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Please respond to the Concord office

October 7, 2010

**Rick Sawyer, Planning Director
Town of Bedford
24 Amherst Road
Bedford, NH 03110-5400**

Re: Merged Lots

Dear Rick:

This letter is in response to your request for guidance relative to the application of SB 406 which governs lot mergers. The legislature recently amended RSA 674:39-a to include the following provision:

No city, town, county, or village district may merge pre-existing subdivided lots or parcels except upon the consent of the owner.

You have asked how this recent amendment may impact the Town of Bedford's ordinance governing merger of lots, and its past application.

Section 45-4-4(a)(2) reads as follows:

If two (2) or more lots of record are contiguous and in single ownership on or after the effective date of this ordinance (March 13, 1991) and if any of said lots are vacant and do not comply with the dimensional requirements of frontage and area, then those lots shall be considered to be an undivided parcel for the purposes of this ordinance. This provision shall not apply to lots in a subdivision approved by the Planning Board.

As you can see, no action was required on the part of the Town or the owner. Contiguous nonconforming lots in common ownership on or after March 13, 1991 were merged by operation of the ordinance. It is worth noting that this ordinance was applied by the superior court in the 2001 case of *Statires v. Town of Bedford*.

As the zoning ordinance was self-executing, I do not see how someone could have avoided its import. Nor could they now, by selling one of the lots before applying for a building permit, alter the fact that the lots already had been merged.

LGC has opined that, "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." I agree with this observation. Since the Town of Bedford ordinance provided for an automatic merger, the Town is not required to "unravel" any past lots that have been merged, automatically.

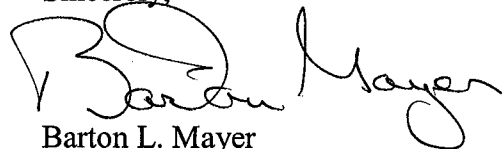
Now we need to deal with the statutory amendment. Interestingly, the ordinance contains a mirror image of the statute by establishing a date certain, March 13, 1991, as the "effective date" of the ordinance. You do not want to lose the historical aspects of this ordinance, as it already has affected some properties. Nevertheless, you need to make it clear that as of September 18, 2010, the ordinance does not apply to substandard lots which may be acquired by the same individual in the future. You may wish to consider the following as an amendment:

The provisions of this section shall not apply to nonconforming lots acquired by a person on or after September 18, 2010.

The real trick to past merged lots is record keeping. Unfortunately, towns with this type of ordinance have not maintained good records, or indeed any records at all. So a lot of these contiguous, nonconforming lots got away (*e.g.*, owner sold them separately and Town did not pay attention) or the assessing records never were coordinated with the zoning ordinance. That is probably something Bedford needs to do: inventory the town and identify those lots that met the criteria of the zoning ordinance and were merged before the new law took effect. It would even be better if a notice was sent to all of the affected land owners. Thereafter, it is a matter of policing sales to make sure that someone is not trying to bypass the past affect of the ordinance.

I trust that the foregoing is responsive to your inquiry. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Barton L. Mayer". The signature is fluid and cursive, with the first name "Barton" being more prominent and larger than the last name "Mayer".

Barton L. Mayer

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BLM/bgb