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STATE OF NEW YORK
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233

December 1, 1989

John P. Mahon, Esq.
Mahon, Mahon & Mahon
1600 Stewart Avenue
Westbury, NY 11590

Re: Application of Charles Ponella
10-88-1632 10-88-1751
Declaratory Ruling Request 15-08

Dear Mr. Mahon:

On June 5, 1989 you submitted a declaratory ruling request on behalf of your client, Charles W. Ponella. The request involves two parcels of land in the Town of Smithtown located within a designated recreational river area. The two 40-by-100 foot parcels front on different streets but share a common rear boundary. You have requested a ruling that each of the back-to-back lots constitutes singly and separately owned property for purposes of the Wild, Scenic and Recreational Rivers System regulations, 6 NYCRR Part 666.

The principles governing interpretation of the Rivers System regulations are clearly set forth in Environmental Conservation Law ("ECL") Article 15, Title 27:

Improvident development and use of these rivers and their immediate environs will deprive [the people] of the benefit and enjoyment of these unique and valuable resources.

It is ... the policy of this state that certain selected rivers of the state..., with their immediate environs, shall be preserved [and] protected.... ECL §15-2701(3), (emphasis added).

More particularly, the statute provides that the Rivers System regulations which the Commissioner must promulgate shall insure "the management, protection, and enhancement of and control of land use and development in the [designated] river areas." ECL §15-2709(1). As further guidance, to the Commissioner in administering the Rivers System program, the legislation mandated that "primary emphasis shall be given to protecting ecological, recreational, aesthetic, botanical,

scenic, geological, fish and wildlife, historical, cultural, archaeological and scientific features of the [designated] area." Id.

Implementation of the legislative policy has been achieved through promulgation of 6 NYCRR Part 666, which became effective on March 26, 1986. The key provision of the regulations in the instant case is as follows: "All contiguous parcels held in actual or effective common ownership on the date upon which this Part first takes effect in a given river area shall be deemed a single lot." 6 NYCRR §666.9(e). The intent of that section is clear: all contiguous parcels in common ownership constitute a single lot. There is nothing shown to indicate an intent other than that the words are being used in their usual and ordinary sense. Similarly, there is nothing shown to indicate an intent to allow any exceptions, either for common rear boundaries or otherwise. The plain meaning of the regulatory provision, together with the rigorous legislative policy noted above, require that the provision in question be literally construed and that no exceptions are authorized. McKinney's Statutes §114; In re Di Brizzi, 303 N.Y. 206 (1951); Bradley v. Buffalo, 34 N.Y. 427 (1865).

Based upon the foregoing, the two parcels, which were held in common ownership prior to promulgation of Part 666 and which were acquired by your client subsequently thereto, must be considered a single lot. Given the size of this single lot, 200' x 40', a variance from the provisions of either 6 NYCRR §666.9 or §666.25 would have to be obtained in order to construct two or more principal buildings thereon. Provisions governing variances are set forth in 6 NYCRR §666.12, should your client seek to avail himself of that avenue of recourse.

Sincerely,



Marc S. Gerstman
Deputy Commissioner and
General Counsel