

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting Via Zoom Conference Call

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2021-01, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

7:00 pm

MARCH 18, 2021

MINUTES

MEMBERS PRESENT: Dexter Legg, Chair; Elizabeth Moreau, Vice Chair Karen Conard, City Manager; Peter Whelan, City Council Representative; Ray Pezzullo, Assistant City Engineer; Colby Gamester; Peter Harris; Rick Chellman and Corey Clark

ALSO PRESENT: Juliet Walker, Planner Director; Peter Britz, Environmental Planner

MEMBERS ABSENT: Polly Henkel, Alternate

I. APPROVAL OF MINUTES

- A. Approval of the Planning Board minutes from the February 18 and 25, 2021 meetings.

Vice Chairman Moreau moved to approve the Planning Board minutes from the February 18 and 25, 2021 meetings, seconded by Mr. Gamester. The motion passed unanimously.

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.

Mr. Clark moved to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration, seconded by Vice Chairman Moreau. The motion passed unanimously.

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.

Mr. Clark moved to determine that the application is complete according to the Subdivision Review Regulations and to accept the application for consideration, seconded by Mr. Chellman. The motion passed unanimously.

III. OLD BUSINESS

- A. **REQUEST TO POSTPONE** 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.
REQUEST TO POSTPONE

Vice Chairman Moreau and City Manager Conard recused themselves from the application.

Chairman Legg asked for a group motion to postpone all of the Clipper Traders' applications on the agenda.

Mr. Chellman moved to **postpone** this request to the next Planning Board meeting, seconded by Mr. Clark. The motion passed unanimously.

- B. **REQUEST TO POSTPONE** 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. **REQUEST TO POSTPONE**

Vice Chairman Moreau and City Manager Conard recused themselves from the application.

Mr. Chellman moved to **postpone** this request to the next Planning Board meeting, seconded by Mr. Clark. The motion passed unanimously.

- 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.

SPEAKING TO THE APPLICATION

Attorney Justin Pasay, Patrick Crimmins from Tighe and Bond, and George Combs from Lonza spoke to the application. Mr. Pasay commented that this was for Phase 1 of the development plan of the Iron Parcel on the Pease Development Authority. They requested an extension that was approved in January 2019. This CUP application is identical in every way to the one from two years ago. This will be a phased development of 3 industrial buildings and related site improvements. After a robust technical review, the Planning Board approved the CUP. This application is identical to the one that was unanimously approved then. After this Board recommended approval all three approvals became final with the PDA in February 2019. Then they received state wetland permitting. Wastewater services delayed the requested 1-year extension. In the meantime, Covid and the review and processing of the Great Bay total nitrogen permits have caused delays. Now Lonza sees a path forward in this project. The PDA granted an additional one-year approval for the Site Plan, so the approval is good until 2022. However, the Board of Directors doesn't have the authority to grant an additional one year for the CUP approval. They voted to refile with the City for them to review and refer back to the PDA. This application is to better align with the underlying site plan.

Mr. Crimmins commented that this was for an expansion of the existing facility. The master plan build out is for just over a million square feet. The property is bound by Goose Bay Dr. and Corporate Dr. There will be 3 new buildings, a parking garage, and a central utility building. The site does include wetlands and wetland buffer impacts, which are outlined on the plan. Many wetlands didn't exist 25 years ago. Historically, this area was row housing. The wetlands were created after that housing was demolished with inappropriate grading. There is some higher value wetland that they tried to avoid as much as possible. The site has a buried portion of Hodgson Brook. To mitigate the buffer and wetland impacts, they are proposing to daylight 1,000 linear feet of the brook in a new surface water stream. This will improve the site and create higher value wetlands. The site will be constructed in phases. Phase 1 will include the stream restoration. This was previously approved with NHDES and they have an AOT approval for the storm water management of the site. There will be two gravel wetlands and a rain garden. The plan meets the criteria outlined in the PDA regulations. The land is reasonably suited to the use, and there is not alternate location. There will be no adverse impacts to the wetland. The impacted wetland areas have limited functions and values. The proposed stream will provide higher function and value. The site will have low impact storm water management practices. The only alterations will be within the limits of the development area. There is a detailed wetland planting plan included. Impacts to the wetland will be mitigated with the stream construction.

