

VI. LOT MERGERS

A. Involuntary Mergers Prohibited – 2010 Chapter 345 (SB 406)

Part of the fallout from the New Hampshire Supreme Court's decision in *Sutton v. Gilford*, 160 N.H. 43 (2010), has been two years of legislative activity. Last year, the Legislature listened to property owners' stories of injustice at the hands of municipalities that had merged abutting non-conforming lots under common ownership, without the consent of the owner. Sometimes these mergers had been done quietly by companies that created the municipalities' tax maps, in other cases the assessor had merged the lots for convenience, and, in some cases, the local zoning ordinance contained a provision that decreed that such lots would be merged as of a particular date. The Legislature heard these pleas, and determined that involuntary mergers should no longer occur. Lacking a better place to insert this new law, the Legislature appended it to the existing "voluntary merger" statute. [Effective September 8, 2010]

- RSA 674:39-a – New sentence: "No city, town, county, or village district may merge preexisting subdivided lots or parcels except upon the consent of the owner."

Questions remain: consider abutting substandard lots owned by the same person:

1. Does this limit a planning board's ability to require merger as part of site development? Probably not, as long as both lots are necessary for and part of the proposal.
2. Does it limit a ZBA's ability to require merger instead of granting a variance for development of one lot? Probably yes, but there may be other appropriate reasons to deny such a variance.

B. Involuntary Merger Optional Retroactive Restoration – 2011 Chapter 206 (HB 316)

The second part of this tale deals with ambiguity over whether the first part (above) was to be applied retroactively to "un-merge" lots that had been merged by the municipality without the consent of the owner. Apparently recognizing that retroactive application was not the

intention of the 2010 enactment, and after considerable work on developing compromise language, the Legislature created a process by which an owner could petition the municipality to restore merged lots to their separate and distinct condition. [Effective July 24, 2011]

- RSA 674:39-aa – Restoration of Involuntarily Merged Lots.
 - ✧ Lots involuntarily merged by a municipality (for zoning, assessing, or taxation purposes) prior to Sept. 18, 2010 shall be restored to their pre-merger status at the request of the owner, *provided*
 - » Request is made prior to Dec. 31, 2016; and
 - » No owner in chain of title voluntarily merged the lots; all subsequent owners estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.
 - ✧ Requests for “un-merger” to be made to the local governing body, whose decisions may be appealed pursuant to RSA 676
 - ✧ Municipalities may adopt more liberal ordinances
 - ✧ No later than January 1, 2012, municipalities *must* post notice in a public place that lots may be restored and publish notice in the annual reports for 2011-2015