

CITY COUNCIL MEETING

AGENDA ITEM III



CITY OF FRANKLIN, NEW HAMPSHIRE

"The Three Rivers City"

316 Central Street
Franklin, NH 03235

(603) 934-3900
fax (603) 934-7413
cityhall@franklinnh.org

August 6, 2013

Mr. & Mrs. John Krauz
7 Pemi Shore Lane
Franklin, New Hampshire 03235

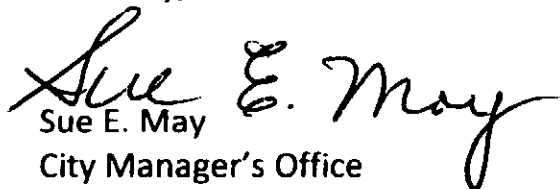
RE: Request for the Restoration of Involuntarily Merged Lots

Dear Mr. & Mrs. Krauz:

Please be advised that your request concerning that which is referenced above has been placed on the Council Agenda for Monday, September 9, 2013. The City Council meeting begins at 6:00 p.m.

If you have any questions, please don't hesitate to contact us.

Sincerely,


Sue E. May
City Manager's Office

CC: City Manager, Mayor & Council
Richard Lewis, Planning & Zoning Director



**CITY OF FRANKLIN
COUNCIL AGENDA REPORT**

September 9, 2013 City Council Meeting

From: Richard Lewis, Planning and Zoning Administrator

Subject: Request by John and Cindy Krauz for the Restoration of Involuntarily Merged Lots; continued from 8/5/13 meeting of the City Council

Potential Motions:

To Approve:

I move that the Franklin City Council approve the restoration, per RSA 674:39-aa.II, of the involuntarily merged lots owned by John and Cindy Krauz based on the evidence presented by the owners.

To Deny:

I move that the Franklin City Council deny the request by John and Cindy Krauz to restore their property identified as Tax Map & Lot 114-014-00 to three separate lots. This denial is based on the fact that Mr. Krauz used this one lot as the basis for obtaining a Special Exception from the Zoning Board of Adjustment on November 2, 1988. To restore the property to three separate lots now would undermine the integrity of the approved Special Exception.

Discussion:

This past January, I presented to the City Council an Agenda Report concerning the adoption of a policy regarding any request to re-store any involuntarily merged lots. This policy was a follow-up to a change in State Statutes intended to address the restoration of lots merged by a municipality for "zoning, assessing, or taxation purposes without the consent of the owner". For your information a copy of the Statute and my January Council Agenda Report [CAR] are attached. The adopted policy conforms to the draft presented in the CAR.

John and Cindy Krauz have presented to the City a request to restore their property to the pre-merger status. Attached is a copy of their email request and their supporting information [my correspondence with them, their deed; a copy of the tax map that shows the property as one lot; and, a tax map showing the layout of the 3 lots they wish to establish (7 pages total)]. If the City Council voted to restore these 3 lots then the deeds would be provided to the firm preparing the updated tax maps and they would incorporate this change into the new maps.

It is my professional opinion and recommendation that this request be denied. A separate memo outlining issues which support my recommendation is attached.

Alternatives:

If the City Council determined that additional information was required, or that additional time was needed to come to a decision, this matter could be continued to the next City Council meeting.

**TITLE LXIV
PLANNING AND ZONING**

**CHAPTER 674
LOCAL LAND USE PLANNING AND REGULATORY POWERS**

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2016.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011.



CITY OF FRANKLIN
COUNCIL AGENDA REPORT

January 7, 2013 City Council Meeting
Late Item

From: Richard Lewis, Planning and Zoning Administrator

Subject: Adoption of Policy for the Processing of Involuntary Lot Merger Requests

Proposed Motion:

"I move that the Franklin City Council approve the proposed policy for the processing of requests per RSA 674:39-aa for the restoration of involuntarily merged lots."

Discussion:

The 2011 New Hampshire Legislature amended a statute to add a new section [674:39-aa, copy attached] intended to address the issue of a municipality involuntarily merging lots for "zoning, assessing, or taxation purposes without the consent of the owner".

