


**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: December 9, 2019
TO: JOHN P. BOHENKO, CITY MANAGER
FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
RE: 27 THAXTER ROAD – INVOLUNTARILY MERGED LOTS



This memorandum addresses an agenda item scheduled for the December 16, 2019 meeting of the City Council.

On May 20, 2019, the City Council reviewed a request from Chad Callihan and a recommendation from the Planning Board and subsequently voted to unmerge two lots on Thaxter Road owned by Mr. Callihan which were believed to have been involuntarily merged. See NH RSA 674:39-aa (copy is attached for reference).

Abutters, Kenneth and Deborah Jennings of 63 Thaxter Road, then appealed that decision of the City Council to the Board of Adjustment as allowed by the statute. The Board of Adjustment heard the appeal on September 17, 2019 and then continued their deliberations to the October 15, 2019 meeting. At the initial hearing on the appeal, Attorney Ralph Woodman, on behalf of the appealing abutters, indicated to the Board of Adjustment that there was information which had not been available to the City Council at the time of its initial vote which should have been considered prior to granting the unmerger of the lots. The hearings and the deliberation of the Board of Adjustment on this matter may be reviewed on YouTube at <https://youtu.be/kXgZE42ztOk?t=1296> (September 17, 2019 hearing) and <https://youtu.be/MOfxZ5glur4?t=1374> (October 15, 2019 meeting). Subsequent to the hearing and deliberation, the Board of Adjustment voted to remand the matter to the City Council for the Council to take whatever action it deemed to be appropriate under the circumstances.

The remand is now before the City Council scheduled for December 16, 2019. Attorneys for each side have been asked to present their arguments in writing, with a limit of seven (7) pages each. Those writings are due to the City Clerk by noontime on December 11, 2019 and should be included in the agenda packet for that evening. In addition to those documents, each side in the dispute has been asked to have a representative present at the City Council meeting who might answer any questions which might be propounded by members of the Council.

After the Council has conducted whatever review it deems appropriate, considered the writings provided by the parties and asked any questions which it wishes to ask of the party representatives, it would seem appropriate for the Council to either:

- (1) Uphold its previous decision to unmerge the lots;
- (2) Reverse its previous decision to unmerge the lots; or
- (3) Take any other action deemed appropriate by the Council.

cc: Christopher P. Mulligan, Esq.
Ralph Woodman, Jr., Esq.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, 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 the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2021.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.

**BOYNTON WALDRON DOLEAC
WOODMAN & SCOTT, P.A.**

CHARLES B. DOLEAC*†
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HAND DELIVERED
December 11, 2019

City of Portsmouth
Attn: Kelli Barnaby, City Clerk
1 Junkins Avenue
Portsmouth, NH 03801

RE: Jennings Memorandum on Remand to City Council

Dear Ms. Barnaby:

Enclosed are an original and five (5) copies of the Jennings Memorandum on Remand to the City Council – which I understand will be reviewed by the City Council Members prior to the December 16, 2017 Remand Hearing.

I am sending copies of this to Attorney Sullivan and Attorney Mulligan by email today.

Please contact me at r.woodmanjr@comcast.net with any questions. (I've got a bad cold and don't expect to go back to work today).

Very truly yours,



Ralph R. Woodman, Jr.

RRW/jcd

Enclosures

Cc: Robert Sullivan, Esquire
Christopher Mulligan, Esquire

**JENNINGS MEMORANDUM
ON
REMAND TO CITY COUNCIL**

Kenneth and Deborah Jennings (owners of the home at 63 Thaxter Road and direct abutters to the property at 27 Thaxter Road) submit this Memorandum on the Remand by the Zoning Board of Adjustment (ZBA) to the City Council.

This Remand, as stated by the Planning Department in its letter of October 28, 2019, was voted by the ZBA in order to allow the Council

“..to **consider new information** that was not originally available.”

As you will see, this information was “NEW” because neither Mr. Callihan nor the Planning Department staff had previously made it available to the Council.

THE LAW

Under certain circumstances, RSA 674:39-a allows for the “restoration of involuntarily merged lots.”

