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MEMORANDUM

TO: Village Trustees
FROM: David A. Crawford, Village Manager
DATE: March 23, 2012
SUBJECT: **25 South Street / Stevens Park Boundary UPDATE OF PREVIOUS MEMO**

This memo is an update of the 3/13 Staff Memo and includes the addition of a considerable amount of new information. What we have created is a document that the Trustees can use as a reference. Additional information includes:

- Hamlin's e-mail giving his survey crew information & his summary of the various e-mails on conversations on this issue.
- Dave Barra's e-mail summarizing our mtg with Norm Smith & his legal opinion.
- Owner's Realtor Jay Pasackow's e-mail re what his request is.
- Recent photos of the property

The owner's Attorney Norm Smith has not provided the owner's response to Board's questions as of Thursday afternoon.

Robin shared with me a thought that would be a good guide in this situation:

"We must accommodate the individual under the umbrella of what is the best for the community."

VILLAGE ATTORNEY DAVE BARRA'S SUMMARY COMMENTS

I agree with the Village Engineer's analysis below.

A few other points may be helpful when considering a fair resolution. I haven't done a title search for the parcel, but I think it is important to bear in mind that the current owner is several steps removed from the owners who created 25 South Street and donated the Park to the Village. The current owner took from the Grangers in 1999. The deed at that time described a parcel with 49.5' frontage. It specifically pointed out that the reference in the tax map should not be relied upon. Nothing was done to resolve this issue then. The Grangers got the parcel in 1993 from the Luttons. The same reference to the frontage is in their deed. Not sure how many steps between Luttons and Hazel Stevens but it appears that about 5 years elapsed between her death and when the Luttons purchased the lot. This issue could more easily have been resolved then. The Village had nothing to do with why it was not resolved then.

While we have heard some people express their opinions that the existing driveway is the same driveway that was there when Hazel lived there, my experience in matters of this kind is not to accept recollections of this kind without some degree of skepticism. Typically, people have no reason to know the exact dimensions of their neighbor's driveway and its relative location to where it was fifty years ago. Yes, there was a driveway to the east of 25 South Street, but was it exactly where this one is? In this location, the street has been rebuilt and curb cuts have been relocated since the 1980's. It would not be surprising to discover that the driveway has moved further east since 1988.

I think any solution should involve a survey of each parcel that will prevent any future issues regarding boundaries from arising.

VILLAGE ENGINEER RICK HAMLIN'S REPORT

RICK HAMLIN'S 3/22/12 AT 11:30 E-MAIL SUMMARIZING THE SITUATION

I think the easement concept must come off the table in light of Ms. Radley's representatives indicating that, along with the driveway, enough land must be controlled to also build a garage, especially when combined with the other concerns raised by Attorney Barra. (See her realtor's e-mail for the garage reference) I don't think the Land Development Code would allow a non-conforming lot to become more conforming, which would be the case if a garage was constructed less than 8' or over the property line into an easement area.

This leaves two options; 1) move the driveway or 2) increase the lot size via a Boundary Line Adjustment.

There has been some discussion about the level of documentation required to change the configuration of the parcels. The Land Development Code is clear that a survey of both parcels is required. (See Chapter 5.) Even if this were not the case, good practice and the proper protection of all the parties would include a survey, prepared by a Licensed Surveyor depicting both the existing conditions and the proposed change to the common boundary. This would also allow Ms. Radley and her representatives to be sure that enough property was being adjusted to allow the desired future garage construction. I also believe that the Attorneys would agree that the resultant deeds would be stronger if there was a plat to refer to. It is in Ms. Radley's best interest for her to hire a Licensed Surveyor to document what is desired.

I agree with Robin with regard to the assignment of cost if a Boundary Line Adjustment is desired instead of moving the driveway. At the time of purchase, the deed for the 25 South Street property contained a clear parcel description and if the goal is to now put the driveway on the lot and construct future building improvements, then the expense should be borne by the party that will benefit from the boundary change. If the Village does get some benefit from the adjustment, then perhaps costs could be shared, but to date no benefit to the Village has been described.