Mr. Clark requested more clarification on the delays due to the national pollution discharge permit. Mr. Pasay responded that the draft permit of the tunnel nitrogen process was issued back in January 2020. The EPA received public comments for several months. The whole idea about nitrogen limits has wide ranging implications on Portsmouth and Pease wastewater facilities to provide the services

needed to accommodate it. There was a lot up in the air November 2020. Now there is a road map forward. There's certainty. Mr. Clark commented that he knew it was still an ongoing discussion, so it was good to make sure there were no more anticipated delays.

Mr. Chellman questioned if they needed the CUP before moving forward with the nitrogen permit process. Mr. Pasay responded that they needed the CUP because phase 1 of the site plan is daylighting the brook. The wetland impact is subject to a wetland CUP. Then the hope is to make progress on the nitrogen permit. Then a construction permit will be pulled. Mr. Chellman questioned if the utility services for the project were all in place. Mr. Pasay confirmed that was correct. This is just about impacts to the wetland and buffer for the site work. Mr. Chellman clarified that this request was not for the renewal of a site plan just the CUP. Mr. Pasay responded that the PDA was able to provide an extension of the site plan approval, but they did not have the authorization to extend the CUP approval. That is why this is being presented tonight. Mr. Chellman questioned if this was discussed with the Planning Department. Ms. Walker confirmed that the Planning Department has been in discussion with the PDA and Mr. Pasay and they were in agreement.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau moved to **recommend approval** of the Wetland Conditional Use Permit as presented, seconded by Mr. Gamester.

Vice Chairman Moreau commented that this was a good plan, and they spent a lot on it the first time. Nothing has changed and it is still good plan.

The motion passed unanimously.

IV. PUBLIC HEARING – NEW BUSINESS

- A. **REQUEST TO POSTPONE** 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. **REQUEST TO POSTPONE**

Vice Chairman Moreau and City Manager Conard recused themselves from the application.

Mr. Chellman moved to **postpone** this request to the next Planning Board meeting, seconded by Mr. Clark. The motion passed unanimously.

- 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.

Mr. Gamester moved to consider New Business Item B and New Business Item C together and vote on them separately, seconded by City Manager Conard. The motion passed unanimously.

SPEAKING TO THE APPLICATION

Eric Saari from Altus Engineering spoke to the application. The property is on the section of North Mill Pond called inner cuts cove. It is tidal water. The wetlands extend up into the site. The existing house was built in the late 1950s with a big patio. There is also another patio with a pool and cabana. The lawn area is mowed. The property is accessed by a private street called Clark Drive. In 1974 the Planning Department looked at a proposal with a cul-de-sac. It was designed and permitted but never built. The only thing put in was a water line. There is a sidewalk that cuts through to Market St. The yard has lawn and trees with scrub shrub and a slightly forested buffer. There is a lot of invasive plants in that area. The property has a sewer easement. There is a proposed easement for a walkway to the waterline and the drainage. Everything on site will be demolished. All of the pavement will be removed and the waterline will be abandoned. DPW has requested that this be complete by the end of May because they plan to finish paving Cutts St. by then. The sidewalk to Market St. will be replaced and widened to 10 feet. The property will become a 4-lot subdivision. There will be a new private road off Cutts St. that will end in a cul-de-sac. The first three lots will have frontage along the cul-de-sac and lot 4 will have frontage along Market St. Lot 4 will be accessed via the cul-de-sac with an easement. A Homeowners' Association will be required for this project and it will include deed restrictions with the easements. One easement will provide access to the sewer in the back for DPW. The Conservation Commission requested that they follow the NOFA organic standards of lawn care, so that has been included. There is also a provision for abutting lots to access the cul-de-sac if need be in the future. The topography trends down toward the water. There is a blanket easement over the right of way for City water testing. There is a waiver request for the lot arrangement. There is also a waiver request for the road to be 20 feet wide instead of 32 feet wide. This will reduce the impervious surface on the lot and traffic speeds. The road in the cul-de-sac will be 24 feet wide. There will be new lighting in the walkway to light the end approach from Market St. The existing chain link fence will be replaced with a stockade or similar privacy fence. There will be new chain link fencing as well. The whole road will be curved with a closed drain catch basin. There will be a 6-foot-wide rain garden along the permitter and swales to catch all runoff. There will be a reinforced accessway with lawn on top. That will allow trucks to drive on it. The rain garden will have a 1.5-foot berm. There

will be a punchbowl emergency outlet too. The existing water line is undersized. The proposal is to tie a new line into the existing City line with a new hydrant. This project will have 15,500 sf of impact in a previously disturbed area. All of the existing impervious surface in the buffer will be removed. There are boxes on the plan to represent 2,500 sf potential homes. The planting plan is included for all areas beyond the rain garden. The rain garden will be a 50/50 mix of wildflower and wetland seed mix. There will be street trees along the cul-de-sac. The property is in the highway overlay noise zone. They ran a study, and the entire sit is outside of the 65 decidable range. It will meet the noise requirements without mitigation.