Since the statutory language is new and the standard planning reference tools do not provide any guidance, City Attorney Paul Fitzgerald was contacted to clarify some sections of the statute. Based on the feedback from Attorney Fitzgerald, it is my recommendation that the City Council adopt a procedure for a request by a landowner to restore involuntarily merged lots. A proposed procedure is as follows:

1. The property owner shall submit a written request to restore the lots in question.
2. The request shall provide supporting materials [deeds, plans, maps,] that describe the lots in question and support the request for the restoration of the merged lots.
3. The request shall be submitted to the City Council. Once the request is received the item shall be placed on the agenda of the Council for either a regularly scheduled meeting or for a workshop meeting. The scheduling shall be coordinated between the City Manager and the Mayor. The property owner making the request will be notified of the date and time of the discussion.
4. A copy of the request and the supporting materials shall be distributed to the Assessing Office and the Planning & Zoning Office for review; any comments from these departments shall be submitted in writing to the City manager's office.
5. The person making the request may make additional comments or other presentations at the meeting. Any written comments from any City department shall be entered into the record. City staff may make any additional comments at the meeting.
6. Following any comments or presentation, the City Council shall close the discussion. A final decision by the City Council may be made immediately following the close of the discussion. The City Council reserves the right to continue the decision making process to its next meeting in order to allow for further consideration of all of the evidence.
7. Any person aggrieved by the decision of the City Council may appeal to the Zoning Board of Adjustment in accordance with the provisions of RSA 676.

This procedure will ensure that all of the relevant issues are brought to the attention of, or discussed by, the City Council as part of their consideration of the written request.

Close

From: jkrauz@metrocast.net

Sent: Sun 05/26/13 8:59 PM

To: jkrauz@metrocast.net

Priority: Normal

Subject: Fwd: Letter to City Manager and City Council

Type: Embedded HTML/Text

On Sun 05/26/13 1:39 PM, jkrauz@metrocast.net wrote:

To: Franklin City Manager and City Council

Recently we received a letter from Mr. Lewis regarding an issue we have been working on for the past two decades, the issue is whether or not my property located at 32 New Hampton Rd, Franklin has one lot or as we have always felt three. When we purchased the property back in 1988 we received a warranty deed with three lots listed and Recorded at Merrimack County Registry of deeds.

As the property owners we request as required by the state of New Hampshire House Bill 316, to restore our lots to the pre-merger status as stated in our warranty deed.

Parcel # 114-014-00

John Krauz 7-7-2013
Cynthia A Krauz



CITY OF FRANKLIN, NEW HAMPSHIRE
"The Three Rivers City"

Planning and Zoning Department
316 Central Street
Franklin New Hampshire 03235

Tel: (603) 934-2341
Fax: (603) 934-7413
dlewis@franklinnh.org

January 17, 2013

Mr. John Krauz
7 Pemi Shore Lane
Franklin, NH 03235

Re: Lot Merger Issues

Dear Mr. Krauz,

Over the past year or so you have been in touch with the City Assessing Office and the Planning & Zoning Office to discuss your concerns with what you believed to be the improper merger of certain lots owned by you and located off of New Hampton Road and Pemi Shore Lane. During your discussions you raised the 2011 legislative amendment to the state statutes regarding mergers.

Since this amendment, which created RSA 674:39-aa [copy attached], is contained within the land use sections of the RSA's, I presented to the City Manager and the City Council a proposal to address the administrative process for taking any action under this statute. The City Council considered this proposal at their January 7, 2013 meeting and they voted unanimously to adopt a procedure for the consideration of a request to restore involuntarily merged lots.

A copy of the policy procedure is attached. Any formal request that you wish to submit pursuant to this statute can be submitted to the City Manager's office. If you have any questions about this procedure please feel free to contact my anytime.

Thank you.

Sincerely,

Richard Lewis
Planning and Zoning Administrator



CITY OF FRANKLIN CITY COUNCIL REPORT

At their January 7, 2013 meeting, the Franklin City Council adopted, on a unanimous vote, the following policy for the processing of requests per RSA 674:39-aa for the restoration of involuntarily merged lots:

1. The property owner shall submit a written request to restore the lots in question.
2. The request shall provide supporting materials [deeds, plans, maps] that describe the lots in question and support the request for the restoration of the merged lots.
3. The request shall be submitted to the City Council. Once the request is received the item shall be placed on the agenda of the Council for either a regularly scheduled meeting or for a workshop meeting. The scheduling shall be coordinated between the City Manager and the Mayor. The property owner making the request will be notified of the date and time of the discussion.
4. A copy of the request and the supporting materials shall be distributed to the Assessing Office and the Planning & Zoning Office for review; any comments from these departments shall be submitted in writing to the City manager's office.
5. The person making the request may make additional comments or other presentations at the meeting. Any written comments from any City department shall be entered into the record. City staff may make any additional comments at the meeting.
6. Following any comments or presentation, the City Council shall close the discussion. A final decision by the City Council may be made immediately following the close of the discussion. The City Council reserves the right to continue the decision making process to its next meeting in order to allow for further consideration of all of the evidence.
7. Any person aggrieved by the decision of the City Council may appeal to the Zoning Board of Adjustment in accordance with the provisions of RSA 676.