This is a difficult situation. It is understandable that the Trustees desire to assist Ms. Radley in correcting her problem and only they can determine how this desire must also be weighed against their fiduciary responsibility to the remaining residents of the Village.

The Board directed that the Village Engineer have his survey division locate the southwest corner of 25 South Street. The pin has been found & the southwest parcel corner is now known. The following is Rick Hamlin's e-mail prior to the above e-mail.

I don't think what Jay (Mrs. Radley's realtor) is suggesting would allow a balanced land swap with the Village or just an easement that you had described to me, as he is talking about getting enough land for the driveway and a garage in the future.

1. I would suggest that Ms. Radley hire a surveyor to prepare an accurate plat showing the existing lot, the location of the current driveway, all of the structures on the parcel and where they are requesting the line to be adjusted to. Then the Village can see and understand the specific impacts to the park parcel and she can be sure that the proposed lot configuration could accommodate the future garage that they have in mind. This plat could then be referenced should the Village agree to a Boundary Line Adjustment and also be used as a basis for permit applications for the Boundary Line Adjustment and for the garage. This would also be in keeping with the Land Development Code, Chapter 5.

2. Boundary Adjustments. An application for approval of a Boundary Adjustment shall include two reproducible drawings suitable for filing in the land records which shall meet the requirements of 27 VSA and two copies of a survey prepared by a licensed surveyor which depicts the two lots with the adjusted boundary and the following endorsements.

"Boundary Adjustments, approved by the Village of Essex Junction on the ____ day of _____, 20__, meets all Village Code requirements. Signed this ____ day of _____, 20__ By _____, Title _____"

VILLAGE ATTORNEY DAVE BARRA MEETING REPORT & OPINION

From: David Barra [<mailto:dbarra@barralaw.com>]

Sent: Tuesday, March 20, 2012 11:01 AM

To: Dave Crawford

Subject: Re: Info Needed

Dave:

On March 15, 2012, we met with Attorney Norman Smith to review the situation and discuss the law applicable to boundary agreements and adjustments. I summarize our discussion below:

I explained that adverse possession is not available as a matter of law against a municipality. This means that any further encroachment eastward since the Village obtained the property cannot be the basis of a claim for rights in the land. Attorney Smith conceded the point but maintained that the driveway has always been where it is and that the gift to the Village was made subject to the adverse possession claim.

I disagree that the law would look favorably on a claim for adverse possession that has not been asserted for more than thirty five years. I also pointed out that the claim faces some proof problems because it was likely that the use of the driveway on the land owned by the Village's predecessor was consensual. If so, the adverse possession claim would fail. There are several examples around the Village where adjacent lots share curb cuts and driveways. Given the history of this lot, I think it likely that father and daughter agreed to the placement of the driveway in anticipation of the development of the other lot.

The facts do not clearly support a "grandfathered" adverse possession claim. To establish this claim, a lawsuit in Superior Court would be necessary. A survey would be required to show the areas described by the deeds and what was obtained by adverse possession. Smith agreed that this would be a costly and time-consuming process for his client and the Village.

When the current owner took possession of the lot in 1993 her deed clearly indicated that her frontage was 49.5'. She was on notice as to the discrepancy with the tax map and did not do anything about it. I think that her failure to act for 19 years would have an impact on any adverse possession claim.

The Village did not cause the problem. His client and their prospective buyer stand to benefit from any revision of the boundary eastward. Smith agreed.

The Village has agreed to try to find the front borders. If the driveway is over the line, an option to move the driveway to be entirely on 25 South Street may make sense.

I suggested that there were three possible solutions that could be explored: 1) a permanent easement to use the driveway as it is, 2) an exchange of land between the Village and his client, and 3) moving the driveway.

An easement deed would not need any state or municipal permit. A drawing of some kind memorializing the easement area would make sense.

