

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: MARCH 19, 2008

CASE NO.: 3/19/2008-4

APPLICANT: EM-LEW REALTY, LLC
17 MOHAWK DRIVE
LONDONDERRY, NH 03053

LOCATION: 30 STONEHENGE ROAD,12-120, AR-I
113 HARDY ROAD, 12-131, AR-I

BOARD MEMBERS PRESENT: MARK OFFICER, ACTING CHAIR
YVES STEGER, VOTING ALTERNATE
BARBARA DILORENZO, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

REQUEST: AREA VARIANCE TO CREATE A LOT WITHOUT ROAD FRONTAGE.

PRESENTATION: CASE NO. 3/19/2008-4 WAS READ INTO THE RECORD WITH NO
PREVIOUS CASES LISTED.

MARK OFFICER: You weren't here at the beginning, John, but we only have four (4) members tonight.

JOHN MICHELS: That's fine.

MARK OFFICER: Okay, so you require a vote of three (3) or more for approval.

JOHN MICHELS: I understand.

MARK OFFICER: Alright and you wanna continue?

JOHN MICHELS: I wanna continue.

MARK OFFICER: Okay, alright.

JOHN MICHELS: Okay.

YVES STEGER: Not 'continue'.

MARK OFFICER: Not to con...no to...

YVES STEGER: To proceed.

MARK OFFICER: He wants to proceed.

JOHN MICHELS: I'm going to not not leave. Yeah. Okay. Let me give you a few plans here, so you can see what we're dealing with.

[pause while Attorney Michels hands out lot line adjustment plans- see Exhibit A].

JOHN MICHELS: We have a rather unique situation. I think I'll get you oriented and then I'll go through the points. If you look at the plan I've put before you, you will see a line that goes through called "former lot line." Okay? Sort of a dotted line through the middle of things. Okay? At the moment, there is a lot, I'll call it, on the top part of the page and there's a lot at the bottom. The problem here is that Public Service Company of New Hampshire owns a strip in the middle here. And under the basic rules is that when Public Service split the, we'll call it the 'top lot,' in half, there should have really been two (2) lots. There never have been, they've never been accounted for that way. Now, what's going on here, the owner is in the process of planning an affordable elderly housing project on both of these lots here. In the course of doing research, we found out that the old Manchester/Derry street railway, a trolley line, went through the middle here. This was transferred from the trolley line to PSNH in 1946. That particular trolley line right of way is fifty (50) foot wide and it's actually owned by PSNH. In addition, in 1956, PSNH got, on either side of the trolley line, thirty (30) feet of right of way in an easement, which means they don't own it but they have rights on it. So, going through here, there's not only this little strip that's owned by PSNH but they have easements on either side. So, in 1958...1985, PSNH gave Derry the right to run its sewer line, again, right down through this trolley line. When the trolley line went in and the trolley was built in 1907, 1908, so in 1908, they came through and with a taking, they split lots the whole way here. It goes down to Trolley Car Lane, it goes from Derry to...went through the Manchester Airport. But they chopped lots in half. Over the course of time, a lot of these lots got into different ownerships, so you wouldn't have the problem like we did here. Some of them retained the same owners. What is very interesting here is that the Town of Londonderry, when I went through this, is not consistent in what has done. So, in this particular case, PSNH has, on the tax map, you'll see that they have...there are actually two (2) tax maps, map 121...pardon me, map 120A, PSNH owns and is getting taxed and, we'll call it the bottom half of this right way, PSNH is being taxed on 131A. But if you go beyond where we are dealing here, and this is where it gets that this is very unusual, if you go beyond here, for example, if you follow the...if you go on the top left hand corner of the plan you have, there's lot 119. PSNH owns land going through that and if you can see on the left hand side, there's the tiny little sliver that's owned but it's still considered part of that lot. If you go a little farther, you'll get to the Wagon Wheel Tenant Coop and, again, if you look at this, you're gonna see that there's an owned strip that goes through and Wagon Wheel got this tiny part. Now, I didn't follow it too much farther north but I did follow down south just to see, and you get down south of here and if you look, I'll call it on the very right hand side of the plan, where we have something that says "Hardy Road Class V," right beyond there, there's a little note. "Map 12, lot unassigned, PSNH." Well, PSNH has this thing from Stonehenge at the top, there is a...they granted the Town of Derry six thousand (6,000) plus feet, a right to put a sewer and they described it starting at Stonehenge and they go along for six thousand (6,000) feet, so that's a mile. And in it, they refer to the fact that they own the entire piece. Now,

when you get beyond Hardy Road, there are a couple of places where PSNH is taxed and is shown as owning. There are lots of other places where they're not shown and they're not taxed.

LARRY O'SULLIVAN: So there's a gap.

