



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

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September 11, 2015

Peter Jederlinic
Jessica Rockwell
19 Woodland Way
New Gloucester, ME 04260

Subject: ADVISORY RULING AR 15-03, Lot #12-9 on Map 01, Toothaker Island, Rangeley
Plantation, Franklin County

Dear Mr. Jederlinic and Ms. Rockwell;

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on a proposed division of your parcel located in Rangeley Plantation, Franklin County. A survey map prepared by land surveyor Bertrand Lambert in 2006 that was included with your Advisory Ruling request shows the configuration of your lot, including a 1.321 acre parcel that was transferred to an abutter in 2007, and the two lots you now propose to create from your parcel which are the subject of this Advisory Ruling. I have included an annotated copy of this map for reference.

We will attempt to provide our view on your proposed lot divisions as we understand them, pursuant to 5 M.R.S.A. 9001. I want to caution you however, this is an informal response and not a legal determination. You may want to consult your attorney on this matter. In providing our views on these matters, we have relied upon the facts as you have presented them to us, supplemented by information in the Commission's files, and records available through the Franklin County Registry of Deeds and Maine Revenue Services.

1. **Background.** Based on the Commission's records, at some time prior to 1977, it appears that the portion of Toothaker Island located in Rangeley Plt. was divided into up to 14 lots, several of which were 40 acres or more in size. It is not clear if the original lots were created prior to the inception of the Commission in 1972, or if after 1972 if these original lots were created as a large lot land division for which a plat was submitted to the Commission. In 1977, Lot #12-9 was 20.1 acres in size and remained generally in that configuration until the transfer of 1.321 acres to abutter David Ahearn in 2007. Circa 1978 to 1984, several of the existing lots on Toothaker Island were divided and large lot land division plats were recorded

with Commission¹, but none of these involved Lot #12-9. In 1985, applications for Zoning Petition ZP 371 and Subdivision Permit SP 3143 were submitted to the Commission for divisions of several of the lots², including Lot #12-9, but ZP 371 was withdrawn and no action was taken on SP 3143. Also, three Advisory Ruling requests filed with the Commission asked about divisions of several of the parcels, but not Lot #12-9³. The records available to the Commission suggest that divisions of Lots #12-4 and #12-7 may have also occurred, but again those divisions did not involve Lot #12-9. In 1986, Building Permit BP 5367 was issued to Peter and Mary DeFlumeri, who were the owners of Lot #12-9 at that time⁴.

2. **Proposal.** In your Advisory Ruling request, you stated that you would like to form two new lots, each being approximately 3 to 3.3 acres in size and having 200 feet of shore frontage, and to either sell or trade one of the two lots with an abutting neighbor. You asked if the creation of the two new lots would create a subdivision requiring subdivision review by the Commission and, if so, you stated you would be willing to only create one new lot instead.
3. **Land Division History, Lot #12-9.** Based on the information you provided with your Advisory Ruling request and other records available to the Commission, the following transfers by sale or lease have affected your parcel, Lot #12-9, since 1977:

A. *Prior to 1995 (more than 20 years ago).*

- (1) *January 2, 1986.* In 1986, Peter and Mary DeFlumeri purchased Lot #12-9, which was the southern ½ of a 40 acre parcel owned by Mathes Associates, Inc. The 40 acre parcel had previously been transferred to Mathes Associates by S.C Noyes in 1977.
- (2) *March 13, 1987.* In 1987, two land transactions between abutting landowners Donald and Anne-Marie McCormack and Peter and Mary DeFlumeri occurred, establishing a parcel boundary line. The parcel owned by the McCormacks was the northern ½ of the 40 acre parcel previously owned by Mathes Associates. However, the lots affected (Lots #12-9 and #12-14) now appear to still be in approximately the same configuration as they were at that time.
- (3) *January 2, 1990.* In 1990, Peter and Mary DeFlumeri sold Lot #12-9 in its entirety (20.1 acres) to William M. Gannon.

