

Department of Environmental Conservation
Wastewater Management Division

Guidance Related to Old deeds, Leases, and ROW
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Question

Is there an implicit carry forward of lot boundaries in a deed that describes a transfer of land as being “all the same land and premises” when the land being transferred was acquired as two or more separately deeded parcels? An example would be if Jack Smith brought 20 acres of land and at a later date bought a contiguous parcel of 30 acres. Jack Smith then transfers the land to a new owner in a deed stating:

I transfer a certain piece of land to Robert Smith, described as follows:

All and the same land and premises as deeded to me by John Smith in a deed dated 1-1-1928 approximately 20 acres, and

all and the same land and premises as deeded to me by Steve Smith in a deed dated 1-2-1938 approximately 30 acres.

Robert Smith then transfers the land to Sally Smith in a deed stating:

I transfer a certain piece of land to Sally Smith, described as follows:

All and the same land and premises as deeded to me by Jack Smith in a deed dated 1-1-1950, approximately 50 acres. Reference is hereby made to above-mentioned deeds, to the references and descriptions therein, and to the land records of Anytown for further and more complete description of the premises hereby conveyed.

Background

1. In 1986 Gary Schultz issued a decision that all of the land in a deed was a single lot, even if described as two or more parcels. This decision affirmed a long-standing application of the rules. The only exception was that people could sell lots with the same boundaries with which they were acquired. A small number of

people acquired the parcels under separate deed and for one reason or another later listed them in one deed. This was sometimes done at the time of marriage in order to get both parties listed on the deeds. People who did this were allowed to later return to the boundaries with which they acquired the land. Once the land was transferred to a new owner in one deed the lots were merged.

During this period many attorneys objected to the automatic combination of lots and believed that as long as the deed described two or more parcels they should be considered separate and distinct pieces of land.

2. In 1996, Commissioner Brierley issued a procedure that explains a revision to the previous policy. The procedure tied the decision to the boundaries as described in a deed as of September 18, 1969. The procedure provided that the boundaries described in a deed in existence on September 18, 1969 would be definitive as to the lot boundaries related to subdivision of land subject to the rules. The procedure also made it clear that contiguous ownership did not merge these lots, even if the land was described in one deed as long as the description included the boundaries of the separate pieces of land.
3. At some point in the recent past, some one raised the issue of whether in fact simple referencing of old deeds was the same as including the boundary descriptions in the new deeds. The argument is that while attorneys never (seldom) carry forward the old descriptions because of the fear of creating mistakes in the deed, they consciously intended to keep the lots separate. This is not convincing because this concept was not raised in 1996, at least not in any official way that resulted in decision by the Department.
4. The definition of lot in the rules is: “Lot – means a tract or portion of land with defined boundaries created by an act of subdivision. A deed may describe one or more lots. Multiple lots described in a single deed remain separate lots provided that they are described as having separate and distinct boundaries and that any subsequent deed describing the lots does not eliminate the separate and distinct boundaries.”

Answer

The decision would seem to rest on whether the deed in effect on September 18, 1969 described two or more parcels. Thus, the important word is “describe”. Black’s Law Dictionary (sixth edition) defines the word:

“To narrate, express, explain, set forth, relate, recount, narrate, depict, delineate, portray; sketch. Of land, to give the metes and bounds.”

It is reasonable to think that in order to describe two or more parcels, the deed must state that there are two or more parcels and provide the metes and bounds. That demonstrates an intention to keep them as separate and distinct parcels. A deed that was

in effect on September 18, 1969 that stated that there were two or more parcels, with the metes and bounds for each being as described in some specifically referenced earlier deed for each parcel, will be considered as defining two or more separate lots.

Decision

The deed in effect on September 18, 1969 must be examined. If the deed has a specific reference to two or more parcels of land, the metes and bounds of which can be determined, each parcel shall be considered to be a pre-existing lot at that time. While the deed must specifically reference two or more parcels, the actual metes and bounds description may be contained in a separate document. If, after September 18, 1969 the land has been transferred in a single deed, the pre-existing status is maintained as long as the new deed continues to refer to more than one parcel of land. If the all of the land is transferred to a new owner without a reference that more than one piece of land is being transferred, the land in the new deed shall be considered as merged for the purposes of these rules.

A landowner who acquired separate lots of land in either separate deeds or described as separate lots in a single deed, can always transfer the separate lots with the boundaries with which they were acquired. If during the period of ownership, the land was re-described as a single piece of land, such as might happen upon marriage or civil union, or the creation of a trust that does not transfer the ownership of the property, the owner may still transfer the separate lots as described when acquired. Once the ownership transfers, the new deed will be determinative.

The concepts noted above would also apply to existing exempt lots created after September 18, 1969 that did not require state subdivision approval, such as 10-acre lots, homestead exemptions, and the first two lots created prior to March 5, 1973.

Leases

Any lease in effect on September 18, 1969 created at least two lots, the leased land and the remaining land. These lots shall be considered as separate lots, as long as no subsequent action would clearly reconfigure the lots or recombine the lots. Therefore as long as the current owner at some point leased the land as described in the 1969 lease they have separate lots, even if the lease has expired in the meantime. If the property has been transferred while the lease was in effect the lots would continue to exist. If the property has been transferred during a time when the lease was expired, the lot has ceased to exist, unless specifically referenced as a separate lot in the new deed. Leases first created on or after September 18, 1969 also created at least two lots. Lots created by lease are subject to the same requirements as lots created by any other action and may be lots created in compliance with the rules, lots created in violation but subject to the amnesty exemption, or created in violation and not subject to the amnesty provisions. Lots created in violation that are not subject to amnesty are not considered to be separate lots unless and until they are brought into compliance with the rules. Any violation for

improvements other than those related to one single-family residence on the lot is not subject to the amnesty.

State or Municipal Right of Way

Subdivision is deemed to have occurred when a lot is divided by a state or municipal ROW. If a state or municipal ROW that was in existence on or after September 18, 1969 has been discontinued or abandoned, the pieces of land that were separated by the ROW shall continue to be considered separate pieces of land unless there is or has been a specific action taken with the intent that the separate pieces be combined into a single lot. If the all of the land is transferred to a new owner without a reference that more than one piece of land is being transferred, the land in the new deed shall be considered as merged for the purposes of these rules.