This “restoration” has restrictions under the statute and is not allowed by the City Council if the owner of the lot – or **any previous owner of the property**

“..voluntarily merged his or her lots.”
674:39 a II (b), with

a “voluntary merger” being defined by the statute as “**any overt action or conduct** that indicates an owner regarded said lots as merged such as, but not limited to, abandoning its lot line.” RSA 674:39-a II (b).

The statute states that in the event that **anyone** who owned the lots in question **at any time** (being the property now known as 27 Thaxter Road) voluntarily merged them, then

“all subsequent owners shall be estopped from requesting restoration” RSA 674:39-a II (b).

Although there is not a great deal of NH Supreme Court cases on the subject in Roberts v. Windham, 165 NH 186 (2013) the Court said the Town properly considered

“the use of the property in its entirety” p. 193
in determining whether a voluntary merger had occurred.

Also, Newbury v. Landrigan 165 NH 236 (2013) was a case involving “voluntary merger” issues.

In Newbury the Court recognized as a factor (in determining whether “any overt action or conduct” a voluntary merger had occurred) that the owners

“treated the property as a single lot when they applied to the Town for building permits” at 241

So the issue in this matter is has “any overt action or conduct (occurred) that indicates the owner (of the lots at 27 Thaxter) regarded said lots as merged”?

As you will see, 27 Thaxter Road and Lots 44, 45 and a portion of 46 were **created** as a single lot by the action or conduct of the owners in 2004.

As you will also see, the Newbury case is **the same** way that earlier owners (Tong and Healy) treated 27 Thaxter Road in 2011.

**HISTORY OF 27 THAXTER ROAD
WHAT LOTS MAKE UP 27 THAXTER ROAD?
(CURRENTLY OWNED BY CHAD CALLIHAN)**

By letter dated February 21, 2019 to the City Council, counsel for Chad Callihan stated that "... between 1972 and 1988... the City involuntarily merged the lots into a single unified lot for tax purposes."

"The lots" which now are called and known as 27 Thaxter Road (Callihan's property) are:

- 44
- 45
- A part of 46 (30 ft. frontage on Thaxter)

all originally shown on an old Plan of Westfield Park (Attached as "A"), with these lots surrounded in green on Attachment A.

In total, these lots today (27 Thaxter Road) contain approximately 12,850 square feet of area and 130 feet of frontage on Thaxter Road.

Chad Callihan now seeks to unmerge a "lot" with only 30 feet of frontage on Thaxter Road and 100 feet deep. This "lot" was formerly known – prior to its merger- as a portion of Lot 46. This is **NOT** the entire original Lot 46, just a portion that is only 30 feet wide.

Prior to 2004, four and one-half (4.5) lots on the Plan of Westfield Park, being lots 42, 43, 44, 45 and a portion of Lot 46 had been merged into **one lot** owned by one owner (Guptill). The lots contained the Guptill residence on Thaxter and Portsmouth's famous "False Tooth Building" on Islington street (where Mr. Guptill worked).

These 4.5 lots are all shown surrounded in red on Attachment A as being on both Thaxter Road and Islington Street, which were considered as one lot by the City until 2004.

NEW INFORMATION

When a person takes a careful look at the Registry of Deeds, ZBA historical records and records available at City Hall, they clearly show that owners of 27 Thaxter Road before Chad Callihan took "action or conduct" which shows that they regarded the lots which comprise 27 Thaxter Road (being Lots 44, 45, and a portion of Lot 46) as "merged."

NONE of this information was disclosed by the Applicant or the Planning Department to the City Council, the City Manager, Planning Board, or ZBA.

In summary, these actions or conduct by the previous owners are:

1. In 2004, the owner (Guptill at that time) of lots 42, 43, 44, 45 and a portion of 46 (which were merged together **as one** single lot at the time – this one lot is surrounded in red on Attachment A), petitioned the ZBA for a variance in order to create **two separate lots** to allow the separation of one lot into two lots with one home on each lot and the two separated lots becoming:
 - a. Lot 52, having 10,475 square feet and known as 17 Thaxter Road (previously Lots 42 & 43 – surrounded in black); and
 - b. Lot 39 having 12,580 square feet and known as 27 Thaxter Road (previously Lots 44 & 45 and a portion of Lot 46 surrounded in green).

(See ZBA Agenda attached as Attachment B.)

