



# TOWN OF GILFORD

*Recreation Center of New Hampshire*

DEPARTMENT OF PLANNING & LAND USE

VIA CERTIFIED MAIL #7006 0100 0005 3554 1926  
RETURN RECEIPT

May 23, 2007

Barbara Aichinger  
36 Old English Road  
Bedford, NH 03110

Re: 554 Edgewater Drive, Gilford, NH -- Tax Map and Lot #221-007.000

Dear Ms. Aichinger:

As you know, questions have been raised about the interpretation I gave you earlier concerning whether your property is legally one lot or two. I have consulted with the town's legal counsel, and have learned that it is indeed one.

I apologize for any inconvenience that my earlier opinion may have caused you. If there are any questions, it would be best if your attorney contacted the town's: Walter Mitchell (524-3885).

Sincerely,

John B. Ayer  
Director of Planning and Land Use

cc: Board of Selectmen  
Evans E. Juris, Town Administrator  
David Andrade, Building Inspector  
Appraisal Department  
Walter L. Mitchell, Esq.  
Patrick H. Wood, Esq.  
File

BUILDING • CONSERVATION • HEALTH • HISTORIC PRESERVATION • PLANNING • ZONING

47 CHERRY VALLEY ROAD • GILFORD, NH 03249 • PHONE: (603) 527-4727 • FAX: (603) 527-4731

**MITCHELL & BATES PROFESSIONAL ASSOCIATION**

ATTORNEYS AT LAW

UNION SQUARE • 382 UNION AVENUE  
LACONIA, NEW HAMPSHIRE 03246

WALTER L. MITCHELL  
TIMOTHY BATES

TELEPHONE (603) 524-3885  
FACSIMILE (603) 524-0745

July 26, 1996

John Bobula, Director  
Gilford Planning and Land Use  
47 Cherry Valley Road  
Gilford, NH 03246

Re: Gilford Zoning Ordinance - Merger of Lots

Dear John:

This letter will confirm our telephone conversation of this morning. I have reviewed Section 9.1.1 of the Gilford Zoning Ordinance regarding the merger of contiguous lots. It is my opinion that to the extent this provision is interpreted to require the merger of adjacent conforming lots, the provision is unconstitutional for at least two independent reasons.

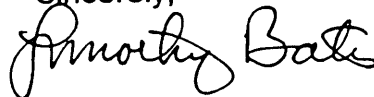
First, by definition, conforming lots comply with all current land use regulations of a municipality, and it is my opinion that requiring such a lot to be merged with an adjacent conforming lot would serve no valid public purpose whatsoever. Such a requirement would therefore be struck down as violating substantive due process.

Second, I also believe that such a requirement would violate the constitutional guarantee of equal protection of the laws. That is, similarly situated landowners are treated in a vastly different way depending on whether their conforming lots are adjacent or separated by some minimal amount of intervening land. It does not seem to me that such different treatment can be justified with the theory that the regulation bears a substantial relationship to the achievement of an important public purpose. Therefore, the regulation would also flunk the equal protection test.

In light of the foregoing, I urge that Section 9.1.1 be amended to eliminate any interpretation that would require the merger of adjacent conforming lots. In the meantime, I am hopeful that the ZBA would interpret this section to not require the merger of such lots if the issue comes to the Board before an amendment can be adopted.

As always, we appreciate the opportunity to assist and hope you will call if you have any further questions.

Sincerely,



Timothy Bates

TB/scc

cc: David R. Caron, Town Administrator

# MITCHELL & BATES PROFESSIONAL ASSOCIATION

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LACONIA, NEW HAMPSHIRE 03246

WALTER L. MITCHELL  
TIMOTHY BATES

TELEPHONE (603) 524-3885  
FACSIMILE (603) 524-0745

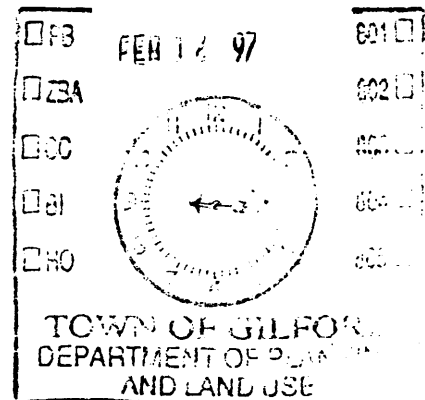
February 11, 1997

## VIA FACSIMILE AND FIRST CLASS MAIL

John Bobula, Director  
Dept. of Planning & Land Use  
47 Cherry Valley Road  
Gilford, NH 03246

Re: Lot Merger Clause  
Section 9.1.1 - GZO

John:



As an addendum to my letter of July 26, 1996 you have asked whether the town may legally require the merger of contiguous **nonconforming** lots that have each been developed with a principal use. It is my strong opinion that the town may not require such merger.

The basis for my conclusion is the familiar rule that once a landowner has established a lawful use on a parcel of land, his or her rights to continue that use, absent a clear danger to public health or safety, become vested, and may not be taken or impaired by government regulation, unless the landowner is fully compensated for the loss the regulation would cause to the vested use. This concept of vested rights extends to the separate existence of the parcel(s) that has/have been developed, as well as to the continued existence of the use that has been established on the lot(s).

In the interest of providing a prompt response to your inquiry, I have not supported this opinion with citations to the large body of federal and state case law on this topic. I will be happy to offer such supporting authority if you feel it is necessary.

Sincerely,

Timothy Bates

TB/dbm

cc: David R. Caron, Town Administrator

# MEMO

Date: January 24, 2002  
To: Gilford Planning Board  
From: John Ayer, Director of Planning and Land Use  
Re: Ordinance Amendments – Updated Since 1<sup>st</sup> Public Hearing

Article 4 and Article 9 each had significant modifications since the first public hearing. I have printed these new copies in color to help distinguish between new and old text.

- The new text that you wanted out is now gone.
- Text that was new at the first hearing which we are keeping now appears with a yellow highlight.
- Text existing today that needs to be removed appears as it did before with the ~~strike through line~~.
- Text that is new since the first public hearing now appears in red type with yellow highlight.

If you have any questions or comments about the new verbiage, please contact me before the meeting and I will prepare some modified language. Please note with the DORMITORY descriptive wording I added some parameters which we did not really cover before. Please consider what I've proposed. I'm not married to the language or the exact standards I've proposed, but I feel we need to define what people can and cannot do. That makes it less arbitrary and capricious to enforce, and clarifies things for the unsuspecting dormer/dormee(?!).

Since no changes were made to Article 10 or Section 5.4 those are not in your packets.

**ARTICLE 9**  
**NON-CONFORMING STRUCTURES, LOTS, AND USES**  
PAGE 1 OF 3

9-1

**ARTICLE 9 NON-CONFORMING STRUCTURES, LOTS AND USES**

~~This ordinance is intended to regulate land uses so areas will contain compatible uses on adequate lots with proper structures. The ordinance shall be administered so that deleterious affects of non conforming lots, buildings, and uses shall be reduced and eventually eliminated. The purpose of this ordinance is to regulate nonconforming lots, uses, and structures; provide limitations on their use; and clarify under what circumstances nonconforming lots, uses, and structures may be expanded, reduced, modified, continued, or terminated.~~

**9.1 NON-CONFORMING LOTS** - A lot that is not contiguous to another lot owned by the same party, that has less than the prescribed minimum area or frontage, may be built upon provided that all other regulations of this ordinance are met and that lot, before the adoption of the requirements which have made it non-conforming:

(a) was lawfully laid out by plan or deed duly recorded in the Belknap County Registry of Deeds, or

(b) was shown on a subdivision plan approved before 1984 under the Subdivision Regulations of the Town of Gilford, or

(c) was otherwise exempt from such regulations by the provisions of statute, and provided that such lot conforms to the area and frontage requirement of the zoning ordinance applicable at the time of said recording or approval.

**9.1.1 CONTIGUOUS NON-CONFORMING LOTS** - ~~When two (2) or more lots of record are held in common ownership have the same owner and are contiguous, and one (1) or both more of the lots is non-conforming to this ordinance as to size, dimension or frontage, the lots shall merge and be treated as a single lot owner shall be required to merge all contiguous, nonconforming lots with contiguous lots under similar ownership until such contiguous, nonconforming lots are made conforming unless an exception is provided for below.~~

**9.1.1.1 EXCEPTION** - ~~If at the time of the establishment of common ownership of the lots described above become owned by the same owner, there is a lawful and preexisting principal use listed in Article 4 on each lot, the lots owner shall not be required to merge the nonconforming lot or lots.~~

**9.1.1.2 EXCEPTION** - ~~Whenever lots are protected from merger by the provisions of RSA 674:39, the lots owner shall not be required to merge the lots.~~

**9.2 NON-CONFORMING USES** - If a lawful use exists at the effective date of adoption or amendment of this ordinance, ~~that which~~ would not be allowed in the zone under the terms of this ordinance, said use shall be protected and may be continued so long as it remains otherwise lawful and subject to the other provisions of this section.

**9.2.1 DISCONTINUED USE** - If a non-conforming use is discontinued for one (1) year or superseded by a conforming use, it shall thereafter conform to the regulations of the zone and the non-conforming use may not be resumed.

**9.2.2 EXPANSION** - A non-conforming use may be expanded within the limits of the property in which it was lawfully established if the unity of the use is retained and other requirements of the zone are complied with.

**9.2.3 NON-CONFORMING SEASONAL USES** - A non-conforming seasonal use may not be expanded to a year-round use.

-----Original Message-----

From: Stephan Nix  
Sent: Monday, November 24, 2008 10:08 AM  
To: Patrick H. Wood

Pat:

Attached are the letters from Tim Bates to the Planning Department regarding merger. These letters were given out by the planning department in the 1996 - 97 time period as part of the zoning information package.

For many years, the planning department considered a structure that met the definition of a dwelling (kitchen, sleeping, living, bathroom) as a principal use. If the a person owned two nonconforming lots with a house on one lot and a "guest house" on the second lot, that the lots would not merge.