Vice Chairman Moreau questioned why they could not give lot 4 access from the cul-de-sac without an easement. Mr. Saari responded that it will have access but no frontage. The intent was to prevent putting another driveway on Market St. Vice Chairman Moreau questioned if frontage for all 4 lots could be on the cul-de-sac. Mr. Saari responded that they would need to extend the cul-de-sac for that to happen which would involve more impact. Vice Chairman Moreau questioned how trash would be handled. Mr. Saari responded that it would be private trash collection and part of the HOA documentation and fees. Vice Chairman Moreau questioned if the deed restrictions would be enough to make sure people understood that they could not develop or maintain the buffer spaces. Mr. Saari responded that the building envelopes were out of the 100-foot buffer. They would not get a building permit if they tried to build in the buffer. The sewer and storm water are covered in an easement and included in the mylar. It will also be part of the HOA documents which will be included in the closing package. They will include the storm water maintenance and inspection plan. There will be a check list of items the HOA has to do including the trash, storm water management, and snow management. Vice Chairman Moreau questioned if the City would have authority to step in if the owners were violating something in the HOA documentation. Ms. Walker confirmed that they could step in if they were not complying with the subdivision approval which incorporates all of those items.

Mr. Clark questioned if these would be sold as individual lots. Mr. Saari responded that as of right now there was no builder or developer tie in. Mr. Clark questioned what would happen if some of the houses had lots and some did not and there was a rain event. Mr. Clark requested clarification on who would be responsible for maintaining the empty lots. Mr. Saari responded that the owners of each lot would be responsible. If the empty lots are still owned by the applicant, then they are still on the hook for them. Mr. Clark noted that all the runoff migrates to lot 4 and questioned if lot 4 would be responsible for dealing with all of it. Mr. Saari responded that every bit of the storm water management is in the easement for the HOA. They are all responsible for it. Mr. Clark noted that the NOFA standards were not included in this plan packet. It should be clear in the plan what needs to be done. Mr. Saari confirmed that the plan would be updated.

Mr. Chellman questioned if the HOA documents were typically reviewed by the Planning Board because the HOA documents were not submitted with the plan. It is important to review that to ensure all of the items discussed are included in the documents. Ms. Walker responded that sometimes an applicant will have them included in the plan if it is drafted. However, it is often left up to staff review for that final approval step when it comes back to the City for recording. The Planning Board can elect to review it if they want, or they can leave it up to staff.

Mr. Chellman suggested putting trees along the rain garden instead of using monuments. Mr. Saari responded that the markers are more official. Mr. Britz added that the markers should be every 20 feet along the edge of the rain garden.

City Council Representative Whelan joined the meeting.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Ms. Walker commented that the Conservation Commission specifically requested rain barrels, the Planning Department found that problematic to request that. Mr. Britz noted that soil infiltration was not the best word. It should be a stone trench or something like that to get the water to the rain garden.

Vice Chairman Moreau moved to **grant** this request as presented, seconded by Mr. Gamester with the following stipulations:

- 1) Instead of wetland boundary markers along the wetland buffer, the applicant shall install wetland boundary markers every twenty feet at the uphill edge of the rain garden within the wetland buffer or as recommended by the Planning Department.
- 2) The houses shall be constructed with drip edges and pre-treatment of roof run-off as recommended by the Planning Department and DPW.
- 3) Homeowner Association documents shall be reviewed and approved by the Planning Department to confirm that the relevant details related to organic fertilizer application practices (as referenced in note 18 on the plan set), related deed restriction, and stormwater maintenance are appropriately referenced and consistent with the plans approved.

- 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.

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau moved 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, seconded by Mr. Gamester. The motion passed unanimously.

Vice Chairman Moreau moved to **grant** the requested waivers to the Subdivision Residential Street Standards requiring that the pavement width of a residential road be 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 finding that 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, seconded by Mr. Gamester. The motion passed unanimously.

Chairman Legg commented they were fortunate that City staff is able to look at the HOA documents and take guidance when necessary. The Chairmen was confident they could go through the details based on their training knowledge and experience. Mr. Chellman agreed. City Council Representative Whelan commented that the HOA agreement could be recorded and reviewed by the City before the deed was recorded. Ms. Walker responded that could be added as a stipulation.