A deeded exchange of land between the Village and the adjoining landowner would require local approval but appears exempt from state approval. A drawing establishing the land to be exchanged would be necessary.

Moving the driveway would not require any drawing or deeds.

Smith indicated that he would discuss the situation with his client and get back to us.

In summary, adverse possession has not been established and there are significant hurdles to be overcome to establish it. The Village did not cause the problem and the cost of any solution seems more fairly borne by the ones who will benefit from it. The most cost-effective solution is to move the driveway. Next would be to provide an easement. The most costly solution would be to give away Village land and pay for the process necessary to properly record the transfer.

Please let me know if you need anything further.

Dave

STAFF RECOMMENDATION

The Village Staff recommends that the Trustees pass the following motion:

That Ms. Radley hire a licensed surveyor of her choice to prepare an accurate plat showing the existing lot, the location of the current driveway, all of the structures on the parcel and where they are requesting the line to be adjusted to. Then the Village (in consultation with EJRP) can see and understand the specific impacts to the park parcel and she can be sure that the proposed lot configuration could accommodate the future garage that they have in mind. This plat could then be referenced should the Village agree to a Boundary Line Adjustment and also be used as a basis for permit applications for the Boundary Line Adjustment and for the garage. This would also be in keeping with the Land Development Code, Chapter 5.

An application for approval of a Boundary Adjustment shall include two reproducible drawings suitable for filing in the land records which shall meet the requirements of 27 VSA and two copies of a survey prepared by a licensed surveyor which depicts the two lots with the adjusted boundary and the following endorsements.

Boundary Adjustments, approved by the Village of Essex Junction on the _____ day of _____, 20__, meets all Village Code requirements. Signed this _____ day of _____, 20__ By _____, Title _____

cc Village Engineer Rick Hamlin
 Village Attorney Dave Barra
 Planning & Development Director Robin Peirce

SITE PICTURES







ATTORNEY NORM SMITH'S SUBMISSIONS

**NO INFORMATION RECEIVED AS OF 2:00 PM
ON MARCH 22.**

From: Jay Pasackow [<mailto:jayp@hickokandboardman.com>]

[E-MAIL 3/19/2012]

Sent: Monday, March 19, 2012 9:11 AM

To: Dave Crawford

Cc: 'Nancy Radley'; radleyna@aol.com

Subject: 25 South St

Dear Mr. Crawford

I am the Realtor representing Nancy Radley, the owner of 25 South St.

Nancy said that Mike from Hamlin Consulting came to the property yesterday and with a metal detector found the buried stake indicating the westerly point of her frontage, Point A. Measuring east from that point 49.5 feet it brings the deeded frontage to the middle of her existing driveway. Point B.

With these two points now established the question becomes whether the Village would agree to a boundary line adjustment to increase this frontage. The tax map indicates a total frontage of 85 feet. We understand that this has no force in this matter however. Looking at the existing property and its current usage, a total footage of 70 ft (a 20.5 ft adjustment) would appear to be adequate. The reason for this is that the current driveway angles to the right as it goes into the property. By having 70 ft frontage it would appear to cover this plus allow the potential future building of a single car garage along the driveway path taking into account the required 8 ft setback from side boundaries.

We appreciate the work you and the Village have done on this and hope that we can come to a satisfactory accommodation.

Jay

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INFORMATION FROM 3/13 STAFF MEMO – FOR REFERENCE

The Lot at 25 South Street was created many years prior to the gift to the Village of the adjacent park land in 1973. The boundaries of Lot 25 are well described in the land records. According to the Tax Map the size of the lot is 19,602 sq. ft. However this is not an accurate map for land ownership or transfer purposes. Nor can it be used as the basis for a Boundary Line Adjustment. A survey, by a Land Surveyor, licensed in Vermont, would be needed for such an action. We estimate that the lot is approximately 9,310 sq. ft. which exceeds the minimum requirement of the zoning district which is 7,500 sq. ft.

