

## Kim Keene

---

**To:** Legal Services Department  
**Subject:** RE: Mount Desert - Functional Land Divisions

---

**From:** Legal Services Department [mailto:Legal@memun.org]  
**Sent:** Thursday, September 08, 2011 4:05 PM  
**To:** Kim Keene  
**Subject:** RE: Mount Desert - Functional Land Divisions

Kim:

Good afternoon. You asked for a written response to your question below. Previously, we discussed this problem over the telephone. After consulting with some colleagues, and giving the matter some thought, I came to the conclusion that the landowner could not remove the existing structure and build new because he would create a new, non-conforming lot, and as such, the new lot is insufficiently sized to allow a new residential building.

The reason for my opinion stems from the entirety of the ordinance, both the functional division section and the non-conformity provisions. More particularly, it is my view that the functional land division provisions (Section 4.6) do not anticipate the removal of a structure. Rather, the criteria to be satisfied in order to qualify for a functional division uses language that assumes a non-conforming structure (which includes a non-conforming lot) that forms the basis for the division will continue to exist after the division is accomplished. To suggest that the structure can be removed afterwards is to make the criteria for a functional division temporary. It makes the functional division section a stepping stone to the creation of a new structural arrangement that was not considered in the decision to grant a functional land division. In other words, the criteria are only applicable for purposes of granting the division, but once such a division is accomplished, the criteria lose significance. I do not think this is what the drafters had in mind. It seems more consistent with the intent of the provision to assume that the functional division is granted based on the history of the lot, and that that history of the lot represents an indicator of how the property will be treated in the future.

One significant factor in my thinking is concerns the non-conforming structure provisions (4.3). There is no allowance for replacement of a structure except under the discussion concerning reconstruction or replacement (4.3(3)). Although a structure can be replaced under this paragraph, it only applies to non-conforming structures located less than the required setback from a water body, tributary stream, or wetland. The house in question is not so located. Thus, the non-conforming provisions do not apply.

In view of these observations, it is my conclusion that to remove the structure would be to create a new, non-conforming lot. As such, any new construction and the newly created lot would need to meet current ordinance standards. If those standards cannot be satisfied, a new residential building cannot be erected.

As we discussed earlier, my answer is based on opinion, not on any clear, unambiguous, expressed language contained within the land use ordinance. The ordinance does not address the question that you raise. However, given the entirety of the ordinance, the absence of any allowance to remove a building and build new under these circumstances, and the fact that the law does not like non-conformity, the better answer is to say that the residential structure in question cannot be removed and replaced.

I trust this is responsive. Please contact me if you have additional questions.

Kind regards,

MLS

**Michael L. Stultz**

Legal Services Department

**Maine Municipal Association**

60 Community Drive, Augusta, ME 04330

1-800-452-8786 (in state)

207-623-8428

FAX 207-624-0187

[legal@memun.org](mailto:legal@memun.org)

---

**From:** Kim Keene [mailto:ceo@mtdesert.org]  
**Sent:** Wednesday, July 20, 2011 12:44 PM  
**To:** Legal Services Department  
**Subject:** FW: Mount Desert - Functional Land Divisions

To whom it may concern:

I believe Michael Stultz sent me a response to my e-mail below. However, I cannot locate the response within my received e-mails. Could Michael Stultz send it again?

Thank you.

Kim

---

**From:** Mary Merrifield [mailto:mmerrifield@memun.org]  
**Sent:** Friday, March 18, 2011 10:11 AM  
**To:** Kim Keene  
**Subject:** RE: Mount Desert - Functional Land Divisions

Kim, MMA Legal Services has received your inquiry. It has been assigned to one of our attorneys, who will respond as soon as possible. Our response time may vary depending on the volume of inquiries, the nature and complexity of your inquiry, and current staffing. We appreciate your understanding and cooperation. If you have a specific deadline, please let us know. Thank you. Mary Merrifield, Legal Services Department