This procedure will ensure that all of the relevant issues are brought to the attention of, or discussed by, the City Council as part of their consideration of the written request.

Dustin, Richard H
+ Deborah D

* Parcel # 114-014-00
32 New Hampton Rd.

5600
RECEIVED
1988 NOV 10 PM 3:24
MERRIMACK COUNTY
REGISTRY OF DEEDS
081162

WARRANTY DEED

We, RICHARD H. DUSTIN and DEBORAH D. DUSTIN, husband and wife, of RFD #1, New Hampton Road, Franklin, New Hampshire 03235, for VALUABLE CONSIDERATION paid, grant to JOHN J. KRAUZ and CINDY A. KRAUZ, husband and wife, of New Hampton Road, Franklin, New Hampshire 03235, as joint tenants with rights of survivorship, with WARRANTY COVENANTS, three parcels of land with any buildings thereon in FRANKLIN, Merrimack County, New Hampshire, more particularly bounded and described as follows:

One tract, or parcel, situated on the Westerly side of the highway leading to Giles Mills, now known as New Hampton Road, beginning at a stake and stones eight feet northwest from an apple tree on the Northerly side of passway of Frank Giles, or land formerly of him; thence running Northerly on the Westerly side of the highway, two hundred forty (240) feet, more or less, to stake and stones; thence Westerly two hundred ninety-four (294) feet, more or less, to land now or formerly of said Giles; thence Southerly by land of said Giles two hundred forty (240) feet, more or less, to stake and stones standing on the North side of Giles passway; thence Easterly on the Northerly side of said passway two hundred ninety-four (294) feet, more or less, to the point of beginning. Being the Southerly one-half of the same premises conveyed to the late Malvina Burnor and Clementina Boulrisse by Benton T. Clough by deed dated April 18, 1898; the undivided half interest of said Clementina Boulrisse being ~~conveyed to said Malvina Burnor by deed of same date recorded Book 329, Page 101, Merrimack County records.~~

Also another tract beginning at the Southwesterly corner of land now or formerly of Clementine M. Boulrisse; thence running Westerly on land of said Boulrisse one hundred forty-three (143) feet, more or less, to stake and stones; thence Southerly on land formerly of Horace F. Giles two hundred seventy-one (271) feet, more or less, to stake and stones; thence Easterly on said Giles land one hundred forty-three (143) feet, more or less, to stake and stones; thence Northerly on said Burnor land two hundred seventy-one (271) feet, more or less, to first-mentioned bound.

Being the same premises conveyed to said Malvina Burnor by H. F. Giles by deed dated April 26th, 1905.

JOSEPH F. VITTEK, JR.
ATTORNEY AT LAW
810 CENTRAL STREET
FRANKLIN, N. H. 03235
(603) 934-5305

045186
STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
NOV -- '88
P.B. 10664
STATE TAX COMMISSION
560.00
R.S.A. 78-B

BK 1756 PG 0892

Also a third tract described as commencing at the Southwest corner of said Burnor land, or Homestead Place; thence running Northerly fifteen rods, more or less, on the Burnor line and fifteen rods, more or less, in the same direction on line now or formerly of Clementine Boulrisse to the Southwest corner of the homestead place of the late Annie E. White; thence Westerly parallel with said White's Southerly line to the Pemigewasset River; thence Southerly on said River to a point twenty (20) feet, more or less, Northerly of the Range line; thence Easterly in a straight line to the point begun at. Also a right to pass and re-pass over the common passway by the James Sargent place to said conveyed tract. Being the same premises and rights conveyed to the said late Malvina Burnor by deed of H. F. Giles, dated August 16, 1909, and recorded Book 390, Page 55, Merrimack County records.

Meaning to convey hereby the same premises conveyed to Richard H. Dustin by warranty deed from Proulx dated April 28, 1953, recorded April 28, 1953, at Book 732, Page 82, Merrimack County records.

We release our homestead and other interests in subject property.

