

## Frequently Asked Questions about SB406

### **Q. Why do we need this legislation?**

A. Under the misguided notion that all non conformities in land use should be quickly eliminated towns created the concept of Involuntary Lot Merging. When a town increases lot size or frontage requirements lots created under the previous requirements become non conforming. Towns have been merging side by side lots when they come into common ownership in developed neighborhoods even if the lots are the same size as all the other lots in the neighborhood. Owners can then not build on each lot or sell the lots separately

### **Q. This sounds like a regulatory taking, is it?**

A. YES and it has caused many lawsuits throughout the state. For those owners that cannot afford the lawsuits they simply suffer in silence. The old adage ' you can't fight city hall' has certainly rung true for these property owners. New Hampshire is not a "Home Rule" State. That is, the municipality only has the power granted to it from the state and the state never granted them this power. The owner has two or more deeded lots and the municipality has reduced that to one lot.

### **Q Is it just small lots we are talking about?**

A. NO In some cases where the zoning was increased to 5 acres, 2 to 4 acre lots are being combined all without any notification to the owner. The towns never file anything in the registry of deeds. This leads to many flawed title searches.

### **Q. Why shouldn't towns require lots to be combined?**

A. Because it is a violation of our constitution.

### **Part the First Article 2**

*All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness.*

These are deeded lots that were conforming when created. Most of them buildable and in established neighborhoods. They were acquired by family members perhaps passed down but if they came into common ownership MERGED! The town erased the lot line with no notification to the owner and nothing filed in the registry of deeds.

### **Part the First Article 12**

*no part of a man's property shall be taken from him, or applied to public uses, without his own consent..*

In many cases a lot with a house on it is merged to a vacant lot. The second lot or lots has essentially been taken from the owner. They must pay taxes, insurance and upkeep but these merged lots are rendered useless because they cannot be built on or conveyed. Since they have been merged to the house lot the owner cannot even give the extra land away. If they stop paying taxes on the land they will loose their house since everything has been merged together. A sneaky little trick by the municipality to limit building but still retain the taxes coming in.

### **Part the First Article 23**

*Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.*

New lot size and frontage requirements are being applied RETROACTIVELY onto to subdivisions created prior to the new ordinance. Towns have seen fit to combine lots only when they come into common ownership. Thus punishing families who have bought side by side properties hoping to

pass them down or punishing spouses whose side by side lots come into common ownership when one spouse dies. The surviving spouse now has lost the value of two separate and distinct parcels.

**Q What if neighbors don't want small lots?**

A. Ahhh...the rights of the abutter. In one community they created a restriction where if a small lot came up for sale the abutter had the right of first refusal. So if the abutter wanted the lot he could buy it from the owner. If the abutter did not want to buy it then it could be sold as is. So if the abutter wanted to control his neighbor's lot he could control it by buying it. However some abutters want their cake and eat it too. They do not want to buy it but want it to remain vacant and unbuildable because it adds tax free privacy and value to THEIR property! If SB406 passes then communities CAN adopt such a right of first refusal policy. Right now the abutters have all the tax free control! In Gilford an abutter has abused the process and has demanded money in exchange for not contesting an unmerge! SB406 will return to the property owner his rights as the deeded owner of his land. One additional thought...when does the rights of the abutter EXCEED that of the property owner? NEVER!

**Q. Can't towns restrict what is built on lots?**

A. YES and SB406 will not change that. Any owner of any lot regardless of size must obey setbacks, height and septic requirements. If a lot is too small to fit a structure then it is too small. This is when the Voluntary Merger RSA674:39-a comes into play. The owner will probably find that it is in his best interest to merge to an adjacent lot. The owner may also opt to sell it to an abutter or just leave it vacant. Being a property owner of an unbuildable lot has the advantages of using the town beach or boat launching facilities or could be used to provide an access to a lake or mountain trail.

**Q. Isn't this why real estate people and lawyers tell folks who buy side by side lots to put them in different names?**

A. YES but some folks, namely buyers from out of state, never got that memo. Also divorce, death and estate planning often cause lots to pass into common ownership only to be MERGED! It is absurd to think a name on a deed should make that much difference!

**Q. How will this help owners of lots that have been Involuntarily Merged and want their lots restored?**

A. Owners will be able to approach the municipality for relief. Several towns have already recognized the unconstitutional nature of this regulatory taking and have begun an orderly process of allowing property owners to come forward. This is where the town's jurisdiction will take over. Most owners will keep the status quo as increased property taxes will act as a deterrent. With the passage of SB406 owners' of merged lots will get due process afforded to them and get their property rights restored. It is now illegal for a municipality to hold those lots merged as ***No city, town, county, or village district may merge preexisting subdivided lots or parcels except upon the consent of the owner.***

**Lawsuits caused by Involuntary Lot Merging (partial list)**

Governors Island Club v. Gilford 1983

Sutton vs. Gilford, Aichinger and Governor's Island Club 2007

Kristie- Ali v. Concord 2008

Zanninni v. Atkinson 2004 and 2007

Snow v. Candia 1995