

# TOWN of EAST MONTPELIER

P.O. Box 157  
East Montpelier, VT  
05651-0157

C. Bruce Johnson, ZA  
eastmontadmin@comcast.net  
(802) 223-3313 ext. 204

August 8, 2014

Ellery & Jennifer Packard  
PO Box 70  
East Montpelier, VT 05651

Re: Merger of Pine Ridge PRD Lots 8 & 9  
270 Pine Ridge Road; Parcel #12-009.000; Tax Map #21-52-72.000

Dear Mr. & Ms. Packard:

On July 3, 2014 Karen Gramer, paralegal with the law firm of Zalinger Cameron & Lambek, P.C., came into my office to ask whether the undeveloped Casavant lot (Pine Ridge PRD Lot #8) that you purchased in 2008 by tax sale was a separate lot and freely transferrable. I told her that the Casavant lot was merged with your original house lot (Pine Ridge PRD Lot #9) and could not be sold separately absent a subdivision which, due to the town's minimum lot size requirements in that zoning district, was not an available option.

On July 7, 2014 Ellery phoned me to discuss this issue. I explained that, in my opinion, the two lots were merged and could not be separated for sale. I further explained that he should formally request a written decision by me, as East Montpelier Zoning Administrator, to open an avenue of appeal of this opinion. On July 9, 2014, your attorney, Philip Zalinger, contacted me by phone to ensure he understood the process I was recommending. Later that day Attorney Zalinger sent an email to me, with a copy to East Montpelier Town Attorney Bruce Bjornlund, requesting a written decision on the merger issue.

The somewhat tortured regulatory history of the Pine Ridge Road Planned Residential Development can be seen by the following timeline:

- April 6, 1989: Sketch plan review before the East Montpelier Planning Commission ("PC") of a proposed 17-lot subdivision of the Casavant property off of VT Rte. 14 S.
- April 17, 1989: East Montpelier Zoning Board of Adjustment ("ZBA") determined that the portion of the Casavant property formerly owned by Chase is in Zone C (residential/commercial district; 1 acre minimum lot size).
- May 4 & June 1, 1989: PC conducts preliminary plat review for the proposed 14-15 lot subdivision (East Montpelier Zoning Application 25-89); the PC now considers the entire property to be in Zone C; the PC suggests altering application to a Planned Residential Development ("PRD").
- October 19, 1989: PC continues review of the reconfigured project, now a 15-lot PRD; PC grants sketch plan approval.

- November 16, 1989: PC grants preliminary plat approval.
- December 21, 1989: PC grants final plat approval.
- December 21, 1989 & January 8, 1990; ZBA, as required by the zoning regulations for PRDs, also reviews the proposal; noting that this is a PRD in Zone C, the ZBA grants final plat approval; both PC & ZBA approvals require reconsideration once the Act 250 process is complete; the PRD will have some common land, a road “lot” that will be deeded to the town, and a formal association; there will be some undersized (less than 1 acre) lots and some lots with less than minimum road frontages, although no density bonus was needed or granted.
- April 29, 1991; after undergoing changes during the Act 250 process, the now-14 lot PRD is the subject of a joint hearing by the PC & ZBA.
- May 16, 1991; the PRD is granted final plat approval by the PC.
- May 29, 1991; the ZBA grants approval for the PRD.
- May 29, 1991; Zoning Administrator Roger Chapell grants East Montpelier Zoning Permit 25-89.

The final plat is part of the East Montpelier Land Records at Hanger 40, Map 5. The 14 building lots ranged from 0.63 acres to 1.96 acres for a total of 15.38 acres. The common land, under control of the Pines Home Owners’ Association, is a total of 11.33 acres in 3 parcels. The 2.8-acre road lot was transferred to the town and is now a class 3 town highway known as Pine Ridge Road. Lot 9, the lot you originally purchased, was 1.96 acres. Lot 8, the lot you purchased at tax sale, was 1.53 acres. Since the ZBA ruled that the entire PRD was in Zone C, the 1-acre minimum zone, both lots were conforming for lot size at the time of creation. Lot 8, however, did benefit from the PRD road frontage rule relaxation (145’ instead of the minimum 150’).

Over the next 14 years, Lots 1-7 and Lots 9-14 were purchased from the Casavants and, other than Lot 4, improved with homes. Lot 4 was purchased by the Jolys, already owners of Lot 5. Lots 4 & 5 have been treated by the town as merged into one lot for tax purposes, but no formal decision on merger for zoning purposes has been requested or issued. You purchased the 1.96-acre Lot 9 in 1995, constructed a residence, and continue to reside on this parcel, now known as 270 Pine Ridge Road.

