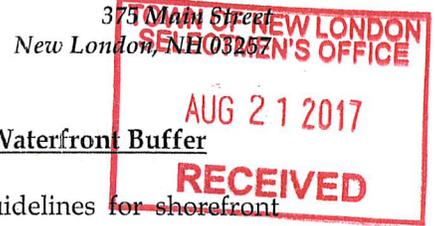




# Town of New London

PLANNING BOARD



## Guidelines for tree cutting in the Shore Land Overlay District Waterfront Buffer

The New London Planning Board offers the following procedural guidelines for shoreline residents seeking approval to cut trees within the 50' Waterfront Buffer.

A waterfront plan and inventory, along with a cutting and planting plan, must be prepared for, submitted to, and approved by the New London Planning Board before cutting or felling any tree within the Waterfront Buffer, including dead trees.

The New London Zoning Ordinance (Article XVI G. 2. c (3)). states:

"If the total tree and sapling score in any 50 by 50 foot segment exceeds 50 points, then the Planning Board may authorize the removal of trees, saplings and shrubs as long as the score for the remaining trees, saplings and shrubs in that segment does not total less than 50 points...."

To facilitate the implementation of this ordinance please observe the following steps:

1. A tree-cutting request shall include a plot plan of the site showing all existing trees and saplings in each 50' by 50' segment within 50' of the reference line, clearly indicating the points for each tree or sapling and the total points for the segment, which trees the property owner intends to remove and their points and the resulting points for each segment if the trees were removed (see over for a detailed explanation and sample plot). This plan shall also indicate the type, points, and location of replacement plantings if needed. New plantings shall be native species, such as white pine, hemlock, high-bush blueberries, etc.
2. A representative of the Town must visit the site to verify plan conditions (contact Peter Stanley, Zoning Administrator at 526-4821 x16, [zoning@nl-nh.com](mailto:zoning@nl-nh.com) to arrange a site inspection). Based on this visit, the Town representative makes a recommendation to the Planning Board on the proposed tree-cutting plan. This step is very important because the Planning Board is inclined to follow the recommendations of the Town representative.
3. No cutting shall occur until *after* the Planning Board has approved the plan and the property owner has been notified of the approval and conditions thereof, if any.

Prop. Owner: Common lot Date: 08/21/2017  
 Mailing Address: 375 MAIN ST., NEW LONDON, NH  
 Phone: 526-6240 Cell: N/A Email: ROBERT@MESSERPOUND.COM  
 Contractor: ROBERT BROWN Phone: 526-6240 Cell: N/A  
 Map/Lot: 118-019-000 Street Address: FOREST ACRES RD  
 Visited By: \_\_\_\_\_ Date of Site Visit: \_\_\_\_\_  
 Planning Board Review Date: \_\_\_\_\_ Approved: \_\_\_\_\_ Denied: \_\_\_\_\_

**Excerpt from Article XVI G. 2. C of the New London Zoning Ordinance March 10, 2009**

2.c. Starting from the northerly or easterly boundary of the property, and working along the shoreline, the Waterfront Buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportioned to that required for a full segment.

(1) Tree and sapling diameters shall be measured at 4½ feet above ground and are scored as follows:  
Diameter Score:

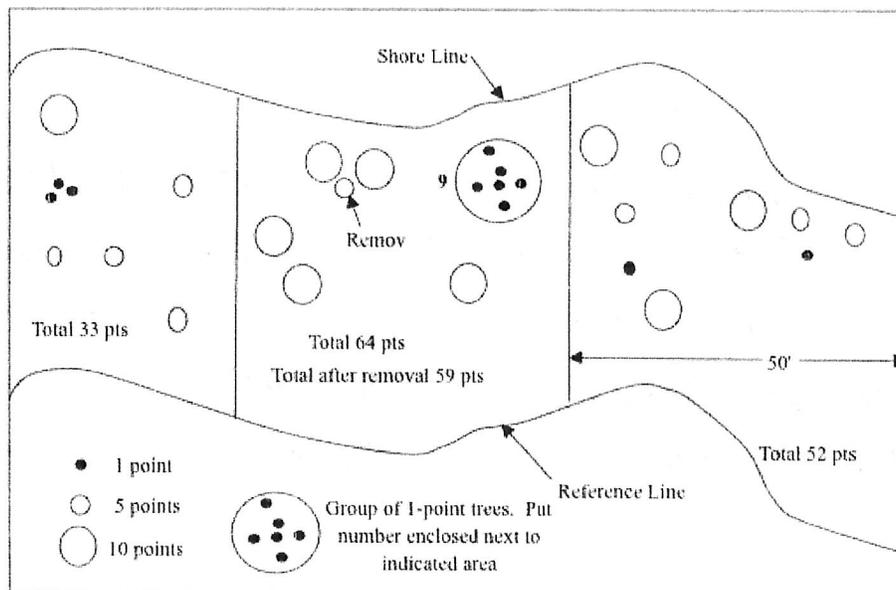
- **1 inch to 6 inches:** **1 point**
- **Greater than 6 inches to 12 inches:** **5 points**
- **Greater than 12 inches:** **10 points**