EXECUTED this 10 day of November, 1988.

Richard H. Dustin
Richard H. Dustin

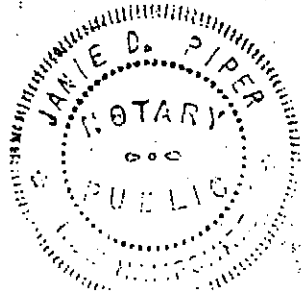
Deborah D. Dustin
Deborah D. Dustin

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

The foregoing instrument was sworn to and acknowledged before me this 10th day of November, 1988, by Richard H. Dustin and Deborah D. Dustin.

James D. Piper
Justice of the Peace/Notary Public
My commission expires _____

My Commission Expires November 6, 1990



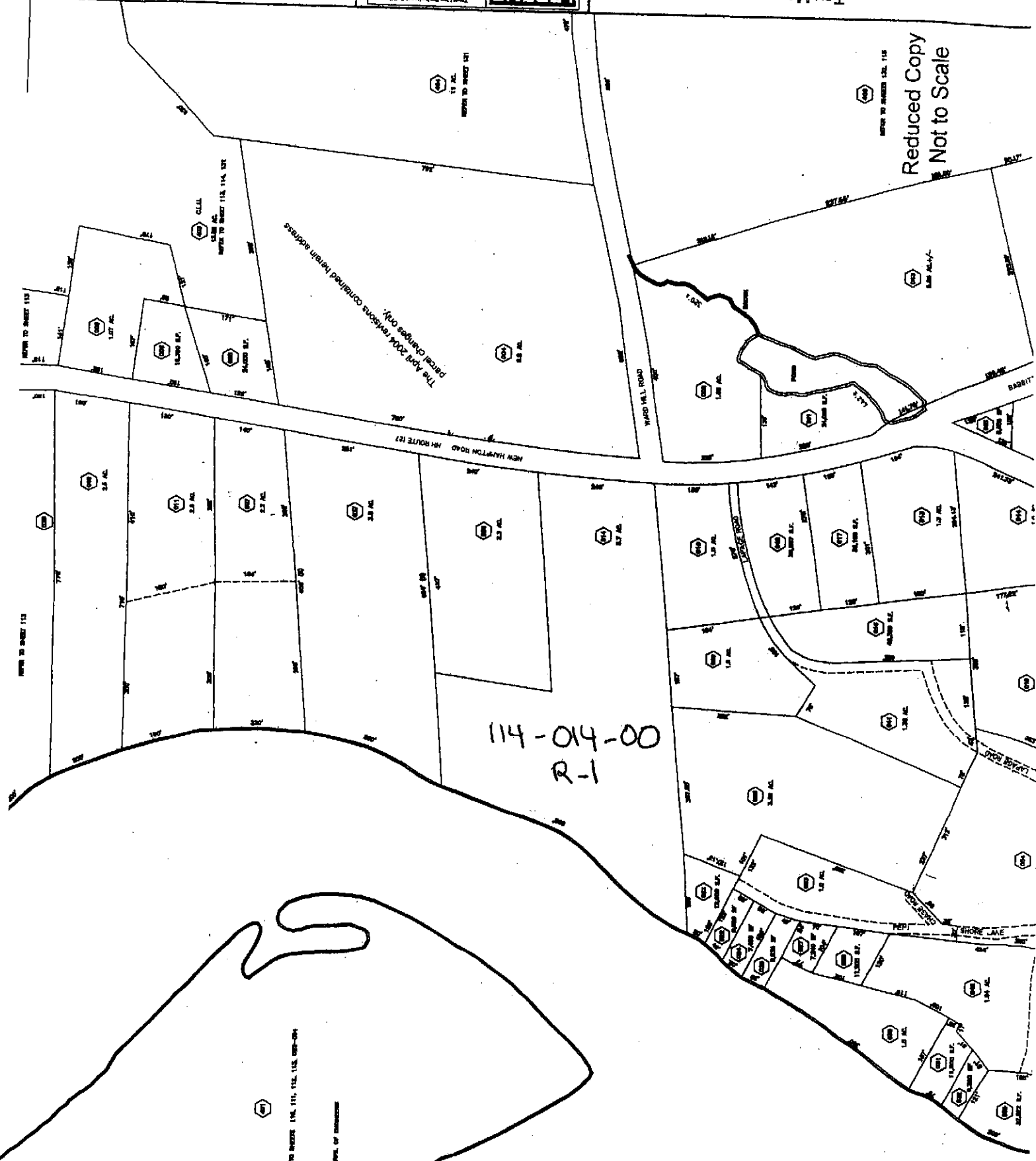
City of Franklin, NH Tax Maps

LEPENE
ENGINEERING
SURVEYING

These Tax Maps are for assessment purposes only and are not intended for legal descriptions of land transfers. Original Tax Maps were prepared by Rate Camp - 1979. Revised April 1, 2004.

