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September 22, 2016

Amanda Lessard, Town Planner
Town of Windham
8 School Road
Windham, Maine 04062

RE: Lots 26 and 27, Otterbrook Estates

Dear Amanda:

I am writing in response to two issues/questions that you presented to Matthew Ek in your email of September 21, 2016.

Your first question is whether or not Attorney Bower's content that the grandfather status is lost when lot lines are adjusted is supported by the Law Court decision of *Day v. Town of Phippsburg*. As I stated in my letter of September 19th, the facts in the *Day* case are very different from our present case and do not even address the issue of lot line adjustment to nonconforming lots. The *Day* case deals with the merger of lots that were nonconforming and a Town's Shoreland Zoning Ordinance that does not have the same language that Windham has in Section 204.C. of Windham's Land Use Ordinance. The case has nothing to do with lot line adjustments and whether or not grandfather status is lost when there is "land swap" of equal square footage. What the Court did say in the *Day* case was that "The policy of zoning is to abolish nonconformi[ties] as speedily as justice will permit." *Town of Windham v. Sprague*, **219 A.2d 548**, 552-53 (Me. 1966). This is exactly what Mr. Gagnon is trying to do. Mr. Gagnon is requesting that the Board revise the line so that the garage is no longer on two separate and distinct lots, thus abolishing a nonconformity. Based upon our review of the Town of Windham Ordinances along with applicable caselaw in the State of Maine, it is clear that the proposed revision to the lot lines does not affect the grandfather status of the subdivision or the lots.

The second question is whether the changing of the lot lines creates a new lot that is nonconforming and how that issue relates to Section 105 of the Land Use Ordinance which requires conformance. As we have stated previously, we are in compliance with Section 105 B which states that "No building, structure or land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located." The purpose in this zone and this subdivision is to have single family

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residences on each lot. This is exactly what we are proposing. Furthermore, we are not creating a new lot. We are only adjusting lot lines to existing lots that are already nonconforming.

The Town of Windham Planning Board has authority to revise a subdivision pursuant to Section 913 of the Town's Land Use Ordinance. "In reviewing such an application, the Planning Board shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of Title 30-A MRSA Section 4404." The only subsection of Section 4404 that applies in this review is subsection 9, which states: "The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal authority may interpret these ordinances and plans." Mr. Gagnon's changes comply with Section 200 ("Nonconforming Provisions") of the Town of Windham's Land Use Ordinance, thus the Board has authority to grant approval to our subdivision plan revision.

I will be attending Monday's Planning Board meeting and will be happy to address any additional questions at that time.

Very truly yours,



Alan E. Wolf

AEW/ah
cc: Kevin Gagnon