(2) Dead, diseased, or unsafe trees or saplings (as determined by the Planning Board) shall not be included in scoring.

(3) If the total tree and sapling score in any 50 by 50 foot segment exceeds 50 points, then the Planning Board may authorize the removal of trees, saplings and shrubs as long as the score for the remaining trees, saplings and shrubs in that segment does not total less than 50 points. The remaining scores in partial segments shall be treated similarly.

(4) The Planning Board may authorize the removal of trees and saplings on a segment of a property having less than the required minimum score of 50 points, as long as trees, saplings and shrubs are replanted in sufficient quantity to equal or exceed the score that existed prior to the removal activity. The Planning Board shall not approve a cutting request that results in less than the required minimum score of 50 points or less than the score that existed prior to the request being filed.

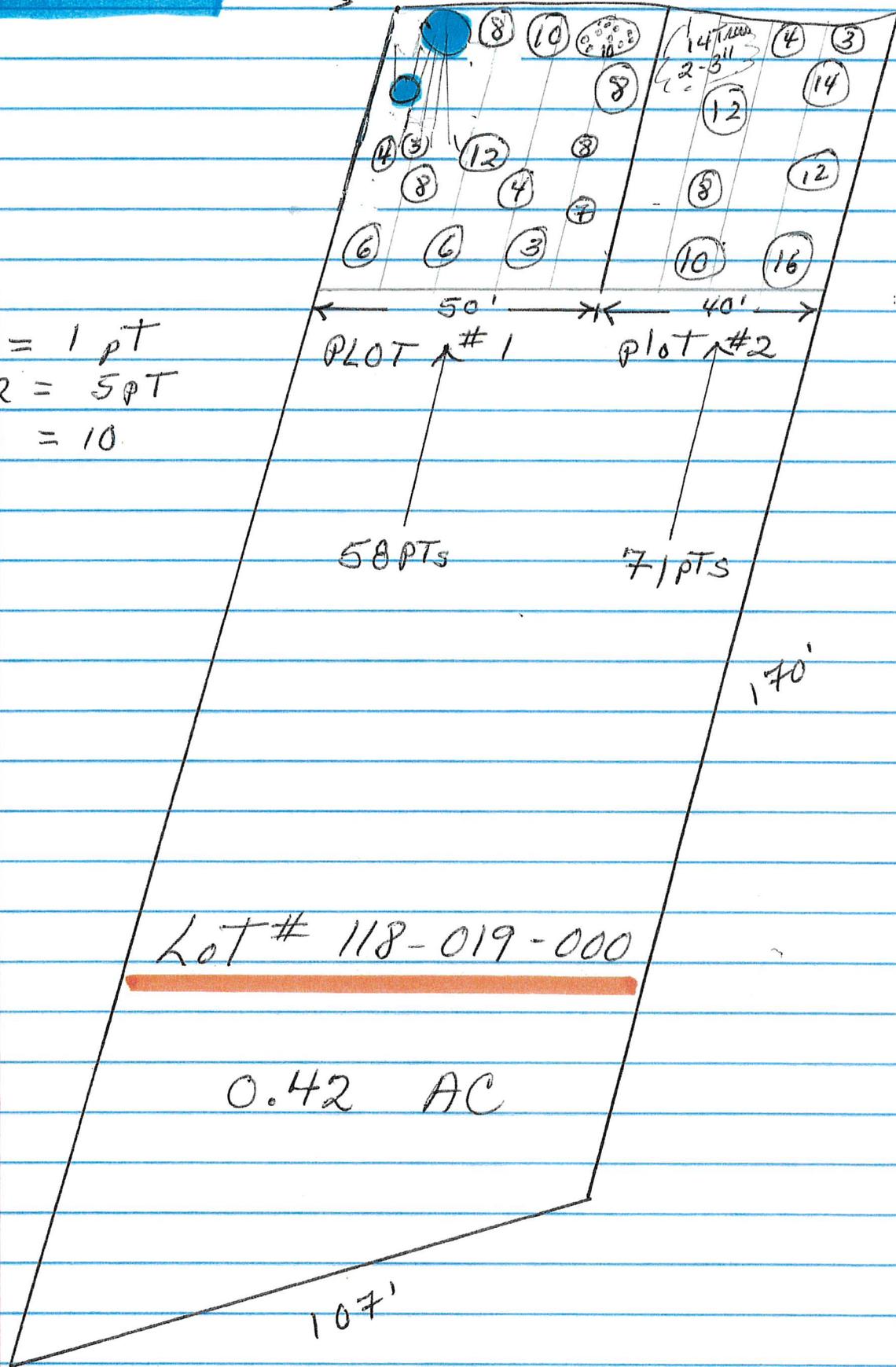
**Sample plot plan with 50' by 50' segments (tree cells) and trees identified by points**



