



TOWN OF MILFORD, NEW HAMPSHIRE
OFFICE OF COMMUNITY DEVELOPMENT

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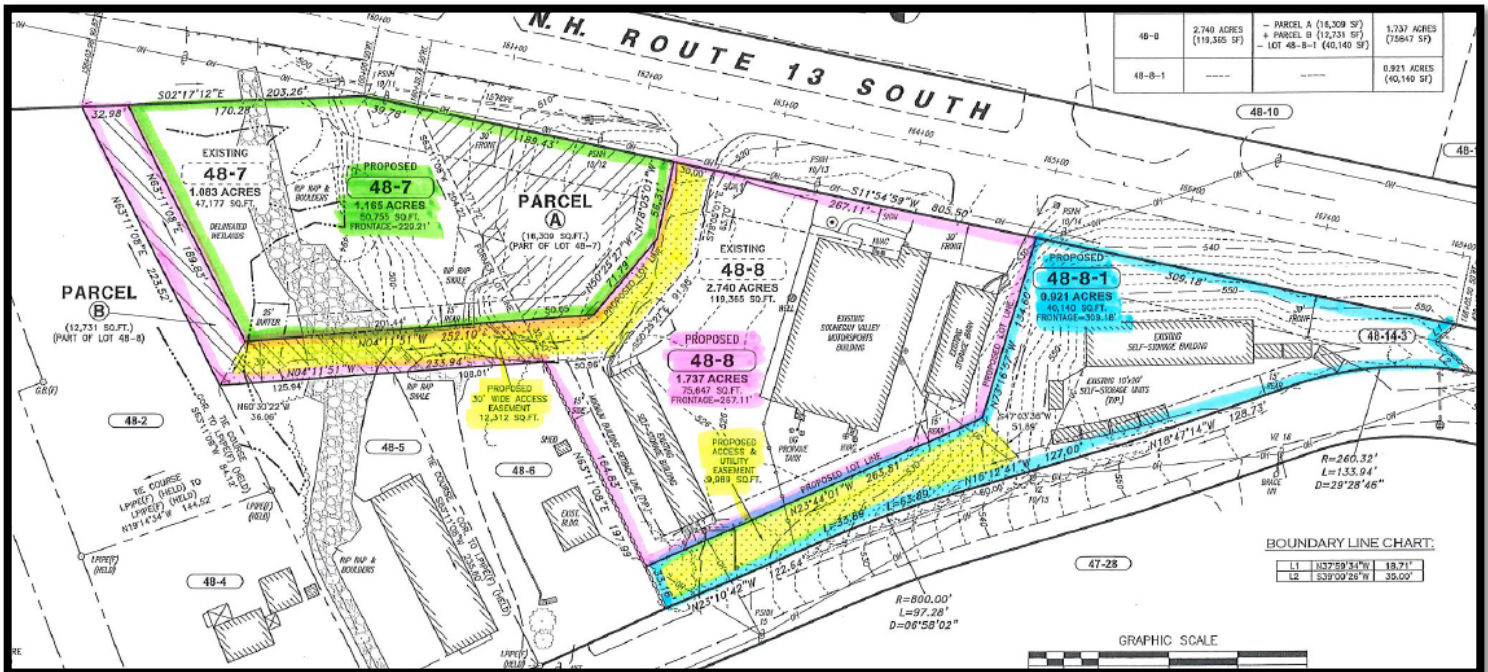
Date: November 8, 2021
To: Town of Milford Planning Board
From: Jason Cleghorn, Town Planner
Subject: SD2021-06 Chappell Properties, LLC (owners), 454 NH Route 13 South, Map 48, Lots 7 & 8 Rescission Hearing

BACKGROUND:

The Planning Board on April 20th approved a lot line adjustment and minor subdivision involving these two properties however the applicant did not record the plan with the Registry of Deeds. The below were the resultant lots as part of that approval.

Town Staff reached out to the New Hampshire Municipal Association’s Municipal Services Counsel for guidance on how best to proceed when a plan has been approved but not recorded and their guidance was for the Planning Board to hold a Rescission Hearing for the prior approval PRIOR to the approval or hearing of the new plan.