As a result of the actions of the prior owner (Guptill), Lots 44, 45 and a part of Lot 46 were then merged to become **ONE LOT** (Lot 39 with 12,580 square feet and 130 feet of frontage on Thaxter Road) which is the **exact same property** Chad Callihan owns today which is known as 27 Thaxter Road (surrounded in green).

Lots 42 and 43 were then merged to become a separate single lot (Lot 52) with 10,475 square feet and known today at 17 Thaxter Road (surrounded in black).

IN OTHER WORDS, IT IS CLEAR THAT THE SINGLE LOT KNOWN AS 27 THAXTER ROAD WAS CREATED AS A SINGLE LOT IN 2004 AS A RESULT OF THE ACTIONS OF THE OWNERS AT THAT TIME BEFORE THE ZBA. THE "ACTIONS" OF THE THEN OWNER (GUPTILL) WERE SIMPLE AND STRAIGHTFORWARD, HE ASKED THAT 27 THAXTER ROAD (FORMERLY LOTS 44, 45 AND A PORTION OF LOT 46) BE CREATED AS A **SINGLE LOT**, WITH LOTS 43 AND 44 AS A SECOND SINGLE LOT.

The May 27, 2004 ZBA letter to the then owner (Attachment C) confirmed that the owner's request to allow for the creation of a single lot (formerly Lots 44, 45 and a portion of Lot 46) at 27 Thaxter Road was allowed at the ZBA meeting of May 25, 2004.

2. In 2011, the then owners of 27 Thaxter Road (a single separate lot created in 2004) filed a ZBA Application for a lot-line variance. This was requested by the owners at the time – Tong and Healy.

As part of that application they filed an Existing Site Plan dated January 17, 2011 with the ZBA.

This site plan, filed for the owners, clearly showed the entirety of 27 Thaxter Road as a **SINGLE LOT**.

In addition the owners representing to the City that lots 44, 45 and a portion of lot 46 = 27 Thaxter Road were a **SINGLE LOT**, that "Existing Site Plan" shows a single fence around the perimeter of the single lot. (See existing Site Plan for 27 Thaxter Road attached as Attachment D.) This is the same voluntarily merged single lot surrounded in green on Attachment D as was created and surrounded in green on Attachment A.

This white picket fence around the perimeter of the entirety of 27 Thaxter Road is also shown in pictures which were presented to the ZBA, but not able to be shown here due to "page restriction" for this Memo.

The facts as stated in this Section are all **new information** which had not previously been known to the City Council, Planning Board or ZBA.

If this information had been known, you'd think that the Planning Department staff would have mentioned it in its memo – which it did not.

PRIOR CITY COUNCIL AND PLANNING DEPARTMENT ACTION

The City Council referred Chad Callihan's earlier request to unmerge a portion of 27 Thaxter Road (the small 30 foot x 100 foot area) to the Planning Board.

The Planning Department staff did a memo on the request, but neither the acts by prior owners of 2004 or 2011 are referred to in the report.

The City Council was **not informed** of the 2004 and 2011 actions as stated in the above New Information Section prior to the time of the Council's May 20, 2019 6-3 vote to unmerge the lots.

The City Council was not informed of the actions in 2004 and 2011 by the applicant, the Planning Department or otherwise.

It is possible the Planning Department did not find the minutes of the May 25, 2004 meeting due to them being wrongly filed and therefore missing on the website.

REMAND

In any event, we now know what occurred with 27 Thaxter Road property in 2004 and 2011, including how Lots 44, 45 and a portion of Lot 46 were created as a single lot known as 27 Thaxter Road at the request of the owner in 2004 and thereafter continue to be treated as a single lot by subsequent owners.

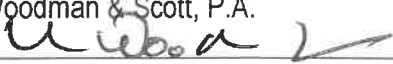
This is the "new information" as referred to in the October 18, 2019 letter from the ZBA.

The City Council now has the opportunity to correct its decision on this matter based on facts now known to it, by denying Chad Callihan's request to unmerge his property, which RSA 674-39 a II (B) requires.

Kenneth and Deborah Jennings
By: Boynton, Waldron, Doleac,
Woodman & Scott, P.A.