Hope this helps,

Stephan Nix  
Attorney at Law  
25 Country Club Road  
Suite 502  
Gilford, NH 03249  
603-524-4963  
fax 603-524-1978  
[snix@metrocast.net](mailto:snix@metrocast.net)

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Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

Attachment(s): Merger letters.pdf

#10

**PENACHO COLEEN**

**From:** Glenn Sutton [gsutton1@gmail.com]  
**Sent:** Friday, December 07, 2007 10:22 AM  
**To:** PENACHO COLEEN; Me  
**Subject:** Fwd: Fw: GIC Update 4/23/2007

----- Forwarded message -----

**From:** Kevin Keohan <kevin.keohan@k2-eng.com>  
**Date:** Apr 26, 2007 8:18 AM  
**Subject:** Re: Fw: GIC Update 4/23/2007  
**To:** Glenn Sutton <gsutton1@gmail.com>

Hi Glenn...I faxed over the letter...2 pages.  
 Stay tuned  
 Regards, Kevin

----- Original Message -----

**From:** Glenn Sutton  
**To:** Kevin Keohan  
**Sent:** Wednesday, April 25, 2007 8:08 PM  
**Subject:** Re: Fw: GIC Update 4/23/2007

Thanks Kevin, my fax is 203/226-5949.

I sent that email/letter today..you should have gotten a copy. I will also let you know if I hear anything. Should be an interesting week or two! Thanks again for all your help.

Brgds, Glenn

On 4/25/07, Kevin Keohan <kevin.keohan@k2-eng.com> wrote:

Hi Glenn...yes...we are on the same page. If you have a fax number I can fax you over the letter we sent to Ayers as well. I spoke to Skip Sutton yesterday who said he had called on Monday and spoke with Ayers. Ayers told him that they were going to have a meeting (he did not mention the attendees) to discuss the issue. As I learn more, I will advise you.  
 Regards, Kevin

----- Original Message -----

**From:** Glenn Sutton  
**To:** Kevin Keohan  
**Sent:** Wednesday, April 25, 2007 9:01 AM  
**Subject:** Re: Fw: GIC Update 4/23/2007

Kevin, thanks for adding me to your list.

I finally got around to drafting a letter to the Selectmen last night. To make sure we are on the same page, this is what I am planning to send:

I am writing this letter as General Agent for Rita B. Sutton, owner of 548 Edgewater Drive. Mrs. Sutton's property abuts the above-referenced Aichinger property to the northwest.

After reviewing the correspondence contained in the Aichingers' file in the Department of Planning and Land Use between the Aichingers , Mr. John Ayer and Mr. Wil Corcoran , it appears as if Mr. Ayer has made an attempt to unilaterally "de-merge" the Aichinger property and therefore create two building lots. What was the legal precedent for such action? Isn't due process necessary in cases such as this? Were the Selectmen consulted prior to this action? Mr. Corcoran pointed out very clearly in his letter of October 19, 2006 to the Aichingers that "*...I have no authority to proceed without direction from Planning and the Selectmen.*" It seems as if this is all contrary to the New Hampshire Supreme Court decision pertaining to the referenced parcel.

Please advise me as to what the positions of the Town Counsel and the Selectmen are regarding this matter. Thanking you in advance for your earliest possible reply, I remain,

Sincerely,

Glenn Sutton  
Power of Attorney for Rita B. Sutton

Let me know what you think..I'd like to send it off today.

Thanks again for all.

Regards,  
Glenn

On 4/24/07, **Kevin Keohan** <[kevin.keohan@giclub.org](mailto:kevin.keohan@giclub.org)> wrote:

Hi Glenn...I've added you to our email list.

Kevin

----- Original Message -----

From: "Kevin Keohan" <[kevin.keohan@giclub.org](mailto:kevin.keohan@giclub.org)>

To: "Kevin Keohan" <[kevin.keohan@giclub.org](mailto:kevin.keohan@giclub.org)>

Sent: Monday, April 23, 2007 9:51 AM

Subject: GIC Update 4/23/2007

- > Dear GIC Member....It appears that spring has finally arrived on GI. Most of
- > the ice is gone on the lake and hopefully the beautiful weather this past
- > weekend is a sign the the winter is finally over. I wanted to bring you up
- > to date on the last two Board of Directors (BOD) meetings and alert you to
- > some legislation that could affect waterfront owners.



- >
- > At the 3/18 BOD meeting the main item on the agenda were the GIC rules. They
- > are printed in the back of the telephone directory and were in need of
- > updating and clarification. The rules surrounding clubhouse use by members
- > were totally re-written in an effort to make the clubhouse more accessible
- > by members. The fee to use the clubhouse was reduced to \$100, just enough to
- > cover cleaning costs, and the times when the clubhouse is available for
- > members' use has been expanded and clarified. The new rules will be
- > published in this years telephone directory and on the GIC website. Please
- > contact Nancy Halfmann if you wish to use the clubhouse.
- >
- > We are still having trouble getting the permit from the Department of
- > Environmental Services (DES) for the repair of the beach at the clubhouse.
- > The plans submitted last fall were rejected by the DES which prompted the
- > club to request a meeting with the DES Commissioner in January. At the
- > meeting were the DES Commissioner, two DES Engineers Jack McDevitt and
- > myself.. Because of the continued erosion problems we have at the GIC
- beach
- > the DES is mandating that a concrete wall 75' long be constructed between
- > two of the jetties. In addition the DES is requiring that the new plans be
- > drawn and approved by a Professional Engineer (PE) which is unusual and
- only
- > required in extreme circumstances. We are currently in the process of
- > working to have the plans completed for re-submittal to DES. I expect the
- > application costs to be 2 to 3 times the initial budget. Once the plans
- are
- > approved thru DES, we will get pricing on the construction phase of the
- > project. Construction costs per the original plans were around \$ 40K.
- >
- > In March the owners of the property at 554 Edgewater Drive submitted plans
- > to the club for reconstruction of their home. On the plans submitted, the
- > owners are claiming that they have two homesites on their waterfront
- parcel
- > of land where one homesite has existed for decades.
- > As some of the long term residents may remember, this property was at the
- > center of a New Hampshire Supreme Court decision which found that the
- shore
- > property comprised one lot.
- >
- > 554 Edgewater was the only agenda item at the 4/18 BOD meeting where the
- > Directors, with advice of Counsel, unanimously voted to request a written
- > decision by an appropriate land use board of the Town of Gilford, such as
- > the Planning Board or Board of Adjustment as the case may be, that the
- shore
- > property has been validly subdivided, or de-merged into two lots.
- >
- > It has recently been brought to the club's attention that there are
- several
- > bills that are going before the state Senate as soon as this week. The

bills

> are HB383, HB665\_FN-AS and HB857-FN-Local. As I understand it the intent of

> these bills is to limit the amount of square footage that may be used for

> construction on a given waterfront lot. These bills will have the most

> impact on smaller lots should the owners wish to rebuild or add on to their

> home. At this point however, the club does not know enough about these bills

> and is requesting that all members write letters and/or call Senate members

> from your home district and urge them to postpone action until the GIC has

> had time to review the bills and have input.

>

> On behalf of GIC, I have written letters to all 24 Senators and have

> requested postponement of any voting. The list of State of NH Senators can

> be found at <http://www.gencourt.state.nh.us/senate/senatemembers.asp>

>

> The Senator that represents Gilford is

> <http://www.gencourt.state.nh.us/senate/members/senate04.asp>

>

> I have posted the Bills on the GIC home page for your review.

[www.giclub.org](http://www.giclub.org)

> If you are a waterfront owner these bills will affect you. Please take the

> time to call the Senator from your home district (assuming you live in NH)

> or write as many State Senators as possible and urge them to postpone voting

> on these bills.

>

> That's all for now,

> Regards, Kevin Keohan

>

>

>

>

>

>

>

-  
Glenn Sutton, III  
Managing Member  
CCI Development, LLC  
87 Route 100 North  
Dudlow, VT 05149

12/7/2007

00000031

m:203.856.8002  
o: 802.228.7522  
f: 802.228.7523

\*\*\*\*\*

This e-mail is intended only for the addressee named above. As this e-mail may contain confidential or privileged information, if you are not the named addressee, you are not authorized to retain, read, copy or disseminate this message or any part of it.

\*\*\*\*\*

BROUILLARD & BROUILLARD  
P.L.L.C.  
Attorneys at Law

COPY

221-007

PHILIP A. BROUILLARD  
OF COUNSEL  
RICHARD P. BROUILLARD

16 ACADEMY STREET-LACONIA, NEW HAMPSHIRE 03246-3603  
603-524-4450  
TELECOPY: 603-528-3646  
E-MAIL: philb@worldpath.net

RECEIVED

APR 19 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

April 17, 2007

Walter Mitchell, Esquire  
Mitchell & Bates P.A.  
25 Beacon Street East, Suite 2  
Laconia, NH 03246-3445

**RE: Town of Gilford - Barbara Aichinger Property  
Governor's Island, Gilford, NH  
Our File #91-97**

Dear Walter:

I am enclosing a copy of my letter, dated April 3, 2007, to John Ayer, together with the attachments mentioned in said letter.

I stopped in today (Monday, April 16, 2007) to see John, at the Town Hall, but he was away the week at a planning conference.

I represent Governor's Island Club, and the Board of Directors has been asked to approve a house plan for the Aichinger shore lot. The records of the Club and the Supreme Court Case consider the shore lot as one parcel. The Town, however, has recently de-merged the shore front lot into two lots. See letter dated January 15, 2007.

I asked Dave Andrade about this today, and he said about 30 properties have been de-merged by the Planning Office, and the Assessor's office within the last 10 years. This was based on some case Dave recalls against the Town in which the Town took the position that two contiguous non-conforming lots in the same ownership were merged but that the Court held otherwise.

I am trying to advise the Club as to whether one or two shore lots exist. It would seem that some superceding legal precedent or authority should exist to sustain a decision to de-merge the shore lots.

Dave also advised me that the Planning Department was not aware of the Supreme Court case that decided that the shore lot could not be subdivided because of insufficient area under the Gilford Zoning Ordinance.

I would like to discuss this with you at your earliest convenience.

Very truly yours,

Philip A. Brouillard

PAB/djs  
Enclosures

cc: Mr. John Ayer, Gilford Planning.

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APR 19 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

**BROUILLARD & BROUILLARD**  
P.L.L.C.  
Attorneys at Law

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PHILIP A. BROUILLARD  
OF COUNSEL  
RICHARD P. BROUILLARD

APR 23 2007

**DEPT. OF PLANNING AND LAND USE**  
TOWN OF GILFORD

16 ACADEMY STREET-LACONIA, NEW HAMPSHIRE 03246-3603  
603-524-4450  
TELECOPY: 603-528-3646  
E-MAIL: philb@worldpath.net

April 20, 2007

John B. Ayer, AICP Director  
Town of Gilford Department of Planning & Land Use  
47 Cherry Valley Road  
Gilford, NH 03249

Walter Mitchell, Esquire  
Mitchell & Bates P.A.  
25 Beacon Street East, Suite 2  
Laconia, NH 03246

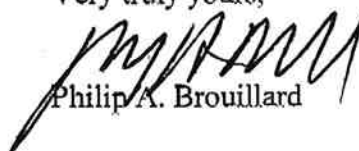
**RE: Barbara Aichinger Property**  
**Governor's Island, Gilford, NH**  
**Our File #91-97**

Dear John and Walter:

I am enclosing the following correspondence regarding the Aichinger de-merging matter, following up on my letter of April 3, 2007, to John, and April 17, 2007, to Walter:

1. E-mail from Susan Bradley to Edward Sutton, dated April 18, 2007, detailing the "Coup" and "map maker error" as well as plans for the newly de-merged lot.
2. E-mail from Mr. Aichinger advising the Club to contact the Town directly about the Club's specific concerns.
3. Letter of Approval from Governor's Island Club to Aichinger for 554 Edgewater Drive advising that "In order to avoid any confusion, doubts with respect to the status of your shore property, we would appreciate being provided with a written decision by an appropriate land use board of the Town of Gilford, such as the Planning Board or Zoning Board of Adjustment as the case may be, that your shore property has been validly subdivided, or de-merged, into two lots.

Very truly yours,

  
Philip A. Brouillard

PAB/djs  
Enclosures

Apr 18 07 10:00P

Richard P. Brouillard

2396495195

p. 2

Page 1 of 1

Main Identity

DAN, VI - Show THIS TO PHIL

From: "Susan C Bradley" <susanbradley@metrocast.net>  
To: "Edward Sutton" <patskip@webtv.net>  
Sent: Wednesday, April 18, 2007 9:59 AM  
Subject: Bob Gagne

PHIL - PLEASE NOTE THIS INFO -

Skip,

I understand that you have become aware of Barbara Aichinger's coup!!! She and her attorney have researched and discovered the joining of her lot was done in error by a map maker years ago. The map maker failed to draw the line between the original two lots. Apparently there have been several reversals of the joining of lots, and she was able to get the town to agree to separate the lots. There was no subdivision. The town merely corrected a mistake done by a map maker years ago.

Barbara has torn down her home, and she will be building a modular home on the lot next to you. She will be either selling the extra lot or will be building another modular home next to her. The septic system for the extra lot will be on her land across the street. She has had a five bedroom septic system designed to fit on the lot across the street, and she will be selling the right to construct on that lot along with the waterfront lot. She will not be selling the land across the street. She will be keeping her tennis court.

Barbara has attempted to rent Imi Kilburn's property for the summer during construction of her new home.

Also, Chuch and Ginny Whitten will be building their new home at Windemere. They are purchasing a lot in the next couple of weeks.  
Sue

Susan C. Bradley  
REALTOR  
Coldwell Banker Residential Brokerage  
348 Court Street  
Laconia, NH 03249  
Direct line 603.581.2810  
Cell 603.493.2873

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APR 23 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

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APR 19 2007

Brouillard & Brouillard P.L.L.C.

4/18/2007

RECEIVED 1 of 2

APR 20 2007

**Brouillard & Brouillard**

**Brouillard & Brouillard P.L.L.C.**

**From:** "Kevin Keohan" <kevin.keohan@k2-eng.com>  
**To:** "Richard Brouillard" <rbrouillard@mindspring.com>; "Philip A. Brouillard" <philb@worldpath.net>  
**Sent:** Friday, April 20, 2007 9:37 AM  
**Attach:** 554\_Edgewater.doc  
**Subject:** Fw: New Aichinger home

Hi Richard and Phil...I have attached the final letter which was sent to the Aichingers re: approving their building plans. I have made a few modifications since the letter Richard and I discussed on 4/18.

I emailed the letter to the Aichingers and also sent an original to them via USPS. Below is the response that I have received from Ed Aichinger.

Regards, Kevin

----- Original Message -----

**From:** Edward Aichinger  
**To:** 'Kevin Keohan'  
**Cc:** 'Barbara Aichinger' ; 'Edward Aichinger'  
**Sent:** Thursday, April 19, 2007 4:56 PM  
**Subject:** RE: New Aichinger home

RECEIVED

APR 23 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

Kevin,

Thanks so much for the approval.

With regards to your questions about the un-merge, I believe it would be more expedient for the club to contact the Town of Gilford directly about your specific concerns.

Regards,  
Ed

---

**From:** Kevin Keohan [mailto:kevin.keohan@k2-eng.com]  
**Sent:** Thursday, April 19, 2007 1:34 PM  
**To:** Edward Aichinger  
**Subject:** Re: New Aichinger home

Hi Ed...attached is a letter in response to your building plans. I will mail an original to your Bedford address for your records. Please call with any questions that you may have.

Regards, Kevin  
508-517-6604

----- Original Message -----

**From:** Edward Aichinger  
**To:** 'Kevin Keohan'  
**Cc:** aichinger@comcast.net ; 'Edward Aichinger'  
**Sent:** Tuesday, April 17, 2007 4:33 PM  
**Subject:** New Aichinger home

Hi Kevin,

Just would like to know if the club has received all the information it requires to approve our plans. I trust you



received on March 28, 2007, the septic plan, the building permit, and new location on the lot. This is addition to the house plan sent on March 22, 2007. When do you believe we can expect receiving the approval from the club?

Regards,  
Ed

---

No virus found in this incoming message.  
Checked by AVG Free Edition.  
Version: 7.5.446 / Virus Database: 269.5.5/769 - Release Date: 4/19/2007 5:56 PM

**RECEIVED**

APR 23 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

**GOVERNOR'S ISLAND CLUB, INC.**

Post Office Box 7165

Gilford, New Hampshire 03247-7165

To: Barbara Aichinger  
36 Olde English Road  
Bedford, NH 03110

April 18, 2007

RE: Building plans for 554 Edgewater Drive

Dear Mrs. Aichinger,

This letter is to inform you that the Governor's Island Club Board of Directors has approved the building plans that you submitted on 3/20/2007 and 3/28/2007 to replace the dwelling which you recently demolished on Lot 7 consisting of 1.14 acres.

It is important to emphasize that the Board is approving the building plans only. We do not feel it would be appropriate to take a position with regard to whether or not your new home is situated on a single lot (as determined in a New Hampshire Supreme Court decision regarding this property) or, as shown on your plan as submitted, one of two lots.

In order to avoid any confusion, doubts, or uncertainty with respect to the status of your shore property, we would appreciate being provided with a written decision by an appropriate land use board of the Town of Gilford, such as the Planning Board or Zoning Board of Adjustment as the case may be, that your shore property has been validly subdivided, or de-merged into two lots.

Thank you for your assistance in this matter and we look forward to hearing from you in this regard.

Regards,

Kevin Keohan  
President  
Governor's Island Club Inc.

**RECEIVED**

APR 23 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

BROUILLARD & BROUILLARD  
P.L.L.C.  
Attorneys at Law

PHILIP A. BROUILLARD

OF COUNSEL  
RICHARD P. BROUILLARD

16 ACADEMY STREET-LACONIA, NEW HAMPSHIRE 03246-3603

603-524-4450

TELECOPY: 603-528-3646

E-MAIL: philb@worldpnh.net

**RECEIVED**

APR 19 2007

April 3, 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

John B. Ayer, AICP Director  
Town of Gilford Department of Planning and Land Use  
47 Cherry Valley Road  
Gilford, NH 03249

**RE: Barbara Aichinger  
Our File #91-97**

Dear John:

Thank you for meeting with me on short notice this morning.

I am enclosing the following:

1. Letter, dated January 15, 2007, from yourself to Barbara Aichinger;
2. Copy of Supreme Court Decision in case of Governor's Island Club v. Town of Gilford;
3. Letter from Wil Corcoran to Barbara Aichinger; and
4. Various correspondence and emails.

I had a question about the third (3) sentence in your letter, dated January 15, 2007. "Such automatic mergers were required by an old Zoning Ordinance that was thrown out in a Court challenge and is no longer on the books".

I requested that you direct me to the authority you quoted in this letter, and you advised that you could not, and would have to discuss the matter with Attorney Walter Mitchell. Could you also provide a copy of "the old Zoning Ordinance that was thrown out".

Please note that the Supreme Court case decided that the Aichinger property consisted of only one lot on the shore and could not be subdivided because of insufficient area under the Gilford Zoning Ordinance.

It would seem that some recent superceding legal precedent or authority should exist to sustain a decision to demerge the shore lots.

**RECEIVED**

APR 19 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

Please consult Walter and let me know your thoughts.

Very truly yours,

Philip A. Brouillard

PAB/djs  
Enclosures

BROUILLARD & BROUILLARD  
P.L.L.C.  
Attorneys at Law

221-002  
221-007 ?

PHILIP A. BROUILLARD  
OF COUNSEL  
RICHARD P. BROUILLARD

16 ACADEMY STREET-LACONIA, NEW HAMPSHIRE 03246-3603  
603-524-4450  
TELECOPY: 603-528-3646  
E-MAIL: philb@worldpath.net

May 7, 2007

John B. Ayer, AICP Director  
Town of Gilford Department of Planning and Land Use  
47 Cherry Valley Road  
Gilford, NH 03249

**RECEIVED**

MAY 07 2007

DEPT. OF PLANNING AND LAND USE  
TOWN OF GILFORD

**RE: Town of Gilford - Barbara Aichinger Property  
Governor's Island, Gilford, NH  
Our File #91-97**

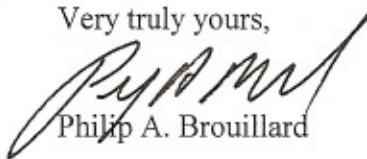
Dear John:

I initially inquired about this matter on April 3, 2007, and have yet to receive a response to my letter, other than you have advised me that you and Attorney Walter Mitchell are working on it.

I want to advise you that Kevin Keohan, President of Governor's Island Club, received an email, dated May 7, 2007, in which Mrs. Barbara Aichinger stated "the Building Inspector said that everything on my site (both parcels) looked fine and everything was ok and well done." Since the time of my initial request, the site has been cleared, and Mrs. Aichinger has deeded the property from her trust to herself creating a separate lot of record in the Registry of Deeds. There are also indications that the Aichingers have made plans for construction on that lot. Their reliance on the de-merger decision, if it is determined not to be valid, may create some significant problems such as were involved in the case of *Thomas v. Town of Hooksett* decided by the New Hampshire Supreme Court on July 20, 2006. It would appear that Mr. & Mrs. Aichinger have relied on your letter, dated January 15, 2007.

In view of the above, I would appreciate an answer to my letter of April 3, 2007, as to the legal precedent or authority on which the de-merger decision was based.

Very truly yours,

  
Philip A. Brouillard

PAB/djs

cc: Walter L. Mitchell, Esquire  
Board of Selectmen, Attn: Evans Juris,  
Town Administrator

Town of Gilford  
47 Cherry Valley Road  
Gilford, NH 03249-6827



Appraisal Office  
(603) 527-4704  
FAX (603) 527-4711

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**Recreation Center of New Hampshire**

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October 19, 2006

Barbara Aichinger  
36 Old English Rd  
Bedford, NH 03110

RE: Gilford Parcel 221-007

Dear Ms. Aichinger,

Your set of emails regarding the above referenced lot were sent forward to me for input. While I have no authority in these regards, I do understand some of the history of how this merger could have occurred which I will convey here for all interested parties.

When I arrived in the town in 1992 it was the policy of the mapping company to 'automatically' merge an adjacent vacant 'unbuildable' lot provided the ownership was identical to both 'parcels'. The mapping company needed no prodding from taxpayers or the municipality, rather, merged these parcels on their own volition.

When I questioned them on this policy they (Cartographics, Inc.) referenced the 'Nighswander ruling', also known as the Nighswander Edict. Apparently judge Nighswander ruled that this policy was consistent with State Planning laws and rules (I have not seen the ruling myself). The net effect was that any 'grandfathering' provisions the lot may have garnered over time were lost, along with 'lot of record' status, merged into one lot of record.

Over time however, we began to receive transfers of 'portions' of lots (portion of a merged parcel). So, while the 'edict' was in force, this did not prevent taxpayers from selling the portion of the lot that was merged. In these instances, the 'lot of record' status was revived, subject to normal setback requirements should the lot be developed.

Given these emerging situations, from an assessing perspective, I would highly recommend that these '(un)voluntary' mergers, when discovered, be separately assessed subject to evidence that would indicate otherwise. Again, however, I have no authority to proceed without direction from Planning and the Selectmen.

I hope this helps you in your efforts.

Sincerely,



Wil Corcoran  
Town Appraiser

Cc: Board of Selectmen  
Planning  
Enforcement



# TOWN OF GILFORD

*Recreation Center of New Hampshire*

DEPARTMENT OF PLANNING & LAND USE

January 15, 2007

Barbara Aichinger  
36 Olde English Road  
Bedford, NH 03110

Re: Reversal of Lot Merger – Tax Map and Lot #221-007.000

Dear Ms. Aichinger:

This letter is sent to confirm that the Town Assessor and I agree that the lot referenced above is legally two (2) lots. It appears that the lots were automatically merged only on the Town tax maps and not at the Registry of Deeds. Such automatic mergers were required by an old zoning ordinance that was thrown out in a court challenge and is no longer on the books. Your deed still describes two separate lots, not a single merged lot, which further attests to the notion that this property was not the subject of a bona fide merger, and the tax maps show residual evidence of the former lot layout.

Addresses for the two lots will be 554 Edgewater Drive for what used to be lot 9 (the more northerly lot), and 558 Edgewater Drive for what used to be lot 10 (see attached map).

I hope this information is helpful. Please let me know if you have questions or require further information.

Sincerely,

John B. Ayer, AICP  
Director of Planning and Land Use

cc: Wil Corcoran, Town Appraiser  
E/911  
US Post Office  
Assessing/Cartographic Assoc., Inc. Map Corrections  
Gilford Public Works  
Gilford Fire/Rescue  
Gilford Police Department  
File

BUILDING • CONSERVATION • HEALTH • HISTORIC PRESERVATION • PLANNING • ZONING

47 CHERRY VALLEY ROAD • GILFORD, NH 03249 • PHONE: (603) 527-4727 • FAX: (603) 527-4731

----- Original Message -----

**From:** [John Ayer](#)  
**To:** [Barbara Aichinger](#)  
**Sent:** Friday, October 24, 2008 2:35 PM  
**Subject:** RE: Planning Board Meeting

You have asked me that before and I do not know that there were specifically 5, and frankly at this point I'm questioning if there were any others. I went back a few months ago to check on one that I thought I could recall, only to find that it wasn't a lot merger issue but rather it was an addressing issue. That was the one I remembered best (besides your own, of course). So I can try again to see if my memory is able to drag anything up, but definitely no guarantees.

- John

**John B. Ayer, AICP**  
**Director of Planning and Land Use**  
**Town of Gilford**  
**47 Cherry Valley Road**  
**Gilford, NH 03249**  
**603-527-4727 (phone)**  
**603-527-4731 (fax)**

---

**From:** Barbara Aichinger [mailto:[aichinger@comcast.net](mailto:aichinger@comcast.net)]  
**Sent:** Friday, October 24, 2008 10:04 AM  
**To:** John Ayer  
**Subject:** Re: Planning Board Meeting

John,

Thanks so much. In the past on several occasions you told me that you had 'personally' been involved in 5 other unmerges. Can you at all remember them?

Regards,  
Barb Aichinger  
----- Original Message -----

**From:** [John Ayer](#)  
**To:** [Barbara Aichinger](#)  
**Sent:** Friday, October 24, 2008 10:03 AM  
**Subject:** RE: Planning Board Meeting

No, not at the Planning Board meeting. They stuck with the one discussion item (Gunstock Acres boat storage) and zoning amendments I mentioned.

- John

**John B. Ayer, AICP**  
**Director of Planning and Land Use**  
**Town of Gilford**



**47 Cherry Valley Road**  
**Gilford, NH 03249**  
**603-527-4727 (phone)**  
**603-527-4731 (fax)**

---

**From:** Barbara Aichinger [mailto:aichinger@comcast.net]  
**Sent:** Friday, October 24, 2008 9:45 AM  
**To:** John Ayer  
**Subject:** Re: Planning Board Meeting

John,

Thanks for your quick reply. Was there any discussion concerning my property or the proposal I have made?

Regards,  
Barb Aichinger

----- Original Message -----

**From:** [John Ayer](#)  
**To:** [Barbara Aichinger](#)  
**Sent:** Thursday, October 23, 2008 5:03 PM  
**Subject:** RE: Planning Board Meeting

No, the only ordinance amendments we covered were the flag lot regs., a rezoning, and bunk houses. We also had a discussion item regarding boat storage for Gunstock Acres Trust.

**John B. Ayer, AICP**  
**Director of Planning and Land Use**  
**Town of Gilford**  
**47 Cherry Valley Road**  
**Gilford, NH 03249**  
**603-527-4727 (phone)**  
**603-527-4731 (fax)**

---

**From:** Barbara Aichinger [mailto:aichinger@comcast.net]  
**Sent:** Thursday, October 23, 2008 2:34 PM  
**To:** John Ayer  
**Subject:** Planning Board Meeting

Hello John,

I noticed a Planning Board meeting took place this past monday. Can you tell me was the merging ordinance discussed?

Regards,  
Barb Aichinger

PATRICK WOOD LAW OFFICE, PLLC  
555 Main Street  
Laconia, New Hampshire 03246

[phwood@patrickwoodlaw.com](mailto:phwood@patrickwoodlaw.com)

Tel. 603.524.1446  
Fax: 603.524.1788

May 29, 2007

Attorney Walter L. Mitchell  
Mitchell & Bates, PA  
25 Beacon Street East  
Laconia, NH 03246

RE: Barbara Aichinger  
Gilford Tax Parcel 221-007/554 & 558 Edgewater Drive

Dear Walter:

As we discussed briefly this afternoon, we represent Ms. Aichinger. Ms Aichinger began communicating with the Town of Gilford in April of 2006 concerning the property that she owns on the lakeside of Edgewater Drive on Governor's Island. After considerable communication between Ms. Aichinger and the Town Appraiser, Wil Corcoran and Mr. John Ayer, the Director of Planning and Land Use, Ms Aichinger received communication from Mr. Corcoran dated October 19, 2006, a copy of which I am sending to you, indicating that he highly recommends that these involuntary mergers be separately assessed subject to evidence that would indicate otherwise. Similarly, on January 15, 2007, Mr. Ayer sent a letter to Ms. Aichinger confirming that this tax map which consists of two separately described lots, Lot 9 and Lot 10, would be separated on the tax map into 554 Edgewater Drive (Lot 9) and 558 Edgewater Drive (Lot 10). I am also enclosing a copy of that letter along with the attached copy of part of the tax map that shows the new addresses for these two separate lots.

At the time of that letter, these two parcels were held of record by Barbara P. Aichinger, Trustee of the Barbara P. Aichinger Revocable Trust by deed from Elizabeth Altman dated 20 February 2002, recorded in Book 1728, Page 695. At the request of Ms. Aichinger, I prepared a deed from her as trustee to herself individually for Lot 9. That deed was dated May 3, 2007, and recorded in the Belknap County Registry of Deeds in Book 2403, Page 141.