Lot	Old Size	New Size	Minimum Lot size
48-7	1.083 acres	1.533 acres (66,765 sf)	0.91 ac (40,000 sf)
48-8	2.740 acres	1.298 acres (56,522 sf)	0.91 ac (40,000 sf)
48-8-1	N/A	0.921 acres (40,140 sf)	0.91 ac (40,000 sf)



From: [Legal Inquiries](#)
To: [Jason Cleghorn](#)
Subject: Milford: Proper Procedure for New LLA for parcels previously approved for LLA and Minor Subdivision but *NOT* recorded
Date: Monday, October 18, 2021 3:23:16 PM
Attachments: [image002.jpg](#)
[image003.jpg](#)
[image004.png](#)

Good afternoon Jason,

All the board would need to do is “rescind” their approval. Since it wasn’t filed at the registry, they don’t have to worry that the statute applies only to recorded approvals. (Although, to be extra safe, they could record a copy of the rescission.)

The board, should, however, as a matter of due process, schedule a rescission hearing involving the two parties prior to issuing the rescission. Presumably, that could occur at the same date/time/place as any hearing required for the new LLA, and it would be reasonable to assume that the Board would require a hearing where an application is for a LLA adjustment between two properties that were already issued a LLA and the old LLA was not filed. The reason is that the board wants to assure that it does not issue a new LLA and then find out that the old one was filed prior to the filing of the new one, or some other action occurring which obscures the proper LLs of the properties. (Much like a judge wants to ensure that the correct result is reached when the filings are confusing.)

I hope that’s helpful.

Natch Greyes, Esq.

Municipal Services Counsel

NH Municipal Association

25 Triangle Park Drive

Concord NH 03301

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<https://www.nhmunicipal.org/american-rescue-plan-act-2021-information-page>



<https://www.nhmunicipal.org/nhmas-80th-annual-conference-and-exhibition>

From: Jason Cleghorn <jcleghorn@milford.nh.gov>

Sent: Monday, October 18, 2021 2:16 PM

To: Legal Inquiries <legalinquiries@nhmunicipal.org>

Subject: Proper Procedure for New LLA for parcels previously approved for LLA and Minor Subdivision but *NOT* recorded

Importance: High

Steve et al,

We had a Lot Line Adjustment and Minor Subdivision application approved by the Planning Board but the applicant never actually recorded the plan at the Registry of Deeds. They have now submitted another Lot Line Adjustment related to the same properties and I am looking for guidance on how to proceed technically with our Planning Board to effectuate the new LLA in light of the previously approved one but not recorded.

The below templates for Notice to Revoke PB Approval are from the Planning Handbook.



The pertinent (I think it would be pertinent) RSA is below but it also seems to contemplate revocation of a 'recorded' plan.

NH RSA 676:4-1 Revocation of **Recorded** Approval, states that:

- I. A subdivision plat, street plat, site plan or other approval which has been filed with the appropriate recording official under RSA 674:37 may not be revoked, in whole or in part, by the planning board, except pursuant to this section, and only under the following circumstances:*
 - a. At the request of, or by agreement with, the applicant or the applicant's successor in interest.*
 - b. When the applicant or successor in interest to the applicant has performed work, erected a structure or structures, or established a use of land, which fails to conform to the statements, plans or specifications upon which the approval was based, or has materially violated any requirement or condition of such approval.*

- c. *When the applicant or successor in interest to the applicant has failed to perform any condition of the approval within a reasonable time specified in the approval, or, if no such time is specified, within the time periods specified in RSA 674:39.*
- d. *When the time periods specified in RSA 674:39 have elapsed without any vesting of rights set forth therein, and the plat, plan or other approval no longer conforms to applicable ordinances or regulations.*
- e. *When the applicant or successor in interest to the applicant has failed to provide for the continuation of adequate security as provided by RSA 674:36, III(b) and 674:44, III(d) until such time as the work secured thereby has been completed.*

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