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**MEMORANDUM**

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**To:** Planning Board  
**From:** Juliet T.H. Walker, Planning Director *JTW*  
**Subject:** Staff Recommendations for the March 18, 2021 Planning Board Meeting  
**Date:** March 12, 2021

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**II. DETERMINATIONS OF COMPLETENESS**

**SITE PLAN REVIEW**

- A. The application of the **Woodbury Cooperative, Inc.**, Owner, for property located at **1338 Woodbury Avenue** requesting Site Plan Review approval.

**SUBDIVISION REVIEW**

- A. The application of the **Frederick Watson Revocable Trust, Owner**, for property located at **1 Clark Drive** requesting Preliminary and Final Subdivision approval.

### III. PUBLIC HEARINGS – OLD BUSINESS

*It is recommended that Items IIIA, IIIB, and IVA be discussed together.*

*A motion is required to consider these items together.*

- A. The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting Site Plan Review approval for the demolition and relocation of existing structures and the construction of 152 dwelling units in 3 buildings, and associated community space, paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.
- B. The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting Wetland Conditional Use Permit Approval in accordance with Section 10.1017 of the Zoning Ordinance for work within the 25-foot, 50-foot, and 100-foot wetland buffers to North Mill Pond which includes the removal of existing impervious surfaces and buildings, construction of 3 stormwater outlets, repaving of an existing access drive and parking lot, construction of a linear waterfront trail and community space, and construction of three new buildings which will result in a net overall reduction in impervious surfaces of 28,792 square feet. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.
- A. (IV. Public Hearings – New Business) The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting a Lot Line Relocation as follows: Tax Map 157, Lot 1 increasing in area from 61,781 s.f. to 205,804 s.f.; Tax Map 157, Lot 2 decreasing in area from 102,003 s.f. to 81,645 s.f.; Tax Map 164, Lot 1 increasing in area from 51,952 s.f. to 52,289 s.f.; Tax Map 164, Lot 4-2 decreasing in area from 249,771 s.f. to 119,519 s.f. and the existing right-of-way increasing in area from 69,624 s.f. to 75,792 s.f. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.

Description

The applicant has requested to postpone to the April meeting. The Planning Department will plan to re-notice all abutters and include all three applications in the notice. Public comments received to date have been included in the Planning Board's packet for this month.

Planning Department Recommendation

*Vote to postpone all three applications to the April Planning Board meeting.*

### III. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

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- C. Application of the **Pease Development Authority, Owner, and Lonza, Applicant**, for property located at **70 Corporate Drive** requesting renewal of a previously approved Conditional Use Permit, under Chapter 300 of the Pease Land Use Controls, Part 304-A Pease Wetlands Protection, for work within the inland wetland buffer for the construction of three proposed industrial buildings: Proposed Building #1 with a 132,000+ s.f. footprint; Proposed Building #2 with a 150,000+ s.f. footprint; Proposed Building #3 with a 62,000+ s.f. footprint; and two 4-story parking garages, with 55,555+ s.f. of impact to the wetland, 66,852+ s.f. of impact to the wetland buffer and a 1,000+ l.f. stream restoration for Hodgson Brook resulting in 42,500 s.f. of wetland creation. Said property is shown on Assessor Map 305 Lot 1 and lies within the (ABC) District.



#### Description

The project received Wetland Conditional Use Permit Approval from the Planning Board on January 17, 2019 for work within the inland wetland buffer for the construction of three proposed industrial buildings: Proposed Building #1 with a 132,000+ s.f. footprint; Proposed Building #2 with a 150,000+ s.f. footprint; Proposed Building #3 with a 62,000+ s.f. footprint; and two 4-story parking garages, with 55,555+ s.f. of impact to the wetland, 66,852+ s.f. of impact to the wetland buffer and a 1,000+ l.f. stream restoration for Hodgson Brook resulting in 42,500 s.f. of wetland creation.

The Planning Board previously recommended approval of this application to the Pease Development Authority Board on January 17, 2019. The applicant subsequently requested that the PDA Board grant a one-year extension to the Wetland Conditional Use Permit approval, which was granted and the approval expired in February 2021. Due to project delays, the applicant was not be able to start the project prior to the expiration of the approval. As no further extension requests are allowed under PDA's Regulations, the applicant must now re-apply for the wetland conditional use permit.