FALLEN  
WHITE PINE

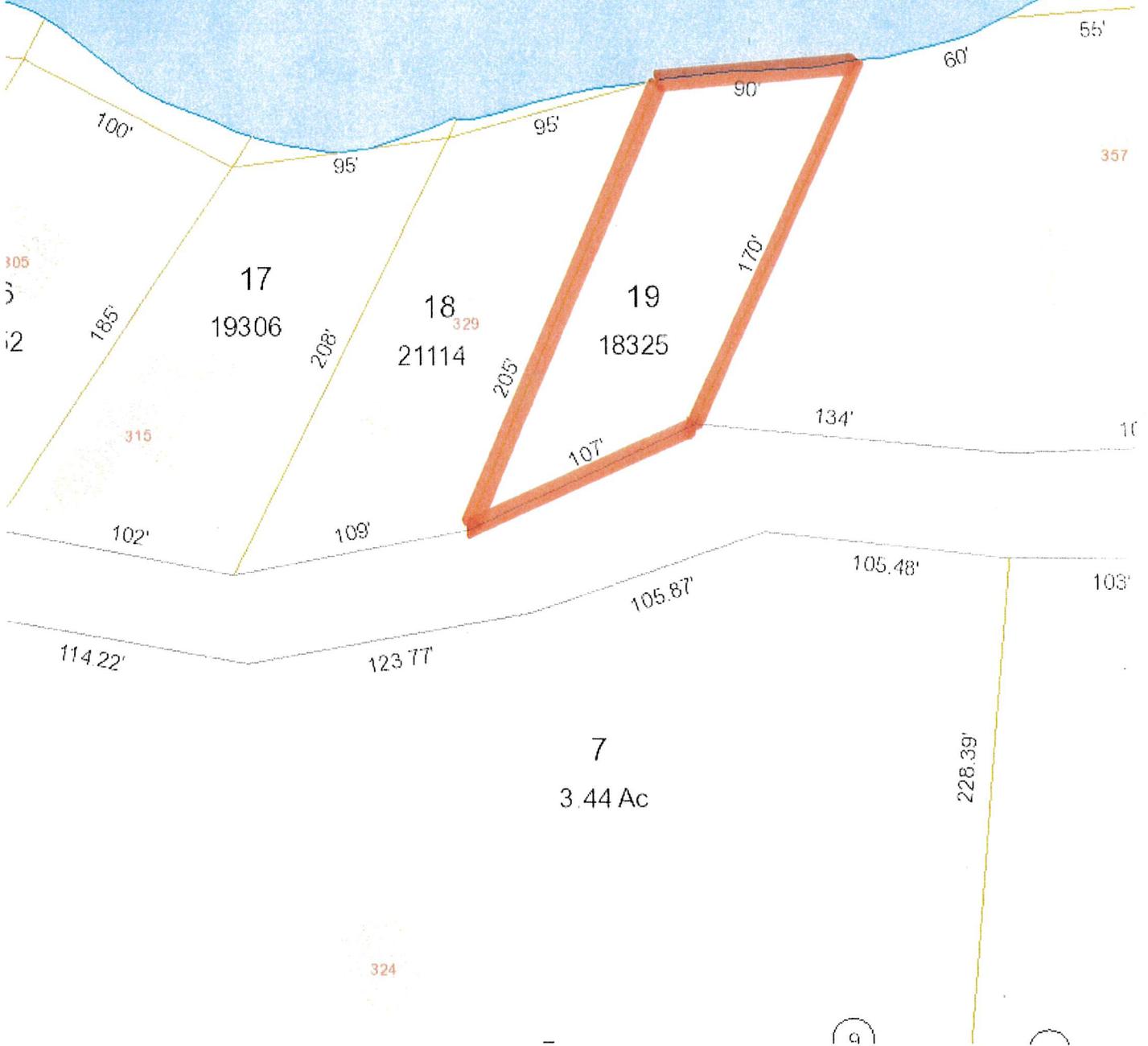
MESSER

90' POND



1" - 6" = 1 pt  
 > 6 - 12 = 5 pt  
 > 12 = 10

# MESSER POND



<b>CURRENT OWNER</b> COMMON LOT - REFER TO ASSESSOR'S 375 MAIN STREET NEW LONDON, NH 03257 Additional Owners:	<b>TOPO.</b> Wetland	<b>UTILITIES</b>	<b>STRT./ROAD</b> 3 Unpaved	<b>LOCATION</b> 7 Waterfront	<b>CURRENT ASSESSMENT</b> Code 9070	<b>Assessed Value</b> 115,800	<b>Assessed Value</b> 115,800	2119 NEW LONDON, NH
<b>SUPPLEMENTAL DATA</b> Other ID: 00118 00030 00000 ZONE MP Septic Infor Y UTILITY WF Ward CONSERVA1 Prec. ROADFF GIS ID: 118-019-000 ASSOC PID#								<b>VISION</b>

<b>RECORD OF OWNERSHIP</b> COMMON LOT - REFER TO ASSESSOR'S	<b>BK-VOL/PAGE</b>	<b>SALE DATE</b>	<b>SALE PRICE</b>	<b>V.C.</b>	<b>PREVIOUS ASSESSMENTS (HISTORY)</b>	<b>Assessed Value</b>	<b>Code</b>	<b>Yr.</b>	<b>Code</b>	<b>Assessed Value</b>	<b>Code</b>	<b>Yr.</b>	<b>Code</b>	<b>Assessed Value</b>
				0		115,800	9070	2017	9070	115,800	9070	2016	9070	115,800
<b>Total:</b>					<b>Total:</b>	115,800				115,800				115,800

**EXEMPTIONS**

Year	Type	Description	Code	Amount	Number	Comm. Int.
				0	0	0
