

March 19, 2021

Juliet Walker, Director
Portsmouth Planning Department
1 Junkins Ave., 3rd Floor
Portsmouth, New Hampshire 03801

Re: Tax Map: 52, Lot Number: 38 and Tax Map: 52, Lot Number: 39
Restoration of Involuntarily Merged Lots Pursuant to N.H. RSA 674:39-aa
344 Aldrich Road, Portsmouth, New Hampshire

Dear Ms. Walker and members of the Planning Department:

This letter is being sent to advise you that I represent David and Julia Higgins (the "Higgins") relative to their ownership of what was known as Portsmouth Tax Map 52, Lot Number 38 and Tax Map 52, Lot Number 39, collectively now known as 344 Aldrich Road, Portsmouth, New Hampshire (the "Property"). On behalf of the Higgins', I am submitting this letter to request the City of Portsmouth (the "City") unmerge these two lots which are currently being treated as a single lot by the City.

On August 21, 2014, the Higgins acquired title to the Property by Warranty Deed (the "Deed") from Eric S. and Joan S. Landis, a copy of which is attached and labeled Attachment #1. In the Deed, the Property is described as: "A certain lot or parcel of land...being Lots Numbered 38, 39 and a portion of Lot 46 as shown on ...Plan #233 and said Lots Numbered 38 and 46 as changed and shown on ... Plan #782. Plan #233 (Attachment #2) shows Lots 38, 39 and 46. Plan #782 corrects the boundary of Lot 38 by extending it into Lot 46, which was not shown on Plan #233. Lot Number 39 stays the same on both plans.

We have reviewed the tax cards for the Property back to 1971. As can be seen from the cards enclosed, the City recognized and acknowledged that the Property was two distinct parcels, with two distinct tax cards, designated as Plan 52, Lot 38 (Attachment #4) and Plan 52, Lot 39 (Attachment #5).

It appears that it was in 1978 that the City involuntarily merged the lots. On the 1978 tax card (Attachment #6), you will see that there is a handwritten note in the top left corner which says, "Lot 39 added for '78 per deed 2271/84". In the top right-hand corner, is printed "Plan Lot 052 Lot 038", but underneath that a handwritten note that says, "Plan 066 Lot 050". From these

notations, it appears that the City believed the two lots had been merged based on the deed recorded at Book 2271, Page 84 (Attachment #7). However, we have researched the deeds back to 1936

and the description of the Property in every deed, including Attachment #7, and the most recent Higgins' deed all have the exact same description. There was therefore never any intent on the part of the any past owners, or the current owner of the Property to merge the lots.

RSA 674:39-aa II (a) requires that: a request to unmerge lots be made prior to December 31, 2021; and (b) further requires that no prior owner voluntarily merge the lots. With regard to the first requirement, this request is timely, as it is prior to December 31, 2021. The second requirement is also satisfied. A voluntary merger is defined as "any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line." As is clear in the enclosed deeds dating back to 1936, the Property is described as Lots No 3839 and a portion of Lot 46 and there is no evidence in the chain of title that the parcels were voluntarily merged by any previous owner.

Furthermore, the New Hampshire courts have held that the conveyance of multiple lots in a single deed does not, standing alone, support a voluntary merger Roberts v. Town of Windham, 165 N.H. 186, 192 (2013). Instead, the courts will consider the use of the property in its entirety, including evidence of physical development on the land *Id.* When applying this standard, the courts have found a voluntary merger in the follow situations: where the landowner built a duplex across lot lines; where deeds in the chain of title uniformly described the property as a single parcel; and where the lots shared a driveway, a garage was constructed on one lot within two inches of and facing the other lot and where lots had common ancillary buildings, including a bunkhouse, which were typical of a waterfront estate. See Robillard v. Town of Hudson, 120 N.H. 477, 416 (1980); Town of Newbury v. Landrigan, 165 N.H. 236, 241 (2013); and Roberts v. Town of Windham, 165 N.H. 186 (2013).

In this case, the Higgins house sits alone on Lot 38, and neither the Higgins' nor any prior owner built anything on the Lot 39 or used Lot 39 in any way that would make it appear that the owner thought these two lots were in fact one. There are no structures on Lot 39, and the Property has been maintained as two distinct lots. Furthermore, the deeds in the chain of title uniformly describe the Property as two parcels, namely, Lots Numbered 38, 39 and part of 46.