Reduced Copy
Not to Scale

These Tax Maps are for assessment purposes only and are not intended for legal descriptions of land transfers. Original Tax Maps were prepared by Rate Camp - 1979. Revised April 1, 2004.



114-014-00
R-1

WARD HILL ROAD

SPRING LAKE

The lot 2004 revisions contained herein address parcel changes only.

NEW HAYTON ROAD NH ROUTE 123

WARD HILL ROAD

SPRING LAKE



CITY OF FRANKLIN, NEW HAMPSHIRE
"The Three Rivers City"

Planning and Zoning Department
316 Central Street
Franklin New Hampshire 03235

Tel: (603) 934-2341
Fax: (603) 934-7413
dlewis@franklinnh.org

To: Mayor Merrifield and Members of the Franklin City Council
From: Dick Lewis, Planning and Zoning Director
Date: August 28, 2013
Re: Request by John and Cindy Krauz for Restoration of Pre-merger lots

The Council Action Report provides some of the background on the overall issue of restoration of involuntarily merged lots. As noted in the CAR, it is my opinion that this request be denied. My recommendation is based on the following facts and conditions:

1. The 3 "lots" [actually called tracts on the deed] were shown as one large lot on the first assessing maps generated by the City back in 1979.
2. When Mr. Krauz purchased the land in 1988, it was identified on the tax and assessing maps as one parcel of land, and all of the lots were identified in one deed [recorded on 11/10/88].
3. Mr. Krauz came before the ZBA back on November 2nd, 1988 seeking a Special Exception to allow for the creation of a second unit in the house structure located just off of New Hampton Road. As part of this application he presented a signed and dated sketch plan [copy attached] showing a 6.6 acre lot and the structure. The plan contains a note that reads, "*all set back measurements from foundation*". The setback for the structure is shown as 800 feet to the rear lot line along the river; Mr. Krauz did not show a setback to the lot line which he seeks to establish today. This presents clear evidence that Mr. Krauz used the entire 6.6 acre parcel to help justify the granting of the Special Exception. His actions meet, I believe, a critical definition in the Statute at 674:30-aa.I(c): "*voluntarily merged means ...any overt action or conduct that indicates an owner regarded said lots as merges such as, but not limited to, abandoning a lot line*". The plan by Mr. Krauz which shows the entire lot is an "overt action" which means that the request to restore the lots should be denied.
4. It is my professional opinion that the Board reviewed and considered this plan as part of their review process in determining whether to grant the Special exception.
5. The Local Government Center recently issued a court update for the NH Supreme Court case of Roberts v. the Town of Windham [decided 7/16/13]. In the opinion of the LGC, local governing bodies must now recognize that "*they should review requests to 'unmerge' lots based on all of the circumstances of actual use of the property, and that the lack of a request to voluntarily merge the lots by a current or former owner will not, standing alone, support such a request*".
6. The NH Supreme Court issued on 8/21/13 a decision in the case of Town of Newbury v Steven P. Landrigan, which also deals with voluntarily merged lots. This decision cited an earlier case where the owner "*had obtained a building permit for a duplex relying upon the combined frontage and area of the two contiguous, non-conforming lots. We held that such conduct effectively erased the individual lot lines and resulted in the merger of the two prior non-conforming lots*". This is basically the same

circumstance as the Krauz matter where he used the overall 6.6 acre lot to justify the granting of the Special Exception.

I also want to make sure the Council is aware that in 2011 Mr. Krauz came before the ZBA seeking a variance to create lots that did not meet the frontage requirements of the Zoning Ordinance [this variance request was denied by the ZBA]. During this hearing it was revealed by Mr. Krauz that the house at 32 New Hampton Road, which sits on the lot under discussion, contained 2 apartment units and one studio apartment. There is no evidence that the City ever approved three units in this structure. In fact, the application submitted to the ZBA back in the fall of 1988 indicated that this was a single family structure. These facts point to an over-utilization of the property when viewed in relationship to the allowed uses in the Zoning Ordinance.

All of the above facts and conditions support a denial by the City Council of the request by the Krauz's. I will be at the Council meeting to answer any questions and present an overview of the issues. Thank you.

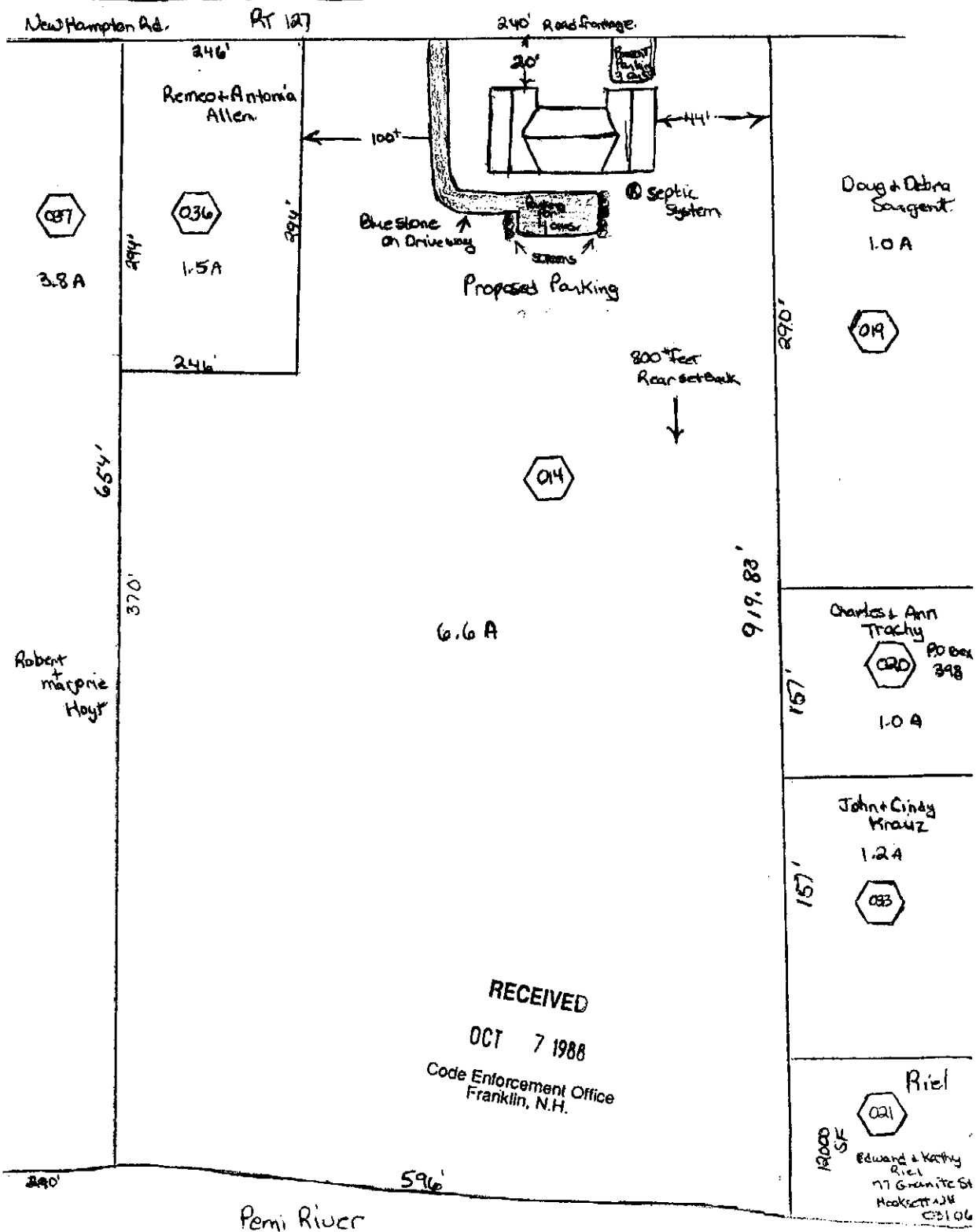
Not Drawn to scale.

All set back measurements from Foundation.

Edward + Mary Allard

Ward Hill Rd

John Krauz
10/31/88



Robert + Margorie Hoyt

RECEIVED
OCT 7 1988
Code Enforcement Office
Franklin, N.H.

Pemi River