				0	0	0
				0	0	0
				0	0	0
<b>Total:</b>						

<b>ASSESSING NEIGHBORHOOD</b>		<b>OTHER ASSESSMENTS</b>	
NBHD/SUB	NBHD Name	Description	Amount
12/A			
<b>NOTES</b>		<b>APPRAISED VALUE SUMMARY</b>	
OPPOSITE SIDE OF WATER		Appraised Bldg. Value (Card)	
PER PLAN #1799 MCRD		Appraised XF (B) Value (Bldg)	
10/13- REVIEW CONDITION		Appraised OB (L) Value (Bldg)	
TAKE PHOTO		Appraised Land Value (Bldg)	
		Special Land Value	
		Total Appraised Parcel Value	
		Valuation Method:	
		Adjustment:	
		Net Total Appraised Parcel Value	

<b>BUILDING PERMIT RECORD</b>		<b>VISIT/ CHANGE HISTORY</b>	
Permit ID	Issue Date	Type	Description
			08/31/2014 IN FIELD REVIEW
			08/31/2010 IN FIELD REVIEW
			03/28/2002 TN MEASURE & LIST
			11/18/1987 RW CB CALL BACK

<b>LAND LINE VALUATION SECTION</b>		<b>LAND LINE VALUATION SECTION</b>	
B Use Code	Use Description	Zone	D Front Depth
1	9070 COMMON LOT	R2	107
			18.325 SF
			4.21 1.0000 4 1.0000 0.50 12 3.00 W/ACCESS LOT
			Unit Price
			Acres Disc
			Factor S.A.
			Factor C.
			Factor Idx
			Adj
			Notes- Adj
			Special Pricing
			S. Adj Fact
			Adj. Unit Price
			Land Value
			1.00 6.32 115,800