Vice Chairman Moreau moved to **grant** Preliminary and Final Subdivision Approval, seconded by Mr. Gamester 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 and confirm consistency with the Stormwater Maintenance and Operations Manual.

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) Homeowner Association documents shall be reviewed and approved by the Planning

Department, DPW, and Legal Departments as appropriate prior to recording and should be consistent with the approved plans and the Stormwater Maintenance and Operations Manual.

2.11) 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

The motion passed unanimously.

- D. 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.

SPEAKING TO THE APPLICATION

Ryan Libbey and Tara Reardon spoke to the application. Mr. Libbey commented that this was a site plan application for the site improvements to the Woodbury Cooperative off of Woodbury Ave. The plan includes the demolition of the existing store and garage at the south part of the parcel. There will be a new access to the mobile home park. Several mobile homes will be removed from the site because they are in disrepair. Some new mobile homes will be brought in, and the layout will be reconfigured. There will be a secondary access for the park. The proposal includes running new water and sewer utilities to the site. All homes will receive that and new electrical. The entrance will be cut off from old Woodbury Ave. They will put in landscaping and grass off that entrance.

Vice Chairman Moreau commented that this was a good project and questioned if the apartment building was connected to the park. Mr. Libbey responded that was still part of the organization. There was a previous proposal to subdivide that, but it was not looked upon favorably. The 3-unit apartment building will still be part of the park and will be receiving new water service as well.

Vice Chairman Moreau questioned if the mobile homes that are being removed were the ones that were boarded up. Vice Chairman Moreau questioned if the new units would be brought in by individual owners. Ms. Reardon responded that the abandoned boarded up homes have been there since 2016. It has always been the plan to remove them and reconfigure the area. There will be three new homes along the entrance. The Cooperative has a line of credit and will buy the homes and list them with a realtor.

Chairman Legg questioned if there would be a net increase of 3 housing units. Mr. Reardon responded that right now there is 15 manufactures homes and the three-apartment bungalow. After the project there will be 16 manufactured homes and the three-unit apartment building.

City Council Representative Whelan questioned if Snug Harbor Ave. was a private road. Mr. Libbey responded that it was a private road, and the park owns it.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the petition. Seeing no one rise, the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau commented that she excited about the project. Reconfiguring the entrances made more sense. It will be better for the City as a whole.

Vice Chairman Moreau moved to **grant** this request, seconded by Mr. Clark 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.

The motion passed unanimously.

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. RIML 20-3

Attorney Bernie Pelech spoke to the agenda item. Mr. Pelech spoke on behalf of ASRT LLC. The City Assessor's report contained a considerable amount of information and has determined that this was not an involuntary merger. The City has the burden of proving that at some point in time the lots were voluntarily merged. The City Assessor has relied upon the language of the deeds in 1975 and 1976. Those deeds both say that what is being conveyed is 8 lots. They refer to a plan that shows the 8 lots. It was her determination that the perimeter meets and bounds description around the 8 lots was the fact. That issue has been decided by the Supreme Court. That in and of itself does not mean a voluntary merger. The City Assessor has referenced a conversation with Mr. Doolittle, but Mr. Pelech did not find any record of that conversation in the Assessor's Office. The 3 lots that front on Clinton Ave. should be unmerged. None of the 3 lots fronting on Peverly Hill Rd. depend on the Leavitt road lots. The 3 Peverly Hill Rd. lots have been totally vacant and have been for 50 years. The fact that there is a meets and bound perimeter is not sufficient evidence to find a voluntary merger. The Assessor combined the lots. There was no request from the landowner to combine lots. There was no overt action on part of the landowner to merge lots. The courts would find that the perimeter description would not be sufficient to constitute a voluntary merger.

Vice Chairman Moreau commented that they have been told in the past that if lots were unmerged, then they have to be unmerged to the original status. That would mean that all 8 lots would have to be unmerged. Houses exist on those lots. They are asking for 3 lots to be unmerged, but what is the argument to not unmerge all 8 lots. Mr. Pelech responded that the applicant only desires to unmerge 3 lots. That was all that was requested. They all don't have to be unmerged.