Dated: December 11, 2019

By:


Ralph R. Woodman, Esquire
82 Court Street • Portsmouth, NH 03801
603.436.4010



ATTACHMENT B

AGENDA, Board of Adjustment, May 18 & May 25, 2004

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, MAY 25, 2004

I. PUBLIC HEARINGS

10) Petition of Orville N. Guptill Revocable Trust, owners, for property located at 27 Thaxter Road wherein Variances from Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf. Said property is shown on Assessor Plan 166 as Lots 52 & 39 and lie within the Single Residence B district. Case # 5-8A



CITY OF PORTSMOUTH

Community Development Department (603) 431-2006, ext 232

Planning Department (603) 431-2006, ext 216

PLANNING DEPARTMENT

ATTACHMENT C

May 27, 2004

Orville N. Guptill Revocable Trust
27 Thaxter Road
Portsmouth, NH 03801

Re: Property at 27 Thaxter Road
Assessor Plan 166 Lots 52 & 39

Dear Gentlemen:

The Board of Adjustment, at its meeting of May 25, 2004, and after due Public Hearing, completed its consideration of your application wherein the following was requested: Variances from Article III, Sections 10-301(A)(4) and 10-302(A) to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf.

As a result of this consideration, the Board voted to grant your request as advertised and presented with the following stipulations:

- That the curb cut be located on Thaxter Road.
- That there is no intent to stipulate how the house is oriented.

Stating that the requested Variance would not be contrary to the public interest, the Board spoke to the size of the lots, which would be close to the first and second largest lots on the block. They noted that this was the only vacant lot in an otherwise, fully developed neighborhood, and they saw no benefit to leaving it vacant. They felt it would also be in the public interest to demolish an unattractive commercial building on the edge of the lot.

The Board felt that special conditions exist in the fact that there is a vacant unusable building on the lot. The lot is located in an area that is commercial in part, and abuts a residential area with small lots.

For this particular neighborhood, the Board felt that literal enforcement of the Ordinance would result in unnecessary hardship. They saw no advantage to retaining the lots as vacant and unbuildable; and, stated that no one had spoken in terms of injury to either public or private rights.

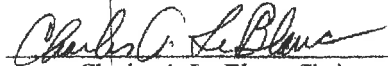
They stated that the requested Variance was consistent with the spirit of the Ordinance as it would provide housing in this residentially zoned area. They stated that substantial justice would be done, as there is a good use to which this property could be put. They felt there were no detrimental factors in making its use residential and that justice would be done to the owner in regards to the fact that the two lots have been taxed separately as buildable lots.

They felt that granting the Variance would not diminish the value of surrounding properties and noted a letter from a realtor to that effect.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-431-2006, ext. 243 between the hours of 8:30 - 10:00 a.m. Applicants should note that other approvals may also be required from other Committees and/or Boards prior to the issuance of a Building Permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

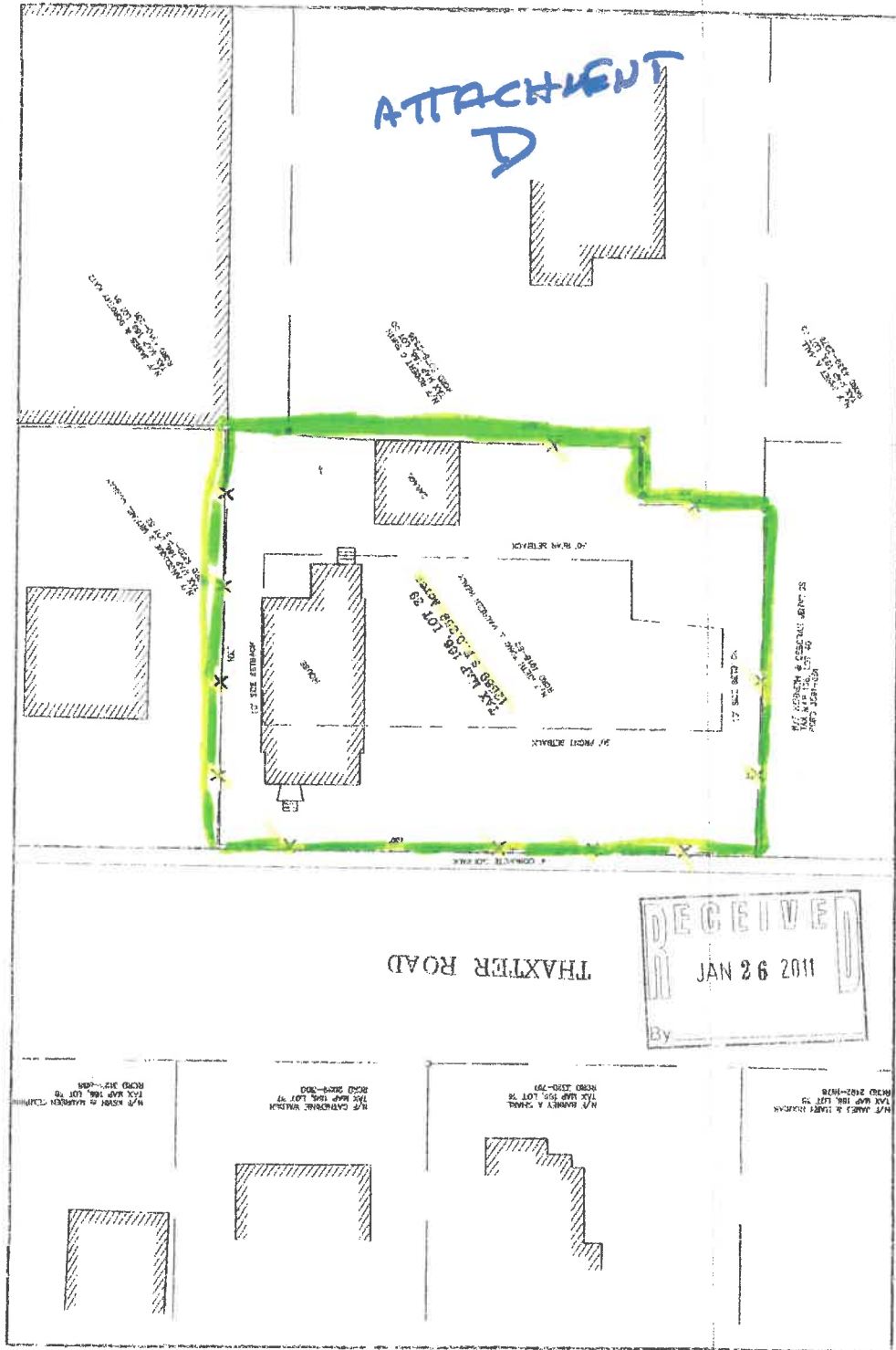
Very truly yours,



Charles A. Le Blanc, Chairman
Board of Adjustment

CAL/jac

cc: Richard A. Hopley, Building Inspector
Charles A. Griffin, Esq.



LITTLE GREEN HOMES, LLC
 CHRIS REDMOND - Designer
 23 Autumn Pond Park - Greenland, NH 03840
 603-315-8095 www.littlegreenhomes.com

TONG RESIDENCE
 21 Thaxter Road Portsmouth, NH

TITLE: EXISTING SITE PLAN
 SCALE: 1/32" = 1'-0"
 DATE: 17 JAN 2011

BOSEN & ASSOCIATES, P.L.L.C.
ATTORNEYS AT LAW

December 11, 2019

VIA HAND DELIVERY

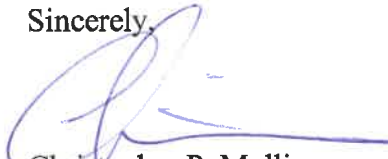
Kelli Barnaby, Clerk
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

**RE: *Appeal of Restoration of Involuntarily Merged Lots Pursuant to RSA
674:39-aa (27 Thaxter Road / Tax Map 166, Lot 39)***

Dear Ms. Barnaby:

Enclosed please find the original and four copies of our memorandum relative to the above matter. Thank you for your attention.

Sincerely,



Christopher P. Mulligan

CPM/

Enclosures

cc: Chad Callihan (w/ enclosures)
Ralph R. Woodman, Jr. (w/ enclosures)

John K. Bosen
Admitted in NH & MA

Christopher P. Mulligan
Admitted in NH & ME

Molly C. Ferrara
Admitted in NH & ME

Bernard W. Pelech
Admitted in NH & ME

MEMORANDUM to City Council

Re: *Appeal of Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (27 Thaxter Road / Tax Map 166, Lot 39)*

On May 20, 2019, following the unanimous recommendation of the Planning Board, the Council voted to restore two involuntarily merged lots located at 27 Thaxter Road owned by Chad Callihan. Kenneth and Deborah Jennings, owners of the abutting property, have objected and appealed this decision to the Board of Adjustment, which in turn has remanded the matter to the Council for further consideration.