<b>Total Card Land Units:</b>		<b>Parcel Total Land Area:</b>		<b>Total Land Value:</b>	
0.42 AC		0.42 AC		115,800	

CONSTRUCTION DETAIL		CONSTRUCTION DETAIL (CONTINUED)							
Element	Cd.	Ch.	Description						
Model	00		Vacant						
		<b>MIXED USE</b>							
Code	9070	COMMON LOT	Percentage 100						
		<b>COST/MARKET VALUATION</b>							
Adj. Base Rate:		0.00							
Net Other Adj:		0							
Replace Cost		0.00							
AYB		0							
EYB		0							
Dep Code									
Remodel Rating									
Year Remodeled									
Dep %									
Functional Obslnc									
External Obslnc									
Cost Trend Factor		1							
Condition									
% Complete									
Overall % Cond									
Apprais Val									
Dep % Ovr		0							
Dep Ovr Comment									
Misc Imp Ovr		0							
Misc Imp Ovr Comment									
Cost to Cure Ovr		0							
Cost to Cure Ovr Comment									
<b>OB-OUTBUILDING &amp; YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)</b>									
Code	Description	Comment	Yr	Gde	Dp	Rt	Cnd	%Cnd	Apr Value
<b>BUILDING SUB-AREA SUMMARY SECTION</b>									
Code	Description	Living Area	Gross Area	Eff. Area	Unit Cost	Undeprc. Value			
		0	0	0	0	0			

No Photo On Record

**Ttl. Gross Liv/Lease Area:**



## Town of New London

Selectmen's Office

Jessie W. Levine  
Town Administrator

P.O. Box 240  
375 Main Street  
New London, NH 03257

August 7, 2003

Robert & Sandra Brown  
458 Forest Acres Road  
New London, NH 03257

Re: Common Lot on Forest Acres Road (Map 118, Lot 19)

Dear Property Owner(s):

You have received this letter because, according to our records, you are among the owners of a shared waterfront lot on Forest Acres Road (Map 118, Lot 19, which sits between the Nutter and Troxell properties as shown on the enclosed tax map). This may come as a surprise to some of you; it certainly surprised us when we put the puzzle together. The purpose of this letter is to advise you of your ownership and to alert you to any issues that may arise because of it.

The shared use of Map 118, Lot 19 arose from a series of subdivisions in the early 1960s by Forest Kimball. In August 1962, Mr. Kimball subdivided property along the shoreline of Messer Pond -- from the Doyle property at Map 119, Lot 18 to the Miller property at Map 118, Lot 12 -- into 17 lots of about 1/2 an acre each, and reserved Lot #10 "as a right of way for the use of the property owner or owners, present or future, owning land on the opposite side of the entire right of way running from the County Road to the Bog Road." Mr. Kimball recorded this subdivision as Section IV (see plan #1799, Merrimack County Registry of Deeds).

In July 1963, Mr. Kimball created three subdivisions of land on the back side of Forest Acres Road, and recorded those plans as #1847 (Section VI), #1848 (Section VII), and #1852 (Section V). As shown on the maps, Section VII begins at the Brown property on the corner of Forest Acres and Bog Roads (Map 119, Lot 4), turns the corner of Forest Acres Road, and ends at another Brown property (Map 119, Lot 11). Section VI runs from the Stephens property (Map 119, Lot 12) to the Rossachaci property (Map 118, Lot 10), and Section V runs from the Rossachaci property to the Ruth Haas property (Map 105, Lot 27-001). Each of these recorded plans contains a note that says: "Section IV--Lot 10 is reserved as a right of way for the use of owners, present or future, of these lots." Reduced copies of the recorded plans are enclosed.

The properties that were created by Sections V and VI also contain language in the deeds that reflects ownership of the shared lot. For example, a deed states: "Also one sixth in common and undivided of Lot #10 in Section IV on a Plan of Lots in Forest Acres as shown on a map by Lloyd H. Littlefield, Surveyor, dated July 5, 1962 recorded in the Merrimack County Registry of Deeds as Plan #1799." Although the properties in Section VII do not contain specific language in their deeds, town counsel has advised me that the statement on the recorded subdivision plan is enough to substantiate the developer's intent to associate ownership of the lots identified in Section VII with a deeded right to Section IV, Lot 10. Furthermore, the fractional shares mentioned in the various deeds do not imply that a person with 1/6<sup>th</sup> of a share has any more rights than a person with 1/24<sup>th</sup>, since the deeds state that ownership is "in common and undivided." There are not differing levels of ownership; all property owners have equal ownership of the waterfront lot.

