

**City Council Special Meeting
November 15, 2022
Council Chambers
7:09 PM**

COUNCILORS PRESENT

Councilor Beaudoin
Councilor Berlin
Councilor de Geofroy
Councilor Desrochers
Councilor Fontneau
Councilor Gilman
Councilor Gray
Councilor Hainey
Councilor Hamann
Councilor Larochelle (remote)
Councilor Malone (remote)
Deputy Mayor Lachapelle
Mayor Callaghan

OTHERS PRESENT

Blaine Cox, City Manager
Katie Ambrose, Deputy City Manager
Terence O'Rourke, City Attorney
Shanna Saunders, Director of Planning
Damon Kondrup, Trustee 556 Salmon Falls
Chris Wyskiel, Attorney

Minutes

1. Call to Order

Mayor Callaghan called the Special Meeting to order at 7:09 PM. He reminded all those present that Councilors Larochelle and Malone were connecting remotely to the meeting via Teams. Deputy City Clerk Cassie Givara had taken a roll call attendance prior to the Public Hearing preceding the Special Meeting. All Councilors were present in Council Chambers except for the two Councilors connecting remotely, as detailed above.

Mayor Callaghan asked all present to stand and had Councilor Beaudoin lead the Pledge of Allegiance.

2. Lot Restoration of 556 Salmon Falls Road *first reading and consideration for adoption*

Shanna Saunders, Director of Planning, explained that lot restorations are allowed under State RSA 674:39aa, however, she detailed why this restoration was different from those normally seen by the planning department. Normally, it is clear whether it was an involuntary lot merger on the part of the property owner; involving the City merging adjacent lots for administrative and cost savings measures. She explained that owners sometimes did not even realize the properties had been merged and continued to maintain the properties as separate lots. Directors Saunders stated that, in this particular circumstance, it is not clear whether or not the lots were maintained as separate after the merger occurred. Land had been subdivided off the two lots being proposed for restoration. She stated that it was difficult for the Planning Department to pinpoint a timeframe, pre-merger, to which the lots would be restored and thus they were having difficulty making a recommendation for a full

restoration. She suggested that if Council does want to recommend the restoration, they consider the conditions outlined in her memo.

Terence O'Rourke, City Attorney, stated that in RSA 674:39aa(2), when you restore involuntarily merged lots to a pre-merger status, the pre-merger boundaries of said lots must be identified. However, there is no clear indication of these pre-merger boundaries due to sales of portions of these lots. Due to subdivisions, the pre-merger status no longer exists. Attorney O'Rourke acknowledged what the applicant was trying to accomplish with the request, but felt that this should be a subdivision request as opposed to a restoration under RSA 674:39aa since restoration to pre-merger status is not plausible.

Councilor Hamann asked, given the information supplied by the City Attorney, why the request is for restoration as opposed to subdivision. Attorney O'Rourke responded that by today's standards, neither lot would be conforming and there would be variances required if the request was for subdivision. He explained that the owners during the 1950s/1960s time period sold portions of the property, and then sold the entirety of the lots in 2010s.

Councilor Fontneau referenced the map included in the packet showing the lots in question labeled as tract 1 and tract 2. He asked for confirmation that tract 1, containing the house, is the same as the pre-merger status. Director Saunders confirmed that tract 1 was the same as pre-merger. Councilor Fontneau asked when the adjacent lots were subdivided off tract 2 and if it was done pre-merger. Attorney O'Rourke stated that it could not be determined when the merger occurred, but the subdivisions occurred in the 1960s. Councilor Fontneau speculated that if the request were granted, tract 1 would be converted back to its original status, which would not meet today's zoning, but would have met the zoning criteria on the 1960s. He inquired if tract 2 would be allowed as a "pork chop" lot under current zoning regulations. Director Saunders stated that the lot would not qualify because a pork chop lot needs to be a minimum of 6-acres and this lot is 3-acres.

Director Saunders stated that the State statute requires a City Council decision on this action as opposed to a decision from the Planning Board. The Planning Department has made recommendations, but it is in the purview of the Council to make the final decision. She advised that the applicant was present to answer questions.

Damon Kondrup, applicant, addressed Council and explained that he was the trustee of the property in question. Mr. Kondrup stated that the property is owned by his mother who is currently in a memory care facility. He gave a brief history of the properties and the intention of his mother to pass the field lot to himself and his wife, and their plans to conserve this land from development. He explained that at an unknown time, the house lot (Tract 1) and the field lot (Tract 2) were merged by the City. He applied in July 2022 under RSA 674:39aa to have these lots restored to their original configuration. At this time, the Planning Department discovered several errors in the deed and questions regarding the lot lines. The Planning Department then advised Mr. Kondrup that he would need to have the lots surveyed and have title work done. Mr. Kondrup had asked for assurance that he was eligible under the cited RSA to make this request, which would not be applicable if the lots were voluntarily merged. Mr. Kondrup stated he was told he did qualify, and he proceeded with completing the survey of the land. Mr. Kondrup reported that the Planning Department disputed the findings of the survey as they did not match the lot lines included on the deed. Mr. Kondrup was also told at this time that he did not qualify under RSA 674:39aa as they now felt the lots were

voluntarily merged. Mr. Kondrup was then advised to investigate the option of subdivision instead of lot restoration.