Planning Department Recommendation

*Vote to recommend approval of the Wetland Conditional Use Permit.*

#### IV. PUBLIC HEARINGS – NEW BUSINESS

***It is recommended that Items IVB and IVC be discussed together and voted on separately.***

***A motion is required to consider these items together.***

- B.** The application of the **Frederick Watson Revocable Trust, Owner**, for property located at **1 Clark Drive** requesting a Wetland Conditional Use Permit in accordance with Article 10 Section 10.1017 to demolish an existing home, driveway, and swimming pool and construct a new private road and create four new house lots with associated stormwater management infrastructure which will result in 15,500 square feet of impact in the 100-foot wetland buffer. Said property is shown on Assessor Map 209 Lot 33 and lies within the Single Residence B (SRB) District.
  
- C.** The application of the **Frederick Watson Revocable Trust, Owner**, for property located at **1 Clark Drive** requesting a Conditional Use Permit under Article 6 Section 10.674 of the Zoning Ordinance for construction of new residences in the Highway Noise Overlay District and Preliminary and Final Subdivision approval to subdivide a lot with an area of 137,176 s.f. and 75 ft. of continuous street frontage into four (4) lots and a proposed new road as follows: Proposed lot 1 with an area of 20,277 s.f. and 137.23 ft. of continuous street frontage; Proposed Lot 2 with an area of 17,103 s.f. and 100 ft. of continuous street frontage; Proposed Lot 3 with an area of 20,211 s.f. and 100 ft. of continuous street frontage; and Proposed Lot 4 with an area of 53,044 s.f. and 592.50 ft. of continuous street frontage. Said property is shown on Assessor Map 209 Lot 33 and lies within the Single Residence B (SRB) District.



### Description

The applicant is requesting to convert a lot with an existing single family home into four residential lots accessed by a new private road. The stormwater drainage system that will be serving these lots will be located within the 100-foot wetland buffer.

### Wetland Conditional Use Permit

#### Conservation Commission Review

1. *The land is reasonably suited to the use activity or alteration.* The rear portion of the new house lots are partially within the 100' wetland buffer. The application is providing stormwater treatment in the lawn area at the rear of these houses and completely within the 100' wetland buffer. The applicant has stated that this is the only area on the site where effective stormwater treatment can be done. The applicant should provide a detailed maintenance schedule for the stormwater treatment area and consider a deed restriction to protect this area from future changes by property owners.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given the area is currently lawn and is the low point on the properties it is the most feasible location for the treatment. However, as it is not clear how the future property owners will treat this area it is important they understand there are important inspection and management requirements and long-term protection of the functionality of this stormwater treatment system.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* Given that the proposed work is in a lawn area and will reduce the velocity of flow it should have a net improvement on stormwater quality. The applicant has provided a buffer planting plan to enhance some portion of the 100' wetland buffer. Both the stormwater treatment and the planted buffer area should be protected from future impacts. In particular to insure the stormwater treatment system is maintained and remains in place there should be inspection requirements as well as deed restrictions placed on this approval or within the homeowner's association documents.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The existing lawn will be regraded and replaced with a vegetated rain garden.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed project should reduce velocity of stormwater from the site and with plantings could represent an enhancement. However, it is important as stated above that the applicant secure a monitoring and maintenance program for the long-term efficacy and protection of the proposed stormwater management system. Additionally, the applicant should demonstrate that this is the furthest from the wetland edge this treatment system can be installed and that the lawn area is not being maximized. It should be described how the treatment system has been placed as far from the edge of wetland as possible.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The revised plan shows landscape buffer plantings in areas that are currently lawn. The applicant has planted the area that is lawn waterward of the proposed treatment system.

The Conservation Commission reviewed this application at the March 10, 2021 meeting and voted unanimously (with one absention) to recommend approval of this application with the following stipulations:

1. That there shall be wetland markers around the rain garden area.
2. That downspouts and drip edges shall be used to control roof run-off.