(603) 526-4821 (telephone)  
(603) 526-9494 (fax)  
townadministrator@adelphia.net

Forest Acres Road Property Owners

August 7, 2003

Page 2

I also understand from town counsel that deeded rights to Section IV, Lot 10, do not pass to any property along Forest Acres Road that is not specifically identified in one of Mr. Kimball's subdivision plans. That is, even though the language on Plan #1799 is vague in referring to "property owner or owners, present or future, owning land on the opposite side of the entire right of way running from the County Road to the Bog Road," the subsequent recorded subdivisions confirm the developer's intent in conveying ownership of the shared lot to the properties specifically identified in the recorded subdivision plans.

Over time, some of the smaller lots have been annexed together to create bigger lots. When those annexations occurred, some property owners assumed that their shares of the waterfront lot could be multiplied by the number of parcels in the annexation, essentially increasing the number of shares that they owned. For example, if four smaller lots were annexed into one big lot, one may assume that the property now owns four shares of the waterfront lot. In one instance, a property owner who made this assumption sold her Forest Acres property with three ownership shares and retained the fourth share, even though she no longer owns property on Forest Acres Road. According to town counsel, this assumption, and the practice of owning shares that are not associated with one of the lots on Forest Acres Road, is contrary to real estate law and to the intent of the subdivision. Remember, the subdivision plans state "Section IV - Lot 10 is reserved as a right of way for the use of owners, present or future, of these lots." It is therefore reasonable to conclude that the deeded rights to the waterfront lot are not severable from ownership of the back lots, just as rights to use common land in a subdivision cannot be sold or given to anyone other than a property owner in that subdivision.

In addition to being contrary to real estate law, this practice violates the New London Zoning Ordinance. In 1992, New London voters approved the creation of the Shore Land Overlay District, the intent of which is to protect New London's lakes and ponds by regulating land use within 300 feet of the normal high water mark. Article XVI, Section D of the Zoning Ordinance states, at #s 3 and 4:

3. Lots within the Shore Land Overlay District shall not be used as common areas for waterfront access or for the purpose of granting deeded rights or access to residents of multiple units and/or non-waterfront properties, regardless of the location of such properties, except as provided herein and subject to Planning Board approval. For the purpose of this section, the term "common area" shall mean an area used by a group of 3 or more unrelated persons or by an association, club or organization consisting of 3 or more members.
4. Rights to gain access to a water body by or through a shore land lot shall not be created or attached to any real estate. Waterfront access shall be gained only in accordance with the standards set forth below and subject to Planning Board approval.

(Emphasis added.) Since Mr. Kimball's subdivisions were pre-existing when the Shore Land Overlay District was adopted, the shared use of the waterfront lot is considered a grandfathered, or "non-conforming," use. Under NH law and under the New London Zoning Ordinance, non-conforming uses are allowed to continue but may not be changed or expanded in any way. Article XX, Section A, 2, of the Zoning Ordinance states: "Any non-conforming use shall not be changed to another non-conforming use. Any non-conforming use shall not be expanded."

Forest Acres Road Property Owners  
August 7, 2003  
Page 3

It is the Town's position that the ownership of shares of the waterfront lot by anyone other than an owner of property identified in Sections V, VI, or VII of the subdivision plans constitutes a change or expansion of the non-conforming use, and is not permitted. In essence, every parcel of property on the back side of Forest Acres Road, from the Browns (Map 119, Lot 4) to Ruth Haas (Map 105, Lot 27-001), has a deeded right to the waterfront lot, and that deeded right is wholly associated with ownership of a specific lot. Although the Town does not intend to pursue a zoning violation with respect to the expansion of a non-conforming use, we will record this letter with the Merrimack County Registry of Deeds so that no further transfers of ownership may occur. In addition, a copy of this letter will go into every tax map file in our office, so that it can easily be found by future property owners.

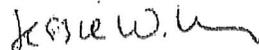
As for your use of the property going forward, the Town encourages the property owners to form an association for the care and maintenance of that waterfront parcel. I have enclosed the list of property owners and mailing addresses for your use in contacting one another.