RSA 674:39-aa provides an owner with the ability to unmerge lots that were previously merged by municipal action. The Property satisfies the statutory requirements of RSA 674:39-aa II which governs the process for unmerging lots. RSA-674-aa II states in pertinent part, that "Lots or parcels that were involuntarily merged prior to September 18, 2010 by a ... town... or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds."

Based on the above and the enclosed, the Property satisfies the requirements of the statute, and accordingly, the Higgins' respectfully request that the Planning Board unmerge the parcels and recognize Tax Map: 52, Lot Number: 38 and Tax Map: 52, Lot Number: 39 as separate tax lots.

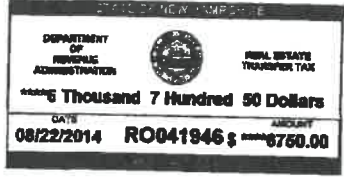
If additional information is needed, please do not hesitate to contact me. Thank you for your consideration of this request.

Sincerely,

Thomas M. Keane

Enclosures
cc:

Attachment
#1



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that we, **Eric S. Landis and Joan S. Landis**, husband and wife, of 344 Aldrich Road, Portsmouth, New Hampshire, for consideration paid, grants to **David Higgins and Julia Higgins**, a married couple, of 76 Sunset Road, Portsmouth, New Hampshire, as joint tenants with rights of survivorship, with Warranty Covenants the following described premises:

A certain lot or parcel of land, together with the buildings thereon, situated at Portsmouth, in the County of Rockingham and State of New Hampshire and adjoining the southwesterly side of Aldrich Road, so-called, and being Lots Numbered 38, 39 and a portion of Lot 46 as shown on Plan of Westfield Park drawn by John W. Durgin, C.E. and recorded in Rockingham Registry of Deeds on August 2, 1917 as Plan # 233, and said Lots Numbered 38 and 46 as changed and shown on a plan entitled "Part of Westfield Park, Portsmouth, N.H. showing proposed changes in Lots No. 38 and 46" dated August 1933, made by John W. Durgin, C.E. and duly recorded in said Rockingham Registry of Deeds as Plan #782, and being more particularly bounded and described as follows:

Beginning at the Northerly corner of said parcel of Aldrich Road at Lot No. 40 on said Plan and running thence in a Southeasterly direction by said Aldrich Road, one hundred fifteen (115) feet to land now or formerly of John W. Shannon; thence turning at right angles and running in a Southwesterly direction by said land of said Shannon, one hundred (100) feet and continuing in the same direction by land now or formerly of one Guptill, fourteen (14) feet to land now or formerly of one Walter A. Gove; thence turning at right angles and running in a Northwesterly direction by land of said Gove, thirty (30) feet to Lot No. 45 on said Plan; thence turning at right angles and running in a Northeasterly direction by said Lot No. 45, fourteen (14) feet to said Lot No. 38; thence turning at right angles and running in a Northwesterly direction by said Lot No. 45 and by Lot No. 44 on said Plan, both now or formerly owned by one Walter A. Gove, eight-five (85) feet to Lot No. 41 on said Plan; thence turning at right angles and running in a Northeasterly direction by said Lot No. 41 on said Plan and by Lot No. 40 on said Plan, one hundred (100) feet to the point of beginning.

Meaning and intending to convey the same premises as conveyed to the within Grantor by Fiduciary Deed of Mable Smith as Successor Trustee of the Robert C. Smith Trust, recorded on March 3, 2014 at Book 5515, Page 2228.

031753

2014 AUG 22 PM 2:07

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

IN WITNESS WHEREOF, I have executed this deed on this 21 day of August, 2014.

Den S. Kilmer

Witness

Eric S. Landis

Eric S. Landis

[Signature]

Witness

Joan S. Landis

Joan S. Landis

State of New Hampshire
County of Rockingham

This instrument was acknowledged before me on this 21 day of August, 2014 by Eric S. Landis.

Den S. Kilmer

Notary Public/Justice of the Peace
My commission expires: February 16, 2016
DENISE S. KILMER
Notary Public - New Hampshire
My Commission Expires February 16, 2016



State of New Hampshire
County of ~~Rockingham~~ Rockingham
Hillsborough

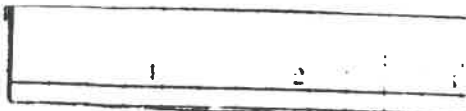
This instrument was acknowledged before me on this 21 day of August, 2014 by Joan S. Landis.