### Conditional Use Permit for Highway Noise Overlay District

This property is located in the HNOD, which was created to protect individuals from the impact of highway traffic noise by regulating certain uses that are considered to be “noise sensitive land uses” as defined by the Ordinance. Per the requirements of the Ordinance Section 10.673, any proposed uses that qualify as noise sensitive land uses require a conditional use permit from the Planning Board. An application for a CUP in the HNOD must include a noise analysis prepared by a registered engineer or qualified professional transportation noise analyst and must demonstrate that the applicable exterior and interior sound level standards are met for the proposed land use using measures listed in Section 10.674.30. The analysis completed by Reuter Associates and submitted as part of this application maintains that “typical residential construction” provides 20 dB of sound attenuation and therefore will meet the required standard, which is 45 dBA for the interior of a residential dwelling. In addition, the analysis confirms that the proposed development is located outside of the 65 dBA noise contour and therefore will meet the required standard of 65 dBA for residential yards.

### Subdivision Approval

#### *Technical Advisory Committee Review*

TAC reviewed this application at the March 2, 2021 meeting and voted to recommend approval of the subdivision application along with the requested waivers with the following stipulations:

To be completed or verified prior to Planning Board review

- 1) The proposed cross-section for the private road does not comply with the City’s minimum requirements for residential subdivisions, therefore a waiver request will be required.
- 2) The path leading to Market Street shall be widened to 10 feet.
- 3) The fences on either side of the pathway out to Market St shall be no closer than 2’ to the edge of the path on either side of the path while still being contained in the easement if they are to be replaced.
- 4) The rain garden back berm needs to be constructed of materials that are not easily susceptible to erosion.
- 5) The Stormwater Operations and Maintenance Plan should indicate that this area is to remain mowed and maintained.
- 6) There should be clear direction in the SOMP about if and when to change the media and what to use.
- 7) The Stormwater Operations and Maintenance Plan shall be referenced in the homeowners association documents.
- 8) The overflow weir shall be modified as discussed at the TAC meeting and the applicant shall confirm that the rain garden will be of sufficient size and shape to mitigate all of the design storms subject to final review and approval by the DPW.
- 9) Sewer laterals travelling together shall be at least 3’ clear space apart and located on the appropriate lot in their entirety.
- 10) Plans shall note that a flow test shall be conducted every 5 years.
- 11) TAC members noted that due to the fact that the road is now proposed as a private road, it no longer requires Trees and Greenery Committee review.



Recommended as conditions of Planning Board approval

- 12) Property owners shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
- 13) Neighboring parcel 209/32 shall have full legal access to the new private road and utilities.
- 14) The current 6" water connection in Cutts St will need to be abandoned by the applicant entirely by removing the valve and bolting on a blind flange to the tee. This work must be completed no later than the end of May 2021 so that the final road pavement can be placed.
- 15) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance.
- 16) All of the new sewer laterals means, methods, materials and installation shall be approved and witnessed by DPW prior to backfilling.
- 17) A note shall be added to the plans and the Stormwater Operations and Maintenance Plan that the roadway catch basins shall be cleaned annually and the road is to be swept yearly in the early spring.
- 18) The detail for the sidewalk shall be adjusted to show use of ½" 50 gyration for sidewalk binder course.
- 19) Applicant shall enter into a maintenance agreement with the City of Portsmouth Water Division regarding hydrant flushing.

On March 5, 2021, the applicant submitted revised plans addressing items 1 to 11, 17, and 18 to the satisfaction of the Planning Department and the DPW. The remaining items have been incorporated into the Planning Director recommendations below.

*Waiver Request*

The applicant has requested waivers from the Subdivision Regulations Residential Street Standards to provide 20' of pavement width on the main roadway and 24' on the cul-de-sac where 32' is the minimum required and from Section VI.2.A Lot Arrangement requiring that lot lines shall be placed radial to curved street lines. The Technical Advisory Committee agreed that the proposed width of the private road is acceptable and adequate for a subdivision of this size and supported the reduction in impervious surface. The lot line shift is minor and seems reasonable as well.