Prior to that deed being prepared, signed and recorded, Ms. Aichinger had contracted to have the existing house on Lot 10 removed, a new septic system installed, and a new foundation built. In addition, they have contracted with Epoch Homes to have a new house brought to that site and installed on Lot 10. I'm enclosing for your information copies of photographs showing that new foundation. Ms. Aichinger has received all of the appropriate permits from the Town for both the demolition and construction.

Attorney Walter Mitchell  
May 29, 2007  
Page Two

On Lot 9 there is a cottage and camp and I'm enclosing copies of photographs of the cottage that currently exists on Lot 9. In addition, they contracted with the person who prepared the foundation for the house on Lot 10 to blast an area for a foundation on Lot 9. I am also enclosing copies of photographs that show the area that has been prepared for the foundation on Lot 9.

Ms. Aichinger has a financial commitment from a bank to loan her a substantial amount of money based upon an appraised value of Lot 9 so that she can pay for the construction of the new house and the foundation work on Lot 10. She also has received an offer from someone to purchase Lot 9. In addition, last week she received a driveway permit from the Town of Gilford for Lot 9.

I have asked my client to send me information on expenses that they have incurred and I am sending you a copy of the expenses incurred to date, as well as, the commitments that they have with regard to the home that is being brought onto the site. As you can see, they have already expended over \$180,000.00. The house that is being delivered in the middle of June will need to be completed and there is substantial cost in doing that. Their estimate of total construction costs will be over \$1,200,000.00, most of which they have either already incurred or have made contractual commitments to complete. The house, as I indicated to you, is an off-site built house and is scheduled to be delivered in the middle of June. That financial commitment has been made as you can see from the \$80,000.00 down payment that was paid at the end of April.

As difficult as this is, it certainly appears to me that they have acted in a reasonable manner in reliance upon the communications they received from the Town over the extended period of the negotiations and discussions beginning in April of 2006. As you can see from the photographs substantial work has been done for the new house, there is an existing cottage on Lot 9, and you can see that they have done substantial excavation work to prepare for the foundation for a new house on Lot 9. Finally, you can see that they have already expended substantial amounts of money to prepare both of these lots. They have also made substantial financial commitments contractually that are definitely to their detriment if the Town reverses its position.

Obviously, this is a matter of great concern to my client. We would like to have this resolved as quickly as possible and without recourse to litigation. Anything you can do to help us in this matter would be greatly appreciated.

Very truly yours,

Patrick H. Wood

Enclosures

cc: Ms. Barbara Aichinger

PATRICK WOOD LAW OFFICE, PLLC  
555 Main Street  
Laconia, New Hampshire 03246

[phwood@patrickwoodlaw.com](mailto:phwood@patrickwoodlaw.com)

Tel. 603.524.1446  
Fax: 603.524.1788

August 6, 2007

Attorney Walter L. Mitchell  
Mitchell & Bates, PA  
25 Beacon Street East  
Laconia, NH 03246

RE: Barbara Aichinger  
Gilford Tax Parcel 221-007/554 & 558 Edgewater Drive

Dear Walter:

My client has asked John Ayer for information from the Town relating to any other situations in which Town officials have made a decision to "unmerge" properties. In accordance with your advice, however, John is unwilling to talk to my client about any of these matters.

Under the right-to-know law, I would ask that you please let us know what information the Town has concerning any other properties that have been "unmerged" in Gilford.

If you have any questions, please let me know.

Very truly yours,

  
Patrick H. Wood

cc: Ms. Barbara Aichinger

----- Original Message -----

From: "Patrick Wood" <[PatrickWood@patrickwoodlaw.com](mailto:PatrickWood@patrickwoodlaw.com)>  
To: "Walter Mitchell, Mitchell & Bates PA" <[wmlaw@metrocast.net](mailto:wmlaw@metrocast.net)>  
Cc: "Barbara Aichinger" <[aichinger@comcast.net](mailto:aichinger@comcast.net)>; "Ed Aichinger" <[eda@futureplus.com](mailto:eda@futureplus.com)>; "Simone Cushing" <[SimoneCushing@patrickwoodlaw.com](mailto:SimoneCushing@patrickwoodlaw.com)>; "Lee Harrington" <[LeeHarrington@patrickwoodlaw.com](mailto:LeeHarrington@patrickwoodlaw.com)>; "Jane Wood" <[JaneWood@patrickwoodlaw.com](mailto:JaneWood@patrickwoodlaw.com)>  
Sent: Thursday, September 13, 2007 2:14 PM  
Subject: RE: Aichinger information request...

Walter - I shall do so, in addition to sending her a copy of your e-mail. Thank you.

Patrick H. Wood  
Patrick Wood Law Office, PLLC  
555 Main Street  
Laconia, NH 03246  
603.524.1446  
603.524.1788 (fax)  
[phwood@patrickwoodlaw.com](mailto:phwood@patrickwoodlaw.com)

-----Original Message-----

From: Walter Mitchell, Mitchell & Bates PA [mailto:[wmlaw@metrocast.net](mailto:wmlaw@metrocast.net)]

Sent: Thursday, September 13, 2007 10:40 AM  
To: Patrick Wood  
Subject: FW: Aichinger information request...

Pat -- Please advise your client on the inappropriateness of her communicating directly with this office. I have no desire for it, and the town certainly doesn't want to pay for it.

Thank you.

Walter

-----Original Message-----

From: Barbara Aichinger [mailto:[aichinger@comcast.net](mailto:aichinger@comcast.net)]  
Sent: Wednesday, September 12, 2007 5:30 PM  
To: Patrick Wood; Walter Mitchell, Mitchell & Bates PA  
Cc: Simone Cushing; Lee Harrington; Jane Wood; [laslaw@metrocast.net](mailto:laslaw@metrocast.net)

Subject: Re: Aichinger information request...

Hello Mr. Mitchell,

It is surprising to me that Mr. Ayer has changed his 'impressions' of the unmerger process in Gilford as we spoke of it several times over the past year and he was quite certain. His opinion was bolstered by the Building Inspectors opinion (as reflected in the April 19th letter from Attorney Brouillard to you) and the opinion of the Town Appraiser Wil Corcoran (see also attached letter). I find it difficult to believe that all three of these town officials were wrong when it came to Gilford's process of unmerging buildable grandfathered parcels. It is clear to me that they had a procedure for investigating the situation, conferring on it and then making a decision. A few weeks back I dropped off at your office my legislative research on HB 390. I have also spoken with a few of the legislators involved in that and Attorney Waugh who helped sponsor the bill.

My impression is that if we are not estopped by the Gagne case then John Ayer, as a town official, had every right to unmerge parcels per HB 390 and the second sentence of RSA 75:9 since this is the exact situation for which that legislation was intended. He had a process, did his research, conferred with other town officials and made a decision.

As to how I found some of the unmerges. It appears that while the planning department nor the assessors department made actual lists of unmerges over the years they did leave some clues. When the unmerged parcel was entered into the assessors data base on occasion the person entering the new record put a notation in the notes field. It was a search on these fields that lead me to the list. It is very probably that I did not find them all since no notation may have been made and any conversion of the database to new software could have negated those fields.

Mr. Mitchell, although I am not an attorney, I like to play one when I am being sued ;-), so please excuse me for offering up my opinions.

Regards,  
Barbara Aichinger

----- Original Message -----

From: "Patrick Wood" <[PatrickWood@patrickwoodlaw.com](mailto:PatrickWood@patrickwoodlaw.com)>

To: "Walter Mitchell, Mitchell & Bates PA" <[wmlaw@metrocast.net](mailto:wmlaw@metrocast.net)>

Cc: "Barbara Aichinger" <[aichinger@comcast.net](mailto:aichinger@comcast.net)>; "Simone Cushing" <[SimoneCushing@patrickwoodlaw.com](mailto:SimoneCushing@patrickwoodlaw.com)>; "Lee Harrington" <[LeeHarrington@patrickwoodlaw.com](mailto:LeeHarrington@patrickwoodlaw.com)>; "Jane Wood" <[JaneWood@patrickwoodlaw.com](mailto:JaneWood@patrickwoodlaw.com)>  
Sent: Wednesday, September 12, 2007 3:07 PM  
Subject: RE: Aichinger information request...

Walter - my client, the super sleuth, has found what we believe are about a half dozen "unmerger" situations in Gilford. I am attaching her list that I just got on Monday.

Patrick H. Wood  
Patrick Wood Law Office, PLLC  
555 Main Street  
Laconia, NH 03246  
603.524.1446  
603.524.1788 (fax)  
[phwood@patrickwoodlaw.com](mailto:phwood@patrickwoodlaw.com)

-----Original Message-----

From: Walter Mitchell, Mitchell & Bates PA [<mailto:wmlaw@metrocast.net>]

Sent: Wednesday, September 12, 2007 2:19 PM  
To: Patrick Wood  
Cc: John Ayer  
Subject: Aichinger information request...

Pat -- A few weeks back you and I had a discussion which followed up on your letter to me dated 8/8/07.

I have discussed with Mr. Ayer his earlier impression that in the past there have been other situations similar to one which involved your client's property. Despite his earlier impression, his present impression is that there are none.

He reports that at the time he was thinking of a situation with a property on Dow Road. However, when he subsequently went back to check those background facts he discovered that situation did not involve a "merger", but rather a mix-up with respect to addresses. He will pull

out those details and provide them to me in case anyone wishes to review paperwork.

Initially he was also under the impression that similar situations had also arisen in Gunstock Acres. However, he is unable to recall the specifics or the specific property, to test the accuracy of that memory. He will, however, keep trying to remember.

Sorry that we are not able to supply more detail at this time.

