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STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

November 21, 2018

Harold Lantz
PO Box 5413
Oquossoc, ME 04964

RE: ADVISORY RULING AR 18-09
Rangeley Plantation, Franklin County

Dear Mr. Lantz:

On October 19, 2018, the Land Use Planning Commission (“the Commission”) received your request for an advisory ruling pursuant to the *Maine Administrative Procedures Act*, 5 M.R.S. § 9001 and the Commission’s Chapter 4 *Rules of Practice*. You have requested an advisory ruling seeking a special exception to the subdivision rules regarding the proposed transfers of land by gift to Jennifer Desrosiers and Jessica Peters. This advisory ruling is based on the facts presented to the Commission staff and research conducted by staff, including a review of records available through the Franklin County Registry of Deeds and Rangeley Plantation. Pursuant to Chapter 4, section 4.02(2), this advisory ruling shall not be binding on the Commission but shall be subject to the provisions of 5 M.R.S.A. § 9001(3).

There are two prongs to the analysis of your advisory ruling request. The first involves analyzing the laws and rules pertaining to the gifting of lots in the context of subdivision. The second involves a review of the land division history to understand how the parcels you currently own may be further divided, regardless to whom they are granted.

Subdivision statute and rule review

Subdivision means:

Except as provided in section 682-B, “subdivision” means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing. The term “subdivision” also includes the division, placement or construction of a structure or structures on a tract or parcel



of land resulting in 3 or more dwelling units within a 5-year period.

12 M.R.S. § 682(2-A); *see also* Chapter 10, *Land Use Districts and Standards* (01-672 C.M.R. 10), Ch. 10.02(207) (restating the statutory definition of subdivision).

The phrase “2-in-5” is commonly used in reference to the subdivision law. While the creation of three or more lots within a five-year period creates a subdivision, triggering the need for subdivision review; the creation of two lots in a five-year period – 2-in-5 – does not create a subdivision. As a result, lots may be created on a 2-in-5 basis without the need for subdivision review by the Commission.

Exceptions for gifting land to relatives is addressed in statute. “A division of land accomplished by gift 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. § 682-B(1).

Chapter 10, section 10.2g,1,g,4 further addresses 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).

Retained lot exception:

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.

Chapter 10, section 10.25,Q,1,g,(3).

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. Chapter 10, section 10.25,Q,1,g,3.

Land division history

The Commission staff's research indicates that you currently own, or within the last 20 years have owned, the following lots: #10.A, #10.2, #15-#18, #28-#32, and #34 on Rangeley Plantation Tax Map 17; and Lot #1.1 on Rangeley Plantation Tax Map 3. The tax lots are shown on the enclosed excerpt of Rangeley Plantation's tax maps.

On November 7, 2008, you acquired tax lots #17-15, #17-16, #17-17, #17-18, #17-28 and #17-29 (9.22 acres in aggregate) from Evelyn Fortner and Alice Lantz¹. These six lots, once under your common ownership, were considered merged for regulatory purposes. This is considered the "parent parcel" for purposes of this analysis.

Tax lot #17-17 on the parent parcel is developed with a residential dwelling². The other five lots making up the parent parcel are not developed.

On October 31, 2016, you transferred a 1.2-acre lot (tax lots #17-15 and #17-18) from the parent parcel to Deborah Luopa ("the Luopa lot")³. With the transfer of the Luopa lot, a total of three lots were created: 1) the Luopa lot; 2) your retained, merged tax lots #17-16 and #17-17 ("Lantz lot #1"); and 3) your other retained, merged tax lots #17-28, #17-29, and #17-30 ("Lantz lot #2"). Lantz lot #1 does not qualify as a retained lot exception because it is developed with a residential dwelling. Lantz lot #2 does qualify as a retained lot exception, provided it is retained in accordance with Chapter 10, section 10.25,Q,1,g,(3), including that it is not further divided, is not transferred (except to an abutter) and remains undeveloped for a period of at least 5 years from the date the Luopa lot was divided.

After October 31, 2021, you may subdivide the Lantz lot #2 in accordance with the 2-in-5 provision without triggering the need to obtain a subdivision permit from the Commission.

You propose to transfer portions of Lantz lot #2, by gift, to Jennifer Desrosiers and Jessica Peters. The proposed parcels are shown as Parcels B and C on a plan titled "Land Division Plan

¹Franklin County Registry of Deeds, Book 3093, Pages 128, 130, 132 and 135.

² See Building Permit BP 14283.

³Franklin County Registry of Deeds, Book 3967, Page 161. The Luopa lot is shown as "Parcel A" a plan titled "Land to be Conveyed to Deborah Luopa" by Professional Land Surveyor David Jani, dated January 11, 2016, and filed at the Franklin County Registry of Deeds as Plan #5977.

for Harold Lantz” by Professional Land Surveyor David Jani, dated August 2, 2017. This plan is filed at the Franklin County Registry of Deeds as Plan #6138. Because they are not related to you by blood, marriage, or adoption, the gifting either Parcel B or Parcel C to Ms. Desrosiers and Ms. Peters does not qualify as an exempt division for purposes of subdivision. The transfer, prior to October 31, 2021, of either the Parcel B or Parcel C to any person other than an abutter would require a subdivision permit from the Commission. The Commission’s authority to grant variances pursuant to 12 M.R.S. § 685-A(10) and Chapter 10, section 10.10 is limited, and does not include a provision to exempt the desired land transfer you seek in your advisory ruling request from subdivision review.

If you have any questions regarding this advisory ruling please contact Sara Brusila at our Wilton Office at (207) 670-7493 or sara.brusila@maine.gov.

Regards,



Bill Hinkel
Regional Supervisor
Land Use Planning Commission

BH/slb

Enclosure: Annotated Excerpt, Rangeley Plantation Tax Maps 3 and 17.

xc: Sara Brusila
Geo File, Rangeley Plt.

Harold Lantz, Rangeley Plt.

AR 18-09