[Signature]

Notary Public/Justice of the Peace
My commission expires: _____

Thomas M. Keane
Justice of the Peace - New Hampshire
Commission Exp. 12-05-17

Attachment
#3



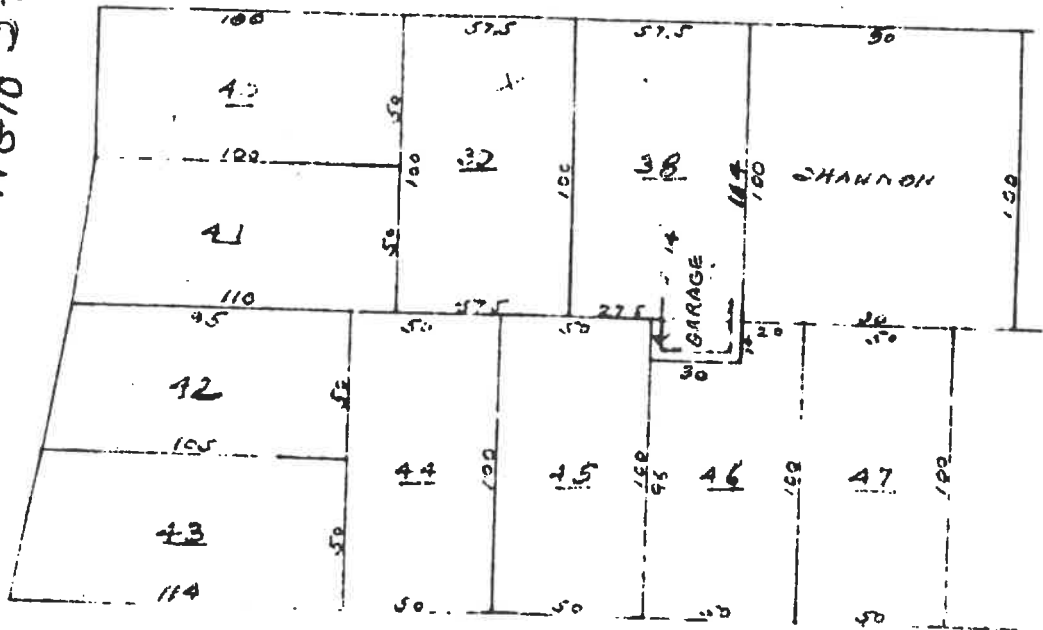
0782



SCALE IN FEET

ALDRICH ROAD

ISLINGTON ST



THAXTER ROAD

ROCKINGHAM RECORDS

Revised 7/16/31 by L.T.A. 1936



PART OF WESTERFIELD PARK
PORTSMOUTH NH
SHOWING PROPOSED CHANGES
IN LOTS 38 AND 46
SCALE: 1" = 50 FT. AUG 1933
CIVIL ENGINEER

FILE NO 1590

PROPERTY ASSESSMENT RECORD, - CITY OF PORTSMOUTH, N. H.

PLAN 52 Lot 38

ADDRESS 344 March Road

DESCRIPTION 2-750 sq ft (Bldg) L

1482/212

1441

1441

1441

6170 SQ FT.

Attachment #4

Justin M. & Olive L. Clark 1482/212 10/3/58

1482/212 K

ARTHUR M. MARGERA W-CLARK 917/57 Feb 21 '28 5-503

RURAL PROPERTY

PROPERTY FACTORS		LAND VALUE COMPUTATIONS AND SUMMARY				OWNERS PREVIOUS TO 1981		ASSESSMENT RECORD					
TOPOGRAPHY	LEVEL	ROLLING	LEDGE	CLASSIFICATION	NO. OF ACRES	RATE	TOTAL	NAME	DATES	ASSESSMENTS	LAND	BLDGS	TOTAL
LEVEL	LOAM	SAND	CLAY	TILLABLE									
HIGH	GOOD	FAIR	POOR	PASTURE									
LOW	GOOD	FAIR	POOR	WOODED									
ROLLING	GOOD	FAIR	POOR	WASTE LAND									
SWAMPY	GOOD	FAIR	NONE	TOTAL ACRES									
	YES	NO		TOTAL VALUE LAND									
	YES	NO		TOTAL VALUE BUILDINGS									
	PAVED	IMPR.	DIRT	TOTAL VALUE LAND & BUILDINGS									
ELECTRICITY													
TELEPHONE													
ROAD													
REMARKS													
URBAN PROPERTY													
LAND VALUE COMPUTATIONS AND SUMMARY													
TOPOGRAPHY	IMPROVEMENTS	FRONTAGE	DEPTH	DEPTH FACTOR	UNIT PRICE	FRONT FT. PRICE	TOTAL						
LEVEL	WATER						500						
HIGH	SEWER												
LOW	GAS												
ROLLING	ELECTRICITY												
SWAMPY	ALL UTILITIES												
	GARBAGE DISPOSAL												
TRENDS OF DISTRICT													
IMPROVING													
STATIC													
DECLINING													
TOTAL VALUE LAND													
TOTAL VALUE BUILDINGS													
TOTAL VALUE LAND & BUILDINGS													
500													
5000													
5500													