B. *January 2, 2007.* In 2007, a 1.321 acre portion on the northwesterly side of Lot #12-9 was transferred by owner William Gannon to abutting property owner, David R. Ahearn, et ux. Prior to the transfer the parcel was 20.1 acres in size. After the transfer the lot was approximately 18.8 acres in size.

C. *October 24, 2014.* In 2014, William M. Gannon sold the 18.8 acre parcel to the current owners, Peter Jederlinic and Jessica Rockwell.

¹ Reference LDP 290, Lot #12-11; LDP 291, Lot #12-10; LDP 294, Lot #12-3; LDP 299, Lots #12-5 and #12-6; LDP 306, Lots #12-7 and #12-8; and LDP 314, Lot #12-2.

² Lots #12-2, #12-3, #12-4, #12-5, #12-6, #12-7, #12-9, #12-13, and #12-14.

³ Reference AR 87-238, Lot #12-3 or #12-3A; AR 90-263, Lot #12-8; and AR 11-25, Lot #12-3.

⁴ Amendments A to D of BP 5367 were issued to William Gannon in 1991 through 1996. Amendment D resolved Enforcement Case EC 96-202.

3. Review Criteria.

- A. Pursuant to Section 10.25,Q,1,a of the Commission's Chapter 10 standards pertaining to *Counting Parcels, Lots, or Dwelling Units Under the Definition of Subdivision*:
"Lots Created by Dividing a Parcel. When a parcel is divided, the land retained by the person dividing land is always counted in determining the number of lots created unless the lot retained qualifies for any of the exemptions listed in Section 10.25,Q,1,g below."
- B. Pursuant to Section 10.25,Q,1,f of the Commission's Chapter 10 standards, "For the purposes of the definition of subdivision in 12 M.R.S.A. §682(2) and in these rules, an 'existing parcel' shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership."
- D. Pursuant to Sections 10.25,Q,1,g,(2), (3), (4) and (8) of the Commission's Chapter 10 standards, "The following divisions are exempt when counting lots for purposes of subdivision, unless the intent of such transfer is to avoid the objectives of 12 M.R.S.A. Chapter 206-A. Future divisions of such exempted lots are not exempt unless one of the exemptions in 10.25,Q,1,g,(1) - (8) is again met for that division:"
- (2) "**Retained Lots.** A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
- (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3) below; and
 - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.
- Only one retained lot exempt under this Section 10.25,Q,1,g,(2) may be created from any one existing parcel."
- (3) "**Transfers to an Abutter and Contiguous Lots.** A lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the abutter's contiguous property is maintained as a single merged parcel of land for a period of 5 years. Where a lot is transferred to an abutter, or two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for:
- (a) lots that are part of a subdivision approved by the Commission;
 - (b) a land division certified by the Commission as qualifying under 12 M.R.S.A. §682-B; or
 - (c) as provided in Section 10.11.
- If the property exempted under this paragraph is transferred within 5 years to another person without all of the merged land, or without satisfying either subparagraph (a), (b), or (c) above, then the previously exempt division creates a lot or lots for purposes of Section 10.25,Q."
- (4) "**Divisions by Inheritance, Court Order, or Gifts.** Divisions of land accomplished solely by inheritance, or by court order, to a person related to the donor by blood, marriage, or adoption are not counted as lots for the purposes of this subsection. A

division of land accomplished by bona fide gift, without any consideration paid or received, to a spouse, parent, grandparent, child, grandchild or sibling of the donor of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division. 12 M.R.S.A. §682-B(1)”

- (8) **“Unauthorized Subdivision Lots in Existence For at Least 20 Years.** A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
- (a) Approval of the subdivision under 12 M.R.S.A §685-B was denied by the Commission and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S.A. §685-B and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - (c) The Commission has filed a notice of violation of 12 M.R.S.A. §685-B with respect to the subdivision in the appropriate registry of deeds; or
 - (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S.A §682-B(5)”