The minimum lot frontage in the R2 District is sixty (60) feet. The Lot frontage (from the Deed) is forty nine and a half (49.5) feet.

It is the opinion of the Planning and Zoning Department that this Lot is a grandfathered nonconforming lot.

The major concern seems to be that the current driveway may be on Stevens Park property and if a garage is built on the site (it would be on the side of the property contiguous with Stevens Park) any new garage could be within the side yard setback of eight (8) feet to be accessible from the street.

If the appropriate survey is completed there may be an opportunity for the Village to enter into a boundary line adjustments with the owner of the Lot that would equalize the amount of land exchanged. Perhaps creating a sixty (60) foot frontage on the lot, and in exchange receiving a portion of the rear of the Lot which could be folded into Stevens Park. This would enable the Lot to be consistent with zoning requirements but also enable off street parking to occur.

It appears from our site visit that with a 60 foot front property line the driveway would be on 25 South Street property.

This property was purchased with the current lot configuration as described in the deed. Nothing has changed since that date. While we have no legal duty to alter the perceived lot deficiencies, the Trustees may feel obliged to help with a solution. If the owner of the Lot pays for an appropriate survey, deed preparation and filing costs perhaps the Village Trustees could waive any zoning fees for the boundary line adjustments which can be handled administratively by Staff.

We have reviewed and concur with the attached e-mail from Village Engineer Rick Hamlin.

Richard F. Hamlin, P.E

President

Donald L. Hamlin Consulting Engineers, Inc.

136 Pearl Street

Essex Junction, Vermont 05452

Phone: (802) 878-3956

Email: rhamlin@dlhce.net

Dave-

[E-MAIL 3/7/2012 @3:54 pm]

My Chief of Surveys has reviewed the information that you provided to our office and has also spent some time in the land records. Based upon his review, we offer the following:

- The lot at 25 South Street was created by taking it out of a larger parcel and the remainder of that parcel formed the lot that the Village owns, currently referred to as Stevens Park.
- The perimeter of the 25 South Street parcel is fully described in the land records.
- The frontage described in the deed for 25 South Street Parcel is 49.5'. This is much less than the frontage suggested by Attorney

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Smith of approximately 82'. There is no evidence in the land records that supports a frontage dimension for 25 South Street of approximately 82'.

- The land records also contain sufficient information to create the original Willey parcel and to determine what parcels were subdivided from it, including 25 South Street; the remainder of which is the Stevens Park parcel.
- Since the Village acquired the park parcel in 1973 there have been no recorded changes to the lot.
- The parcel at 25 South Street does not meet current zoning standards, but it is not in violation as it is a grandfathered parcel.
- Because the 25 South Street property limits are fully described, the use of a "boundary line agreement" as suggested by Attorney Smith would not be appropriate should the Village wish to transfer land to the current owner of 25 South Street. A boundary line agreement should only be used when the boundary between two parcels is indeterminate, which is not the case here.
- The proper method to transfer lands from one ownership to another in this case would be a "boundary line adjustment" because the boundary between the two parcels is known and fully described in the deed. A boundary line adjustment also requires both local and State approval. This process requires both field survey and the preparation of a plan depicting the proposed adjustment, a deed describing the adjustment and the related expenses.
- The use of a boundary line agreement, and the lack of required permits as would be needed for a boundary line adjustment, would actually create a cloud on the title of both parcels. Those doing record research in the future would note that the common line had been described and would look for the documentation of a boundary line adjustment and the related permits.
- In the documentation that you provided there are several references to the configuration of the two parcels as shown on the tax maps. The tax maps are not intended to be used as a basis of record for land ownership.

In summary, we have not found any information in the land records that suggests that there has been any error with regard to the creation of the parcel at 25 South Street that the Village of Essex Junction has a responsibility to correct. Should the Trustees wish to transfer some of the publicly held park property to the private parcel at 25 South Street, the proper mechanism for this to occur would be through a boundary line adjustment as described above.

Please let me know if we may be of further assistance.

-Rick