

**Town of Lyme**  
**38 Union Street, P.O. Box 126**  
**Lyme, NH 03768**  
Phone: 603-795-2661  
Fax: 603-795-4637

**FAX**

**TO:** Barb Aichinger

**FROM:** Francesca Latawiec, CPSSc, CWS, PG  
Planning & Zoning Administrator

**DATE:** August 19, 2008

**PAGES:** 6 (Including Cover Sheet)

**HEADING:**

Let me know what you think.

**FROM:**

**Office Hours**  
**Wednesday and Friday 8:00 – 2:00**  
**Thursday 3:00 ~ 6:00**  
**Or By Appointment**

Definition of "Lot" and Mandatory Merger Discussion  
Public Meeting Discussion – May 11, 2006

**History:**

1. In an undetermined year prior to adoption of zoning in 1989, the Town merged all contiguous lots in the same ownership, including those separated by a road. Two developed contiguous lots and lots in an approved subdivision were not merged. While we believe notices were sent to lot owners, there is no record of notice, other than the merger requirement in the zoning ordinance that would have been reviewed and approved at Town Meeting.
2. This automatic merger provided a tax advantage to the owner because all merged properties were taxed as one building lot rather than as several building lots. However, development rights of the individual lots were lost; if the owners had wished to develop the merged lot, they had to obtain subdivision approval.
3. In late 2005, Town Counsel at Mitchell and Bates reviewed the Town's zoning ordinance and determined that the automatic merger requirement is not legally enforceable in some situations because of its impact on property rights.
4. Town Counsel explained that the courts have addressed the legality of merger requirements in other towns, and it appears that it is lawful in some situations but not others, and it is not clear whether it is lawful in still others due to a lack of clear court rulings. The following chart indicates the various circumstances that can arise. Town Counsel advised the safest option is to NOT merge any separately described parcels, except vacant, nonconforming lots.

Example of Contiguous Lots in Common Ownership	Merge	Not Merge	Unclear
Lots in approved subdivision		X	
Lots with principal structure on each (conforming or non)		X	
Conforming vacant lots		X	
Nonconforming vacant lots	X		
Conforming vacant lot & nonconforming vacant lot			X
Conforming vacant lot & developed nonconforming lot			X
Conforming developed lot & nonconforming vacant lot			X

5. The Planning Board will determine how the automatic merger requirements will be applied until the zoning ordinance is amended again at Town Meeting in March 2007. The "Not Merge" category above is a definite, and the Board must determine how to deal with the remaining categories
6. If there is any disagreement with the Planning Board's decision, an appeal can be made to the ZBA which will determine how to apply the automatic merger requirement.

## Considerations:

1. Taxes. Owners of the merged lots have been paying taxes as if the merged lots were only one building lot. Separating these lots will increase the taxes substantially as it will create multiple taxable building lots. On the other hand, owners may wish to separate the merged lots so they can be developed without further subdivision. For example, a family who had purchased property next to their home to build a home for extended family in the future would have to obtain subdivision approval to do so if the lots are considered merged, and could not obtain subdivision approval unless both lots meet current zoning ordinance requirements. If the lots are separated into the original two lots, a house could be built on the purchased lot even if it does not meet lot size requirements.
2. The town does not have documentation to help in easily determining which lots were merged over the years. It is believed the earliest tax maps were made in 1979, after the merging began. Only an evaluation of the lots on a case by case basis will reveal which lots had been merged.
3. The only way to determine if a "lot" is conforming or not is to determine its dimensional conformity according to Table 5.1 of the zoning ordinance. This includes calculating the "lot size." The "lot size" is not available for every "lot" in Lyme—it is currently calculated on a case-by-case basis as owners come in for zoning or planning approval. However, Don Cooke has volunteered to develop a map of every lot in town to help the Town determine "lot size" of every lot in Town. He is working on it now and has made substantial progress, though it is not known when he will finish as this is a volunteer effort.

## Procedure:

1. ALL property owners will be sent a certified letter explaining the Planning Board's decision and the reason why the decision had to be made. The owners will be asked to sign and return a document stating whether they would like to "un-merge" or separate their parcels into the original multiple lots that existed prior to automatic merger or leave the lots merged into one lot as they currently exist. They will be told that if they do not respond, the parcels will remain merged into one lot. The tax ramifications will be explained in the letter. A deadline for a response (such as 90 days) will be given.
2. An owner who would like to separate the parcels of a merged lot into separate lots will be required to provide evidence that the merged lot used to be separate lots that were automatically merged under the zoning ordinance. This evidence is frequently found in the lot description contained in the deed(s) to the lot(s).
3. If the Planning Board determines that only conforming lots will be "unmerged," any parcels which are requested by the owner to be "unmerged" will be reviewed to determine if the parcels meet the dimensional requirements of Table 5.1 of the zoning ordinance.
4. After the deadline, another letter will be sent to those not responding to verify that their lot will remain merged.
5. Future requests for "unmerging" will be denied.
6. Copies of the letters, signed forms and proof of mailing for each lot will be kept in the property tax file the town already maintains for each taxable lot in Lyme, in order to document the status of each lot.