6170 SQ FT.

Value Decreased by New Lino-Ment

SMITH ROBERT C & DOROTHY A
 344 ALDRICH ROAD
 PORTSMOUTH NH 03801

Lot 39 added for 78 per deed
 227/84

PROPERTY LOCATION		344 ALDRICH ROAD	SIDE	S	LOCATION CODE	/ / / /	PLAN LOT	052 038
CITY OF PORTSMOUTH N.H.		JOHN B. PETTY CAE, ASSESSOR	TYPE	RESID	PROJECT	31001	CONTROL NO	1803052003800
RECORD OF TRANSFER		DATE	BOOK	PAGE	AMOUNT	MORTGAGE		
1 CLARK/MARGARET		100358	1482	212				
2 Clark Justin M & Olive L		11/24/76	2271	81	28,600			
3 Maher John R & Phyllis W		11/24/76	2271	84	29,500			
4								
5								
6								
7								

TOPOGRAPHY-1 LEVEL	LOCATION	FAIR +						
IMPROVEMENTS-1 C WATER	DRAINAGE	02						
-2 SEWER	NEIGHBORHOOD	STATIC						
-3 ELEC	SOIL-1	SANDY						
-4 GAS	LDAM							
STREET/RD-2 S IMP								

ACREAGE COMPUTATION		ACREAGE COMPUTATION		ACREAGE COMPUTATION		ACREAGE COMPUTATION	
TYPE	ACRES	PRICE	TOTAL	DEPR	VALUE	EQ	ASSESSMENT
1 H-LDT 37-A	1.30	10000	3700		3700	100	3700
2 S1	0.26		5100		5100		5100
3							
4							
5							
6							
	1.56		3700		3700	100	3700

Attachment #0

FRONT	REAR	FRONTAGE	DEPTH	STREET PRICE	DEPTH %	ADJ FR PR	TOTAL	DEPRECIATION	CORNER	VALUE	EQ	ASSESSMENT
1												
2												
3												
4												
LOT COMPUTATION												
LAND TOTAL												
BLDG TOTAL												
TOTAL												

Attachment # 7

KNOW ALL MEN BY THESE PRESENTS, That John R. Maher and Phyllis W. Maher of Little Harbor Road, Portsmouth, County of Rockingham and State of New Hampshire

2271-0084

for consideration paid, grant to Robert C. Smith and Dorothy A. Smith of 101 Aldrich Road, Portsmouth, County of Rockingham and State of New Hampshire

with warranty covenants as joint tenants with rights of survivorship:

A certain lot or parcel of land, together with the buildings thereon, situated at Portsmouth, in the County of Rockingham and State of New Hampshire and adjoining the southwesterly side of Aldrich Road, so-called, and being Lots Numbered 38, 39, and a portion of Lot 46 as shown on Plan of Westfield Park drawn by John W. Durgin, C. E. and recorded in Rockingham Registry of Deeds on August 2, 1917, and said Lots Numbered 38 and 46 as changed and shown on a plan entitled "Part of Westfield Park, Portsmouth, N. H. showing proposed changes in Lots No. 38 and 46" dated August 1933, made by John W. Durgin, C. E. and duly recorded in said Rockingham Registry of Deeds, and being more particularly bounded and described as follows:

Beginning at the Northerly corner of said parcel on Aldrich Road at Lot No. 40 on said Plan and running thence in a South-easterly direction by said Aldrich Road, one hundred fifteen (115) feet to land now or formerly of John W. Shannon; thence turning at right angles and running in a Southwesterly direction by said land of said Shannon, one hundred (100) feet and continuing in the same direction by land now or formerly of one Guptill, fourteen (14) feet to land now or formerly of one Walter A. Gove; thence turning at right angles and running in a Northwesterly direction by land of said Gove, thirty (30) feet to Lot No. 45 on said Plan; thence turning at right angles and running in a Northeasterly direction by said Lot No. 45, fourteen (14) feet to said Lot No. 38; thence turning at right angles and running in a Northwesterly direction by said Lot No. 45 and by Lot No. 44 on said Plan, both now or formerly owned by one Walter A. Gove, eighty-five (85) feet to Lot No. 41 on said Plan; thence turning at right angles and running in a Northeasterly direction by said Lot No. 41 on said Plan and by Lot No. 40 on said Plan, one hundred (100) feet to the point of beginning.