## **Planning Department Recommendations**

### Wetland Conditional Use Permit

*Vote to grant approval of the application as presented with the following stipulations:*

1. *Instead of wetland boundary markers along the wetland buffer, the applicant install wetland boundary markers every twenty feet at the uphill edge of the rain garden within the wetland buffer or as ded by the Planning Department.*
2. *That houses shall be constructed with drip edges and infiltration trenches to accommodate roof run-off.*

### Highway Noise Overlay District Conditional Use Permit

1. *Vote to find that the applicable exterior and interior sound level standards shall be met as demonstrated by the noise analysis provided and to grant the conditional use permit as presented.*

### Subdivision Approval

1. *Vote to grant the requested waivers to the Subdivision Residential Street Standards requiring that the pavement width of a residential road by a minimum of 32' wide and Section VI.2.A Lot Arrangement requiring that lot lines shall be placed radial to curved street lines by find that [NOTE: Motion maker must select one of the following options]:*

- a) *Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations*

*[OR]*

- b) *Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations*

2. *Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*
  - 2.1 *Property owners shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.*
  - 2.2 *Neighboring parcel 209/32 shall have full legal access to the new private road and utilities.*
  - 2.3 *The current 6" water connection in Cutts St shall be abandoned by the applicant entirely by removing the valve and bolting on a blind flange to the tee. This work must be completed no later than the end of May 2021 so that the final road pavement can be placed.*
  - 2.4 *The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed according to the approved plans and specifications and will meet the design performance.*
  - 2.5 *All of the new sewer laterals means, methods, materials and installation shall be approved and witnessed by DPW prior to backfilling.*

- 2.6 Applicant shall enter into a maintenance agreement with the City of Portsmouth Water Division regarding hydrant flushing.*
- 2.7 Lot numbers as determined by the Assessor shall be added to the final plat.*
- 2.8 Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- 2.9 GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- 2.10 The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

#### IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

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- C. The application of the **Woodbury Cooperative, Inc.**, Owner, for property located at **1338 Woodbury Avenue** requesting Site Plan Review approval for the demolition of two existing structures and replacement and reconfiguration of existing mobile home units with associated grading, pavement, lighting, utilities, landscaping and other site improvements. Said property is shown on Assessor Map 237 Lot 70 and lies within the MRB District.



#### Description

The applicant is proposing to make modifications and updates to an existing mobile home park.

#### Technical Advisory Committee

TAC reviewed this application at the March 2, 2021 meeting and voted to recommend approval of the subdivision application along with the requested waivers with the following stipulations:

#### *To be completed prior to Planning Board review*

- 1) The pavement edge line should tie into the corner of the property at Old Woodbury Ave, rather than the edge of the abutter's driveway.

- 2) A stop sign and stop line should be provided on the driveway approach to Woodbury Ave.
- 3) Add a water shut off for unit 13 or the apartment building.
- 4) The 8" water main entering the site should be downsized immediately following the hydrant connection. The hydrant needs its own 6" gate valve (please show it) on the hydrant lateral. The 4" valve should be mounted directly behind the hydrant tee.
- 5) Flush valve detail references an 1.5" corporation in the main. Update detail to reflect 2" corporation with 2" copper water line to hydrant.
- 6) Plans shall note that the water main is to be bagged in poly wrap and three brass wedges shall be installed in each bell joint for water main tracing in the future per details approved by DPW.
- 7) The sewer service detail shall be revised to show that the concrete slab is not bonded to the sewer lateral. The 6" sewer should come through an 8" hole in the slab.
- 8) There needs to be a ball valve both before and after the water meter.
- 9) Water services to homes must be 1" or larger.

*Recommended as conditions of Planning Board approval*

- 10) Property owners shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
- 11) The services in Echo Ave shall be terminated to the satisfaction of Portsmouth Water and Sewer Divisions.
- 12) Sewer connections to the City sewer system need to be witnessed by Portsmouth Sewer. The entire system must be tested to ensure the system is tight with no groundwater leaks to the satisfaction of the City.
- 13) Work in the Portsmouth ROW's shall require excavation permits.
- 14) Contractor shall meet with Portsmouth Water Division before starting project.
- 15) Applicant shall enter into a maintenance agreement with the City of Portsmouth Water Division regarding hydrant flushing.

On March 5, 2021, the applicant submitted revised plans addressing items 1 to 9 to the satisfaction of the Planning Department and the DPW. The remaining items have been incorporated into the Planning Director recommendations below.