The property in question, 27 Thaxter Road, presently exists as a single lot for taxation purposes as Tax Map 166, Lot 39. It was created from three (3) previously existing lots, as is graphically depicted on the attached Exhibit A. These were known as Tax Map 52, Lots 44, 45 and 46. It is Lot 46 that this Council previously voted to restore as a separate lot.

There is no question that Lot 46 existed as a separately taxed Lot in 1971. See Exhibit B. Furthermore, the 1981 tax card (which renumbered the entirety as Tax Map U66 Lot 39) identifies the property as comprising a "primary site" and a "secondary" site. See Exhibit C. It is therefore indisputable that sometime between 1972 and 1981, but prior to 2011, the City involuntarily merged these separate lots into a single, unified lot for tax purposes.

In 2011, RSA 674:39-aa was enacted, requiring municipalities to restore involuntarily merged lots at the request of the property owner. A prerequisite for such restoration is that no owner in the chain of title voluntarily merged the lots in question. RSA 674:39-aa, II(b). Notably, the burden of proof to show that a prior owner acted in a manner to voluntarily merge the lots rests with the municipality. *Id.*

The lots in question have never been voluntarily merged by formal instrument as provided for in RSA 674:39-a. Therefore, it is the burden of the City to establish specific conduct of prior owners in the chain of title sufficient to establish those owners regarded the lots as merged.

Before the Board of Adjustment, the Jennings abandoned their contention that the deed history prior to 1971, including the outsale of a portion of the former Lot 46 to the Jennings' predecessor in title, was relevant to this matter. The lots as they existed as of 1971 were obviously merged by the City by 1981, as demonstrated by Exhibits B and C. The statute requires the restoration of lots so merged prior to September 18, 2010.

The Jennings' sole remaining contention before the Board of Adjustment was that the zoning history of 27 Thaxter Road supports an inference that the prior owners treated the lots as merged. However, neither of the variance requests identified relied on a representation of lot area, lot area per dwelling, frontage, or any other dimensional characteristic that the prior owners were looking to take advantage of that would be vitiated by the restoration of the former Lot 46.

The first request for variances, to allow for the separation of two contiguous lots in common ownership, is wholly irrelevant. The lots in question had never been merged, relief was necessary to convert a formerly commercial lot into a now non-conforming residential lot. This relief was requested in 2004, years before RSA 674:39-aa was enacted. That the prior owner's application identified what is now 27 Thaxter Road as having identical dimensions of the entirety of the lots sought to be restored is hardly surprising, since that was the way the City recognized the lots at the time, as a single lot. In fact, it is unlikely the Planning Department would have accepted the application for consideration if the applicant referred to the lots' dimensions in any other manner. Applicants are certainly not free to simply make up their own dimensions and other physical characteristics without regard to official City records. This is not sufficient evidence that the prior owner considered the lots merged, but merely a recognition of how the lots were treated in City records at the time. As Exhibit C establishes, the City had already treated these lots as merged for tax purposes for more than 20 years.

Similarly, the 2011 variance request for relief to build an addition on the existing structure at 27 Thaxter Road was filed on January 26, 2011. RSA 674:39-aa was enacted in 2011 and was not effective until July 24, 2011. Again, that the prior owner's application includes a site plan that shows dimensions which conform to the City's records at the time is completely understandable, for the reasons set forth above. Notably, the relief requested was side yard setback relief, on the side opposite from the restored lot. Had the applicant sought relief to build within the restored lot (former Lot 46) or in some manner that obviously impacted it, that would present far different considerations. However, the Jennings' contention that these variance applications and the dimensional representations made in connection with them constitute overt action indicating the prior owners considered the lots as merged is simply not accurate. To adopt this reasoning would likely effectively estop any property owner who received a prior variance from availing himself of the rights afforded by RSA 674:39-aa.

