



TOWN OF CORNWALL

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March 8, 2023

VIA E-MAIL

Benjamin W. Putnam, Esq.
Putnam & Menard, PLC
One Cross Street
Middlebury, Vermont 05753

Dear Mr. Putnam:

This letter will constitute my formal response to your request, made on behalf of your clients Randy and Mary Martin, as Trustees of the Randy Martin Joint Trust, that I provide certain written certifications concerning the status of the Martin Trust Property located at Route 74 in Cornwall, VT (parcel ID # 80347/ SPAN # 162-051-10345) ("Martin Trust Property" or "Property"). As the duly appointed Zoning Administrator for the Town of Cornwall, I have now had an opportunity to visit the property and review the existing public record located at the Cornwall Town Office. I have also sought the advice of Cornwall's counsel in connection with the interpretation of an Application For the Subdivision of Land that involves the Property and was signed by George Candido on December 5, 1988 and filed with the Cornwall Planning Commission by letter dated February 23, 1989.

To date, I have located or been provided with the following documents from which I have prepared the following chronology and upon which this response is based.

- 1) On 5/31/67, Maurice and Marilyn Prior conveyed the entirety of the Martin Trust Property to George and Alice Candido by Warranty Deed (B 21, P 399) describing seven parcels of land totaling 322 acres and reserving 2 acres of land situated in the northwest corner of "said farm".
- 2) In 1972, Cornwall adopted Zoning Regulations ("CZR") which prohibited "land or building development" without a zoning permit. The CZR was amended in 1973, 1974 and on March 3, 1987 (adding a definition of "land development" to include "the division of a parcel into two or more parcels. . . .")
- 3) On February 23, 1989, Thomas Lynch, Esq. submitted a cover letter to Cornwall enclosing an Application For Subdivision of Land to the Cornwall Planning Commission. ("PC"). The Application was signed by George Candido on December 5, 1988. The Application stated that "the [o]wners will be selling half of their farm [165 acres] which includes residence and outbuildings in 1989 and at closing will grant the Purchaser of that portion of the farm an option to purchase the balance at a fixed price. The option to have a term of 3 years." The Application clarified that the Purchaser (the Martins) planned to "continue to use both the property to be

purchased and the property that will be under option for agriculture purposes other than dairy farming due to the 'Buy-Out' Program" It is unclear what, if any, plat was submitted with the Application but see Exhibits A and B (attached) which are located in the Cornwall Zoning file pertaining to the Property.

- 4) On March 7, 1989, the Cornwall Subdivision Regulations ("CSR") were adopted which defined "subdivision" as the division of a parcel into 2 or more lots, with 3 or less lots constituting a "minor subdivision." Section 320(d) of the CSR required the applicant to submit "[a] complete survey of the boundaries of the subdivision parcel by a licensed surveyor with date, true north point and scale." The CSR also required that "[a]ll subdivisions must be recorded in the office of the Town Clerk within (90) days of the date of final plan approval or the approval expires." See CSR 240.1. See also Section 260 (Minor Subdivision Application and Procedures) and 24 V.S.A. § 4463(b) (approval expires after 180 days).
- 5) On March 15, 1989, the PC and Cornwall Selectman held a joint "meeting" at which the Candido Application was "presented." "The application and map was reviewed and it was agreed that conditional approval could be granted pending a survey of the property. The Secretary was asked to notify Mr. Candido of the decision and ask him to submit a survey to comply."
- 6) On March 28, 1989, the Candido's conveyed to Randy and Mary Martin by Warranty Deed "a PORTION of those lands and premises conveyed to Grantors. . . . The portion of said lands and premises herein conveyed consists of 165 acres . . . together with dwelling house, barns, silos and other outbuildings situated thereon." No survey is referenced or of record in connection with this conveyance.
- 7) On April 19, 1989, the PC held another "meeting" at which Mr. Candido expressed concern as to why he was asked to have a survey of his subdivision. The minutes also reflect that the Selectboard adopted the Subdivision Regulations "as of November 15, 1988" although the CSR references the "effective date" as being March 7, 1989; the date of CSR's adoption at a regular or special town meeting as per 24 V.S.A. § 4404.¹ The minutes then go on to state:

The Board felt that Mr. Candido's subdivision would be considered a Minor Subdivision and they also felt that if he could show a sketch of the property showing where the subdivision lines were to be that it would comply. The tax map at the Town office was reviewed and it was expressed that the property was subdivided because the parcel was not being sold all at one time. The Board understands that a contract is in effect with Mr. Randy Martin on one-half of the parcel and he will become owner of the second half in three years. It was also expressed that no further action can take place on the second half without approval of the Board. It was moved by John Derrick and seconded by Jon Woodbury, that the Board approve this subdivision. So voted.

The Secretary was asked to send a letter of approval to Mr. Candido after the approval of the letter by the Board.