JOHN MICHELS: Yeah. So there's a gap and the gap happens in several ways. Some of the gap is...they aren't taxed. Some places they aren't even shown as having anything. There are other lots...I just quickly went through lots nearby, there are at least four (4) other lots right nearby, lot 12-119, which is the one I showed you. Then going, heading the other direction towards Derry, there's lot 13-19, 13-19-1, those are also lots that are...that have the right of way go through it but the lot's on both sides and they're considered as lots. I think there's some homeowners here that don't really understand that the back part of their land is owned by PSNH. So, when this all came about, we were meeting with the Town staff, with Jim Smith and Tim Thompson and John Trottier, we were discussing the project and we were discussing how to go before the Planning Board and it came up, it says, 'well, you know, you got a problem here that...I know you bought it as a lot and I know the tax map says it's a lot but it's not a lot because you have this piece in between.' So, there were two different choices for what we do and anything would require coming to you. One of the choices was to go, keep the lots as they, but go and say...say, on the top here, which was lot 120, 120 could be a lot and could be split by another property. But that probably would set a bad precedent. And the other thing was we could just take this land and divide on one side of the road...one side of the right of way, we call it one lot, one side is the other. So, what we're coming before you today, just to give you the overview, is to try to square away something that affects not only us but people on different ends of this right of way and we're trying to get it squared away so it matches the zoning. The zoning is if you got a lot, it has to be contiguous, you don't...you're not supposed to have a lot that's, like, separated by a road or separated by another parcel. So, we're coming in here to try to correct what's existed for, you know, a hundred and three (103) years, probably. So, let me go through the points required for the variance.

MARK OFFICER: Before you do that, John, I just wanna make sure we...that's a lot thrown at us, I just wanna make sure everybody on the Board understands. Does anybody have any questions on what John just said?

LARRY O'SULLIVAN: Is this being used by Public Service of New Hampshire right now?

JIM SMITH: Yeah.

JOHN MICHELS: Right now there are power lines on it but not the really big power lines, you know...

LARRY O'SULLIVAN: There are...

JOHN MICHELS: It's not the high tension. There's poles and a line and in some places, it's actually on the right of way, some places it's actually on the easement. So, this whole thing is a hundred and ten (110) feet wide and within the hundred and ten (110) feet, some places actually on what they own and some places otherwise, there are poles run.

YVES STEGER: I have a question.

JOHN MICHELS: Sure.

YVES STEGER: So, your request for a lot without road frontage applies to the new map, lot 133.

JOHN MICHELS: The new...yeah...

YVES STEGER: One thirty one (131).

JOHN MICHELS: The new bottom lot...

YVES STEGER: Yeah.

JOHN MICHELS: ...the new lot 131, which is, call it, as you're looking at your plan, it's on the bottom side.

YVES STEGER: Okay.

JOHN MICHELS: We wanna make all on the one side of the railroad one (1) lot, all on the other side another lot.

MARK OFFICER: Alright, so that's proposed 131. Today it's 120, correct?

JOHN MICHELS: Today, what...

YVES STEGER: It's both.

JOHN MICHELS: ...you can see is, today, if you see the dotted line going across...

MARK OFFICER: Oh, yeah.

YVES STEGER: See?

MARK OFFICER: I see.

JOHN MICHELS: What happens is, the dotted line, the line...everything above the dotted line is lot 120 today...

MARK OFFICER: Mm-hmm.

JOHN MICHELS: Everything below the line is 131. And...which...that created a situation where both lot 120 is separated by...

MARK OFFICER: Oh...

JOHN MICHELS: ...PSNH and lot 131 is separated by PSNH. So, we have something that shouldn't exist. And, you know, it's sort of...

MARK OFFICER: So, the...

JOHN MICHELS: ...it's been existing for quite a while.

MARK OFFICER: ...the proposed 131, the boundary would be the PSNH right of way?

JOHN MICHELS: It would be the PSNH right of way.

MARK OFFICER: Okay.

JOHN MICHELS: Now, when I get into...when I go over the points, what we are planning on doing as we go forward is we're never planning on building lot 131. We're just using it as green space. And the Planning Board will allow us to use it for green space. But we're trying to get the lots and lot lines corrected. We can't go for the Planning Board now because the current lot 120 is not really a lot because it's separated by a road. Although it's been decided that way for years and the Town has taxed it that way...

MARK OFFICER: Separated by the right of way, you mean.

JOHN MICHELS: By the right of way.

MARK OFFICER: Yeah.

JOHN MICHELS: By the PSNH...

MARK OFFICER: And why...so that, oh, I think you said this earlier, so it's not considered a lot because it's two (2) distinct pieces?

JOHN MICHELS: Right, if I...

MARK OFFICER: Oh, yeah, it has to be contiguous?

JOHN MICHELS: If you have a big lot and you take a piece out of the middle, then you've created two (2) separate lots. However, from...that has not happened here and, you know, in a hundred and three (103) years, the top part's been considered one (1) lot and the bottom's been considered one (1). And the catch that I came up with doing a little of the research here is that this is not the only one. I mean, what we...because our engineers had to really get into the questions of dealing with PSNH for, you know, maybe running water over the land or doing something else, they got deeply into the research and when they got in the research, they said, 'man, this is much different than anybody even believes.'

MARK OFFICER: Okay. Alright.

YVES STEGER: And for that reason, you have no plans whatsoever to ever put anything on the new lot 131?

JOHN MICHELS: Nope.

YVES STEGER: Most of it is water and some of them are so small that there would never be enough setback even to work with.

JOHN MICHELS: Well, it's not that it...

MARK OFFICER: There isn't enough frontage.