The fact that prior owners placed a fence around the entirety was duly considered by the Planning Department staff, the Planning Board and the City Council and was properly found to be insufficient evidence of an intent to treat the lots as voluntarily merged. A fence, unlike a garage, barn or dwelling, is not a structure of such permanence that it evinces an intent to abandon a lot line forever. Nor is anecdotal evidence offered Councilor Beckstead at the May meeting that children had played in the combined lots sufficient to rebut the City's burden of proof. The existing dwelling on 27 Thaxter Road, built in 1929, is not in any way oriented toward former Lot 46 in any manner that would suggest that the lots were intentionally developed as a unified whole.

This latter point is significant because in the lone case interpreting RSA 674:39-aa, Roberts v. Windham, 165 NH 186 (2013) is clear that the fact that the lots have historically been conveyed in a single deed is not legally sufficient to effect a voluntary merger. Nor is acquiescence to taxation as a single lot. It is the property's physical characteristics and historical use that is central to any determination of a voluntary merger by conduct.

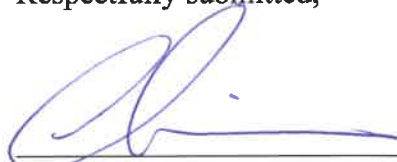
In this case, the existing single family dwelling situated on former Lots 44 and 45 is oriented in such a manner that it faces the street, not former Lot 46. The prior owner's placement of a fence is not indicative of an intent to permanently utilize the Lots as a unified lot. By

contrast, the property owner in Roberts had permanent structures, including a garage within two inches of the lot line for the lot sought to be restored, and access to said garage was only over the lot in question. The Court held "although a shared driveway alone may not be indicative of an intent to merge lots, when viewed in *conjunction with evidence of the placement of the garage and bunkhouse*, the use of a single driveway to serve multiple lots supports the conclusion that the prior owners intended to merge the lots." (Emphasis added). There is nothing comparable in this case which would suggest any permanent intent to treat this Lot as one with the larger property. This is in contrast to the existing garage which spans Lots 44 and 45, and clearly evinces an intent to treat those lots as one. See Exhibit A.

Based upon the foregoing, the City cannot sustain its burden to prove Mr. Callihan or his predecessors voluntarily merged the lots in question and the prior decision of the Council must be upheld.

Thank you for your consideration.

Respectfully submitted,



Christopher P. Mulligan, Esquire
Attorney for Chad Callihan
27 Thaxter Road
Portsmouth, NH 03801

Date: December 11, 2019



ISLINGTON ST

ALDRICH RD

THAXTER RD

OLD LOT LINES

Garage

45

44

46

HOUSE

17

101

114

35

0.275 ac

34

0.179 ac

33

0.172 ac

69

100

100

85

100

45

100

100

100

115

90

47.5

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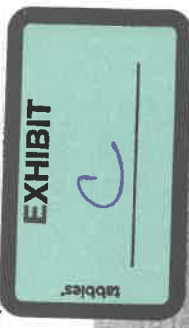
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PROPERTY ASSESSMENT RECORD

LOCATION 27 THAXTER RD LOT 039 CADD 01 OF 03 OLD N.L.P. 022 044.V.C. 961 RECORD OF OWNERSHIP

MAP U.S.C. 16500 ZONING SR II CLASS 01

NAME CUPTILL ORVILLE N MAILING ADDRESS 27 THAXTER ROAD PORTSMOUTH NH 03801

Guptill Orville N Trustee of the Orville N. Cuptill Revocable Trust

REG-PAID 0943/0498 DATE 08/38

2685/1110 05/04/87 none

ASSESSMENT RECORD	LAND	BLDG	TOTAL
16500			
41600			
57100			

LAND VALUE COMPUTATIONS AND SUMMARY

CLASS	SIZE	RATE	INFLUENCE FACTOR	LAND VALUE
1	2500	3.00		15000
4	510	1.0		510
T	12580			15500

MEMORANDA

all values
 2 years
 1/2 years
 \$41600 for 1/2 year 2 years 5 months 2000
 No increase

SALES DATA

DATE	TYPE	SALE PRICE	SOURCE	VALUITY
	1		1	1
	2		2	2
	3		3	3
	4		4	4
	5		5	5
	6		6	6
	7		7	7
	8		8	8
	9		9	9
	10		10	10
	11		11	11
	12		12	12

INSPECTION WITNESSED BY: *Orville N. Cuptill*