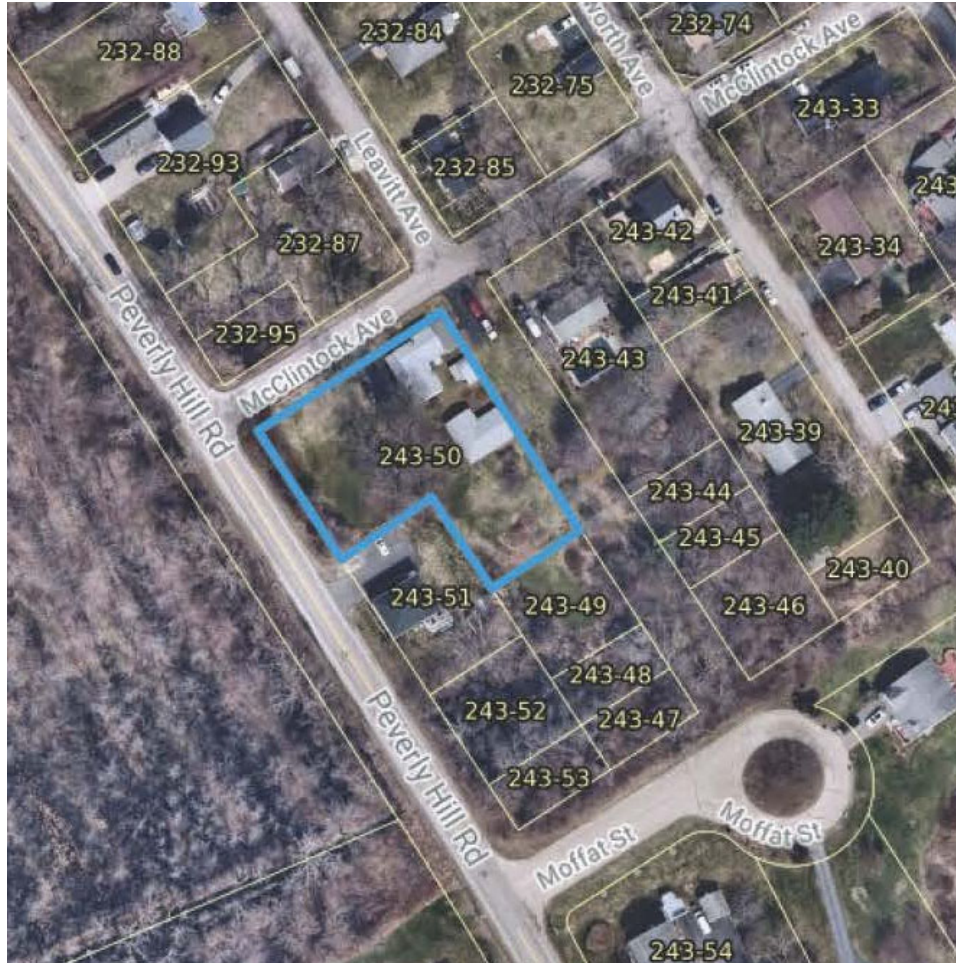
Planning Department Recommendation

*Vote to grant Site Plan Review Approval with the following stipulations:*

- 1. Property owners shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.*
- 2. The services in Echo Ave shall be terminated to the satisfaction of Portsmouth Water and Sewer Divisions.*
- 3. Sewer connections to the City sewer system need to be witnessed by the Portsmouth Sewer Division. The entire system must be tested to ensure the system is tight with no groundwater leaks to the satisfaction of the City.*
- 4. Work in the City of Portsmouth right-of-way shall require excavation permits.*
- 5. Contractor shall meet with Portsmouth Water Division before starting project.*

## V. CITY COUNCIL REFERRAL – PUBLIC HEARING

- A. Request of **ASRT, LLC, Owner**, for the restoration of involuntarily merged lots at **138 Leavitt Avenue** to their pre-merger status pursuant to NH RSA 674:39-aa.



### Description

At its meeting on December 14, 2020, the City Council considered a request from Attorney Pelech on behalf of his client, requesting the restoration of involuntarily merged lots at 138 Leavitt Street to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request to the Planning Board.

### Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore “to their premerger status” any lots or parcels that were “involuntarily merged” by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process nor is there any requirement for the City to hold a public hearing. However, in Portsmouth the City Council has historically referred such requests to the Planning Board to conduct a public hearing.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “*The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances*” (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two premerger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Assessing Department Review

The Assessing Department has reviewed the request and a memo from the City Assessor is included in the packet.

**Planning Department Recommendation**

*Vote to recommend that the Council deny the request for restoration of involuntarily merged lots requested by the owner.*