JOHN MICHELS: It's not so much it's water or anything else, it's more...the land, when we actually do it, it's the, I'll call it the top part is actually on a hill...

YVES STEGER: Yeah.

JOHN MICHELS: ...and it does slope down. And then there's the, you know, the railroad, but we have no plans on doing anything with the bottom.

YVES STEGER: Okay.

JOHN MICHELS: See, right now, the interesting thing is you take the bottom lot, the currently existing lot, 131, you can see on the right hand side, it actually touches Hardy Road. It has a slight bit of access. The problem is, the part underneath the right of way doesn't have any access and really...

YVES STEGER: Mm-hmm.

JOHN MICHELS: ...you know, a hundred and three (103) years ago, that should have been...become a separate lot and it never did. So...

MARK OFFICER: Okay. Okay, any other questions before John goes through the five (5) points?

LARRY O'SULLIVAN: Yeah...

MARK OFFICER: I just wanna make sure everybody understood.

LARRY O'SULLIVAN: Just that this is a, I guess a point of interest would be, is there access to the lower lot granted by PSNH through that, their lot? Can it be...is it accessible, the lower lot accessible, from lot 120?

JOHN MICHELS: Well, the interesting thing is there is nothing written that I have found, okay? I haven't found any...I have no...there's no right of way access, there's no crossing access. I mean, there's nothing described as having a right to cross. It is not posted, therefore you can cross it 'cause anything that's not posted you can go and, you know, you can go and cross. But just to...to get to your...one of your other points, this isn't the only one of those. We've got people along the way with

backyards that have this go through and they can't get to the back part of their land. So, it's...other people don't know about it but this, you know, this exists. And the other catch that I looked is that...

YVES STEGER: Mm-hmm.

JOHN MICHELS: ...there, quite apparently, I'm gonna guess that there is probably, oh, three quarters of a mile to a mile that PSNH is not being taxed on.

LARRY O'SULLIVAN: Ooh, thanks for finding that one.

JOHN MICHELS: And that the, you know...

LARRY O'SULLIVAN: Get that one on the record.

JOHN MICHELS: ...because when I looked at the Derry...there was a deed from Derry...Public Service to Derry and I was trying to go through it, it has some curves and I couldn't quite figure out the distance in the curves reading from the deed, but it describes something of about sixty four hundred (6,400) feet that they own and Derry can now use this sixty four hundred (6,400) feet. When I went and measured from, and it starts at Stonehenge, and when I measured, starting from Stonehenge and going down to where we are, you know, we maybe get twenty five hundred (2,500) feet. So, there's another big distance along there that PSNH owns and there are occasional parts in there where their main transmission lines pass that they are actually taxed on. But they are definitely, now I looked at all the tax records for PSNH, they're definitely not taxed as across the road here.

LARRY O'SULLIVAN: A mile. Yea. We gotta report that.

JOHN MICHELS: So...Yeah, and they're also not taxed...I think that the right of way actually also goes north and I didn't do all the research in north but as I kept floating through the research south, it kept showing that PSNH owns it. And I think going north, they own some also.

YVES STEGER: Trying to [inaudible].

JOHN MICHELS: Which makes for an interesting situation with various people's lots.

LARRY O'SULLIVAN: Near the airport, yeah.

MARK OFFICER: Okay. Alright.

JOHN MICHELS: But that's sort of the overview of what...why we're in here and what we're trying to do and what staff recommended we do to try to correct, you know, try to correct the problem. Just going through the points, we're requesting a variance to create a lot without frontage from two (2) nonconforming lots. The proposed use will not diminish the surrounding property values because this lot is only gonna be used as green space for an affordable elderly project, nothing is planning on being built on it. To any neighbor, they would never notice any difference here, the fact that we classify it as a lot.

MARK OFFICER: So, for clarification, the elderly housing project will be on...

LARRY O'SULLIVAN: The north.

JOHN MICHELS: We'll call it the north...

MARK OFFICER: ...the north side of 120.

JOHN MICHELS: Yeah. It will be...

MARK OFFICER: The current north side of 120.

JOHN MICHELS: Yeah, it'll be the north side.

MARK OFFICER: Alright.

JIM SMITH: The new lot 120.

JOHN MICHELS: Yeah, the new lot 120.

YVES STEGER: Which has plenty of frontage.

JOHN MICHELS: Plenty of frontage, it's...everything else and what...and this is gonna be used for green space. When we got into it, we found out that, you know, we had all the land but that it just wasn't...we can't get before the Planning Board because these lots are split.

MARK OFFICER: Are you gonna use...so, maybe I'm jumping the gun here, but for this project...

JOHN MICHELS: Yeah.

MARK OFFICER: ...you have some green space requirements?

JOHN MICHELS: Green space requirements.

MARK OFFICER: Okay. Are you...how can you...are you gonna be using...the green space requirements, are they gonna be satisfied by the new north side of 120 or are you gonna need to use...?

JOHN MICHELS: It'd be satisfied by 131, which the Planning Board has told us before, in dealing with another similar project that they would consider doing that, particularly when it's something like this.

MARK OFFICER: Include the green space of two (2) lots?

JOHN MICHELS: Yes.

MARK OFFICER: Alright.

JOHN MICHELS: In other words...

MARK OFFICER: Or use the green space of one (1) lot for a project on another?

JOHN MICHELS: Yeah, we're going to do the whole thing as a...

MARK OFFICER: Assuming the same owner?

JOHN MICHELS: ...we're doing the whole thing as a project and part of the project, the bottom lot, is green space. It's all one (1) project, it's gonna be one (1) site plan...

MARK OFFICER: Okay. Okay.

LARRY O'SULLIVAN: Just multiple lots.

MARK OFFICER: Alright.

JOHN MICHELS: With multiple lots.

MARK OFFICER: Okay.

JOHN MICHELS: Okay? Granting the variance will not be contrary to the public interest because the lot being created is gonna be a green space for an affordable elderly project. It is in the public interest to have an affordable elderly project and it's also in the public interest to have a green space and not have the land developed or used. The special conditions which exist that the literal enforcement of the ordinance results in unnecessary hardship; an area variance is needed to enable our proposed use of the property, given the following special conditions. One (1), there currently are two (2) preexisting lots, lot 12-120 and 12-131, each of which is bisected by a strip of land owned by PSNH. Part of these are being used to create a...part of each lot is being used to create a single lot without frontage. The benefit sought by the applicant can't be achieved by any other method reasonably feasible for the applicant to pursue other than an area variance. The division of the lots was caused by the trolley line about a hundred and three (103) years ago. These lots were always considered single lots, even though they were being separated by the railway. The new lot's going to be green space. It will have no need for any road frontage. There's no way to create frontage for this landlocked area which was created, you know, a hundred (100) years ago. Granting the variance would do substantial justice because it will continue to treat the area as it has been treated, you know, for the last hundred (100) years and it will get it to comply with the ordinance, at least in terms of the way lots are. The use is not contrary to the spirit of the ordinance because the creation of an affordable elderly project and green space is not contrary to the spirit of the ordinance.

MARK OFFICER: Okay. Any questions from the Board? Alright. I have one, John, 'cause I have a feeling we're gonna have some public comment. Let's say that this new proposed lot 131 was a different owner and completely separate from this project.

JOHN MICHELS: Right.

MARK OFFICER: Somebody else owned it, didn't wanna sell it, whatever. You have a proposal on 120 today with the frontage on Stonehenge Road.

JOHN MICHELS: Correct.

MARK OFFICER: That could move forward today, it would just be less houses, possibly, 'cause you would have to use more of that lot for green space?

JOHN MICHELS: Well, no, I can't even go forward today because the land is...

MARK OFFICER: Oh, alright...

JOHN MICHELS: ...the land is...

MARK OFFICER: The issue with the...right.

JOHN MICHELS: So I can't even go forward, even if I forgot the bottom lot, I can't even go forward with the top lot because the top lot is on two (2) sides and the lot doesn't conform with the zoning, so...

MARK OFFICER: But let's say it wasn't on two (2) sides, let's say it was completely distinct.

JOHN MICHELS: I could go forward to do something. I couldn't do as much 'cause I don't have as much land.

MARK OFFICER: Mmm. I gotcha. Okay.

JOHN MICHELS: It's all based on the size of the land. But the key element here is that we're not changing anything on those...all we're doing at the moment, and I'm giving you the background of the affordable housing merely as, to give you an overview of what we're doing, but if I had brought this up to the Town otherwise, they would have told me to come in here and square it away anyway because the lot's are wrong. So, regardless of whether I built anything or I didn't build anything, the situation is something that was created improperly, it's not correct on the tax maps, it's not correct on the assessment cards and, you know, it has to get corrected one way or the other.

MARK OFFICER: Okay. The proposed lot 131, is that, in your opinion, is that buildable in any way?

JOHN MICHELS: I haven't even looked at...it's not buildable 'cause it has no road access, so it, you know, just, you know, I couldn't build on that unless I came in here and asked and I have, you know, we have absolutely no plans, there's never even been a thought of, you know, building anything there, it doesn't...

LARRY O'SULLIVAN: Do you have a wetlands map?

JOHN MICHELS: ...it doesn't make any sense...

MARK OFFICER: Yeah. Hmmm?

LARRY O'SULLIVAN: Do you have a wetlands...I can't get into...

MARK OFFICER: Yeah, I looked at it, I just wanted to get for the record.

JOHN MICHELS: Yeah, no, it doesn't...

MARK OFFICER: I mean, looking at the topography and the wetlands, it...

JOHN MICHELS: It doesn't make sense. That's the bottom of a hill.

MARK OFFICER: Yeah.

JOHN MICHELS: You know, it just doesn't make...

MARK OFFICER: Yeah, it's a very steep hill.

JOHN MICHELS: ...sense to do it and has no, you know, has no access.

MARK OFFICER: Okay. Alright, any other questions before I open it up?

YVES STEGER: Nope.

BARBARA DILORENZO: No.

MARK OFFICER: Alright. Okay, anybody speaking in favor of this request? You can come forward to the microphone. Alright, seeing none, anybody opposed or having questions? Come on up, sir. Just state your name and address for the record, please.

PAUL MOULTON: Paul Moulton, 34 Stonehenge Road. I think before you say yes or no to something like this, 'affordable' needs to be defined. You know, healthcare is affordable but if you buy it, that's the only thing you can afford, so, I think 'affordable' needs to be defined before, you know, anybody could agree to something like this.

MARK OFFICER: Okay, yeah, let me address that...

PAUL MOULTON: And I know it's hard to...

MARK OFFICER: Yeah, well, you see, we're the...that question would be more appropriate for the Planning Board when they discuss the site plan for this project. We're the Zoning Board and we're dealing specifically with the area variance...

PAUL MOULTON: Correct.

MARK OFFICER: ...for the lot 120 and the new proposal lot for 131. And it sort of stops there, so the merits of what kind of housing it's gonna be, if it's affordable elderly or something else, the impact on traffic that this project might have, any of those other concerns which are definitely obvious concerns for the abutters like yourself, that would be for the Planning Board. So...

PAUL MOULTON: Correct. I guess in not knowing those details, I'd have to object to this.

MARK OFFICER: Mm-hmm. Okay.

DAVID NEASE: How you doing? My name is David Nease, 11 Fay Lane. I guess my question would be when the land was originally purchased, which I think was only three (3) or four (4) years ago, was it not known at that point that they were split the way they were? And was the...I mean, it looks like it was probably pretty clear on the maps, so my question would be when the land was purchased, was it purchased fully knowing that they were going to come in and ask for a variance?

MARK OFFICER: Okay. John, would like to address that now?

JOHN MICHELS: Sure. When the land was bought, we understood that there was an easement across it. We had no idea we were gonna come in here for this and, in fact, I don't think we knew we were gonna come in here for this until, I don't know, six (6), seven (7) weeks ago. We thought that we could have the lots the way they were going on each side here because that's the way they were. We thought it was a preexisting lot, preexisting use and, you know, the Town staff interpretation is that that's not the way it is.

MARK OFFICER: Okay. Anybody else speaking against or having questions?

DAVID NEASE: I would just...I would just think that there was...

MARK OFFICER: Just come up to the microphone before you speak.

DAVID NEASE: I would just think that there was...should have been some kind of due diligence done when they were investigating the land. When you purchase such a large tract of land, what I would assume would be for the purpose of building a large complex, that that due diligence would have been done prior to purchasing the land. I find it just a little hard to believe that they didn't know about this until seven (7) weeks ago.

MARK OFFICER: Okay. Alright, I'm just gonna ask, before you...I'll give you a chance to rebut, John, I'm just gonna let anybody else speak first. Okay, come on up.

DEB PAUL: Deb Paul, 118 Hardy Road. I just wanna state something. I know that it was said at a Town meeting by Mr. Andre Garron that we were filled to capacity, according to our thirteen (13) percent population with permits for over fifty five (55) developments and that there was a certain percentage and we had said that he had had everybody in there and I don't know if you all had taken

that into consideration that we're supposed to not be building 'em 'cause we haven't been able to sell what we have, nor have we built out all that we are gonna build.

MARK OFFICER: Okay. Alright, yeah, once again, it doesn't necessarily pertain to us on the Zoning Board in terms of the permits that are allowed.

DEB PAUL: I understood that. I just wanted to make sure he knew that.

MARK OFFICER: Yeah, I'll let...yeah, I know, you're...it's freedom of speech. Anybody else speaking opposed or having questions? Alright, John, would you like to add anything?

JOHN MICHELS: You know, before any project is done, we have a long ways to go, we have to go before the Planning Board and in terms of, you know, what plans are or what can be done, you know, the market's gonna dictate whether anything can be, you know, built, sold or what. We're, you know, the market's gonna dictate it. And as far as I know, we haven't hit any limits according to the Town.

MARK OFFICER: Okay.

JOHN MICHELS: But that doesn't really matter for what I'm doing before you. That's irrelevant to the issue before you I think.

MARK OFFICER: Okay. Alright. Any other questions from the Board? You might want to stay up here, John, I know I have another question. Anybody else?

BARBARA DILORENZO: No.

MARK OFFICER: Okay. I know you said the dates but I was trying to get my arms wrapped around this when you were saying it, when was this, well, yeah, right of way, when was that created?

JOHN MICHELS: Okay. The plans, the taking was somewhere around 1905, building somewhere 1907, 1908.

MARK OFFICER: Okay. Alright, any other questions?

YVES STEGER: No.

MARK OFFICER: Barbara? All set? Alright, thank you. Just one last time, no other further comment from the public, for or against? Okay, Jim, do you have anything to add before we go into deliberations?

JIM SMITH: Probably the only thing I could suggest, when we had our meeting here that was referred to, there was another lot that was on the right hand side of this and the discussion of that, we basically talked them into this configuration because it would...there was some other lines and it just didn't make sense in trying to consolidate this and make some sense out of what we had in this situation. What we have is obviously a situation that was created many years ago, it was never really

picked up, the lots really should have been assessed separately at some point in time, but for whatever reason, it was never picked up.

MARK OFFICER: Mm-hmm.

LARRY O'SULLIVAN: And no matter what he wants to do on this...on any of this property, this has to get squared away.

JIM SMITH: Yup. Gotta do something.