Mr. Chellman commented that would mean they are accepting the merger of the other lots and requesting to unmerge the 3 lots. Mr. Pelech responded they were happy to have the other five lots remain as is. There are houses and garages built across the previous property lines of those lots. Mr. Chellman questioned if the other five lots were treated as one parcel. Mr. Pelech confirmed that was correct. Mr. Chellman clarified that part of this application includes merging those lots. Mr. Pelech responded that they can be treated as one lot. The 3 lots fronting on Peverly Hill Rd. would be unmerged from the other 5. They would be be one lot and the other 5 would be another lot. Mr. Chellman clarified that if this request was granted then there would be 2 parcels one comprised of 3 lots and the other comprised of 5 lots. Mr. Pelech confirmed that was correct.

City Assessor Rosann Maurice-Lentz commented that she did more research on the property and found additional information. Mr. Doolittle brought a building permit that was recorded previously and was recorded with the Inspection Department. At that time, Mr. Doolittle represented the lot as one single family lot for moving a shed to meet setbacks. That meets one of the facts. The superior court did support the ZBA decision that the lots were voluntarily merged. The property deed says that the property could not be sold separately, and the meets and bounds were changed then because the mortgage lender wouldn't lend on 8 separate lots. This was listed as a single-family lot for a real estate listing. Ms. Maurice-Lentz has had conversations with Mr. Doolittle. He knew the property was all one lot. The state statuette says if the lots are separated, then it would have to go back to the original 8 lots. That is the way the statuette reads. These lots were merged when Mr. Doolittle purchased this property, and the mortgage deed represents that.

Mr. Chellman commented that he did not read the statuette the same way. Mr. Pelech agreed that they could separate some lots, not all of them. Ms. Maurice-Lentz commented that the statuette says that the lots have to go back to their premerger status.

Mr. Gamester questioned if there was a building permit involved in the 2 lots on Thaxter Rd. Mr. Pelech responded that the property owner applied for a building permit and used the tax map and lot number on the current tax map. Mr. Pelech commented that if the building permit or mortgage for this property was after 1976, then the lots had been merged by the Assessor anyway. They would not have applied any other way because it would have been shown on the tax map as one lot. Mr. Gamester commented that it would be impossible to unmerge all 8 lots because some were clearly merged by construction. Ms. Maurice -Lentz commented that the statuette doesn't let the lots be parsed. It says they need to go back to the premerger status. Mr. Chellman commented that the statuette had broad language. Mr. Chellman questioned if it would be considered overt action if the prior owner represented it as one lot to the new owner. Mr. Pelech responded that there was no documentation of that conversation. Mr. Chellman questioned if that happened would it be considered overt action. Mr. Pelech responded that it would if Mr. Doolittle requested the Assessor merge them. Ms. Maurice -Lentz responded that she was never asked to merge them, but Mr. Doolittle knew they were merged. It is unclear why Mr. Doolittle didn't request to unmerge the lots before they were sold. It was listed and advertised as a single lot. That is another fact in addition to the boundary lines and the mortgage deed. The courts would look at all the facts. The court case that Mr. Pelech referenced just means that there needs to be additional facts other than just the meets and bounds.

Vice Chairman Moreau to recommend that the City Council **deny** the request for restoration of involuntarily merged lots requested by the owner, seconded by City Council Representative Whelan.

Vice Chairman Moreau commented that the state statuette says it has to be all or nothing. The easiest solution would be to do a subdivision. A request to divide the front with the back would be a fairly simple task and would probably be well received.

Mr. Chellman commented that he came into this thinking 8 parcels existed. However, the City Assessor's comments convinced him that Mr. Doolittle merged the lots.

Mr. Gamester disagreed with the statuette interpretation. If someone had 20 lots and built a small modest house over 2 in the corner, then they would be restricted from unmerging the other 18. That is not the intent of the statuette. Mr. Chellman agreed. Mr. Gamester commented that he would not support the motion.

Chairman Legg commented that he would support the denial because he agreed with how the Assessor was interpreting the statuette. It would have to go back to 8 lots. It would be more practical to do a subdivision. That is the right solution. This has a series of fact. There have been other situations where there has been less clarity.

Mr. Chellman did not agree with the statuette interpretation that it's 8 or nothing but he was compelled by what the Assessor said. Mr. Chellman noted that he would support the motion.

The motion passed by a 7-2 vote. Mr. Gamester and Mr. Harris voted against the motion.

VI. ADJOURNMENT

Vice Chairman Moreau moved to adjourn the meeting at 9:07 p.m., seconded by Mr. Gamester. The motion passed unanimously

Respectfully submitted,

Becky Frey,
Acting Secretary for the Planning Board