Finally, with respect to taxation of the waterfront parcel: in 1995, our assessors reviewed the ownership of the waterfront parcel, and determined that since it could not be sold as an individual piece of property, it did not have any market value. The assessors zeroed out the value of that parcel, and incorporated the value into the assessments of the back lots that we were aware of at the time. We now know that the waterfront parcel is shared by more than the 12 properties that the assessors knew of in 1995, and we are reviewing the assessment implications, *if any*, of the deeded right. Given that the assessors had already considered the back side of Forest Acres Road as one neighborhood, I do not anticipate that there will be much of a change in assessments as a result of this discovery.

As always, if you have any questions or disagree with any of the information that I have presented in this letter, please feel free to contact me. However, please be advised that the burden is on the property owner to show that the Town has made an error or to correct any paperwork with the Registry of Deed, and we reserve the right to refer you to an attorney for personal advice. Although I have consulted with town counsel for the purposes of writing this letter, the Town may not use its legal counsel to resolve questions raised by individual property owners.

I hope that this letter answers the questions that have been brought to the town. Thanks very much for your patience as we researched this unusual situation.

Sincerely,



Jessie W. Levine  
Town Administrator

Enclosures

cc: Board of Selectmen  
Merrimack County Registry of Deeds

Forest Acres Road  
 Owners of Shared Lot 118-019

Map/Lot	Owner Name	Address	City	State	Zip Code	Subdivision Plan (Lot)	Date of Most Recent Deed
105-022	James & Karen Howell	PO Box 1902	New London	NH	03257	V (6-7)	August 21, 2001
105-023	Kimberly A Habib	91 Lake Street	Salem	NH	03078	V (8-9)	June 23, 2000
105-024	Ruth S Haas	140 Pleasant Street	Arlington	MA	02476	V (10)	April 23, 1976
105-025	Ruth S Haas	140 Pleasant Street	Arlington	MA	02476	V (11)	April 23, 1976
105-026	Ruth S Haas	140 Pleasant Street	Arlington	MA	02476	V (12)	April 23, 1976
105-027	Ruth S Haas	140 Pleasant Street	Arlington	MA	02476	V (13)	April 23, 1976
105-027-001	Ruth S Haas	140 Pleasant Street	Arlington	MA	02476	V (14)	April 23, 1976
118-005	Judy Eakin & Jean Chockley	1897 Woodstock Road	Gates Mills	OH	44040	VI (2-4)	March 3, 1999
118-006	Stephen & M. Anne Rayda	PO Box 670	New London	NH	03257	VI (5-8)	April 8, 1980
118-007	Jean-Pierre & Kelly Paquette	324 Forest Acres Road	New London	NH	03257	VI (9-12)	December 4, 2000
118-008	Delbert & Mary Prothero	PO Box 2094	New London	NH	03257	VI (13-16)	June 7, 1999
118-010	Marie Rossachad	2017 Skiles Blvd	West Chester	PA	19382	V (1); VI (17)	March 14, 2003
118-011	Brian J & Mary E Wicenski	PO Box 1077	New London	NH	03257	V (2-5)	August 20, 1999
118-019-001	Bruce & Karen Haskell	PO Box 166	New London	NH	03257	n/a	
119-012	Nancy D & Ralph Stephens	2017 Seven Lakes South	West End	NC	27376	VI (1)	January 2, 1985
119-004	Robert & Sandra Brown	468 Forest Acres Road	New London	NH	03257	VII (1)	June 27, 2000
119-005	Gerald & Elizabeth Rogoff	PO Box 2973	Frammingham	MA	01703	VII (2)	September 16, 1988
119-006	David & Anne Wustrow	5101 John Holmes Road	Ann Arbor	MI	48103	VII (3)	September 28, 1999
119-009	Daniel & Patricia Carroll	1369 Fork Road	Stuart	FL	34984	VII (6)	September 10, 2001
119-010	Myron S & Rose R Simon	20 Somerset Road	West Newbury	MA	02165	VII (7-8)	July 28, 1967
119-011	Robert & Sandra Brown	458 Forest Acres Road	New London	NH	03257	VII (9-10)	June 27, 2000
105-004	John & Mary Doyle	357 Mucclatone Road	Franklin	MA	02038	VII (4-5)	December 20, 1985

