case, a court might well .sregard the form of the transaction for its substance. But, absent such collusion, a sale of a lot to an abutter should not be counted a sale of a lot for purposes of the law.

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*/ An example of this might be where A sells Lot 1 to B, then sells the adjoining Lot 2 to B, who subsequently conveys Lot 1 to C. A then sells adjoining Lot 3 to B, who then sells Lot 2 to D. This continues indefinitely until more than five lots aggregating twenty acres have been sold. A tries to claim he has only been selling lots privately to his abutter, B. B, never having held more than two lots at any one time, claims he has not sold five lots from a single parcel. The Court should disregard the sales between A and B and find that A and B jointly have violated the law.