

## ATTORNEY QUESTION

### DEFINITION OF “PARCEL OF LAND” In the PRIVATE WAYS STATUTE

May 16, 2022

The Private Ways Statute, 23 M. R. S. §3101, subparagraph 4. Voting, begins, “Each parcel of land...represents one vote under this section; ...” The MARA Forum has received multiple questions on how to balance voting power and assessment share with lot ownership. The definition of a parcel is critical because it may determine the number of votes per owner and each owner’s share of the annual assessment.

Cliff Goodall is quoted below in a recorded presentation at a MARA Conference in 2014 available on our Resources Page. The first 10 minute were transcribed and are attached as context for what follows. (Attachment #1)

**GOODALL: “Parcel of land is defined nowhere in this statute. That causes a lot of anguish with people. ...**

**(min 3:25) A parcel that constitutes the operative ownership piece for this statute is something that can be defined by each Road Association. ...”**

**(min 10:20) Tax map lots are not necessarily parcels for the purpose of this statute.”**

It would be much easier if all statutory road associations could use the definition, “Each lot is a parcel”. Unfortunately, that definition doesn’t always work well. Owners of multiple lots, for instance, get multiple votes throwing off the balance needed for a “fair and equitable” majority vote. The flexibility offered by allowing each road association to arrive at its own fair and equitable definition of a parcel would seem to work well if compatible with the Statute.

**QUESTION: According to the Private Ways Statute, may each road association define a “parcel of land” to meet the needs of its members?**

**ANSWER:**

**Attorney Mary Denison:** I honestly don’t think there is anything I would say that in any way contradicts Cliff Goodall’s remarks from 2014. Nothing in the law has changed that would require any clarification or revision. A “parcel of land” can be defined by the owners in the Statutory Road Association. As long as the definition is reasonable and applied consistently and fairly, the courts should respect it if challenged.

## Attachment #1

### **Cliff Goodall on defining “Parcel of Land” in the Maine Private Ways Statute, MARA Conference 2014 recorded and available on the MARA Resources Page. Transcribed August 22, 2021 by Andrew L. Allen**

“I have worked with a lot of road associations --down in Washington County and everywhere in between. I think it's 18 that I counted up and I'm sure I forgot some. So I've had the privilege of working with a lot of people setting up Road associations and therefore am somewhat aware of the plans, issues and controversies, which inevitably come up.

Having that in mind and that experience, just before I retired and my son happened to be the majority leader of the state senate a year ago, I took the road Association private way statute and, one night, wrote a whole bunch of amendments for it which then became just like a legislative document and passed as written.

So, at some point, if you have questions about the statutory changes that occurred in the law, I would be happy to discuss them during a question-and-answer period if I didn't touch on them in my presentation. For a better or a worse there, I take parental credit for this awesome prank and since then ... that was my swan song. So, I have worked with very few road associations since then but I have heard good feedback.

The biggest controversy for any road Association that has been set up or is being set up is:

Who are the owners who get the assessment? How do you figure out the membership? And if we could look at in the Statute and we'll have it here on the screen. Section, 3101 should be on the first page. (Okay, I'm going to get it. -Betsy)

The number one is “Definition” and number two is “Call of meeting”. I want to look at number two.

(min 2:48) And the key word is right here, “...parcels of land benefited by a private way.”

Parcel of land is nowhere in this statute, defined; that causes a lot of anguish with people.

(A parcel) is not a lot; it is not necessarily A taxable lot, which the tax assessors tax, but it is... and I will show you how to do that in a minute...

(min 3:25) A parcel that constitutes the operative ownership piece for this statute is something that can be defined by each Road Association. It's not in the statute.

The first mistake a lot of people make is well... We're in a subdivision, there is a recorded subdivision plan. Therefore, each subdivision lot should be a parcel. If it's a very recent subdivision it meets all the minimum lot size standards and you get the setbacks, that may be a viable alternative for how you define what is the parcel. But

there are many subdivisions in Maine that go back to the 1920s, in which there are multiple lots, on lakes, on the shorelands, and on coastal islands. And all these lots are laid out, 50 feet of shore frontage and a hundred feet depth back to the road. So, they're not buildable, and frequently, they are sold as groups. And in the deed itself. It will say parcel. 1, 2, 3, 4, 5 as shown on X Subdivision plan recorded in the register.

If a deed identifies something as a parcel, it's of no relevance to this statute. Since this statute has no definition of what is a parcel, you can't look anywhere else for a definition. You can't go to the subdivision statute and say, "Oh, a 'parcel' means a 'lot'." You can't say because the subdivision lot plan has the number on it, that must be a parcel for this, and that's who we're going to hit the assessment on. You don't have to do it that way and you may not necessarily want to do it that way.

(min 5:35) So, this statute is "wonderfully vague". Some people may say, "Oh, he's a lawyer, it's a lawyers dream." It does give a lot of flexibility as to how you go about defining what is a parcel. So, for each road association, you need to determine what is a parcel.

Tax maps may or may not be helpful because tax maps and sometimes, the assessors will tax separately, each lot identified on a subdivision plan even though they're not built and there are owned by the abutting properties, are all owned by the same person. There are some towns where they have taken the ownership clusters and made them into one taxable lot. If you're in town where that's happened, you may want to use that as a definition of what is a parcel. But if you have, let's say, two subdivision lots on the shore, lots numbers 8 & 9 in a subdivision, and they have 200 feet of Frontage. They have 60,000 square feet. Each nice big lots. They have Road access. Are they two parcels or are they one parcel? Well, if one of those lots, lot eight, has a structure on it, a dwelling, and lot nine does not. You could say if you chose to set up your bylaws... and I'll go over that in a minute. You could say that those are two parcels: one used as a residential purpose, and one, as an empty lot buildable lot owned by the same people.

What if the people who build the house, put it right in the middle of the two lots and the house straddles, the lot lines? Is that still two parcels? Or is it one parcel?

So, one of the things you need to do is determine is how you're going to define parcels and you can do it by ownership and you can do it by clusters of abutting lots, or you could do it by lots that are used currently for dwelling purposes and you can make distinctions when you start putting together your definition of a parcel between developed lots, that have a residence on it, empty buildable lots that are benefited by the road. Obviously, they get a benefit even though they're empty.

You could also make a distinction, and this is where you may start getting controversial, of whether it has a year-round residence or a seasonal residence, so those are different parcels. They can be different types of parcels, or you can also have a definition for your road association of parcels based on location ---shore lots and back lots.

And that all leads eventually to a different type of assessment. But defining, what is a lot is not easy for many road associations. If you're in a brand-new subdivision then it's probably alright to just take the subdivision map, and unless this one of these houses is straddling, you may call each lot a parcel.

Now.

(min 10:20) Let me just recap, a subdivision lot is not necessarily a parcel. Tax map lots are not necessarily parcels for the purpose of this statute. Deed descriptions, which frequently describe Parcels as parcel one, parcel two, parcel three are not necessarily parcels for road associations.”

**ALA ended listening and transcribing here!**