---

**From:** Kim Keene [mailto:ceo@mtdesert.org]  
**Sent:** Wednesday, March 16, 2011 4:54 PM  
**To:** Legal Services Department  
**Subject:** Mount Desert - Functional Land Divisions

Greetings MMA Legal~

To Whom It May Concern:

The question I pose today has to do with Functional Land Divisions. (see below)

**Section 4.6 - Functional Land Divisions.** Functional land divisions of lots are allowed provided the lots are as conforming as possible, reviewed, and approved by the Planning Board. The Planning Board will determine whether each division is a distinct, separate, and historical

residential use. The following criteria shall be met for a functional land division to be approved:

The dwelling unit(s) located on the property all predate the adoption of this Ordinance or any amendment thereto which made the structures non-conforming.

The structures located on the property, together with appropriate curtilage (i.e. yard area used with and around structure/s), were separately occupied and used by tenants at the time of the adoption of this Ordinance or any amendment thereto which made the structures non-conforming.

The proposed use reflects the nature and purpose of the use prevailing when the zoning legislation took effect.

There is not created a use different in quality or character, as well as in degree.

The current use is not different in kind in its effect on the neighborhood.

If a property owner received approval from the Planning Board to functionally divide their property in compliance with the "Functional Land Division" section of the LUZO can they turn around and demolish one or both of the dwelling units that predated the adoption of the Land Use Zoning Ordinance or any amendments and rebuild new?

Kimberly Keene  
Code Enforcement Officer  
Town of Mount Desert  
21 Sea Street, P.O. Box 248  
Northeast Harbor, ME 04662  
Phone: (207) 276-5731 or 276-5531  
Fax: (207) 276-3232



## ***Town of Mount Desert***

Durlin E. Lunt, Town Manager  
21 Sea Street, P.O. Box 248  
Northeast Harbor, ME 04662-0248

Telephone 207-276-5531 Fax 207-276-3232

Web Address [www.mtdesert.org](http://www.mtdesert.org)  
[manager@mtdesert.org](mailto:manager@mtdesert.org)

**To: Kimberly Keene, Code Enforcement Officer**

**From: Durlin E. Lunt, Town Manager**

**Date: November 9, 2011**

**Re: Board of Selectmen request for review of LUZO signage regulations**

**At its meeting of November 7 2011, the Board of Selectmen requested a review of our current signage regulations to determine if they are still in alignment with the needs and desires of the community. A similar request was made last year concerning set back requirements for buildings on the Main Street of Northeast Harbor.**

**Our current signage regulations date back to the early 1970's, a very different economic time from the present. Billboards were still placed along Maine highways and there was a concern that over commercialization would have negative consequences for the quality of life in Mount Desert.**

**Today there is a movement to restore economic vitality to our villages. Currently groups such as "Restore Northeast Harbor, the "Revitalization Committee", comprising summer and year round residents, are working to encourage sound economic development within the Town of Mount Desert.**

**It is in this spirit that Section 6B.15 Sign Regulations should be examined. Of particular concern is the provision under permitted signs that reads: " Directional signs on roadsides within the Town of Mount Desert are permitted for any church, school, library, museum, or similar public facility with the approval of the Board of Selectmen on the recommendation of the Planning Board". It would appear to be an opportune time to determine if this privilege should be extended to commercial activities.**