Meaning and intending to convey the same premises conveyed to John R. and Phyllis W. Maher by deed of Paul L. Clark and Shirley G. Gailey on November 24, 1976 and recorded in the Rockingham County Registry of Deeds on November 24, 1976.



John R. Maher & Phyllis W. Maher, husband and wife of said grantor, release to said grantees all rights of homestead and other interests therein.

Witness, Our hands and seals this 24th day of November, 1976.

Witness signature: Thomas G. Ferguson

Signatures of John R. Maher and Phyllis W. Maher

Thomas G. Ferguson

State of New Hampshire

Rockingham ss.:

November 24 A. D. 1976

Personally appeared John R. Maher & Phyllis W. Maher known to me, or satisfactorily proven, to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me, Justice of the Peace - Public

REC'D ROCKINGHAM COUNTY REGISTRY OF DEEDS '76 NOV 24 P12:41



CITY OF PORTSMOUTH

Assessors Office

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
Tel: (603) 610-7249 – Fax: (603) 427-1579

To: Dexter Legg, Chair Planning Board
Cc: Karen S. Conard, City Manager
From: Rosann Lentz, City Assessor *Rosann Lentz*
Date: May 14, 2021
RE: City Council Referral- Request of Restoration of Involuntarily Merged Lots to pre-merger status at 344 Aldrich Road- RIML-21-4

At its meeting on May 3, 2021, the City Council considered a request from Thomas M. Keane, Esq, on behalf of the property owners David and Julia Higgins, requesting the restoration of involuntarily merged lots at 344 Aldrich Road to their pre-merger status pursuant to NH RSA 674:39-aa. These lots are represented as historical lot numbers 38 and 39 on Tax Map 52. The Council voted to refer to the Planning Board and Assessor for report back.

Description

Current assessment records identify the parcel as having .27 acres with a 3 bedroom 1 bath single family dwelling built around 1920 located on the parcel. Older assessment records dating back to the 50's identified the parcels as Tax Map 52 Lots 38 and 39; these remained separately assessed until 1978. A physical inspection and photo of the two lots is attached.

History

Deeds: According to the deeds researched back to 1921; Book 757 Page 67, transferred a parcel of land known as lots 38, 39 and 45 were transferred in one deed with a single metes and bound description.

Property Assessment Records:

In 1978 the Assessor merged lots 38 and 39; to date these two lots have been assessed as one individual lot.

Map Geo 2020 Ariel

When viewing the Ariel on the City Website through Map Geo, it is unclear whether the dwelling is situated on the property line of lot 38 or straddles lots 38 and 39 (See Attached).

Court Decisions

Upon review of various New Hampshire court decisions concerning the denial of restorations of lots, the courts have held that the conveyance of multiple lots in a single deed does not, standing alone, support a voluntary merger Roberts v. Town of Windham, 165 N.H. 186,192 (2013).

Additionally, court decisions also looked at the use of the property in its entirety by reviewing a lots physical characteristics and the overt actions that occurred over time to the placement of buildings, driveways,

outbuildings etc. These decisions, citing totality of changes, can reasonably support that lots by predecessors or current owners were voluntarily merged when facts show the primary and accessory buildings, access, etc. work as a unit. *Robillard v. Town of Hudson*, 120 N.H. 477,416 (1980); *Town of Newbury v. Landrigan*, 165 N.H.236,241 (201); and *Roberts v. Town of Windham*, 165 N.H. 186 (2013).

Summary

Upon review of the Map Geo 2020 Ariel, and reviewing Lot 39 it is unclear whether the dwelling on lot 38 straddles the boundary line of lots 38 and 39. This office recommends a further review of the boundary line between the two lots as it is reasonable to conclude when the dwelling was built in the 1920s the dwelling was built on or straddling the two lots causing an overt action of voluntary merger.

Attachments:



Property Information

Property ID 0166-0051-0000
Location 880 ISLINGTON ST
Owner CHKB PROPERTIES LLC



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019
Data updated 7/17/2019

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