4. Interpretation.

- A. Based on the information and materials you supplied, records from the Franklin County Registry of Deeds and Maine Revenue Services, and other Commission records, no land divisions affecting your Lot #12-9 requiring subdivision approval from the Commission occurred during the preceding 20 years. The only land division occurring during this period involved the transfer of a 1.321 acre portion of your lot in 2007 to the owner of abutting Lot #12-8B.
- B. In accordance with the provisions of Section 10.25,Q,1,f of the Commission’s Chapter 10 standards, this analysis and interpretation considers Lot #12-9 on Toothaker Island in Rangeley Plantation as the parent parcel for the purpose of this advisory ruling addressing the proposed land transfers. Lot #12-9 was created prior to 1995.
- C. To provide the answers to your questions, we first determined the current status of the parent parcel using the information in the Background and Land Division History (*see* Sections 1 and 3, above). In accordance with Section 10.25,Q,1,g(8) of the Commission’s standards, any land transfers from the parent parcel were traced back more than 20 years from the present time to determine whether more than two non-exempt lots had been created within any 5-year period, as defined by the Commission’s statutes and rules. Please note that any other non-exempt divisions not listed and accounted for in the Land Division History might alter this advisory ruling.

- D. The creation of two new lots approximately 3 to 3.3 acres in size would cause a total of three lots to be created from Lot #12-9 because your retained lot, which would be roughly 12.2 to 12.8 acres in size, is treated as one lot. Because your lot is currently developed with a residence, it cannot be treated as exempt under Section 10.25,Q,1,g,(2). If you transfer either or both of the two new lots to an abutter, then those could be treated as exempt under Section 10.25,Q,1,g,(3) as long as the lot(s) transferred to an abutter is merged with the abutter's lot and maintained as a single parcel for at least 5 years.

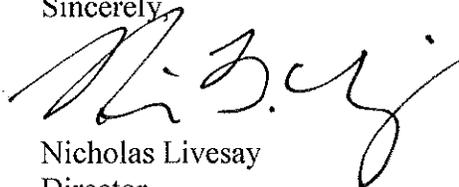
To summarize, if none of the three lots created by the land divisions you propose can be treated as exempt, then a rezoning and subdivision permit from the Commission would be required. If one or two of the lots could be treated as exempt, then neither a rezoning nor a subdivision permit would be required. Any lot formed must have at least 200 feet of shore frontage and be at least 40,000 square feet in size in order for it to be used for a residence.

5. **Other Considerations.** In 2000, the Commission adopted the Prospective Zoning Plan for the Rangeley Lakes Region (*see* Appendix D to the Commission's Comprehensive Land Use Plan), which requires that any land being rezoned in 10 townships surrounding the Town of Rangeley, including Rangeley Plantation, meet the rezoning criteria in Section 10.08,C of the Commission's Land Use Districts and Standards, in addition to Sections 10.08 A and B. If you plan to apply for a rezoning of your parcel, please contact the Commission staff in the West Farmington office to obtain the application forms and guidance regarding the rezoning criteria.

This interpretation is based upon the Commission's current statutes and standards. The status of the proposed land divisions may change in the future should relevant statutes and/or standards be amended. Also please be aware that any land division activities other than those identified in your request and discussed in this advisory ruling could alter the analysis and conclusions presented in this ruling. Please contact the Commission if you plan any changes.

Should you have any further questions, please contact Marcia Spencer Famous at our Augusta Office at (207) 287-4933, or Brian at (207) 670-7492.

Sincerely,



Nicholas Livesay
Director

Attachment: Figure showing lot #12-9 and proposed lots
xc: Geo File, Rangeley Plantation, Franklin County
AR 15-3 file
cc: Brian Barrett, LUPC W. Farmington office
Jean Flannery, LUPC Permitting Manager
Marcia Spencer Famous, LUPC Senior Planner

