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June 28, 2016

Via Electronic Mail

Christina Stacey
Zoning Specialist
City of Portland
Permitting and Inspections Department
389 Congress Street
City of Portland, ME 04101

Re: James and Katherine Luedke

Dear Christina:

While not intended to be a comprehensive response to the June 22, 2016 NOV issued to James and Katherine Luedke, I wanted to provide you and your team with some legal background that is relevant to the resolution proposed in my e-mail of June 23.

Factual Background

In December, 2015, the Luedkes hired a contractor to remove trees on a parcel they own on Great Diamond Island (the "Lot"). The contractor does a substantial amount of work on GDI and was recommended as the go to person for the work. The tree removal was done in connection with a single family home that the Luedkes intend to build on the Lot. A specific tree removal plan was submitted to the City as part of the permitting for the house, and that plan was provided to the contractor prior to commencement of his work. A copy of the plan is attached.

The Lot is within the shoreland zone, and between the Lot and the coastal bluff is an approximate 75-foot strip of land that is a paper street owned by the City (the "Buffer Area"). We have not done title work to confirm ownership but understand that the City believes it owns the Buffer Area. There are two monuments marking the boundary between the Lot and the Buffer Area.

The Luedkes provided their contractor with the tree removal plan and requested that he remove those trees, as well as dead trees and some brush located on the Lot. They did not ask him or direct him to do any work on land not owned by the Luedkes. Additionally, the Luedkes specifically requested that the contractor (i) comply with applicable laws, and (ii) not push debris over the edge of the coastal bluff.

Mr. Luedke's father, Ed Luedke, who lives on GDI but was away at the time of the clearing, returned, saw that material had been pushed over the edge of the bluff, and immediately stopped work on the site and directed the contractor to place any remaining debris on the edge of the road. Our understanding is that since that time, no more clearing has occurred. The City subsequently asked Mr. Luedke to stabilize the area, which he did immediately by installing silt fence along the seaward boundary of the Lot and placing hay over both the Lot and the Buffer Strip. The hay was well distributed and there is already some regrowth occurring.

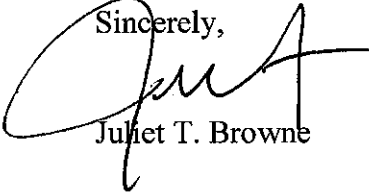
Legal Context

The Maine Law Court has specifically addressed the question of when a landowner may be liable for the acts of an independent contractor and, except for narrow circumstances not present here, held that the landowner is not liable for the wrongful acts of an independent contractor. In Stockly v. Doil, a case with remarkably relevant facts, Mrs. Doil hired a contractor to clear trees on her property in Falmouth. The contractor not only cleared trees on the Doil property, but cleared trees on the abutting land owned by the Stocklys. Because Mrs. Doil had not contracted to have trees on the abutting property removed and had not asked the contractor to do so, the Court held that she could not be held liable for his trespass. 870 A.2d 1208, 2005 ME 47, ¶¶ 10-21. The Court relied on Bonk v. McPherson, which recognizes that as a general rule, there is no vicarious liability upon the employer of an independent contractor, and that the "responsibility ordinarily rests upon the agent alone, and the principal is not liable for the torts he may commit." 605 A.2d 74, 78-79 (1992) (internal citations omitted).

Here, the Luedkes hired an experienced contractor and asked him to clear trees on their property pursuant to a specific plan that identified that trees should be cut. Additionally, the Luedkes' property was surveyed and had monuments in place delineating the boundary between their Lot and the City Buffer. The Luedkes specifically instructed their contractor to comply with applicable laws and not to place debris on the coastal bluff. Under these circumstances, we do not believe there is a legal basis for holding the Luedkes responsible for clearing that occurred in the Buffer Area. Nonetheless, the Luedkes are interested in working with the City to come to a fair and equitable resolution. Specifically, based on input from the City Arborist, Mohr & Seredin, professional landscape architects, has prepared a draft replanting plan for the Buffer Area that I will forward separately. The final plan will be submitted to the City for review and approval pursuant to direction from the City staff.

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We look forward to talking further with the City to resolve these issues. In the meantime, if you have any questions, please don't hesitate to contact me.

Sincerely,

Juliet T. Browne

Cc: James Luedke (via e-mail)

JTB/prf