---





TOLL FREE: (888) 824-2099

RENTALS ■ SALES ■ REPAIRS ■ CONSTRUCTION ■ COMMERCIAL LAWN & GARDEN ■ TOOLS ■ EXPORT

Home

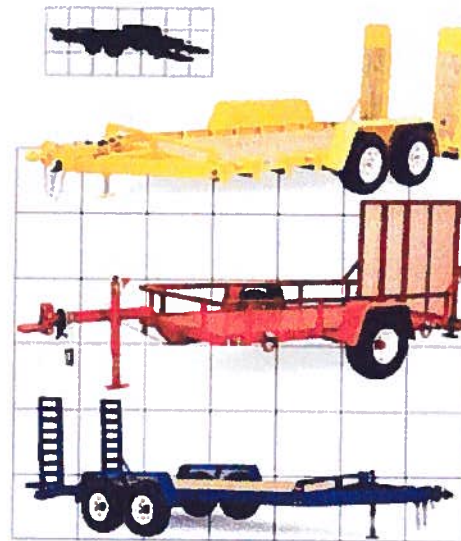
- About Us
- BLOWOUT SALE
- Product List
- Air Compressors
- Lawn & Garden
- Skid Steers
- Backhoe's
- Excavators/Boring
- Utility Vehicles
- Light Construction
- EDCO
- Wacker Products
- Aerial Lifts
- Concrete Mixers
- Echo
- Tools
- Chemicals
- Janitorial Equipm.
- Used Equipment
- Quote Request
- E-MAIL US

# LIGHT CONSTRUCTION EQUIPMENT



## TRAILERS

- TT Series
- HD Series
- LG Series
- DDSL Series
- SLT Series
- WT Series



 [sales@equipmenttools.com](mailto:sales@equipmenttools.com)

All trade names and logos referenced on this web site are the service mark, trademark or registered trademarks of their respective manufacturers.

# Lanford Equipment Company



- Home
- About Us
- Contact | Locations
- Products
- Specials
- Search Used Equipment
- Lanford Advantage
- RSS Feeds
- Parts Department
- Parts Department
- Parts Department
- Site Map

## PRODUCTS - LANFORD EQUIPMENT COMPANY

**Kubota compact construction equipment at Lanford Equipment Co. Inc., Austin and Marble Falls Texas.**

### Kubota Construction Equipment

Visit [www.kubota.com](http://www.kubota.com) for more information.

#### Kubota KX Series Compact Excavators from 10.2 to 64.1 hp

By combining efficiency and precision in tight work areas, the KX-Series compact excavators have broken new ground for rental, construction, and utility applications. You can depend on them for high output, strong torque, and smooth, powerful operation.



##### Overview

- Conventional Tail Swing
- Construction
- Rental
- Public Works

#### Kubota U Series Compact Excavators from 12.9 to 42 hp

Nothing beats our U-Series compact excavators for working in extremely tight spaces. To eliminate damage caused by rear overhang, a zero-tail swing design enables them to rotate within the width of their tracks. This lets operators focus solely on the job at hand.



##### Overview

- Zero Tail Swing
- Construction
- Rental
- Public Works

#### Kubota R Series Compact Wheel Loaders from 43 to 49 hp

Equipped with a host of state-of-the-art features, the versatile R-Series wheel loaders offer better visibility, more power, and superior



### LATEST ENTRIES

2005 Kubota RTV900I

Search our Equipment Listings

**SEARCH**



productivity. Thus, enabling you to efficiently handle more tasks in less time and with the highest level of comfort.

**Overview**

- Construction
- Rental
- Public Works
- Landscaping

**Kubota TLB Series of Loader/Backhoes from 21 to 59 hp**

Nothing beats the Loader/Landscaper Series tractors for loader, backhoe, and other applications. Both tractor/loader and tractor/loader/backhoe merge power, compact size, and versatility to offer incredible performance when trenching, landscaping, material handling, and more.

**Overview**

- Landscaping
- Material Handling
- Trenching
- Towing
- Rental
- Light Construction

---

Copyright © 2008 Equipment Locator Service

The decision of the Selectmen on the appeal shall be final, with no right of further appeal.

~~6.0~~ ~~Additional Eligibility Requirements~~

~~6.1~~ ~~All property taxes must be current.~~

**7.06.0 Appropriations Required**

**7.16.1** All benefits payable under this ordinance are subject the requirement of annual appropriation by the Town Meeting. In the event the amount appropriated for this purpose in any year is insufficient to fund the full amount of benefits payable to eligible applicants for that year, the full and partial benefit amounts payable for that year shall be reduced *pro rata*.

**8.07.0 Period of Ordinance**

**8.17.1** The effective date of this Ordinance is: May 5, 2009.

**8.27.2** This Ordinance shall expire and be of no force or effect on May 7, 2024.