



# PORTLAND MAINE

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*Lee Urban- Director of Planning and Development  
Marge Schmuckal, Zoning Administrator*

February 8, 2007

Richard Golden, Esq.  
Clifford & Golden, P.A.  
5 Maple Street, P.O. 368  
Lisbon Falls, ME 04252

RE: Property located at Seashore Avenue and Maple, Peaks Island, 85-O-1 & 39 and 85-O-36, 37 & 38 – IR-2 Zone with a Shoreland Zone Overlay

Dear Mr. Golden:

This letter is in response to your request for a zoning determination, dated October 24, 2007, as to whether a house lot and two abutting undeveloped lots owned as described further below merged by recording of a deed or remain legally separate lots and can be sold separately.

As background information, my understanding is that the house lot (120 Seashore Avenue, Peaks Island, 85-O-36, 37 and 38) was jointly owned by David and Jan Scoblionko, while the vacant lots (Peaks Island, 85-O-1 and 39) were owned solely by David Scoblionko. As part of the Scoblionko's divorce settlement, Jan was to convey her interest in the house to David after the vacant lots were sold, so that David would retain the house lot. Jan executed a deed for her half-interest in the house lot and instructed Attorney David A. Lourie to retain the deed until after sale of the vacant lot, but Attorney Lourie erroneously recorded the deed in the Cumberland County Registry of Deeds prior to sale of the vacant lots.

Ordinarily, consolidation of ownership of the house lot and abutting vacant lots in one owner, David Scoblionko, would operate under section 14-433 of the Portland Zoning Ordinance to merge the lots and render the vacant lots separately unbuildable. However, in this case, the intention of both Jan and David Scoblionko was not to consolidate ownership in the house lot until after the vacant lots were sold. This intention is evidenced both by the Scoblionko's divorce decree and a corrective deed filed immediately upon discovery of the erroneous recording of the prior deed from Jan to David for the house lot.

Under Maine law, "Legal delivery of a deed requires that the grantor transfer the deed to or for the benefit of the grantee with the intent to vest that title in the grantee." *Walter v. Grover*, 540 A.2d 120, 121 (ME 1988). Here, it is clear from the evidence that

Jan Scoblionko did not intend to vest title of her half interest in the house lot in David Scoblionko at the time the first deed was recorded. Consequently, the recorded corrective deed is the operative deed for this transaction.

I therefore determine that the house lot and abutting vacant lots remained in separate ownership at all times, and thus did not merge under the Portland Zoning Ordinance. The vacant lots therefore may be sold separately from the house lot.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: David A. Lourie, Esq.  
Jim Adolf  
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