¹ Cornwall's 1989 annual Town Meeting was held on March 7, 1989.

- 8) On May 3, 1989, the PC issued a letter to Mr. Candido as follows:

After meeting with you, the Board became aware of the conditions of the sale of your property to Randy Martin of Cornwall. You stated that Mr. Martin is under contract to purchase one-half of this property now and the other half within three years. Since only one buyer, Mr. Martin, is involved in the purchase of the total parcel, the Board voted its approval of your application with the following provisions. If, ultimately, Mr. Martin does not purchase the second half of your property and you subsequently contract to sell to another party, you must apply to the Board for further consideration under the subdivision regulations.

- 9) On March 31, 1992, the Candido's conveyed to Randy and Alice Martin by Warranty Deed "all [165 acres of] the remaining lands and premises . . . which were reserved and not conveyed" in the March 28, 1989 deed to the Martins. No survey is referenced or of record in connection with this conveyance.

- 10) On April 26, 2017, Randy and Mary Martin conveyed the Property by Warranty Deed in two parcels, to the Martin Trust with the intent of the parcels retaining their separate and distinct status as separate parcels of land.

Based solely on the above information, and the CZR, the CSR and the Municipal & Regional Planning Act as they existed as of March 7, 1989, I can certify that the Town of Cornwall is not currently pursuing any administrative or legal action to enforce its land development bylaws in connection with the Martin Trust Property. This certification is limited to its explicit terms: that the Town is not, as of the date indicated below, pursuing any enforcement actions on this Property.

Based on the above information, I have also formed an opinion that I am unable to determine whether the PC's decisions, as voted on March 15 and April 19, 1989 together with the letter of May 3, 1989 noting the ZBA's "approval of your application . . .," can be conclusively interpreted as granting a two-lot subdivision permit subject only to reapplication if "Martin does NOT purchase the second half of your property." On the one hand, these records do reasonably suggest that the PC approved of two separate parcel transfers into Martin conditioned **only** on their actual occurrence, which was completed on March 31, 1992, thereby effectively returning the two parcels into single ownership. In addition, the two parcels as separately conveyed were, and remain, in compliance with the use and dimensional requirements of the zoning districts in which the parcels are located which, I believe, limits the application of any common law or statutory merger of the parcels that might otherwise occur when abutting non-conforming parcels come into common ownership. See, e.g., Appeal of Weeks, 167 Vt. 551, 553, 712 A.2d 902, 908-909 (1998) and CZR § 405.

On the other hand, a reasonable argument can be put forward that the intent of the PC as framed in their 1989 approvals was that the Deed transfer, when coupled with an option to purchase the remainder, would effectively result in the return of the Property to its previous status as a single integrated parcel. There is also a reasonable argument that the PC's 1989 subdivision approval as noted in the minutes and letter of May 3, 1989 lapsed by operation of law after 90 days when a Plat was not recorded bearing the necessary signatures as required by CSR 240.1.

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Given these uncertainties, I am unable to affirmatively certify that the conveyed parcels retain their status as separate parcels as conclusive resolution of these issues would necessitate a final determination made in the context of a justiciable controversy. It is my opinion, however, that the facts as stated above and applicable law would not alone warrant the issuance of a notice of violation were the parcels to be conveyed into separate ownership given the ambiguities in the existing permits of record which were created, at least in part, by the PC in its initial review and decision of the 1989 permit applications. This opinion is, of course, subject to any contrary opinion that may be provided or issued by your counsel or a court or tribunal of competent jurisdiction in the course of an actual justiciable controversy.

Disclaimers

- 1) Nothing stated herein shall relieve an owner or buyer of real estate and their representatives and agents of the responsibility for making a thorough review of municipal records and independently determining whether there are any encumbrances on the subject property arising out of or relating to acquisition of all necessary and required zoning and other municipal approvals or with the laws of the State of Vermont. Nothing contained herein should be construed as an opinion or certification of marketability of the subject property or that the undersigned has conducted or undertaken a title search of the property for or on behalf of an owner or buyer of real estate or any insurer, mortgagor or assignee of the recipient.
- 2) Nothing herein shall preclude or prejudice the Town of Cornwall from taking any and all enforcement actions it deems appropriate against either the seller or buyer of real estate for a violation of the zoning bylaws, other municipal ordinances, bylaws, or regulations, or the laws of the State of Vermont.
- 3) This Certificate is issued based solely on the above-referenced information and is issued solely for informational purposes and is not provided to the requesting party or any third party in an advisory capacity or as professional advice upon which the recipient may rely in making land use decisions or determinations in connection with the Property in question. The recipient is hereby advised to seek the advice of independent counsel to determine the necessity or status of any land use permit needed for the recipient's current or future use of the Property.

Please feel free to contact me if I can be of further assistance.

Sincerely,

TOWN OF CORNWALL

By: /s/ James F. Carroll, Esq. for
Gary Barnett, Zoning Administrator