LARRY O'SULLIVAN: Mm-hmm.

MARK OFFICER: Okay. Alright, thank you. Alright, so the Board will deliberate now on case number four (4) and we'll accept no other further input from the public at this time.

DELIBERATIONS:

MARK OFFICER: Alright, before we go through the five (5) points, anybody have any opening comments they'd like to discuss? Everybody understand what the situation is? Another 'one-off.'

LARRY O'SULLIVAN: Yeah. Talk about unique.

YVES STEGER: Yeah.

LARRY O'SULLIVAN: This is another unique one.

MARK OFFICER: Yeah. Yeah.

LARRY O'SULLIVAN: And it's interesting to see that when you do a little history on these things, I think PSNH is our top tax payer, by the way, in town.

MARK OFFICER: Really?

LARRY O'SULLIVAN: Yeah. Jim, is PSNH our top tax payer in town?

JIM SMITH: I never really paid much attention to that...

LARRY O'SULLIVAN: I like watching that stuff and I'm pretty sure they are.

MARK OFFICER: Would it be Granite Ridge or...?

LARRY O'SULLIVAN: No, PSNH.

MARK OFFICER: ...the ice...yeah?

LARRY O'SULLIVAN: 'Cause they pay it on towers and wires and along the streets and...

MARK OFFICER: Okay.

LARRY O'SULLIVAN: ...any value-add. But this is a huge part of it. The way I look at this, this is helping us to get our Town records squared away, regardless of what happens on this lot.

MARK OFFICER: Yup. Something has to be done, like Jim said.

LARRY O'SULLIVAN: And this looks like a very logical way and that's probably why the Town staff suggested it. So...

YVES STEGER: Actually, what is even amazing is that the combination of lots create two (2) lots that have exactly the same size that the two (2) original ones had.

LARRY O'SULLIVAN: Is that right? That...

YVES STEGER: Yes, I couldn't believe it, you know? You combine the old 120 with a portion of 131 and we go from thirty eight thirty four (38.34) to thirty eight twenty eight (38.28) acres.

LARRY O'SULLIVAN: Wow.

YVES STEGER: And the other one goes from twenty four eleven (24.11) from twenty four-o-five (24.05), so, it's just...

LARRY O'SULLIVAN: Pretty darn close.

YVES STEGER: Magic.

MARK OFFICER: That's bizarre.

YVES STEGER: It is, isn't it?

LARRY O'SULLIVAN: That's our Town staff for you, they figured that one out.

MARK OFFICER: I doubt it, but...

YVES STEGER: Great job, Jim.

JIM SMITH: Oh yeah.

LARRY O'SULLIVAN: Take the kudos for that one.

MARK OFFICER: Yeah, they drew that line perfectly.

YVES STEGER: Okay, let's go through them.

MARK OFFICER: Alright, so, no other opening comments, so, diminishing surrounding property values.

LARRY O'SULLIVAN: No, we're combining two (2) lots, we're not making any changes to anything other than combining two (2) lots.

MARK OFFICER: Yeah, and you can't...

LARRY O'SULLIVAN: And separating them in two (2) areas, so, there's no public anything on that.

MARK OFFICER: And you can't build on this anyway.

LARRY O'SULLIVAN: It serves the public interest to do it.

MARK OFFICER: Yeah, you make that point. Alright, anything else? Alright, (B), granting the variance would not be contrary to the public interest. Once again, I think we just said it.

YVES STEGER: There's two (2) noncompliant lots become two (2) compliant lots.

MARK OFFICER: Yeah.

YVES STEGER: Can't see anything wrong with that.

MARK OFFICER: Right. Yeah, that's a good way of looking at it. Alright, special conditions. The first part is an area variance is needed to enable the applicant's proposed use of the property given the following special conditions. Well, I think we know what the special conditions are.

YVES STEGER: Yeah, they're special enough.

MARK OFFICER: Yeah, very special, given the land taking and the bisection and the years that it has gone without being detected. Anything else? No? Okay. And then the second part is the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance, so, you know, they're really stuck until this is resolved.

YVES STEGER: Yeah.

MARK OFFICER: You have to define...yeah, you have to do something.

YVES STEGER: Mm-hmm.

MARK OFFICER: Okay.

YVES STEGER: I agree.

MARK OFFICER: So now onto (D), granting the variance would do substantial justice.

LARRY O'SULLIVAN: Especially if we do the variance with a restriction that...

YVES STEGER: Yes.

LARRY O'SULLIVAN: ...lot 131 never be developed.

YVES STEGER: Correct. Yeah. Mm-hmm.

BARBARA DILORENZO: But then I thought they were gonna combine the two (2) lots together, so then it becomes one (1), right?

YVES STEGER: No.

MARK OFFICER: No, no, no.

YVES STEGER: This is gonna be one (1) lot and this is gonna be the other lot and the variance is required for this one, which is a combination of this and this because there is no road attached to it.

MARK OFFICER: Of course it can't be developed. It's landlocked.

YVES STEGER: Well...

LARRY O'SULLIVAN: That doesn't mean something can't be developed. You should know that.

YVES STEGER: I will definitely...whoever makes the motion needs to put...

MARK OFFICER: Yeah.

