

September 27, 2010

Mr. Sawyer
Town Planner
Mr. Marcoux
Town Manager
Town of Bedford
24 North Amherst Road
Bedford, NH 03110

Subject: Involuntary Lot Merging, SB406 and the Carter Property

Dear Mr. Sawyer and Mr. Marcoux,

My name is Barbara Aichinger and I was the prime force behind the passage of SB406 and an end to Involuntary Lot Merging. I have set up a web site on this issue www.NHPropertyRights.com and I encourage you both to read it. In addition to my property in Gilford, NH I am also a 16 year property owner and taxpayer here in Bedford. Last week I received a call from Chris Carter. He and his family are trying to provide for their elderly mother's care through the sale of their property here in Bedford and have been informed that the Town of Bedford will not consider their two abutting lots as separate lots.

The issue faced by the Carter family is exactly the issue that SB406 was meant to address. This legislation had as its co-sponsor Senator Shelia Roberge of Bedford and every NH House Representatives from Bedford supported its passage. Through our legislative representatives the people of the Town of Bedford have spoken. NO MORE INVOLUNTARY LOT MERGING. Yet it appears that this message has fallen on deaf ears down at the town hall. It appears that the Town Planner is relying on advice of town counsel in addition to the latest New Hampshire Local Government Center bulletin which states:

Involuntary Merger of Lots Prohibited. Chapter 345 (SB 406) prohibits any municipality, county or village district from merging preexisting subdivided lots or parcels except upon the consent of the owner. The purpose is to invalidate provisions, common in local zoning ordinances, that require the automatic merger of contiguous substandard lots that are owned by the same person. The new law does not appear to invalidate involuntary mergers that are deemed to have occurred by operation of law prior to the effective date. It also does not appear to prevent a municipality from requiring the property owner to merge contiguous substandard lots as a condition precedent to developing the lots—it merely states that the municipality itself may not merge them. E.D. September 18, 2010.

Throughout the course of SB406 there were many hearings and debates. The NHLGC was opposed to SB406 and I personally debated the NHLGC attorney Cordell Johnston toe to toe in front of the legislators. I won. So it is not surprising to see the NHLGC trying to keep SB406 out of play. Sounds like sour grapes. In fact I would contend that it is very irresponsible of them to express their continued opposition using the statements 'the new law does not appear...' to try to convince municipalities to keep the status quo on lots that were involuntarily merged.

The reality of the situation is that the intent of the legislation *was* to afford relief to those owners who were involuntarily merged without their consent. Many, if not all, the legislators who voted to pass SB406 felt that involuntarily lot merging was unconstitutional. They felt that common ownership should

have nothing to do with lot of record status. The method of the relief will be up to the towns and the individual situations that the properties are in. You cannot expect the state to come in and solve this problem for every town. The towns that engaged in this unconstitutional practice all did so in a different manner. The towns that engaged in Involuntary Lot Merging should now face the music and devise a process to return property rights to these owners.

The town of Bedford is now faced with their first test case, the Carter property. Lucky for you it's an easy one. You should deal with these on a case by case basis as they come forward. I would suggest that the town recognize the Carter property as two lots since via SB406 the towns merging ordinance is no longer legal. The only thing holding them merged is the zoning ordinance and since that is no longer legal these lots should be set free. The Carter property consists of one *conforming* lot of 1.5 acres with a principal use (a house) and one non conforming vacant lot of 1.3 acres. The vacant lot was always taxed as a separate buildable lot and since the town never took any action to merge it via any change to its assessing it should be given that status. It is astounding to me that the town would demand the taxes, year after year, for over 40 years as a buildable lot and then deny it the status for which it was taxed for! What if the Carters stopped paying the taxes on that vacant lot? Would the town take it? How could it take it if it is merged to the house lot? So the town would get to take it and resell it? The merging ordinance only applies to the property owner and not the government. WHAT? This is simply absurd and you know it. This is why involuntary lot merging simply does not work and why SB406 was passed.

The Carters never encroached on the lot line or built any structure over the lot line. You have heard from the family that it was always their intent to keep the lots separate. Indeed if not for their lack of understanding of Bedford's very obscure merging ordinance (one of the most obscure that I have seen) they would have kept the lots in different names. It was simply a mistake on their part to put them into common ownership. I hardly think this 'punishment' fits the crime.

The Town Planner should then asking the Planning Board to remove the merging ordinance and put in its place a process for folks to come forward and regain their property rights. This is being done in many other towns and the process is working out fine. A name on a deed should not dictate if a lot is a buildable lot. That is simply ridiculous. These unmerged lots should all be treated as if the owners had placed them into separate names. Common ownership will have nothing to do with it and science and property rights will prevail and all will be well.

I would be more than happy to appear at any hearings that the town will have on the matter of Involuntary Lot Merging and restoring property rights to those affected by it.

It is important that our public officials remember that it is their duty to protect and defend the constitutional rights of its citizens and property owners. I would sincerely hope that the Town of Bedford would do everything it can to right the wrong that has been done to the Carter Family through this now illegal zoning ordinance.

Yours in Liberty,



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