In 2008 the only lot left under Casavant (Richard & Carole) ownership was Lot 8, a 1.53-acre undeveloped lot which abutted your property to the northwest. On May 29, 2008 the lot was sold at tax sale to you for the sum of \$3,401.58. The property was not redeemed by the Casavants and on June 5, 2009 East Montpelier Delinquent Tax Collector Karen Gramer issued a Tax Collector’s Deed to you for Lot 8.

In late October 2007 the East Montpelier Planning Commission presented to the East Montpelier Selectboard major zoning regulation amendments, which included adjustments to reflect the major state statutory changes to Chapter 117 of Title 24 of the Vermont Statutes and included updated zoning district mapping. On January 6, 2009 the citizens of East Montpelier voted to adopt the East Montpelier, Vermont Land Use & Development Regulations (the current version includes minor amendments in 2010 and 2011; the amendments have no effect on this issue). The new East Montpelier Zoning Map definitively set the dividing line of Zone C (1 acre minimum lot size) and Zone D (3 acre minimum lot size) in the Pine Ridge Road area. Pine Ridge PRD Lots 3-11 are now in Zone D, including both Lot 9 that you developed and the

undeveloped Lot 8 you purchased at tax sale. The minimum conforming lot size is 3 acres for both lots.

Section 3.9 of the East Montpelier Land Use & Development Regulations deals with the issue of small lots that are in or come into affiliated ownership:

### **Section 3.9 Nonconforming (Pre-existing) Small Lots**

- (A) In accordance with the Act [§4412(2)], any lot in individual and separate and non-affiliated ownership from surrounding properties lawfully in existence on the effective date of these regulations may be developed for the purposes permitted in the district in which it is located, if such lot is at least one-eighth of an acre in area with a minimum width or depth of 40 feet. Development of the existing lot shall be subject to all other applicable requirements.
- (B) Existing small lots in affiliated or common ownership, or such lots which subsequently come under common ownership with one or more contiguous lots, shall be deemed merged with the contiguous lots for the purpose of these regulations. However, such lots shall not be deemed merged, and may be separately conveyed, if in accordance with the Act all of the following requirements are met:
- (1) the lots are conveyed in their pre-existing, Nonconforming configuration; and
  - (2) each lot had been developed with a water supply and wastewater disposal system; and
  - (3) at the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and,
  - (4) the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined by 10 VSA Chapter 64.

The town treats contiguous lots that are in affiliated ownership or that subsequently come under affiliated ownership in the same manner.

Lots 8 & 9 are contiguous parcels, sharing approximately 190' of border. You are the owners of both lots. On January 6, 2009 both lots 8 & 9 were placed in Zone D, which mandates a minimum lot size of 3 acres. Regardless of whether you technically became the owners of Lot 8 in 2008 or 2009, it became, as of January 6, 2009, an undeveloped small lot. Again, regardless of whether you owned Lot 8 on January 6, 2009 or technically became owners of Lot 8 after the tax sale redemption period passed and the Delinquent Tax Collector processed the deed, either on January 6, 2009 or such later date when you became official owners of Lot 8, the two lots merged.

Although this plays no part in the above analysis, Lot 8 has been treated as merged with Lot 9 for tax purposes. The East Montpelier Listers discussed this situation with you after the tax sale transfer became final and made a site visit to the property. At no time since you became official owners of Lot 8 have you been taxed for a separate lot.

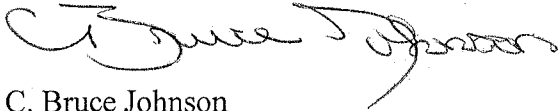
For the reasons expressed above, it is my opinion, as East Montpelier Zoning Administrator, that the Casavant lot is merged with your home lot. The resultant 3.49-acre lot is a conforming lot in Zone D, but is too small to be subdivided.

The rules pertaining to appeals of zoning administrator decisions are contained in East Montpelier Land Use & Development Regulations Section 7.5 and 24 V.S.A. §4465. As owners

of the property, 24 V.S.A. §4465(b)(1) gives you the right to appeal my decision to the East Montpelier Development Review Board. 24 V.S.A. §4465(a) requires notice of any such appeal to be filed, within 15 days of the decision date, with the East Montpelier Town Clerk (in lieu of an elected secretary of the DRB), with a copy provided to the East Montpelier Zoning Administrator. The fee for an appeal of a decision by the zoning administrator is \$150.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Bruce Johnson". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

C. Bruce Johnson  
East Montpelier Zoning Administrator