YVES STEGER: ...the words in there to...

MARK OFFICER: I mean, they did say it was gonna green space. Yeah.

YVES STEGER: Well, that's the thing, well, let's keep going...

MARK OFFICER: Yeah.

YVES STEGER: ...but I have some comments about green space.

MARK OFFICER: Alright. And the last one, the use is not contrary to the spirit of the ordinance.

YVES STEGER: So, whatever the use is, green space or anything else, at this time, it is not something that influences our decision. Whatever they do with that lot, it has no frontage and we're gonna put restrictions about the fact that it can never be developed. Now, I was thinking about it and say if they wanna use it as green space, they may want to possibly put a gazebo.

LARRY O'SULLIVAN: Right.

YVES STEGER: That's a building, too, so we wanna be careful...

LARRY O'SULLIVAN: They'd come here for it, then, wouldn't they?

YVES STEGER: What?

LARRY O'SULLIVAN: They'd have to come here for it then, wouldn't they?

YVES STEGER: Okay. That's fine, then. So, alright. Yeah, but if we have already put that restriction in another ruling from the Zoning Board, then...

LARRY O'SULLIVAN: The next Zoning Board gets to make the exception.

YVES STEGER: Alright, that would be fine. But I didn't want to use the green space because it will be the decision of the Planning Board to decide if that green space is applicable or not.

LARRY O'SULLIVAN: John said that that was going to be remaining...

YVES STEGER: But we cannot use that as part of our decision, so I'm not even assuming that it's gonna be green space. As far as I'm concerned, it is unusable space for this Board. Now, they can use the green space as part of the decision for the Planning Board, but that's something that we do not have to decide.

LARRY O'SULLIVAN: Or that whole lot 131 could be sold to somebody who's abutting on the south side and they can take their swimming pool and put it in there.

YVES STEGER: Yup.

LARRY O'SULLIVAN: 'Cause it is accessible from the lots that are on the...what would that be, the east side.

MARK OFFICER: Wait a minute, how can they do that?

LARRY O'SULLIVAN: They can combine lots. If they now have access...

YVES STEGER: There's no other lots that...

LARRY O'SULLIVAN: On the south side of that?

YVES STEGER: No.

LARRY O'SULLIVAN: Do they all...sure they do.

MARK OFFICER: No, yeah, if there...

LARRY O'SULLIVAN: It doesn't mean...

MARK OFFICER: ...there's lots that about Mammoth. You can see right...right here. This is...these are Mammoth Road.

YVES STEGER: Oh. Yeah, those.

MARK OFFICER: Okay?

LARRY O'SULLIVAN: You see where I'm going with that, right? 'Cause you can combine those lots with...

YVES STEGER: Correct and if they did that, then they would have enough frontage and they don't even have to come in front of us.

LARRY O'SULLIVAN: Like the Wagon Wheel people could take that lot and buy that lot and...

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: ...own it for forever and put in more Wagon Wheels. Unless we put this restriction on it.

YVES STEGER: Oh. That's a good point.

MARK OFFICER: Okay. Jim?

JIM SMITH: I think you need to be careful about that because even if you put a restriction on this lot and then it's combined with another lot, now it's a different lot.

LARRY O'SULLIVAN: No, that's...we have an old...the description here is old...

JIM SMITH: No, no, no. Larry, here's what I'm saying. What you're suggesting, if you create this lot that has no frontage and by definition, with no frontage, you can't develop it, then you...and you try to put a restriction on it that you can't develop it, if someone then combined that with a lot that has frontage...

LARRY O'SULLIVAN: Right, that's my...

JIM SMITH: ...now that's a new lot.

LARRY O'SULLIVAN: That's what I'm saying.

YVES STEGER: Okay...

JIM SMITH: It's a new lot, so your restriction wouldn't have any bearing on it.

YVES STEGER: Okay. I...

LARRY O'SULLIVAN: Oh, you mean the variance would go away.

JIM SMITH: Right, because that would go with the old lot. Now you got a new lot.

LARRY O'SULLIVAN: Oh....

YVES STEGER: Yeah.

LARRY O'SULLIVAN: Catch-22.

YVES STEGER: Yeah. But that's okay, because then it would be...it will be following the rules.

LARRY O'SULLIVAN: Okay.

MARK OFFICER: Yeah.

LARRY O'SULLIVAN: So I guess we wouldn't restrict it that way.

MARK OFFICER: Well, it's not buildable...

LARRY O'SULLIVAN: It was a thought.

MARK OFFICER: I mean, I don't know what you could do.

YVES STEGER: Well, they, I mean, theoretically, they can still can but it...

MARK OFFICER: Well, yeah.

YVES STEGER: They could. They have frontage.

MARK OFFICER: Yeah.

YVES STEGER: But that's okay. This is hypothetical.

MARK OFFICER: Yeah, so I don't see any problem with the points of law.

LARRY O'SULLIVAN: Me neither.

MARK OFFICER: I think it's the restriction that I'm still grappling with a little bit. So, I was gonna be happy with just saying, 'to be used as green space,' but you feel it should say, 'not developed'?

YVES STEGER: Correct.

MARK OFFICER: Well, what does that mean? 'Not developed.' I mean, it can't be developed anyways by the fact that it's landlocked.

YVES STEGER: Well, if you allow us to create a lot with no frontage, it's an AR-I, so, no, we have already authorized it. That's why I wanna have that restriction.

LARRY O'SULLIVAN: Yeah, that has to...that's what I'm saying, too.

MARK OFFICER: Do we have a definition for 'green space' in our ordinance? Does anybody know?

YVES STEGER: ...don't call it a green space.

MARK OFFICER: Yeah.

YVES STEGER: That's why it's not our role to define it.

JIM SMITH: Yeah, but I think...I'm still going back to the fact. If the lot doesn't have frontage, you would have to get a variance or something to develop it anyways.

YVES STEGER: Okay, yes.

JIM SMITH: So, trying to say...put that restriction on it, it's already there. So, it's...

YVES STEGER: It's moot.

JIM SMITH: It doesn't make sense.

YVES STEGER: Okay. So, essentially, we only allow that a lot be created without frontage. That doesn't allow anything more than that.

JIM SMITH: Right.

YVES STEGER: It's a vacant lot.

MARK OFFICER: Mm-hmm.

JIM SMITH: Essentially, you're creating a nonconforming lot.

MARK OFFICER: Yeah. I mean, I see us as having little choice but to have this...

LARRY O'SULLIVAN: Oh, yeah.

MARK OFFICER: ...new lot created.

LARRY O'SULLIVAN: Yeah, there's...

MARK OFFICER: Right?

YVES STEGER: Yeah.

LARRY O'SULLIVAN: That's why I said there should be...that's why I believe there should be a restriction, because remember how all those streets off of Stonehenge got...there was no access to those back lots and people said yeah, they'll give people a right of way through there or they'll, you know, let my driveway go to the end of the property and so forth. We do that. We do that in town, so it's not like it's undevelopable.

JIM SMITH: But you still would have to come back to get a variance.

MARK OFFICER: Those lots have frontage.

LARRY O'SULLIVAN: Sorry?

JIM SMITH: You would still have to come back to get a variance. Even if you had a right of way...

MARK OFFICER: Yeah.

JIM SMITH: Because you still don't have frontage.

MARK OFFICER: A lot of those lots had some frontage to begin with.

LARRY O'SULLIVAN: Yeah, but it doesn't change the...well...

MARK OFFICER: I don't know, I just...

LARRY O'SULLIVAN: It doesn't make it a different lot.

JIM SMITH: No, but what I'm saying, even if someone gave them a right of way, a right of passage to access the lot, they still couldn't develop until they get a variance to develop on a lot with no frontage.

LARRY O'SULLIVAN: Yeah. And if somebody came in here for a variance for a lot with no frontage and they had a right of way, we'd give it to them.

JIM SMITH: That would be their choice. That would be up to that Zoning Board.

LARRY O'SULLIVAN: That's why if we had a restriction on the lot as is, it wouldn't ever be able to happen with those circumstances. Now, where you've got us...

JIM SMITH: Well, see...

LARRY O'SULLIVAN: ...was when you create a new lot.

JIM SMITH: I think part of what you also have to think about is if you put that on, does that prohibit them using it as green space for this development? I'm not sure.

LARRY O'SULLIVAN: Why would it?

JIM SMITH: I'm not sure because it's part of a development.

LARRY O'SULLIVAN: Mmm.

MARK OFFICER: I think the restriction is...

JIM SMITH: I don't think you need to put that restriction on.

MARK OFFICER: Yeah, I'm...I don't think the restriction will do any good.

LARRY O'SULLIVAN: Okay.

MARK OFFICER: 'Cause they have...if they do anything to it, they have to come here and if it's merged with another lot for whatever reason, then...

YVES STEGER: They have to come back...

LARRY O'SULLIVAN: ...granted, it goes away...

MARK OFFICER: Yeah, they have to come...or the variance goes away.

LARRY O'SULLIVAN: Right. Okay.

MARK OFFICER: So...I mean, I...

YVES STEGER: Okay. You convinced me.

MARK OFFICER: I understand...

YVES STEGER: You convinced me. Go ahead.

MARK OFFICER: I understand what we're trying to get at but I think by the fact that it's landlocked, we're...it's being met in that...[inaudible]. So...

LARRY O'SULLIVAN: Okay, are you ready for a motion?

MARK OFFICER: I am.

LARRY O'SULLIVAN: I make a motion to approve case 3/19/2008-4, having met all the requirements and in the interest...the best interest of the town.

YVES STEGER: I second that.

MARK OFFICER: Alright, a motion's by Larry, seconded by Yves. All those in favor, say 'aye.'

LARRY O'SULLIVAN: Aye.

YVES STEGER: Aye.

BARBARA DILORENZO: Aye.

MARK OFFICER: Aye. Those opposed? Alright, motion carries, four (4) to zero (0).

RESULT: THE MOTION TO GRANT THE AREA VARIANCE WAS APPROVED, 4-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED APRIL 16, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY BARBARA DILORENZO AND APPROVED 4-0-2 (NEIL DUNN & VICKI KEENAN ABSTAINED AS THEY HAD NOT ATTENDED THE MARCH 19, 2008 MEETING).