STATE OF MAINE PENOBSCOT, SS.	SUPERIOR COURT
JOHN WILSON, et al., Plaintiffs,	FILED & ENTERED CKet No. AP-04-6 SUPERIOR COURT
	OCT 1 9 2004
	PENOBSCOT COUNTY
v.) <u>DECISION AND JUDGMENT</u>
LAND USE REGULATORY COMMISSION, et al., Defendants.	ý)))

The Plaintiffs commenced parallel actions seeking, *inter alia*, judicial review of an administrative decision, declaratory judgment, and equitable relief. On April 27, 2004, this court granted a stay of all proceedings to allow the parties to submit the declaratory and equitable issues to the court for disposition.

The Plaintiffs Myers and Zentgraf move for summary judgment on Counts III, IV, V, VII, VIII, IX, X, XIII, XIV,XV and XVI. Plaintiffs did not initially file a statement of material fact as required by Rule 56. Instead, they filed a document styled as "Request for Judicial Notice, Statement of Material Facts, and Affidavit of Ted Kurtz." Regardless of the state of compliance with the rule, the parties seem to be in agreement with the facts and the court will accept all parties' submissions – motions to allow such are hereby granted.

Although the parties have advanced numerous arguments and theories regarding the three rights of way which appear to service the Walsh property, the court is satisfied that a commercial use upon the Walsh property does not *ipso facto* render the use of an easement which accesses the property a commercial use. This decision is fact-driven, and the court concludes that the circumstances presented herein do not justify a conclusion that the easement(s) are commercial in nature. The facts suggest that the access roads are simply access roads and their use to travel to the sporting camp on the Walsh property does not overburden the easement(s). Although this conclusion resolves many of the principal issues raised in this matter, the court also rules as follows:

Counts II¹ and III – the easements over Lot 13 are not subject to the Declaration of Restrictions imposed by the Sysladobsis Realty Trust.

¹ Although the motion for summary judgment did not specifically invoke this count, judgment is nonetheless entered as noted herein.

Count IV – The right of way over lots other than Lot 13 was not extinguished by later deeds or conveyances.

Count V – The Zentgraf property is not burdened with any easement for access to southerly properties.

Count VII – The easement across Lot 13 is not subject to use restrictions beyond ordinary pedestrian and vehicular travel.

Count VII(I) - The easement across lots other than Lot 13 is not subject to use restrictions beyond ordinary pedestrian and vehicular travel.

Count IX – No easement exists across the Zentgraf property.

Count X – The court declines to order injunctive relief.

Count XIII - The court declines to order injunctive relief.

Count XIV - The court declines to order injunctive relief.

Count XV - The court declines to order injunctive relief.

Count XVI - The court awards costs to the Defendants.

The court declines to order injunctive relief or further declaratory relief on counts XI or VI, respectively.

The docket shall reflect that summary judgment is granted in favor of Defendants Deschaine and Walsh on all counts enumerated above.

The Plaintiff shall file the record on the 80C action (Count I) within 60 days. Petitioner's Brief shall be due 30 days thereafter. Respondents shall then have 30 days to file responsive briefs. Finally Petitioner shall have 10 days thereafter for a reply brief.

The Clerk may incorporate this Order upon the docket by reference.

Dated: October 18, 2004

Andrew M. Mead

JUSTI¢E, MAINE SUPERIOR COURT

County

Action RULE 80C APPEAL (TITLE TO REAL ESTATE IS INVOLVED) ASSIGNED TO JUSTICE ANDREW M. MEAD

SUE ELLEN P MAY 7, 1997 DOUGLAS M. I CO-TRUSTEES	, AND DOUGLAS M. MYERS, and . MYERS, CO-TRUSTEES U/A/D , PETITIONERS, VS MYERS, and SUE ELLEN P. MYERS, U/A/D MAY 7, 1997, and JOHN K. nd JEANETTE M. ZENTGRAF, VS.	MICHAEL W. DESCHENES, AND JOSEPH P. WA AND ELIZABETH R. WALSH,
P O BOX 917 BANGOR, ME BY: EDWARD O FOR: PETIT	Y MOGUL P.A. 04402-0917 GOULD, ESQ. IONERS/PLAINTIFFS JOHN R. WILSON,	Defendant's Attorney FARRELL, ROSENBLATT & RUSSELL P O BOX 738, BANGOR ME 04402-0738 BY: ROGER L. HUBER ESQ FOR: DEFENDANTS JOSEPH P. WALSH AND ELIZABETH R. WALSH
KURTZ & PER	MYERS, AND SUE ELLEN P. MYERS RY, P O BOX J, SOUTH PARIS, ME 04281 RE H. KURTZ, ESQ. FOR: PLAINTIFFS DOUGLAS M. MYERS, AND SUE ELLEN MYERS, AND JOHN K. ZENTGRAF, AND JEANETTE M. ZENTGRA	FOR: MICHAEL DESCHENES
3/12/04	Petition for Review of Final Age filed by Petitioners.	ncy Action Pursuant to ME.R.Civ.P. 80C
3/12/04	Complaint for Injunctive Relief (Titile to Real Estate Involved)	and Declaratory Judgment filed by Plaintif
3/15/04	Notice of Assigned Justice filed. Pursuant to Administrative Order, Sing Justice Assignment of Civil Cases, Docket No. SJC-323, the above reference case is specially assigned to Justice Andrew M. Mead. /s/ Margaret Gardne Clerk. Copy forwarded to Petitioners and Plaintiffs' Attorneys.	
3/17/04	Entry of Appearance by Roger L. and Elizabeth R. Walsh filed.	Huber, Esq. as to Defendants Joseph P. Wal
3/19/04	Acknowledgement of Receipt of Co Defendants Joseph P. and Elizabe	mplaint by Roger L. Huber, Esq. on behalf th R. Walsh filed. (Undated)
3/22/04	Notice of Assigned Justice forwarded to Roger L. Huber, Esq., attorney for Defendants Joseph P. Walsh and Elizabeth R. Walsh.	
3/25/04	Officer's Return of Service filed as to Michael Deschenes. (s.d. 3/18/04)	
4/5/04	Defendants Joseph P. Walsh and E for filing Answer filed.	lizabeth R. Walsh's Motion to Extend Deadl
4/7/04	Deefendant Michael W. Deschenes' M	otion to Extend Deadline for Filing Answer
4/14/04	Motion to Specify Future Course	of Proceedings filed by Petitioners.
4/15/04	Order on Defendant Michael W. De for filing Answer is hereby Gran to attorneys of record.	schenes' Motion to Extend Deadline (30 day ted. (Mead, J.) Copy forwarded