

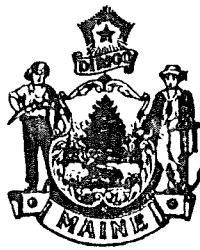
MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 22, 1981

T. M. Stone, Secretary
State Board of Registration
for Land Surveyors
State House Station 98
Augusta, Maine 04333

Dear Mr. Stone:

You have inquired, on behalf of the State Board of Registration for Land Surveyors, whether the boundary lines set forth in a subdivision plan or plat which has been approved by the zoning review authority of a municipality and duly recorded in a registry of deeds, pursuant to Title 30, M.R.S.A. § 4956, are thereby legally established and not subject to being contested. For the reasons set forth below, it is the opinion of this office that the boundary lines on such a plan or plat may be contested according to the normal rules of construction.

The Legislature has provided that:

No person, firm, corporation or other legal entity may sell, lease, develop, build upon or convey for consideration offer or agree to sell, lease, develop, build upon or convey for consideration, any land in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and recorded in proper registry of deeds, nor shall such person, firm, corporation or other legal entity sell or convey any land in such approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. Title 30, M.R.S.A. § 4956(4).

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Approval is based upon criteria which include: pollution, water supply, soil erosion, highway congestion, sewage and solid waste disposal, effects on scenic or natural beauty of the area, conformance with duly adopted subdivision regulations or ordinances, financial and technical capacity of the subdivider, proximity to water bodies, and effect on ground water. Title 30, M.R.S.A. § 4956(3). No subdivision plan or plat may be recorded by any register of deeds if it has not been approved as required. Title 30, M.R.S.A. § 4956(4).

Generally, in determining the boundary lines of a particular parcel of land, the description which best identifies the land in accordance with the intent of the parties is controlling. 11 CJS Boundaries, Section 52(a).

"Where lots have been granted, designated by number, according to a plan referred to, which has resulted from an actual survey, the lines and corners made and fixed are to be respected as determining the extent and bounds of the respective lots." Liebler v. Abbott, 388 A.2d 520, 522 (Me. 1978).

However, where such a plan, even when recorded, does not coincide with the monuments or the actual survey on which the plan is based, it is the settled practice to give effect to the monuments or survey rather than the plan. Susi v. Davis, 133 Me. 354, 360 (1935); Coleman v. Lord, 96 Me. 122, 196 (1902); Bean v. Bacalder, 78 Me. 184, 186 (1886); Esmond v. Tarbox, 7 Me. 61, 62 (1930). Therefore, without the interjection of the zoning review authority, monuments or the actual survey would control over a recorded plan.

The subdivision law does not indicate whether the plat or the monuments or surveys control when there is a conflict. In resolving this matter, we must look to the policies underlying the general rules governing the location of boundaries as well as the subdivision law. The purpose of the rules is to give effect to the intent of the parties and to utilize the most reliable indicia of the location of the boundaries. The purpose of the subdivision law is to assure that subdivisions are sound from an environmental and land use perspective, to protect purchasers from fraud, and to provide simplified records and descriptions of land. 4 Anderson, American Law of Zoning [2d ed.], § 23.03. If the effect is given to the recorded subdivision plat, the actual intent of the subdivider and purchaser might not be effected, and it may be extremely difficult to actually locate the lots. If effect is given to the markers, the location and size of the lots may not be as approved by the zoning review authority. This may constitute a clear violation of the subdivision law, but it does not resolve the problem of where the lot is actually located.

T. M. Stone, Secretary

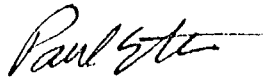
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Although the resolution of this problem is not entirely clear,^{1/} we do not believe that the Legislature intended the subdivision law to abolish the customary rule of construction, pursuant to which monuments and surveys control over plats.^{2/} We recognize that in applying that rule, there is the risk that the sizes and locations of the lots will not always conform to the plan. In those instances, however, the seller might be open to prosecution under the subdivision law, and the buyer might be able to void the transaction as a sale of land in a subdivision which has not been approved.

I hope this information is helpful. Please feel free to contact this office if you have any further questions.

Sincerely yours,



PAUL STERN
Assistant Attorney General

PS:njm

bcc: Steve Diamond

^{1/} We note that case law and legislative history are silent on this point.

^{2/} The requirement in the subdivision law that a permanent marker be set at the corner of each lot appears to reflect the Legislature's recognition of the role which monuments play in determining boundaries. This recognition suggests that the Legislature did not intend to alter the customary rules for making that determination.