Walter

Walter L. Mitchell  
Mitchell & Bates, P.A.  
25 Beacon Street East  
Laconia, NH 03246  
(603) 524-3885  
(603) 524-0745 Fax  
[wmlaw@metrocast.net](mailto:wmlaw@metrocast.net)



## Town of Gilford, NH - PLANNING BOARD - NOVEMBER 5, 2007

### PLANNING BOARD - NOVEMBER 5, 2007

Approved November 19, 2007  
GILFORD PLANNING BOARD  
NOVEMBER 5, 2007  
CONFERENCE ROOM A  
7:00 P.M.

The Gilford Planning Board met in regular session on Monday, November 5, 2007 at 7:00 p.m. in Conference Room A.

In attendance were: Chair, Polly Sanfacon; Vice-Chair, Carolyn Scattergood; Selectmen's Representative, Connie Grant; Jerry Gagnon; Richard Waitt; Richard Vaillancourt; John Morgenstern and Alternate David Arnst.

Member(s) absent:

Also present was John B. Ayer, Director of Planning and Land Use and Stephanie Verdile Philibotte, Administrative Assistant.

Chair P. Sanfacon opened the meeting, led the Pledge of Allegiance, introduced the Board members, and staff and read the rules of procedure for the meeting.

P. Sanfacon read a letter from RCC Atlantic, Inc requesting an extension for the temporary COW to be extended until December 31, 2007. Motion made by R. Waitt, seconded by R. Vaillancourt, to grant the request for the extension. Motion carried with all in favor.

P. Sanfacon introduced the first application.

1197 Union Ave. Associates and Traditional Catholics of New Hampshire

Applicant is proposing a Boundary Line Adjustment between Tax Map & Lot #202-003.000 and 201-031.000 located at Blaisdell Ave. and Terrill Ave (In Laconia. in the Industrial Zone. Boundary Line Adjustment Plan. Application #2005002137.

Motion made by C. Scattergood, seconded by J. Gagnon, to take the application off the table. Motion carried with all in favor.

P. Sanfacon read a letter from Matt Fagginger-Auer, agent for the application, requesting the application be withdrawn at this time. The Board accepted the withdrawal of the application.

P. Sanfacon introduced the next case.

Donald Ames C/O Ames Farm Inn

Applicant is submitting an as-built plan/amended site plan for review on Tax Map & Lot #266-107.000 located at 2800 Lakeshore Rd. in the Single Family Residential Zone. Amended Site Plan Review. Application #2005002438.

Motion made by C. Scattergood, seconded by J. Morgenstern, to take the application off the table. Motion carried with all in favor.

P. Sanfacon read a letter from Steve Smith, agent for the application, requesting the application be continued until November 19, 2007.

Motion made by R. Waitt, seconded by R. Vaillancourt, to table the application until November 19, 2007. Motion carried with all in favor.

The Board decided to schedule an on-site inspection for the Ames

Farm application on Friday, November 9, 2007 at 12:30 p.m.

## Other Business

1) Georgie Johnson of Johnson Surveying, agent representing Janet Elkin and Newt Gardner owners of 42 Alpine Drive. She explained the property owner had mistakenly built a stonewall within the Town of Gilford's right-of-way. She said there has been a portion of the wall removed from the right-of-way and the owners are willing to remove additional sections of the walls encroaching in the right-of-way. However she said there are 2 stonewalls located at the entrance to the house that cannot be easily moved and the owner is willing to provide an easement to the Town of Gilford in order to use that area to turn vehicles around if needed. She said Alpine Drive is not a through street and since the Town of Gilford will convey the property to the owner, that will relieve the Town of Gilford of any liability if the walls were located on town property.

C. Grant spoke about when the applicant appeared before the Board of Selectmen and she said the abutters all spoke in favor of the proposal for the owners to maintain the stonewall in its location.

Motion made by C. Scattergood, seconded by R. Waitt, to recommend to the Board of Selectmen they approve the suggested changes of the ownership for the right-of-way and changes to the site plan for 42 Alpine Drive. Motion carried with all in favor.

J. Ayer spoke about the changes in the easement location to the Lyman subdivision. He brought the Board up to date on Mr. Lyman's request to not return to the Planning Board as the Board had previously decided. The Board reiterated its previous decision to require the applicant to submit a new application to the Planning Board showing the changes in location of the easement.

- 2) Discussion of 2008 Zoning Amendments
  - a. Junk and Old Vehicles- J. Ayer reviewed a request from the

Board of Selectmen regarding proposing a junk ordinance. He reviewed other towns' regulations addressing junk and vehicles. He said he asked Town Counsel for their opinion. Town Counsel's opinion said there is a state law addressing junk yards and automobiles and recommends the Town of Gilford not create another ordinance. The reason being if there is a discrepancy between the Town of Gilford's regulations and the state regulations it would cause confusion in a legal situation. Town Counsel said the Town of Gilford can enforce the state regulations

Discussion ensued about the amount of support from residents to enact a junk ordinance.

P. Sanfacon spoke about clarifying the process for the Town of Gilford in order to enforce the state law. She said if the process is long and cumbersome it would be difficult for the Town to enforce.

b. Flag Lot amendment-J. Ayer reviewed the proposed changes to the ordinance. The Board discussed the proposed changes.

c. Increase shore front setback from 40' to 50' to match new RSA. J. Ayer explained the setback from the brooks would now be increased to 50' because the state is passing a new law effective April 1, 2008.

d. Establish electronic changeable copy signs-J. Ayer reviewed the ZBA's request for the Planning Board to prohibit changeable copy signs and LED signs. He explained he and P. Sanfacon wrote a letter to the ZBA explaining the Planning Board had already decided on the proposed zoning amendments and invited the ZBA to participate in the ordinance amendments for 2008. The Board reviewed the changes and J. Ayer will revise the proposed amendment.

e. Creation of time limit to complete site plans and subdivisions- D. Arnst suggested a developer submitting a project plan that includes a time frame for completion. J. Gagnon spoke about the smaller commercial sites around town that were approved years ago and have not completed the work, now the sites become storage areas.

The Board decided to suggest the proposed changes be put into the Site Plan regulations and not be located in the zoning ordinance.

f. J. Ayer explained B. Aichinger's written request to amend the zoning ordinance. J. Ayer brought the Board up to date on the Aichinger court case. He spoke about the Planning Board's policy of not addressing the proposal due to the court case against the Town of Gilford. He said Town Counsel said the proposal does not apply to the Planning Board it is more of an issue for the Assessing Department.

#### Minutes

Motion made by C. Grant, seconded by J. Gagnon, to table the approval of the minutes from October 15, 2007 until November 19, 2007. Motion carried with all in favor.

#### Adjournment

Motion made by R. Vaillancourt, seconded by R. Waitt, to adjourn the meeting at 9:15 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte  
Administrative Assistant

----- Original Message -----

**From:** [John Ayer](#)  
**To:** [Barbara Aichinger](#)  
**Sent:** Friday, October 24, 2008 2:35 PM  
**Subject:** RE: Planning Board Meeting

You have asked me that before and I do not know that there were specifically 5, and frankly at this point I'm questioning if there were any others. I went back a few months ago to check on one that I thought I could recall, only to find that it wasn't a lot merger issue but rather it was an addressing issue. That was the one I remembered best (besides your own, of course). So I can try again to see if my memory is able to drag anything up, but definitely no guarantees.

- John

**John B. Ayer, AICP**  
**Director of Planning and Land Use**  
**Town of Gilford**  
**47 Cherry Valley Road**  
**Gilford, NH 03249**  
**603-527-4727 (phone)**  
**603-527-4731 (fax)**

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**From:** Barbara Aichinger [mailto:[aichinger@comcast.net](mailto:aichinger@comcast.net)]  
**Sent:** Friday, October 24, 2008 10:04 AM  
**To:** John Ayer  
**Subject:** Re: Planning Board Meeting

John,

Thanks so much. In the past on several occasions you told me that you had 'personally' been involved in 5 other unmerges. Can you at all remember them?

Regards,  
Barb Aichinger  
----- Original Message -----

**From:** [John Ayer](#)  
**To:** [Barbara Aichinger](#)  
**Sent:** Friday, October 24, 2008 10:03 AM  
**Subject:** RE: Planning Board Meeting

No, not at the Planning Board meeting. They stuck with the one discussion item (Gunstock Acres boat storage) and zoning amendments I mentioned.

- John

**John B. Ayer, AICP**  
**Director of Planning and Land Use**  
**Town of Gilford**

**47 Cherry Valley Road**  
**Gilford, NH 03249**  
**603-527-4727 (phone)**  
**603-527-4731 (fax)**

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**From:** Barbara Aichinger [mailto:aichinger@comcast.net]  
**Sent:** Friday, October 24, 2008 9:45 AM  
**To:** John Ayer  
**Subject:** Re: Planning Board Meeting

John,

Thanks for your quick reply. Was there any discussion concerning my property or the proposal I have made?

Regards,  
Barb Aichinger

----- Original Message -----

**From:** [John Ayer](#)  
**To:** [Barbara Aichinger](#)  
**Sent:** Thursday, October 23, 2008 5:03 PM  
**Subject:** RE: Planning Board Meeting

No, the only ordinance amendments we covered were the flag lot regs., a rezoning, and bunk houses. We also had a discussion item regarding boat storage for Gunstock Acres Trust.

**John B. Ayer, AICP**  
**Director of Planning and Land Use**  
**Town of Gilford**  
**47 Cherry Valley Road**  
**Gilford, NH 03249**  
**603-527-4727 (phone)**  
**603-527-4731 (fax)**

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**From:** Barbara Aichinger [mailto:aichinger@comcast.net]  
**Sent:** Thursday, October 23, 2008 2:34 PM  
**To:** John Ayer  
**Subject:** Planning Board Meeting

Hello John,

I noticed a Planning Board meeting took place this past monday. Can you tell me was the merging ordinance discussed?

Regards,  
Barb Aichinger

October 30, 2008

To: Town Of Gilford  
Selectman  
Town Administrator  
Planning Department  
Assessing Department

Dear Selectman, Town Administrator, Planning Department and Assessing Department;

I would like to request under the Right to Know law any information that you have concerning the towns practice of unmerging or separating lots or assigning new tax id's to property that had previously been merged. I will restrict this request to information that occurred between 1997 and May of 2007. This would include the following:

Tax cards, letters, legal opinions, legal theories used by the town to merge or unmerge, requests by property owners to unmerge or assign multiple tax id's to property previously listed with a single tax id, recollection of conversations concerning merging or unmerging, policy changes concerning the assignment of tax id's, any settlements that the town made with property owners concerning merging, unmerging or assigning multiple tax id's to property previously tax as one lot.

This information is important and relevant to my application for rehearing for a variance to the Gilford merging ordinance 9.1.1 that was recently denied by the Gilford ZBA.

Regards,



Barbara Aichinger  
Edgewater Drive  
Gilford, NH

Cc: Attorney Patrick Wood

Request denied



10/30/08



PATRICK WOOD LAW OFFICE, PLLC  
555 Main Street  
Laconia, New Hampshire 03246

[phwood@patrickwoodlaw.com](mailto:phwood@patrickwoodlaw.com)

Tel. 603.524.1446  
Fax: 603.524.1788

November 12, 2008

John B. Ayer, AICP  
Director of Planning and Land Use  
Town of Gilford  
47 Cherry Valley Road  
Gilford, NH 03249

RE: Lot No. 221-007.000, 554 & 558 Edgewater Drive

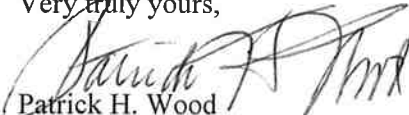
Dear John:

As you know we submitted our request for an appeal of the administrative decision that you made back in May of 2007. That appeal was filed in June of 2007. We have never withdrawn that appeal although it has never been presented to the Zoning Board of Adjustment.

Accordingly, we would request that you submit that today to the Zoning Board of Adjustment so that we may have a hearing on our appeal of that administrative decision.

Please let me know if you have any questions.

Very truly yours,

  
Patrick H. Wood

PHW/mmk

cc: Barbara P. Aichinger

May 1, 2009

Dear Office of Selectman,

My name is Barbara Aichinger and I own property on Edgewater Drive here in Gilford. As you may know I am the target of on going litigation by my neighbor that the town is also involved in.

First of all I would like to thank the Selectman for signing the Agreement with me in June of 2007 that recognized my two waterfront parcels on Governors Island. Having said that I am concerned about recent revelations that I have discovered and want to make sure that the Selectman are made aware of them.

The first is the fact that I now have proof that I was not the only unmerge that was done by the Planning Department. Once the lawsuit was filed the Planning Director and Town Counsel became evasive to the point of misleading me when I asked questions about the unmerges that prior to the lawsuit town employees readily admitted to. I urge the Selectman to direct Town Counsel and the Planning Department to 'come clean' on the other unmerges. This is something they should have done in May of 2007, better late than never.

The second issue that the Selectman need to be made aware of is that the town is leaving hundreds of thousands of tax dollars uncollected due to this merging ordinance. Many of the older neighborhoods that now suffer from falling values have dozens of merged properties in them. This leaves these valuable assets unrealized and contributes to the downward spiral of these neighborhoods property values.

The third issue is that since the town was unmerging parcels for the 10 years prior to 2007 it also never merged any non conforming lots that came into common ownership. This now leaves about a hundred parcels in the town that will now have to be merged. This opens a Pandora's Box of lawsuits and additional lost tax revenue.

The bottom line is that the merging ordinance is bad, very bad and for many reasons. The notion that these older neighborhoods should now be 'made conforming' is ridiculous and ignores common sense.

I have compiled hundreds of pages of supporting evidence to back my opinions. I would be more than happy to present a summary of this information to you at one of your public meetings.

Regards,

Barbara P. Aichinger  
558 Edgewater Drive  
Gilford, NH 03249

Cc: Kevin Hayes  
Gus Benavides  
John O'Brien

May 29, 2009

Dear Office of Selectman, Gilford, NH

As a follow up to your letter of May 14<sup>th</sup> 2009 and my letter of May 1, 2009 I would like to submit the following binder for your review. I have given 8 copies of this binder to the Planning Department as part of my ZBA appeal.

This data shows the pattern of 'unmerges' and 'non merges' in defiance of the Gilford Zoning Ordinance 9.1.1 as that Ordinance has been interpreted by Town Counsel. Please note that former Selectman, Town Administrators, Planning Directors and Assessing Department employees were copied and participated in these actions.

It is clear from this data that Gilford no longer merges non conforming lots in common ownership and in fact engaged in a practice of unmerging them. This means that the town through its actions has set aside this ordinance. The legal term applied to this situation is called *Administrative Gloss*.

I urge the Selectman to formally recognize this situation. I also urge the modifications of the briefs submitted by town council in the past few months at the Superior Court level and Supreme Court level as they are in direct conflict with this information.

Regards,

Barbara P. Aichinger  
558 Edgewater Drive  
Gilford, NH 03249

Walter - as we discussed, Barbara Aichinger has been sending these e-mails for the purposes of preparing for the ZBA meeting on May 26, 2009. It is our understanding - although we are not certain - that the ZBA intends to hear our appeal of the administrative decision of John Ayer in May 2007. If this is not the case, please let us know as soon as possible so we are not at the May 26 meeting expecting to make a full presentation only to be told that the ZBA is not going to hear that presentation.

Thanks.

Patrick H. Wood  
Patrick Wood Law Office, PLLC  
555 Main Street  
Laconia, NH 03246-3449  
603.524.1446  
603.524.1788 (fax)  
[phwood@patrickwoodlaw.com](mailto:phwood@patrickwoodlaw.com)

-----Original Message-----

From: Walter Mitchell, Mitchell Municipal Group, P.A.  
Sent: Friday, May 08, 2009 9:05 AM  
To: Patrick H. Wood

Pat - Ms. Aichinger has been sending a series of e-mails to present and past town officials and employees relating to the issue of merger. Since this is an issue that seems to be part of present litigation, we ask that you instruct her to cease any such contact.

Thank you for your understanding.

Walter

Walter L. Mitchell

Mitchell Municipal Group, P.A.

25 Beacon Street East

Laconia, NH 03246

(603) 524-3885

[wmlaw@metrocast.net](mailto:wmlaw@metrocast.net)



# TOWN OF GILFORD

Recreation Center of New Hampshire

## DEPARTMENT OF PLANNING & LAND USE

June 18, 2009

Gilford Zoning Board of Adjustment  
c/o Andy Howe, Chair  
47 Cherry Valley Road  
Gilford, NH 03249

Re: Aichinger Appeal of My May 23, 2007 Decision

Dear Chair Howe and ZBA members:

I provide this writing to you as it is my decision from which the applicants attempt an administrative appeal, and I want to make clear my department's position on the issues.

This case arose in late 2006/early 2007 when I erroneously led Mrs. Aichinger to believe she owned two lots instead of one. Many months later, when I realized that conclusion was mistaken, I informed her but in the interim she had taken on some financial obligations in reliance on my decision. In considering that, and the possible resulting risks to the town, the Board of Selectmen entered into an agreement with her to treat the property as two lots.

Prior to that agreement being reached, Attorney Wood filed this appeal on her behalf, but instructed our office not to schedule a hearing, telling us that if he was successful in reaching an agreement with the selectmen, he would not go forward with the hearing.

When the agreement was finalized with the Selectmen, that seemed to resolve the ZBA appeal issue. I never heard further from Attorney Wood to schedule the hearing and this department considered the appeal withdrawn. This conclusion is consistent with the understanding of Attorney Mitchell who dealt with Attorney Wood on the agreement with the selectmen.

It was only 17 months later, after the Aichingers' neighbors, the Suttons, had taken the dispute before the court and obtained a trial court ruling that despite the selectmen's agreement the property is still one lot, that Attorney Wood finally asked for a hearing before your board, claiming that the appeal is still active.

In light of the background described above, I ask you to address the following questions, even before you consider the merits of Attorney Wood's appeal:

1. Is there still a valid appeal to hear? This appeal was filed almost 2 years ago and not pursued. In filing it Attorney Wood specifically asked that it not be scheduled and didn't follow up. Further, he represented that it would not be pursued if agreement was reached with the Selectmen and that occurred. Under these circumstances, the appeal has been waived.
2. In this appeal the Aichingers ultimately seek your determination that the property consists of two lots, not one. Yet that question has already been answered by the Belknap County Court. (The Aichingers

**TOWN OF GILFORD** *Recreation Center of New Hampshire*

**DEPARTMENT OF PLANNING & LAND USE**

have now appealed that issue to the NH Supreme Court.) If the Supreme Court upholds the trial court ruling, what authority does the ZBA have to overturn that court decision?

- 3. What question is it that the Aichingers are trying to have your board decide? Are they appealing whether these properties should have been merged in 1984 under the zoning ordinance as it existed at that time? If so, surely it is now too late to file such an appeal.

Is it to question the legality of the merger zoning provision as it existed in 1984? If so, not only is such an appeal too late, but I respectfully question the jurisdiction of your board to rule on such a question of law.

In consideration of the above, I ask that you dismiss the administrative appeal based on one or more of the grounds described above.

Thank you.

Sincerely,



John B. Ayer, AICP  
Director of Planning and Land Use

- cc: Patrick Wood, Esquire
- Linda Connell, Esquire
- James Sessler, Esquire

June 15<sup>th</sup> 2009

To: Town of Gilford, NH  
Selectman  
Town Administrator  
Planning Director  
Assessing Department

Subject: Enforcement of the Merging Ordinance 9.1.1

Dear Selectman, Town Administrator, Planning Director:

It has come to my attention that the lot at 28 Hook Road is now under agreement to be sold. Under the towns new interpretation as has been put forth by town council, this lot has to be merged to the abutting non conforming parcel that is held in common ownership. It is certainly not fair for the town to champion this ordinance with regards to my property in the courts yet ignore enforcement of it with regards to other properties.

The town needs to make a decision, either admit to the courts that the town has set this ordinance aside through Administrative Gloss or enforce the ordinance with the same zeal that you have chosen to take against me in your court filings. I sincerely hope that you take the Administrative Gloss route.