Mr. Kondrup expressed frustration at the amount of time and money that had been invested in this restoration, which he perceived should have gone to City Council in July 2022. The mortgage and taxes have been paid on the property since July with no rental income collected, as the renters were dismissed in June in anticipation of the property sale. Mr. Kondrup reported that his mother has enough liquid assets to pay the property fees through December, and the house has already sold contingent upon the City Council's favorable decision to restore.

Chris Wyskiel, Attorney for Mr. Kondrup, addressed Council regarding the lot restoration. Attorney Wyskiel distributed an informational packet containing documentation relevant to Mr. Kondrup's communications with the City, the City's zoning ordinance, and considerations for the property in question. Attorney Wyskiel presented information on his legal opinion regarding the reasoning why this restoration request should be granted. Mr. Wyskiel surmised that there was no evidence that the lots had been voluntarily merged by previous owners and he presented evidence showing that none of the relevant processes had been completed indicating voluntary merger. He clarified that there is nothing at the registry of deeds, City assessing, or elsewhere indicating a voluntary merger.

Attorney Wyskiel explained his viewpoint, in opposition to City staff, that there was no pre-merger time frame defined to which the lots can be restored. He disagreed based on the historical descriptions of these lots, how they were created, and how they had been utilized since their inception. He clarified that the City of Rochester did not have a zoning amendment prior to 1960, so the dimensions of Tract 1 did not have to comply with any zoning requirements when it came into existence in 1956. Tract 2 was purchased in 1963 and within a month, a portion was conveyed to the owner's son and daughter-in-law. This carve out of the existing lot complied with the zoning regulations of the time. The City of Rochester's view is that this carve out of land was an overt act showing the intention to merge the two lots. Attorney Wyskiel disagreed that this action displayed an overt act to merge, but rather that the owners designated a portion of a lot for their relative's house and retained the remaining land contained on the lot. He stated that the burden is on the City to display the overt act of voluntary merger. Attorney Wyskiel stated that the original deeds from the purchase of Tract 1 in 1956, and Tract 2 in 1963, minus the carve out in 1963, preserve the descriptions of the lots as they originally existed.

Attorney Wyskiel reported that the conditions as referenced by Director Saunders' memo had already been fulfilled and directed Council to the documentation within his packet showing the evidence of the fulfillment of these items. He went on to dispute the assertion of City staff that if the lots were restored, it would create two non-conforming lots, and if subdivision was desired, it would need to be done with variances. Attorney Wyskiel stated that it is the historic conveyancing from 1956 and 1963 that causes the non-conforming lots.

Councilor Lachapelle **MOVED** to **APPROVE** the lot restoration of 556 Salmon Falls Road. Councilor Beaudoin seconded the motion.

Councilor Berlin asked for confirmation that there had been no overt action on behalf of the current or previous owners to merge the lots. Attorney Wyskiel confirmed that this is true. He did reference a statement on the fiduciary deed, which states, "This now exists as one lot." He clarified

that the statement was made by an executor of the estate and it was a statement of fact as opposed to a declaration of intent or an overt act. Councilor Berlin asked for further clarification that when the original owner carved out a portion of the lot for their son, the City viewed that as the abandonment of a lot line on the opposite side. Attorney Wyskiel agreed that this was the view of the City of Rochester. There was further discussion on what constitutes the abandonment of a lot line and how these lots would then be merged. Councilor Berlin directed a question towards City staff asking how the selling of a portion of land on the left side would constitute the abandonment of a lot line on the right side. Director Saunders stated that this is due to the information being stated in the deed as the land being one lot, which was then signed by the owner. She reiterated the point that it is questionable how the lots could be restored; if it would be to the original tract 2 or if it would be tract 2 after the carve out of land by the original owner. Councilor Berlin felt that it was clear that the deed for the 1963 carve out of land could be removed from the equation and the lots could be restored to their original specifications.

Councilor Fontneau stated that he felt the involuntary merger by the City likely did not occur until after 1963 with the subdivision of tract 2 occurring prior to this merger. He also reiterated the RSA requires the burden of proof of the involuntary merger is the responsibility of the municipality. Councilor Fontneau explained that this legislation was put into place to correct former inappropriate actions on the part of municipalities, who had combined adjacent lots owned by one party for the convenience of the municipality. Councilor Fontneau said that he felt this was a clear example and the restoration should be approved.

Councilor Gray said that he had not seen evidence of when the merger occurred. Lacking this information he could not make a determination on the City's statements and would view this as an involuntary merger and vote to restore the lots.

Councilor Beaudoin said there are eight other lots further down the road, which will end up with the same amount of frontage. He also gave an example of a lot restoration that had been made by Council within the recent past and pointed out that this action to be taken tonight is not without precedent.

Mayor Callaghan called for a vote on the motion to restore the lots to their original configuration with the conditions referenced by the Director of Planning. Attorney Wyskiel clarified that these conditions had already been met. The **MOTION CARRIED** by a unanimous voice vote with Councilors Hamann, Desrochers, Gilman, Malone, Fontneau, Larochelle, Gray, de Geofroy, Berlin, Hainey, Lachapelle, Beaudoin, and Mayor Callaghan all voting in favor.

3. Adjournment

Mayor Callaghan **ADJOURNED** the City Council Special Meeting at 7:54 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk