



Town of Gilford
DEPARTMENT OF PLANNING AND LAND USE
47 Cherry Valley Road, Gilford, NH 03246 Vox: (603) 527-4727 Fax: (603) 527-4731

June 9, 1999

Haughey Philpot & Laurent PA
Paul Bordeau Esq.
816 N. Main St.
Laconia NH 03246

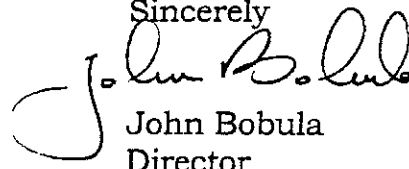
Re: Merger of lots at 12 Hook Rd., #266-087.000 and 16 Hook Rd., #266-088.000

Dear Mr. Bordeau:

On June 9, 1999, I indicated to you in a letter that certain lots owned by your clients Walter A. and Jayna M. Bradshaw will not be considered merged under Section 9.1.1 Contiguous Non-Conforming Lot of the zoning ordinance. My letter referenced lots #266-087.000 and 266-088.000 as being the subject of the Town position expressed. The pairing of those two lots were in error. The correct pair of lots to which the non-merger position of the Town applies is: **#266-087.000** and **266-077.000**. (NB: #266-088.000 is also owned by Bradshaw, but was a segregate lot of record and not a part of the non merger agreement.)

Please correct your records to reflect the change. By copy of this letter, we are also notifying other Town departments of this correction so that they can coordinate their records. If you have further questions in this matter, please contact this department.

Sincerely



John Bobula
Director

CC: Selectmen

W. Bradshaw, 5232 Blackjack Circle, Punte Gorde FL 33982
W. Corcoran, Assessor
D. Eastman TC/TC
DPLU File M,C.

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MITCHELL & BATES PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

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LACONIA, NEW HAMPSHIRE 03246

WALTER L. MITCHELL
TIMOTHY BATES

TELEPHONE (603) 524-3885
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July 30, 1998

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

VIA FACSIMILE AND FIRST CLASS MAIL

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

File

Re: Merger of Bradshaw Lots

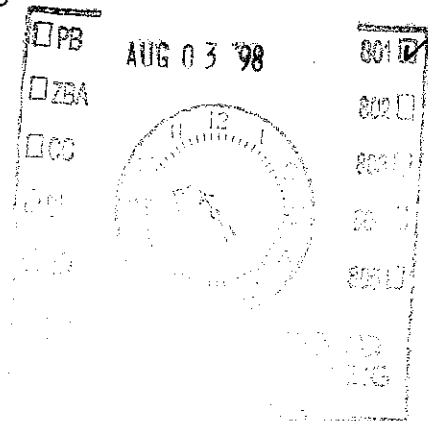
Dear John:

As requested, I have reviewed Attorney Bordeau's letter to you dated May 29, 1998 and disagree with his analysis. I do not believe the conveyance of mortgage interests to different individuals or entities operates to avoid the "common ownership" trigger found in § 9.1.1 of the Gilford Zoning Ordinance. Let me explain the bases for this opinion.

First, let me grant Attorney Bordeau two points: (1) I, too, am not aware of any case on point, certainly not in New Hampshire. Such a case or cases may come to light if it is necessary to research the issue presented in more depth; (2) I agree that in New Hampshire the execution of a mortgage on real estate conveys bare legal title to the mortgagee, with the mortgagor holding an equity of redemption.

Attorney Bordeau's position rests on the notion that it is the mortgagee that has "ownership" of the property, and since the mortgagees are different, the merger provisions of the zoning ordinance are not satisfied. I disagree. "Ownership" as that word is used in the ordinance does not refer to the bare legal title held by a mortgagee, but to the full bundle of ownership rights, which include the right to occupy, use and enjoy the property, and to exclude others from it. The transfer to the mortgagee of bare legal title carries none of those rights with it. I therefore believe a Court would conclude that "common ownership" as that phrase is used in the merger clause refers, where there is one or more mortgagees, to those owners who hold the equity of redemption of the mortgage interests, and who have the right to occupy, use and enjoy the property, and to exclude others from it.

Having said this, it is clear that in the case Attorney Bordeau presents, where the two merged lots have different mortgagees, a foreclosure of one or both mortgages will likely raise significant issues for the town and the mortgagees. I do not mean to avoid those issues by pointing out the obvious, that we should all hope that such a foreclosure does not occur. Perhaps the best that can be done for the moment is for the town to




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John Bobula, Director
July 30, 1998
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take the firm position that the merger clause is effective in this case, and that to avoid the difficult and serious issues which may arise in the event of foreclosure, the mortgages should be renegotiated so that there is a single mortgagee whose rights extend over the entire merged parcel, if that is possible.

We appreciate the opportunity to assist with this matter. Please let me know if you have further questions or comments.

Sincerely,

Timothy Bates

TB/dbm

cc: David R. Caron, Town Administrator

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WALTER L. MITCHELL
TIMOTHY BATES

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

October 29, 1998

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

VIA FACSIMILE AND FIRST CLASS MAIL

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

Re: Merger of Bradshaw Lots

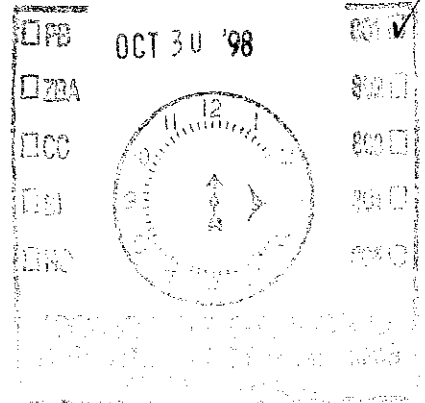
Dear John:

We have given further consideration to the issues presented by the Bradshaw situation. Although I stand by the accuracy of the legal opinions expressed in my letter to you dated July 30, 1998 we think a cost-benefit analysis leads to the conclusion that the town should not insist that the Bradshaw lots have merged. Let me explain the bases for this conclusion.

First, it is clear that had the Bradshaws been aware of the lot merger clause, they could easily have avoided it by having each of the lots deeded to one of the spouses, or into some other "checkerboard" ownership. Thus, if the town now concedes that the conveyance of mortgages by the Bradshaws to different mortgagees does avoid the operation of the merger clause, that concession does not create for the first time a method to avoid merger - the "checkerboard" method of fee ownership is already the well known weapon of choice.

Moreover, the facts presented by the Bradshaw conveyances are not likely to be encountered with any frequency. They are seizing the mortgage issue only because they were unaware of the merger clause in the first place, and therefore did not take advantage of the "checkerboard" option. Therefore, we do not see the mortgage issue as a serious threat to the routine operation of the merger clause or its effectiveness in the normal case.

To be weighed against the foregoing is the likelihood of litigation with the Bradshaws if the town persists in enforcing the merger clause, the possibility that they will prevail, and the practical and legal difficulties that will arise if one or both of the mortgages should be foreclosed as pointed out in my earlier letter.



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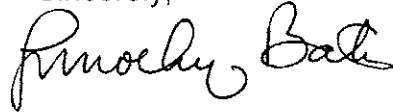
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John Bobula, Director
October 29, 1998
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In sum, we think the wisest course is for the town to agree not to enforce the merger clause against the Bradshaw lots so long as either is mortgaged, or each is mortgaged to different mortgagees.

Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Timothy Bates". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Timothy Bates

TB/dbm

cc: David R. Caron, Town Administrator

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