Regards,

Barbara Aichinger  
558 Edgewater Drive  
Gilford, NH 03249

Cc: Attorney Patrick Wood



October 7, 2009

To: Town of Gilford, NH  
Selectman: Gus Benavides, Kevin Hayes, John O'Brien  
Town Administrator: Scott Dunn

CC: Planning Director: John Ayer  
Assessing Department: Wil Corcoran  
Planning Board Chair: Polly Sanfacon  
ZBA Chair: Andrew Howe

Subject: Enforcement of the Merging Ordinance 9.1.1

Dear Selectman, Town Administrator, Planning Director:

It has come to my attention that the unmerged lots (tab #5 in the Red Binder previously distributed) on Dockham Shore Road owned by the Lambert family (223-026-000 and 223-026-001) have been sold as two separate lots. Under the towns new interpretation put forth by town counsel to the courts, these lots cannot be conveyed separately. It is certainly not fair for the town to champion this ordinance and the *remerging* of my property in front of the NH Supreme Court yet ignore enforcement of it with regards to other properties, specifically this one. These are two small non conforming waterfront parcels .48 and .44 acres with waterfront frontage of 80' and 100' respectively. The street frontage on the parcels is also below the required 150'. One lot is vacant and contains a driveway through it to the other lot that has a small 3 room seasonal cottage. All in all these lots are non conforming in 3 dimensions. In contrast my lots are only non conforming in one. In addition I had a dwelling on each lot that predated the Gilford Zoning Ordinances one of these lots appears to be vacant.

It amazes me that the Selectman continue to *authorize and pay* town counsel to zealously back the remerging of my properties by John Ayer in May of 2007, yet ignore the other unmerges and non merges. Do you read their briefs? Why I am being singled out continues to be a mystery to me. The Selectman should instruct counsel to inform the courts that the action of John Ayer to unmerge my property was not a 'mistake' or 'inadvertent error' as they have portrayed but one of many unmerges that the town had done over the years. For the town to continue down the path that singles me out in front of the courts is unjust, unfair and treats me in a vastly different manner than other similarly situated landowners in the town of Gilford.

Regards,

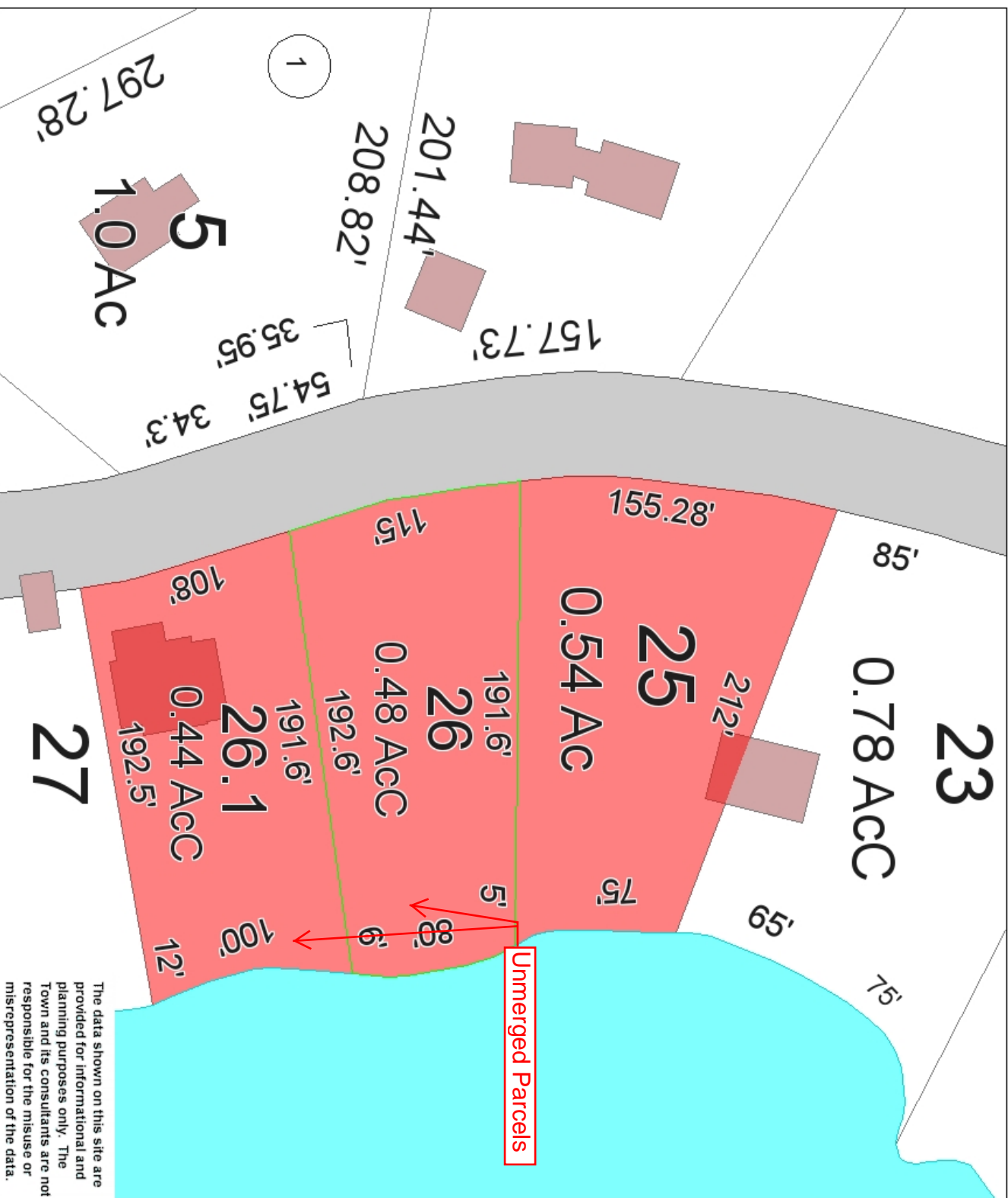
Barbara Aichinger  
558 Edgewater Drive  
Gilford, NH 03249

Cc: Attorney Patrick Wood  
Attachment: GIS maps of the Lambert Property on Dockham Shore Road



- Abutting Towns
- Buildings
- Water Bodies
- Rivers & Streams
- Open Water
- Misc Parcel Lines
- Bridge
- Cemetery
- Easement
- Hooks
- Right-Of-Way
- Private Road ROW
- Utility
- Wetland
- Parcels**
- Common
- Property Line
- Private Road
- Road
- Dashed Road
- Road ROWs

Unmerged Parcels



The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.



----- Original Message -----

**From:** [Scott Dunn](#)  
**To:** [Barbara Aichinger](#) ; [John Ayer](#)  
**Cc:** [Marsha McGinley](#) ; [Stephanie Verdile](#) ; [Dave Andrade](#)  
**Sent:** Monday, July 20, 2009 12:40 PM  
**Subject:** RE: New interpretation of 9.1.1

John,

Please do not respond to this correspondence.

Enough is enough - nothing more needs to be said. The NH Supreme Court will decide on the legality of the ordinance.

In the meantime, ALL communications from Ms. Aichinger are to be referred to the Town Attorney for filing purposes, however, I do not want to pay any incur any unnecessary legal fees in response to her on-going harassment.

Scott

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**From:** Barbara Aichinger [mailto:[aichinger@comcast.net](mailto:aichinger@comcast.net)]  
**Sent:** Monday, July 20, 2009 12:31 PM  
**To:** John Ayer  
**Cc:** Marsha McGinley; Stephanie Verdile; Scott Dunn; Dave Andrade  
**Subject:** New interpretation of 9.1.1

Hello John,

Now that you have changed the interpretation of 9.1.1 when are you going to re-merge all the other unmerges and merge the non merges as detailed in the information I have given your office?

Regards,  
Barb Aichinger  
558 Edgewater Drive

## ARTICLE 9. NONCONFORMING STRUCTURES, LOTS, AND USES

- §9.1 Nonconforming Lots
- §9.2 Nonconforming Uses
- §9.3 Nonconforming Structures

The purpose of this ordinance is to regulate nonconforming lots, uses, and structures; provide limitations on their use; and clarify under what circumstances nonconforming lots, uses, and structures may be expanded, reduced, modified, continued, or terminated.

**9.1 Nonconforming Lots** - A lot that is not contiguous to another lot owned by the same party, that has less than the prescribed minimum area or frontage, may be built upon provided that all other regulations of this ordinance are met and that lot, before the adoption of the requirements which have made it nonconforming:

- (a) was lawfully laid out by plan or deed duly recorded in the Belknap County Registry of Deeds; or
- (b) was shown on a subdivision plan approved before 1984 under the Subdivision Regulations of the Town of Gilford; or
- (c) was otherwise exempt from such regulations by the provisions of statute, and provided that such lot conforms to the area and frontage requirement of the zoning ordinance applicable at the time of said recording or approval.

**9.1.1 Contiguous Nonconforming Lots** - When two (2) or more lots of record have the same owner and are contiguous, and one (1) or more of the lots is nonconforming to this ordinance as to size, dimension or frontage, the owner shall be required to merge all contiguous, nonconforming lots with contiguous lots under similar ownership until such contiguous, nonconforming lots are made conforming unless an exception is provided for below.

- (a) Exception - If at the time the lots described above become owned by the same owner, there is a lawful and preexisting principal use listed in Article 4 on each lot, the owner shall not be required to merge the nonconforming lot or lots.
- (b) Exception - Whenever lots are protected from merger by the provisions of RSA 674:39, the owner shall not be required to merge the lots.

**9.2 Nonconforming Uses** - If a lawful use exists at the effective date of adoption or amendment of this ordinance, which would not be allowed in the zone under the terms of this ordinance, said use shall be protected and may be continued so long as it remains otherwise lawful and subject to the other provisions of this section.

**9.2.1 Discontinued Use** - If a nonconforming use is discontinued for one (1) year or superseded by a conforming use, it shall thereafter conform to the regulations of the zone and the nonconforming use may not be resumed.

**9.2.2 Expansion** - A nonconforming use may be expanded within the limits of the property in which it was lawfully established if the unity of the use is retained and other requirements of the zone are complied with.